

Mosa Mack Science End User License Agreement

This End User License Agreement ("**Agreement**") is made between Mosa Mack Science, Inc. ("**Licensor**") and you ("**Licensee**"). By clicking "I Accept," the Licensee agrees to be bound by the terms and conditions of this Agreement. This Agreement shall be effective as of the date of such acceptance by Licensee ("**Effective Date**").

1. Definitions

1.1 "**Confidential Information**" means non-public information of either party that is disclosed by one party ("**Disclosing Party**") to the other party ("**Receiving Party**") pursuant to this Agreement.

1.2 "**Intellectual Property**" means the intellectual property rights, including but not limited to, copyright, trademark, service mark, trade dress, patent, artwork, logos and/or other graphic depictions in and to the Licensed Products.

1.3 "**Licensed Products**" include all software, print materials, items, articles or things made available online and on-demand via the Mosa Mack Website. This also includes videos, curricular resources, lesson plans, quizzes, supplements, assessments and assessment tools.

1.4 "**Mosa Mack Website**" means the website(s) owned and/or operated on behalf of Licensee, including the website(s) located at www.mosamack.org and any corresponding foreign domains for such website.

2. Grant of Rights

2.1 License. Licensor hereby grants to Licensee, a non-exclusive, non-transferable (except as provided in Section 11.8 below), non-sub-licensable license to access and use the Licensed Products (a) for the purpose of assisting and aiding in the educational instruction of students or (b) for personal consumption.

2.2 Restrictions. Licensee may not (and may not permit any third party to): (a) reverse engineer, decompile, disassemble, or otherwise attempt to discern the source code, underlying ideas, algorithms, file formats, or interface protocols of the Licensed Products or of any files contained in or generated by the Licensed

Products, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation, (b) copy the Licensed Products or any portion of the Licensed Products, (c) distribute copies of the Licensed Products to third parties, (d) rent, lease or lend the Licensed Products, (e) modify, adapt, or translate the Licensed Products, incorporate the Licensed Products into or with other content, or create derivative works based upon any part of the Licensed Products, including, but not limited to, any database or other content contained in the Licensed products, (f) remove or alter any copyright notices, product identification, or other notices on any copies of the Licensed Products, or (g) use the Licensed Products for any commercial purposes other than as set forth in Section 2.1.

2.3 Approvals. Licensor shall have all approval rights.

3. License Fees

No fees are required unless Licensor purchases Mosa Mack Premium at which point Licensee will pay Licensor an annual access fee (the "**License Fee**") for access and use of all Licensed "Mosa Mack Premium" Products.

4. Proprietary Rights.

Licensee acknowledges and agrees that, as between the parties, Licensor owns all right, title, and interest in and to the Licensed Products, and Licensee has not acquired and will not acquire any proprietary rights in the names and Intellectual Property of Licensor, whether included in or separate from the Licensed Property, except as otherwise expressly provided by the license granted herein. Use of the name and the intellectual property of Licensor and/or the Licensed Property by Licensee will be for and inure to the benefit of Licensor. Licensor may provide Licensee with use guidelines and/or other restrictions regarding how to use Licensor's name, Intellectual Property and/or the Licensed

Property. Any and all uses of Licensor's name, Intellectual Property and/or Licensed Property shall be agreed to in advance and approved in writing by Licensor prior to any such use. Licensor may, from time to time, request in writing specimens of all uses of the Licensor's name or Intellectual Property to assess the level of consistency and quality of use of the respective trademark and to ensure that Licensee maintains the consistency and quality of said marks throughout the Term of this Agreement.

5. Confidentiality.

5.1 Confidential Information. Each party acknowledges that in the course of the performance of this Agreement, it may obtain the Confidential Information of the other party. The Receiving Party shall, at all times, both during the Term and thereafter for a period of three (3) years keep in confidence and trust all of the Disclosing Party's Confidential Information received by it. The Receiving Party shall not use the Confidential Information of the Disclosing Party other than as necessary to fulfill the Receiving Party's obligations or to exercise the Receiving Party's rights under the terms of this Agreement. The Receiving Party shall take reasonable steps to prevent unauthorized disclosure or use of the Disclosing Party's Confidential Information and to prevent it from falling into the public domain or into the possession of unauthorized persons, but in no event shall the Receiving Party use less care than it would in connection with its own Confidential Information of like kind. The Receiving Party shall not disclose Confidential Information of the Disclosing Party to any person or entity other than its officers, employees and consultants who need access to such Confidential Information in order to affect the intent of this Agreement.

