

**ANNUAL SITE LICENSE AGREEMENT
FOR K-12 ACADEMIC INSTITUTIONS
Signature Page**

“LICENSEE”

Customer Name: _____
Postal/Street Address: _____
City: _____
State/Province: _____
Zip/Postal Code: _____
Country: _____

ZENGOBI, INC. (“ZENGOBI”)

Zengobi, Inc.
300 Lake Boone Trail
Raleigh, NC 27608-1024

LICENSE COUNT

This site license is based on the number of enrolled students at one school at a single address. Districts must purchase a site license for each school location separately. Site licenses cannot be divided and distributed among multiple schools.

- Tier 1: Less than 300 enrolled students
- Tier 2: 300 to 999 enrolled students
- Tier 3: 1,000 to 1,999 enrolled students
- Tier 4: 2,000 or more enrolled students

PRIMARY LICENSEE CONTACT

Contact Name: _____
Phone Number: _____
Email Address: _____

DESIGNATED LICENSEE SUPPORT CONTACTS

In addition to the primary licensee contact, the following licensee contacts will have sole access to Zengobi technical support.

Contact Name: _____
Phone Number: _____
Email Address: _____

Contact Name: _____
Phone Number: _____
Email Address: _____

Contact Name: _____
Phone Number: _____
Email Address: _____

CONTRACT DATE: _____
(To be completed by ZENGOBI)

EXPIRY DATE: _____
(One year following the Contract date)

This page (“Signature Page”), the attached Terms and Conditions, and the related exhibits together constitute a binding legal agreement between Licensee and ZENGOBI (“Agreement”). Licensee's signature below confirms that Licensee accepts all the terms and conditions, and that Licensee specifically understands the legal requirements regarding future renewal or de-installation of the software.

Accepted and Agreed:

“LICENSEE”

By (Signature): _____
Printed Name: _____
Title: _____

ZENGOBI, INC.

By (Signature): _____
Printed Name: _____
Title: _____

ANNUAL SITE LICENSE AGREEMENT

Terms and Conditions

These Annual Site License Agreement terms and conditions (“Agreement”) constitute a binding legal agreement between you (“Licensee”) and Zengobi, Inc. (“ZENGOBI”) after ZENGOBI processes your initial order and ZENGOBI sends you written confirmation. Licensee confirms that it accepts all the terms and conditions and specifically understands the legal requirements regarding future renewal or de-installation of the software.

1. License.

(a) Software. For purposes of this Agreement “Software” means Curio Professional. Software may also include additional Software if confirmed by ZENGOBI in writing that such additional Software is added to this Agreement.

(b) License Grant. Upon payment of all applicable license fees and subject to the terms of this Agreement, ZENGOBI grants to Licensee a non-exclusive, limited term, nontransferable license to (i) make exact object code copies of the Software, and (ii) install and use such Software on computers owned or leased by Licensee at its site.

Only Licensee's authorized users (as defined in Section 1(d)) that are included in the License Count (as defined in Section 1(c)) may use the Software only during the term of this Agreement, and all use of the Software must cease on the Expiry Date stated in ZENGOBI's contract system, unless the Software is subsequently purchased or the agreement is renewed in accordance with Section 4(a)(iii) or Section 4(b).

ZENGOBI will provide Licensee with a unique License Key, and such License Key must be kept confidential and used solely for the purpose of enabling Licensee to use the Software in accordance with the terms and conditions of this Agreement. Licensee shall be solely responsible for all expenses incurred in the copying and installation of the Software by Licensee.

The License Key provided to Licensee will automatically expire and will cease to be valid on the Expiry Date stated in ZENGOBI'S contract system prohibiting further use of any installed Software.

(c) License Count.

(i) Licensees. Licensee represents that the “License Count” provided by Licensee is the current total of either CPUs or headcount for Licensee’s entire entity as identified by Licensee’s Tax ID#, site address or other identification acknowledged in writing by ZENGOBI.

(ii) Increases. The parties acknowledge that Licensee’s License Count may increase during the term of this Agreement. Licensee is not obligated to pay ZENGOBI for increased use during the annual term so long as the increase in License Count does not exceed 10% of the License Count paid for by Licensee. At the end of the annual term, if the Agreement is renewed then Licensee must pay the new license fees for Licensee’s actual count at that time. If the License Count increases by more than 10% during the annual term, then Licensee must notify and pay ZENGOBI the new license fees before such Software is used – fees will be calculated on a pro rated basis for the balance of the agreement period. If Licensee fails to pay the new license fees when required, then the Agreement will terminate. In all cases the renewal must be for 100% of the then current License Count.

