

Terms Of Use

Effective Date: March 31, 2018

IMPORTANT NOTICE: DISPUTES ABOUT THESE TERMS AND THE SERVICES PROVIDED BY EQUIP ARE SUBJECT TO BINDING ARBITRATION AND A WAIVER OF CLASS ACTION RIGHTS AS DETAILED IN THE “MANDATORY ARBITRATION AND CLASS ACTION WAIVER” SECTION BELOW. These User Terms of Service (the “Terms”) create a legal agreement between you (a “User”) and EQUIP (“Niral Shah,” “Daniel Reinholz,” “we,” “our”). These Terms govern your use of the services, software and websites (together, the “Services”) provided by EQUIP. By accessing or using the Services, you acknowledge and agree that you have read, understand, and agree to be bound by these Terms, our Acceptable Use Policy, and our Privacy Policy. If you do not agree to these Terms, then you have no right to access or use the Services. We may, from time to time, modify these Terms. Please check this page periodically for updates. If you do not agree to, or cannot comply with, the modified Terms, you must stop using the Services. The updated Terms will take effect upon their posting and will apply on a going-forward basis, unless otherwise provided in a notice to you, and except as provided in the Mandatory Arbitration and Class Action Waiver section of these Terms. Your continued use of the Services after any such update constitutes your binding acceptance of such changes.

1. ELIGIBILITY AND SCOPE

1.1 Eligibility. To use the Services you must be, and represent and warrant that you are, at least 13 years of age and competent to agree to these Terms. If you are agreeing to these Terms on behalf of an organization or entity, you represent and warrant that you are authorized to agree to these Terms on that organization or entity’s behalf and bind them to these Terms (in which case, the references to “you” and “your” in these Terms, except for in this sentence, refer to that organization or entity). If we have previously prohibited you from accessing or using the Services, you are not permitted to access or use the Services. 1.2 Use Outside the United States of America. The Services are controlled and operated from the United States of America. We make no representations that the Services are appropriate for use in other locations. Those who access or use the Services from other locations do so at their own risk and are responsible for compliance with local law. We may offer services in other jurisdictions in which case a different version of these Terms may apply and will be presented to you on such services.

2. ACCOUNT REGISTRATION AND USE

2.1 Account Registration and Confidentiality. To access the Services, you must register for an account by providing an email address and creating a password, and providing us with other information that we request. You agree to provide us with accurate, complete, and current registration information about yourself. It is your responsibility to ensure that your password remains confidential and secure. By registering, you agree that you are fully responsible for all activities that occur under your user name and password. We may assume that any communications we receive under your account have been made by you. 2.2 Unauthorized

Account Use. You are responsible for notifying us if you become aware of any unauthorized use of or access to your account. You understand and agree that we may require you to provide information that may be used to confirm your identity and help ensure the security of your account. We will not be liable for any loss, damages, liability, expenses or attorneys' fees that you may incur as a result of someone else using your password or account, either with or without your knowledge and/or authorization, and regardless of whether you have or have not advised us of such unauthorized use. You will be liable for losses, damages, liability, expenses and attorneys' fees incurred due to someone else using your account.

3. OUR PROPRIETARY RIGHTS

privacy and publicity and communications regulations and statutes. The EQUIP software is made available under the GNU Affero GPL License (<https://www.gnu.org/licenses/agpl-3.0.en.html>) and may be used in accordance with the terms of that license.

4. USER CONTENT AND SUBMISSIONS

4.1 User Content and Submissions. The Services allow you to create classrooms and perform observations, which may include information, text, files, and other materials (collectively, "User Content"). User Content submitted or otherwise made available ("submitted") to the Services is subject to the following terms: All users of EQUIP must be sure to use the application in accordance with relevant privacy laws, such as the Family Educational Rights and Privacy Act (FERPA). Thus, a user should not use identifying information (e.g., the name of a school or district, full names of students) in a way that could violate the privacy rights of students or teachers being observed. Users are solely responsible for complying with the applicable laws. We reserve the right to remove any content on the Services that violates these Terms or that is otherwise objectionable in our sole discretion.

5. LICENSE AND ACCEPTABLE USE

5.1 Your License. Subject to your compliance with these Terms, we grant you a limited, non-exclusive, non-sublicensable, non-transferable, and revocable right to access and use the Services only for your own personal use, and only in a manner that complies with all legal requirements that apply to you or your use of the Services, including the Privacy Policy and these Terms. We may revoke this license at any time, in its sole discretion. 5.2 Acceptable Use. Your use of EQUIP must comply at all times with our Acceptable Use Policy. 5.3 Violations. In addition to any other remedies that may be available to us, we reserve the right to immediately suspend or terminate your account or your access to the Services upon notice and without liability should you fail to abide by the terms of this Section 5.