5.2 Exceptions to Confidential Information. The obligations set forth in this Section shall not apply to the extent that Confidential Information includes information that is: (a) now or hereafter, through no unauthorized act or failure to act on the Receiving Party's part, in the public domain; (b) known to the Receiving Party without an obligation of confidentiality at the time the Receiving Party receives the same from the

Disclosing Party, as evidenced by written records; (c) hereafter furnished to the Receiving Party by a third party as a matter of right and without restriction on disclosure; (d) furnished to others by the Disclosing Party without restriction on disclosure; or (e) independently developed by the Receiving Party without use of the Disclosing Party's Confidential Information.

5.3 Permitted Disclosures. Nothing in this Agreement shall prevent the Receiving Party from disclosing Confidential Information to the extent the Receiving Party is legally compelled to do so by any governmental investigative or judicial agency pursuant to proceedings over which such agency has jurisdiction; provided, however, that prior to any such disclosure, the Receiving Party shall (a) assert the confidential nature of the Confidential Information to the agency; (b) immediately notify the Disclosing Party in writing of the agency's order or request to disclose; and (c) cooperate fully with the Disclosing Party in protecting against any such disclosure and/or obtaining a protective order narrowing the scope of the compelled disclosure and protecting its confidentiality..

6. Representations and Warranties.

6.1 By Each Party. Each party represents and warrants to the other party that: (a) it has the power and authority to grant the rights and perform the obligations to which it commits herein; (b) the execution of the Agreement by the natural person representing it will be sufficient to render the Agreement binding upon it; and (c) neither its performance hereunder nor the exercise by the other party of the rights granted by the warranting party hereunder in accordance with this Agreement will violate any applicable laws or regulations or the terms of any other agreement to which the warranting party is or becomes a party.

6.2 By Licensee. In addition to the foregoing representations and warranties, Licensee represents and warrants to Licensor that (a) the use of the Licensed Property shall not infringe any third party rights or be in any other way contrary to applicable law and (b) all services the Licensee renders to third parties in connection with the Licensed Products will be rendered

promptly, diligently, and efficiently, in accordance with high professional standards.

6.3 By Licensor: In addition to the foregoing representations and warranties, Licensor represents and warrants to Licensee that: (a) the Licensed Products are owned by Licensor, or Licensor has secured appropriate third-party rights to use, including a waiver of moral rights and/or droit moral and (b) the use of the Licensed Products as authorized under this Agreement shall not infringe any third party rights or be in any other way contrary to applicable law.

7. **Indemnification.**

7.1 By Licensor. Licensor agrees to defend, indemnify, and hold harmless Licensee and their directors, officers and employees (collectively, the “**Licensee Indemnitees**”) from all losses, claims of losses, damages, and expenses (including, without limitation, court costs and reasonable attorneys’ fees) asserted against such Licensee Indemnitees by third parties arising from or related to infringement of any rights of any third party by the exercise of the rights granted to Licensee by Licensor in accordance with the terms and conditions of this Agreement, except to the extent such third-party claim arises from the acts or omissions of any Licensee Indemnitee, their contractors, or other agents. The obligations of this Section 8.1 are contingent on Licensor (x) giving Licensee prompt written notice of any such claim; (y) providing reasonable cooperation in the defense and all related settlement negotiations; and (z) agreeing that Licensee shall have sole control over the litigation or settlement of such claim.

7.2 By Licensee. Licensee agrees to defend, indemnify, and hold harmless Licensor, its parent, subsidiary, and affiliated companies, and their respective directors, officers, and employees (collectively, the “**Licensor Indemnitees**”) from all losses, damages, and expenses (including, without limitation, court costs and reasonable attorneys’ fees) asserted against such Licensor Indemnitees by third parties arising from or related to the Licensee’s use of the Licensed Property, except to the extent such third-party

claim arises from the acts or omissions of any Licensor Indemnitee.

8. **DISCLAIMERS AND LIMITATIONS.**

8.1 Warranty Disclaimer. EXCEPT AS EXPRESSLY SET FORTH IN SECTION 8, THE PARTIES HEREBY DISCLAIM ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR INFRINGEMENT. THE LICENSED PRODUCTS AND ALL OTHER CONTENT PROVIDED BY LICENSEE IN CONNECTION WITH THIS AGREEMENT ARE PROVIDED “AS-IS”.