(iii) K-12 Education. If Licensee is an accredited public or private K-12 institution, then Licensee represents that the “License Count” provided by Licensee is Licensee’s current total number of enrolled students at one school at a single address in the form of a tiered volume bracket. Districts must purchase a site license for each school location separately and cannot be divided and distributed among multiple schools.

(iv) Higher Education. If Licensee is an accredited public or private university, college, or community college that grants degrees requiring at least two full years of full-time matriculation, then Licensee represents that the “License Count” provided by Licensee is Licensee’s current total number of equivalent full time teachers and administrators.

(d) Authorized Users.

(i) Licensees. The Software may be used by all employees of Licensee at facilities governed by Licensee as identified by the Tax ID# or other identification acknowledged by ZENGOBI, provided that such employees are included in the License Count. Temporary employees, contractors, and consultants of Licensee who work on-site at Licensee’s facilities may also use the Software in connection with the operation of the business of Licensee so long as such temporary employees, contractors and consultants or their computers were included in the License Count. Any copies of the Software used by temporary employees, contractors and consultants must be removed from such individual’s computers once they cease working at Licensee’s facilities or upon expiry or termination of this Agreement.

(ii) Education. The Software may only be used by Licensee’s enrolled students, faculty, teaching assistants and administrators (“Authorized Users”) on Licensee’s computers at facilities governed by Licensee during the term of the Agreement. These authorized users may also make an additional copy of the Software for such individual's exclusive use on either a home or portable computer. Any copies of the Software used on any authorized user's home computer must be removed from such individual's computers once they cease working at Licensee's facilities or upon expiry or termination of the Agreement and Licensee is responsible for confirming such compliance. If the Licensee is a K-12 Educational institution as specified under Section 1(c)(iii) then the Software may be used on any student-owned computer where the academic institution is responsible for the installation and

removal of Software. Any copies of the Software used on a student's personal computer must be removed from such computer upon the earlier of when the student is no longer enrolled at Licensee's school or upon expiry or termination of the Agreement and Licensee is responsible for confirming such compliance.

(iii) Additional Restrictions. Licensee will use commercially reasonable efforts to restrict network or any other access to the Software by anyone outside of Licensee's facilities who is not authorized to use the Software.

(d) Ownership. Licensee owns the media on which the Software is recorded, but Licensee acknowledges that ZENGOBI and its licensors retain ownership of the Software itself.

(e) Software License Agreement. The terms and conditions stated in the Software License Agreement ("SLA") provided with the Software will govern the use of each respective copy of the Software used under this License, except that the SLA does not constitute the granting of any additional license to the Software.

2. Restrictions.

(a) General Restrictions. Licensee acknowledges that the Software contains trade secrets and to protect them, Licensee may not decompile, reverse engineer, disassemble or otherwise reduce the Software to any human-perceivable form except as permitted under applicable law. Licensee may not modify, sell, rent, lease, loan, distribute (except as expressly permitted by this License), or create derivative works based upon the Software in whole or in part.

(b) Notices. Licensee shall:

- (i) not remove any copyright notices or proprietary legends from the Software;
- (ii) reproduce on all copies of the Software the copyright notice and any other proprietary legends that were on the original copy of the Software;
- (iii) not disclose the unique License Key to anyone except Authorized Users under this License; and
- (iv) take reasonable steps to ensure that each user of the Software is aware of and complies with the terms and conditions of this Agreement.

(c) Restricted Uses. THE SOFTWARE IS NOT INTENDED FOR USE IN THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION, COMMUNICATIONS SYSTEMS, OR AIR TRAFFIC CONTROL OR SIMILAR ACTIVITIES IN WHICH CASE THE FAILURE OF THE SOFTWARE COULD LEAD TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE.

(d) No Transfer or Assignment. LICENSEE MAY NOT TRANSFER OR ASSIGN ANY PORTION OF THIS AGREEMENT TO ANOTHER PARTY WITHOUT ZENGOBI'S PRIOR WRITTEN CONSENT.

(e) No Hosting for Third Parties. Licensee may not use the Software to host applications for third parties, notwithstanding any other terms in this Agreement.

3. Maintenance Software.

(a) Definitions.

- (i) "Maintenance Software" includes both Upgrades and Updates.
- (ii) "Upgrade" means an improvement to an existing product through added functionality and/or enhanced performance. Upgrades are identified by a change in the number to the left of the initial decimal point in the product version number (e.g., an upgrade from Curio Pro 7.0 to 8.0 or Curio Pro 8.2.5 to 9.0). Upgrades are generally made available only through electronic download.
- (iii) "Update" means bug fix updates containing fixes, compatibility updates to maintain compliance with specifications, and standards compatibility updates to interoperate with specific standards. Updates are identified by a change in the number to the right of the initial decimal point (e.g., Curio Pro 8.0 to 8.1 or Curio Pro 8.1 to 8.1.1). Updates are generally made available only through electronic download.

