This End User License Agreement, including the Order Form which by this reference is incorporated herein (this "**Agreement**"), is a binding agreement between Arkansas Public School Resource Center ("**Licensor**") and the person or entity identified on the Order Form as the licensee of the Software ("**Licensee**").

LICENSOR PROVIDES THE SOFTWARE SOLELY ON THE TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT AND ON THE CONDITION THAT LICENSEE ACCEPTS AND COMPLIES WITH THEM. BY LOGGING IN WITH YOUR USERNAME AND PASSWORD YOU (A) ACCEPT THIS AGREEMENT AND AGREE THAT LICENSEE IS LEGALLY BOUND BY ITS TERMS; AND (B) REPRESENT AND WARRANT THAT: (I) YOU ARE OF LEGAL AGE TO ENTER INTO A BINDING AGREEMENT; AND (II) IF LICENSEE IS A CORPORATION, GOVERNMENTAL ORGANIZATION OR OTHER LEGAL ENTITY, YOU HAVE THE RIGHT, POWER AND AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF LICENSEE AND BIND LICENSEE TO ITS TERMS. IF LICENSEE DOES NOT AGREE TO THE TERMS OF THIS AGREEMENT, LICENSOR WILL NOT AND DOES NOT LICENSE THE SOFTWARE TO LICENSEE AND YOU MUST NOT USE THE SOFTWARE OR DOCUMENTATION.

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT OR YOUR OR LICENSEE'S ACCEPTANCE OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, NO LICENSE IS GRANTED (WHETHER EXPRESSLY, BY IMPLICATION OR OTHERWISE) UNDER THIS AGREEMENT, AND THIS AGREEMENT EXPRESSLY EXCLUDES ANY RIGHT, CONCERNING ANY SOFTWARE THAT LICENSEE DID NOT ACQUIRE LAWFULLY OR THAT IS NOT A LEGITIMATE, AUTHORIZED COPY OF LICENSOR'S SOFTWARE.

1.   Definitions. For purposes of this Agreement, the following terms have the following meanings:

"**Authorized Users**" means the individual persons authorized to use the Software pursuant to the license granted under this Agreement and identified on the applicable Order Form.

"**Documentation**" means user manuals, technical manuals and any other materials provided by Licensor, in printed, electronic or other form, that describe the installation, operation, use or technical specifications of the Software.

"**Licensee**" has the meaning set forth in the preamble.

"**License Fees**" means the license fees, including all taxes thereon, paid or required to be paid by Licensee for the license granted under this Agreement.

"**Intellectual Property Rights**" means any and all registered and unregistered rights granted, applied for or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret,

database protection or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.

"**Licensor**" has the meaning set forth in the preamble.

"**Order Form**" means the order form filled out and submitted by or on behalf of Licensee, and accepted by Licensor, for Licensee's purchase of the license for the Software granted under this Agreement.

"**Person**" means an individual, corporation, partnership, joint venture, limited liability company, governmental authority, unincorporated organization, trust, association or other entity.

"**Software**" means the software programs for which Licensee is purchasing a license, as expressly set forth in the Order Form.

"**Term**" has the meaning set forth in **Section 9**.

"**Third Party**" means any Person other than Licensee or Licensor.

2.   License Grant and Scope. Subject to and conditioned upon Licensee's payment of the License Fees and Licensee's strict compliance with all terms and conditions set forth in this Agreement, Licensor hereby grants to Licensee a non-exclusive, non-transferable, non-sublicensable, limited license during the Term to use, solely by and through its Authorized Users, the Software and Documentation, solely as set forth in this **Section 2** and subject to all conditions and limitations set forth in **Section 3** or elsewhere in this Agreement. This license grants Licensee the right, exercisable solely by and through Licensee's Authorized Users, to use the Software in accordance with this Agreement and the Documentation. Data, reports, images, screen captures, visual depictions or other similar information obtained by Licensee's use of the Software or Documentation shall be for Licensee's internal use only and shall not be shared with any Third Party.