8.2 Waiver of Consequential Damages. NEITHER PARTY SHALL HAVE ANY LIABILITY TO THE OTHER (OR ANY THIRD PARTIES CLAIMING RIGHTS THROUGH SUCH PARTY) FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL, OR PUNITIVE DAMAGES OR LIABILITIES OF ANY KIND OR FOR LOSS OF REVENUE, LOSS OF BUSINESS OR OTHER FINANCIAL LOSS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, REGARDLESS OF THE FORM OF THE ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT PRODUCT LIABILITY OR OTHERWISE, EVEN IF ANY REPRESENTATIVE OF A PARTY HERETO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

8.3 LIMITATION OF LIABILITY. EXCEPT WITH RESPECT TO A PARTY’S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, OR A CLAIM FOR INDEMNIFICATION MADE UNDER SECTION 8 ABOVE, IN NO EVENT WILL EITHER PARTY’S TOTAL LIABILITY TO THE OTHER UNDER THIS AGREEMENT EXCEED THE LICENSE FEES PAID BY LICENSEE TO LICENSOR HEREUNDER.

9. **Term and Termination.**

9.1 Term. This Agreement shall have a term (“**Term**”) commencing as of the Effective Date and will continue as long as Licensor is a registered user of Mosa Mack Science.

9.2 Termination. Either party may terminate this Agreement at any time upon notice in the event of a material breach of the terms hereby by the other party if the breaching party fails to cure such material breach within thirty (30) days of receipt of written notice thereof, where such written notice describes the nature of the breach in such reasonable detail as to permit the breaching party to cure, if such cure is possible. In addition, notwithstanding anything to the contrary contained herein, Licensor may, for its convenience, on thirty (30) days prior, written notice to Licensee, discontinue one or more specific items of Licensed Products or one or more entire product categories of Licensed Products, after which time Licensee shall no longer sell such items or product categories of Licensed Products.

9.3 Effect of Termination. Upon the expiration or termination of this Agreement, the license granted to Licensee hereunder shall immediately cease. Within forty-five (45) calendar days after expiration or prior termination of this Agreement for any reason, Licensee shall return to Licensor all Licensed Products or other materials furnished by Licensor to Licensee hereunder, and Licensee shall delete all copies of the Licensed Products stored on electronic media.

10. General.

10.1 Governing Law. This Agreement shall be governed by and construed under the laws of the United States and the State of New York as applied to agreements entered into and to be performed entirely within New York between New York residents.

10.2 Notices. All notices, demands, requests or other communications that may be given by any party to the other pursuant to this Agreement shall be in writing and shall be sent by certified or registered mail, return receipt requested, by Federal Express or similar service that records delivery, or by facsimile transmission combined with any of the foregoing methods of notice, to

the addresses set forth in the preamble to this Agreement, or to such other address as provided by a party in writing.

10.3 Scope of Agreement. This Agreement, including the Exhibits referenced herein above and attached hereto, constitute the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and supersedes all prior or contemporaneous, express or implied, written or oral, agreements, representations and conditions between the parties with respect thereto. This Agreement may only be modified or amended by a written instrument signed by the parties.

10.4 Waivers. No failure or delay by either party in exercising any right, power or remedy under this Agreement shall operate as a waiver of any such right, power or remedy. Any waiver by either party of any provision of this Agreement shall not be construed as a waiver of any other provision of this Agreement, nor shall such waiver operate as or be construed as a waiver of such provision respecting any future event or circumstance.

10.5 Severability. In the event any provision of this Agreement (or portion thereof) is determined by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, such provision shall be deemed to have been deleted from this Agreement, while the remainder of this Agreement shall remain in full force and effect according to its terms.

10.6 Construction. This Agreement reflects the wording accepted by the parties, and no rule of construction shall apply against either party. Each party retains the right to correct any typographical or other clerical errors in this Agreement.

10.7 Survival. Upon any termination of this Agreement, the following Sections shall remain in full force and effect: 1, 5-9, 10.3, and 11.

10.8 Assignment. Neither party may assign any rights or delegate any duties under this Agreement (other than the right to receive payments) without the other party’s prior written consent, except that

either party can assign this Agreement or any of its rights or obligations arising hereunder to the surviving entity in a merger, acquisition, or consolidation in which it participates, or to a purchaser of substantially all of its assets. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the respective successors and assigns of the parties hereto.

10.9 Counterparts. This Agreement may be executed in two or more counterparts, any or all of which shall constitute one and the same instrument.

10.10 Compliance with Laws. Each party shall comply with all applicable state, federal and local laws in the performance of this Agreement.