(b) Maintenance License. As part of this Agreement, Licensee's rights to use the Software will extend to the Maintenance Software that is commercially released during the term of this Agreement. ZENGOBI will provide or make available to Licensee a master copy of such Maintenance Software commercially released during the term of this Agreement.

(c) Restrictions and Disclaimers. Licensee's rights to Maintenance Software does not grant Licensee the right to acquire products bearing different names or special versions of the Maintenance Software created for certain customers or market segments, even though they may contain similar features or perform similar functions. From time to time products will be offered in the retail or other channels in different configurations as special promotions, which will not be made available as Maintenance Software, except in ZENGOBI's sole discretion. MAINTENANCE SOFTWARE WILL BE DEVELOPED AND RELEASED BY ZENGOBI AND ITS LICENSORS IN THEIR SOLE DISCRETION. ZENGOBI AND ITS LICENSORS DO NOT WARRANT OR REPRESENT THAT THEY WILL DEVELOP OR RELEASE ANY MAINTENANCE SOFTWARE DURING THE TERM OF THIS AGREEMENT. ZENGOBI AND ITS LICENSORS DO NOT WARRANT THAT THE MAINTENANCE SOFTWARE WILL BE PROVIDED TO LICENSEE OR MADE AVAILABLE WITHIN ANY SPECIFIED TIME PERIOD FOLLOWING THE COMMERCIAL RELEASE OF SUCH MAINTENANCE SOFTWARE.

4. Term & Termination.

(a) Initial Term. This Agreement will commence on the Contract Date and will terminate on the Expiry Date stated in ZENGOBI's contract system ("Initial Term"), unless the Agreement is renewed or terminated under the provisions of this Section 4. Following the Initial Term, Licensee must:

- (i) Renew the Agreement under Section 4(b);

- (ii) Terminate the Agreement under Section 4(d) and cease all use of the Software; or
- (iii) Relicense the software under one of ZENGOBI's other license programs under ZENGOBI's then-current terms.

(b) **Renewal Term(s).** Following the Initial Term, the Agreement may be renewed for additional one year period as follows. Licensee must confirm its License Count in ZENGOBI's contract system on or before each Expiry Date and pay ZENGOBI's license renewal fees in order to renew the Agreement. ZENGOBI will confirm such renewal by issuing a new unique License Key set to expire on the new Expiry Date, issuing a license certificate that states the new Expiry Date, and updating ZENGOBI's contract system. Licensee shall be solely responsible for all expenses incurred in the copying and redistribution of the renewed License Key to its Authorized Users.

(c) **Breach.** If any breach of this Agreement by Licensee continues for more than ten (10) days after receipt of written notice of such breach by ZENGOBI, ZENGOBI may terminate this Agreement by written notice to Licensee, whereupon this Agreement and all rights granted to Licensee herein shall immediately cease. Breach of this Agreement includes, but is not limited to, Licensee's failure to pay any license fees when due.

(d) **Effect of Termination.** Upon expiry or termination of this Agreement for any reason, all licenses under this Agreement are immediately terminated, and Licensee will cease all use, installation and copying of the Software. Within thirty (30) days following expiry or termination, Licensee must submit the required notice in ZENGOBI's contract system, confirming that Licensee has ceased all use of the Software and confirming that copies of the Software have been deleted or destroyed. If ZENGOBI does not receive Licensee's notice within thirty (30) days, then ZENGOBI will invoice Licensee and Licensee is required to continue paying the license fees. Any fees paid to ZENGOBI under this Agreement are non-refundable upon expiry or termination of this Agreement.

(e) **Survival.** Sections 1(e), 2, 4, 5, 6, 7 and 11 shall survive expiry or termination of this Agreement.