3.   Use Restrictions. Licensee shall not, and shall require its Authorized Users not to, directly or indirectly:

(a)   use (including make any copies of) the Software or Documentation beyond the scope of the license granted under **Section 2**;

(b)   use, access and/or visually inspect the Software or Documentation in any non-confidential manner;

(c)   without authorization from Licensor, copy or share any image, screen capture, or visual depiction of the Software or its use or the Documentation;

(d)   provide any other Person, including any subcontractor, independent contractor, affiliate or service provider of Licensee, with access to or use of the Software or Documentation;

(e)   modify, translate, adapt or otherwise create derivative works or improvements, whether or not patentable, of the Software or Documentation or any part thereof;

2

(f)   combine the Software or any part thereof with, or incorporate the Software or any part thereof in, any other programs;

(g)   reverse engineer, disassemble, decompile, decode or otherwise attempt to derive or gain access to the source code of the Software or any part thereof;

(h)   remove, delete, alter or obscure any trademarks or any copyright, trademark, patent or other intellectual property or proprietary rights notices provided on or with the Software or Documentation, including any copy thereof;

(i)   copy the Software or Documentation, in whole or in part;

(j)   rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make available the Software, or any features or functionality of the Software, to any Third Party for any reason, whether or not over a network or on a hosted basis, including in connection with the internet or any web hosting, wide area network (WAN), virtual private network (VPN), virtualization, time-sharing, service bureau, software as a service, cloud or other technology or service;

(k)   provide any other Person, including any subcontractor, independent contractor, affiliate or service provider of Licensee, with data, reports, images, screen captures, visual depictions or other similar information obtained from its use of the Software or Documentation;

(l)   use the Software or Documentation in violation of any law, regulation or rule; or

(m)   use the Software or Documentation for purposes of competitive analysis of the Software, the development of a competing software product or service or any other purpose that is to the Licensor's commercial disadvantage.

4.   <u>Responsibility for Use of Software</u>. Licensee is responsible and liable for all uses of the Software and Documentation through access thereto provided by Licensee, directly or indirectly. Specifically, and without limiting the generality of the foregoing, Licensee is responsible and liable for all actions and failures to take required actions with respect to the Software and Documentation by its Authorized Users or by any other Person to whom Licensee or an Authorized User may provide access to or use of the Software and/or Documentation, whether such access or use is permitted by or in violation of this Agreement.

5.   <u>Compliance Measures</u>.

(a)   On Licensor's written request, Licensee shall conduct a review of its and its Authorized Users use of the Software and certify to Licensor in a written instrument signed by an officer of Licensee that it is in full compliance with this Agreement or, if Licensee discovers any noncompliance:

(i)   Licensee shall immediately remedy such noncompliance and provide Licensor with written notice thereof. Licensee shall provide Licensor with all access and assistance as Licensor requests to further evaluate and remedy such noncompliance.

3

(ii)   If Licensee's use of the Software exceeds the number of copies or Authorized Users permitted under the license, Licensor shall have the remedies set forth in **Section 5(c)**.

(b)   During the Term, Licensor may, in Licensor's sole discretion, audit Licensee's use of the Software to ensure Licensee's compliance with this Agreement. The Licensee shall fully cooperate with Licensor's personnel conducting such audits and provide all reasonable access requested by the Licensor to records, systems, equipment, information and personnel, including machine IDs, serial numbers and related information. Licensor shall only examine information directly related to the Licensee's use of the Software. Licensor may conduct audits only during Licensee's normal business hours and in a manner that does not unreasonably interfere with the Licensee's business operations.

(c)   If any of the measures taken or implemented under this **Section 5** determines that the Licensee's use of the Software exceeds or exceeded the use permitted by this Agreement then:

(i)   Licensee shall, within 30 days following the date of such determination by Licensee or Licensor's written notification thereof, pay to Licensor the retroactive License Fees for such excess use and, unless Licensor terminates this Agreement pursuant to **Section 5(c)(iii)**, obtain and pay for a valid license to bring Licensee's use into compliance with this Agreement. In determining the Licensee Fee payable pursuant to the foregoing, (x) unless Licensee can demonstrate otherwise by documentary evidence, all excess use of the Software shall be deemed to have commenced on the commencement date of this Agreement or, if later, the completion date of any audit previously conducted by Licensor hereunder, and continued uninterrupted thereafter, and (y) the rates for such licenses shall be determined without regard to any discount to which Licensee may have been entitled had such use been properly licensed prior to its commencement (or deemed commencement).

(ii)   If the use exceeds or exceeded the use permitted by this Agreement by more than 10%, Licensee shall also pay to Licensor, within 30 days following the date of Licensor's written request therefor, Licensor's reasonable costs incurred in conducting the audit.

(iii)   If the use exceeds or exceeded the use permitted by this Agreement by more than 10%, Licensor shall also have the right to terminate this Agreement and the license granted hereunder, effective immediately upon written notice to Licensee.

Licensor's remedies set forth in this **Section 5(c)** are cumulative and are in addition to, and not in lieu of, all other remedies the Licensor may have at law or in equity, whether under this Agreement or otherwise.

6.   <u>Collection and Use of Information</u>.

(a)   Licensee acknowledges that Licensor may, directly or indirectly through the services of Third Parties, collect and store information regarding use of the Software and about equipment on which the Software is installed or through which it otherwise is accessed and used.

(b)   Licensee agrees that the Licensor may use such information for any purpose related to any use of the Software by Licensee or on Licensee's equipment, including but not limited to:

<center>4</center>

(i)   improving the performance of the Software or developing updates; and

(ii)   verifying Licensee's compliance with the terms of this Agreement and enforcing the Licensor's rights, including all Intellectual Property Rights in and to the Software.

7.   Intellectual Property Rights. Licensee acknowledges and agrees that the Software and Documentation are provided under license, and not sold, to Licensee. Licensee does not acquire any ownership interest in the Software or Documentation under this Agreement, or any other rights thereto other than to use the same in accordance with the license granted, and subject to all terms, conditions and restrictions, under this Agreement. Licensor reserves and shall retain its entire right, title and interest in and to the Software and all Intellectual Property Rights arising out of or relating to the Software, except as expressly granted to the Licensee in this Agreement. Licensee shall use commercially reasonable efforts to safeguard the Software from infringement, misappropriation, theft, misuse or unauthorized access.

8.   Payment. All License Fees and Support Fees are payable in advance in the manner set forth in the Order Form and are non-refundable. Any renewal of the license shall not be effective until the fees for such renewal have been paid in full.

9.   Term and Termination.

(a)   This Agreement and the license granted hereunder shall remain in effect for the term set forth on the Order Form or until earlier terminated as set forth herein (the "**Term**").

(b)   Licensee may terminate this Agreement by ceasing to use the Software and Documentation and returning or destroying all Documentation.

(c)   Licensor may terminate this Agreement, effective upon written notice to Licensee, if Licensee, breaches this Agreement and such breach: (i) is incapable of cure; or (ii) being capable of cure, remains uncured thirty (30) days after Licensor provides written notice thereof.

(d)   Licensor may terminate this Agreement, effective immediately, if Licensee files, or has filed against it, a petition for voluntary or involuntary bankruptcy or pursuant to any other insolvency law, makes or seeks to make a general assignment for the benefit of its creditors or applies for, or consents to, the appointment of a trustee, receiver or custodian for a substantial part of its property.

(e)   Upon expiration or earlier termination of this Agreement, the license granted hereunder shall also terminate, and Licensee shall cease using the Software and Documentation. Furthermore, upon expiration or earlier termination of this Agreement, the sublicense granted under the Tableau Online Subscription Agreement shall also terminate; Licensee and each Authorized User shall cease to be a Client Sublicensee under the Tableau Online Subscription Agreement; and Licensor shall be allowed to reassign the sublicense granted under the Tableau Online Subscription Agreement to any Third Party. No expiration or termination shall affect Licensee's obligation to pay all Licensee Fees that may have become due before such expiration or termination, or entitle Licensee to any refund.