5. **Limited Warranty.** ZENGOBI warrants for a period of ninety (90) days from the initial Contract Date stated in ZENGOBI's contract system that the Software as provided by ZENGOBI will substantially conform to the published specifications for the Software available from ZENGOBI. ZENGOBI's entire liability and Licensee's sole and exclusive remedy for any breach of the foregoing limited warranty will be, at ZENGOBI's option, replacement of the media, refund of the purchase price, or repair or replacement of the Software. THIS LIMITED WARRANTY IS THE ONLY WARRANTY PROVIDED BY ZENGOBI AND ZENGOBI AND ITS LICENSORS EXPRESSLY DISCLAIM ALL OTHER WARRANTIES AND CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE. FURTHERMORE, THERE IS NO WARRANTY AGAINST INTERFERENCE WITH LICENSEE'S ENJOYMENT OF THE SOFTWARE OR AGAINST INFRINGEMENT OF THIRD PARTY PROPRIETARY RIGHTS BY THE SOFTWARE. ZENGOBI DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE SOFTWARE WILL MEET LICENSEE'S REQUIREMENTS, OR THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN THE SOFTWARE WILL BE CORRECTED. FURTHERMORE, ZENGOBI DOES NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE USE OR THE RESULTS OF THE USE OF THE SOFTWARE IN TERMS OF THEIR CORRECTNESS, ACCURACY, RELIABILITY, OR OTHERWISE. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY ZENGOBI, OR AN AUTHORIZED REPRESENTATIVE OF ZENGOBI SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF THIS WARRANTY. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR CONDITIONS, SO THE ABOVE EXCLUSION MAY NOT APPLY TO LICENSEE.
6. **Limitation of Remedies and Damages.** UNDER NO CIRCUMSTANCES, INCLUDING NEGLIGENCE, SHALL ZENGOBI, OR ITS LICENSORS BE LIABLE FOR ANY INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES THAT RESULT FROM THE USE OR INABILITY TO USE THE SOFTWARE, EVEN IF ZENGOBI, ITS LICENSORS OR AN AUTHORIZED REPRESENTATIVE OF ZENGOBI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO LICENSEE. In no event shall ZENGOBI's or its licensors' total liability for all damages, losses, and causes of action (whether in contract, tort (including negligence) or otherwise) exceed the amount paid under this Agreement. The parties agree that this limitation of remedies and damages provision shall be enforced independently of and survive the failure of essential purpose of any warranty remedy. THE ABOVE LIMITATION WILL NOT APPLY IN CASE OF PERSONAL INJURY WHERE AND TO THE EXTENT THAT APPLICABLE LAW REQUIRES SUCH LIABILITY.
7. **Audit.** No more than once per year and during ordinary business hours (after giving reasonable advance notice) ZENGOBI, or at either party's option, an independent third party reasonably acceptable to both parties, may audit Licensee and its records relating to its payment obligations under this Agreement for the purpose of confirming Licensee's compliance with this Agreement. At ZENGOBI's request, Licensee will provide a knowledgeable employee to assist in such audit. If such audit reveals that Licensee has underpaid amounts owing to ZENGOBI under this Agreement, Licensee will promptly pay ZENGOBI such past due amounts. If the amount which Licensee has underpaid in any period exceeds ten percent (10%) or more of the amounts actually owed to ZENGOBI for such period, Licensee will promptly reimburse ZENGOBI for the direct out-of-pocket expenses incurred in conducting such audit.
8. **Support.** ZENGOBI will provide Licensee with technical support services for Licensee's use of the Software under this Agreement only for the "Primary Licensee Contact" and "Designated Licensee Support Contacts" specified in ZENGOBI's contract system. ZENGOBI is not obligated to provide technical support services for any other Authorized Users. Licensee may order additional support services currently offered by ZENGOBI during the term of this Agreement.
9. **Export Law Assurances.** Licensee may not use or otherwise export or reexport the Software except as authorized by United States law and the laws of the jurisdiction in which the Software was obtained. In particular, but without limitation, the Software may not be exported or re-exported (a) into (or to a national or resident of) any U.S. embargoed countries (currently Cuba, Iran, North Korea, Sudan and Syria), or (b) to

anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce's Denied Person's List or Entity List. By using the Software Licensee represents and warrants that it is not located in, under control of, or a national or resident of any such country or on any such list.

10. Government End Users. All Software provided to the U.S. Government pursuant to solicitations issued prior to December 1, 1995 is provided with RESTRICTED RIGHTS as provided for in FAR, 48 CFR 52.227-14 (JUNE 1987) or DFAR, 48 CFR 252-227-7013 (OCT 1988), as applicable.

11. General Terms. This Agreement shall be governed by and construed in accordance with the laws of the United States and the State of North Carolina, as applied to agreements executed by North Carolina residents and performed solely within the State of North Carolina. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods (1980), as amended, is specifically excluded from application to this Agreement. This Agreement constitutes the entire agreement between the parties with respect to the Software licensed under these terms, and it supersedes all prior or contemporaneous agreement, arrangement and understanding regarding such subject matter. Licensee acknowledges and agrees that it has not relied on any representations made by ZENGOBI, however, nothing in this Agreement shall limit or exclude liability for any representation made fraudulently. No amendment to or modification of this Agreement will be binding unless in writing and signed by ZENGOBI. If any provision of this Agreement shall be held by a court of competent jurisdiction to be contrary to law, that provision will be enforced to the maximum extent permissible, and the remaining provisions of this Agreement will remain in full force and effect. No failure or delay by ZENGOBI in exercising its rights or remedies shall operate as a waiver unless made by specific written notice. No single or partial exercise of any right or remedy of ZENGOBI shall operate as a waiver or preclude any other or further exercise of that or any other right or remedy.