10.   Warranty Disclaimer. THE SOFTWARE AND DOCUMENTATION ARE PROVIDED TO LICENSEE "AS IS" AND WITH ALL FAULTS AND DEFECTS WITHOUT WARRANTY OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, LICENSOR, ON ITS OWN BEHALF AND ON BEHALF OF ITS AFFILIATES AND ITS AND THEIR RESPECTIVE LICENSORS AND SERVICE PROVIDERS, EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, WITH RESPECT TO THE SOFTWARE AND DOCUMENTATION, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND WARRANTIES THAT MAY ARISE OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OR TRADE PRACTICE. WITHOUT LIMITATION TO THE FOREGOING, THE LICENSOR PROVIDES NO WARRANTY OR UNDERTAKING, AND MAKES NO REPRESENTATION OF ANY KIND THAT THE LICENSED SOFTWARE WILL MEET THE LICENSEE'S REQUIREMENTS, ACHIEVE ANY INTENDED RESULTS, BE COMPATIBLE OR WORK WITH ANY OTHER SOFTWARE, APPLICATIONS, SYSTEMS OR SERVICES, OPERATE WITHOUT INTERRUPTION, MEET ANY PERFORMANCE OR RELIABILITY STANDARDS OR BE ERROR FREE OR THAT ANY ERRORS OR DEFECTS CAN OR WILL BE CORRECTED.

11.   Limitation of Liability. TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW:

        (a)   IN NO EVENT WILL LICENSOR OR ITS AFFILIATES, OR ANY OF ITS OR THEIR RESPECTIVE LICENSORS OR SERVICE PROVIDERS, BE LIABLE TO LICENSEE OR ANY THIRD PARTY FOR ANY USE, INTERRUPTION, DELAY OR INABILITY TO USE THE SOFTWARE, LOST REVENUES OR PROFITS, DELAYS, INTERRUPTION OR LOSS OF SERVICES, BUSINESS OR GOODWILL, LOSS OR CORRUPTION OF DATA, LOSS RESULTING FROM SYSTEM OR SYSTEM SERVICE FAILURE, MALFUNCTION OR SHUTDOWN, FAILURE TO ACCURATELY TRANSFER, READ OR TRANSMIT INFORMATION, FAILURE TO UPDATE OR PROVIDE CORRECT INFORMATION, SYSTEM INCOMPATIBILITY OR PROVISION OF INCORRECT COMPATIBILITY INFORMATION OR BREACHES IN SYSTEM SECURITY, OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES, WHETHER ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT THE LICENSOR WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

        (b)   IN NO EVENT WILL LICENSOR'S AND ITS AFFILIATES', INCLUDING ANY OF ITS OR THEIR RESPECTIVE LICENSORS' AND SERVICE PROVIDERS', COLLECTIVE AGGREGATE LIABILITY UNDER OR IN CONNECTION WITH THIS AGREEMENTOR ITS SUBJECT MATTER, UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY AND OTHERWISE, EXCEED THE TOTAL AMOUNT PAID TO THE LICENSOR PURSUANT TO THIS AGREEMENT FOR THE SOFTWARE THAT IS THE SUBJECT OF THE CLAIM.

6

(c)   THE LIMITATIONS SET FORTH IN **Section 11(a)** AND **Section 11(b)** SHALL APPLY EVEN IF THE LICENSEE'S REMEDIES UNDER THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE.

12.   <u>Export Regulation</u>. The Software and Documentation may be subject to US export control laws, including the US Export Administration Act and its associated regulations. The Licensee shall not, directly or indirectly, export, re-export or release the Software or Documentation to, or make the Software or Documentation accessible from, any jurisdiction or country to which export, re-export or release is prohibited by law, rule or regulation. The Licensee shall comply with all applicable federal laws, regulations and rules, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), prior to exporting, re-exporting, releasing or otherwise making the Software or Documentation available outside the US.

13.   <u>US Government Rights</u>. The Software is commercial computer software, as such term is defined in 48 C.F.R. §2.101. Accordingly, if the Licensee is the US Government or any contractor therefor, Licensee shall receive only those rights with respect to the Software and Documentation as are granted to all other end users under license, in accordance with (a) 48 C.F.R. §227.7201 through 48 C.F.R. §227.7204, with respect to the Department of Defense and their contractors, or (b) 48 C.F.R. §12.212, with respect to all other US Government licensees and their contractors.

14.   <u>Miscellaneous</u>.

(a)   The Software and Documentation is highly confidential, proprietary and constitutes the trade secret property of Licensor, even if not marked as such. In order to protect the confidential nature of the Software and Documentation, Licensee shall not disclose, reveal, or make the Software or Documentation available to any person without Licensor's express written consent.

(b)   Licensee acknowledges that disclosure or use of the Software or Documentation in violation of this License could cause irreparable harm for which monetary damages may be either difficult to ascertain or an inadequate remedy. Licensee therefore agrees that Licensor shall be entitled, in addition to any other rights or remedies available, to seek and obtain injunctive relief (temporary, preliminary, or permanent) for any violation or threatened violation of this License without the filing or posting of any bond or surety.

(c)   This Agreement is governed by and construed in accordance with the internal laws of the State of Arkansas without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the State of Arkansas. Any legal suit, action or proceeding arising out of or related to this Agreement or the licenses granted hereunder shall be instituted in the federal courts of the United States or the courts of the State of Arkansas in each case located in the city of Little Rock and County of Pulaski, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. Service of process, summons, notice or other document by mail to such party's address set forth herein shall be effective service of process for any suit, action or other proceeding brought in any such court.

(d)   Licensor will not be responsible or liable to Licensee, or deemed in default or breach hereunder by reason of any failure or delay in the performance of its obligations hereunder where such failure or delay is due to strikes, labor disputes, civil disturbances, riot, rebellion, invasion, epidemic, hostilities, war, terrorist attack, embargo, natural disaster, acts of God, flood, fire, sabotage, fluctuations or non-availability of electrical power, heat, light, air conditioning or Licensee equipment, loss and destruction of property or any other circumstances or causes beyond Licensor's reasonable control.

(e)   All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given: (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or e-mail (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient; or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the addresses set forth on the Order Form (or to such other address as may be designated by a party from time to time in accordance with this **Section 14(e)**).

(f)   This Agreement, together with the Order Form, constitutes the sole and entire agreement between Licensee and Licensor with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter.

(g)   Licensee shall not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this Agreement, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without Licensor's prior written consent, which consent Licensor may give or withhold in its sole discretion. For purposes of the preceding sentence, and without limiting its generality, any merger, consolidation or reorganization involving Licensee (regardless of whether Licensee is a surviving or disappearing entity) will be deemed to be a transfer of rights, obligations or performance under this Agreement for which Licensor's prior written consent is required. No delegation or other transfer will relieve Licensee of any of its obligations or performance under this Agreement. Any purported assignment, delegation or transfer in violation of this **Section 14(g)** is void. Licensor may freely assign or otherwise transfer all or any of its rights, or delegate or otherwise transfer all or any of its obligations or performance, under this Agreement without Licensee's consent. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective permitted successors and assigns.

(h)   This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer on any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

(i)   This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each party hereto. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this

Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

(j)   If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

(k)   For purposes of this Agreement, (a) the words "include," "includes" and "including" shall be deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; and (c) the words "herein," "hereof," "hereby," "hereto" and "hereunder" refer to this Agreement as a whole. Unless the context otherwise requires, references herein: (x) to Sections and Exhibits refer to the Sections of, and Exhibits attached to, this Agreement; (y) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The Order Form referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.

(l)   The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.

July 2016