6. LEGAL COMPLIANCE

You acknowledge, consent, and agree that we may access, preserve, and disclose your information and/or any User Content you submit to the Services if required to do so by law or in a good faith belief that such access, preservation, or disclosure is permitted by the Privacy Policy or reasonably necessary or appropriate for any of the following reasons: (1) to comply with legal

process; (2) to enforce these Terms, our Privacy Policy, or other contracts with you, including investigation of potential violations thereof; (3) to respond to claims that any content violates the rights of third parties; (4) to respond to your requests for customer service; and/or (5) to protect the rights, property, or personal safety of EQUIP, its agents and affiliates, its users, and the public. This includes exchanging information with other companies and organizations for fraud protection, and spam/malware prevention, and similar purposes.

7. PRIVACY

For information about how we collect, use, and share the data we collect from and about you, please see our Privacy Policy which is incorporated by reference into these Terms.

8. WARRANTIES, DISCLAIMERS AND LIMITATION OF LIABILITY

THE SERVICES AND ITS CONTENTS AND OTHER INFORMATION ON OR ACCESSIBLE FROM THE SERVICES ARE PROVIDED “AS IS” WITHOUT WARRANTY, REPRESENTATION, CONDITION, OR GUARANTEE OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES, REPRESENTATIONS, CONDITIONS OR GUARANTEES OF QUALITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT, ALL OF WHICH ARE DISCLAIMED TO THE FULLEST EXTENT PERMITTED BY LAW. SPECIFICALLY, BUT WITHOUT LIMITATION, WE DO NOT WARRANT THAT: (i) THE INFORMATION AVAILABLE ON THE SERVICES IS FREE OF ERRORS; (ii) THE FUNCTIONS OR FEATURES (INCLUDING BUT NOT LIMITED TO MECHANISMS FOR THE DOWNLOADING AND UPLOADING OF CONTENT) WILL BE UNINTERRUPTED, SECURE, OR FREE OF ERRORS; (iii) DEFECTS WILL BE CORRECTED, OR (iv) THE SERVICES OR THE SERVER(S) THAT MAKE THE SERVICES AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. IN NO EVENT SHALL WE BE LIABLE TO YOU OR ANY OTHER PERSON OR ENTITY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, LOSS OF DATA, LOSS OF USE, OR COSTS OF OBTAINING SUBSTITUTE GOODS OR SERVICES), ARISING OUT OF OR IN CONNECTION WITH THE SERVICES, ANY MATERIALS, INFORMATION, OR RECOMMENDATIONS APPEARING ON THE SERVICES, OR ANY LINK PROVIDED ON THE SERVICES, WHETHER OR NOT WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND WHETHER BASED UPON WARRANTY, CONTRACT, TORT, STRICT LIABILITY, VIOLATION OF STATUTE, OR OTHERWISE. THIS EXCLUSION OF LIABILITY SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW. IN ANY EVENT, OUR AGGREGATE LIABILITY WILL NOT EXCEED THE AMOUNT PAID FOR THE PRODUCT OR SERVICE TO WHICH THE CLAIM RELATES OR, IF THE CLAIM DOES NOT RELATE TO A PRODUCT OR SERVICE, \$100. WE DO NOT WARRANT, ENDORSE, GUARANTEE OR ASSUME RESPONSIBILITY FOR ANY PRODUCT OR SERVICE ADVERTISED OR OFFERED BY A THIRD PARTY THROUGH THE SERVICES OR ANY WEBSITE FEATURED OR LINKED TO THROUGH THE SERVICES, AND WE WILL NOT BE A PARTY TO OR IN ANY WAY BE RESPONSIBLE FOR MONITORING

ANY TRANSACTION BETWEEN YOU AND THIRD-PARTY PROVIDERS OF PRODUCTS OR SERVICES. WE WILL NOT BE LIABLE FOR THE OFFENSIVE OR ILLEGAL CONDUCT OF ANY THIRD PARTY. YOU VOLUNTARILY ASSUME THE RISK OF HARM OR DAMAGE FROM THE FOREGOING. THE FOREGOING LIMITATIONS WILL APPLY EVEN IF A REMEDY FAILS OF ITS ESSENTIAL PURPOSE AND TO THE FULLEST EXTENT PERMITTED BY LAW. If you are a California resident, you hereby waive California Civil Code §1542, which says: “A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.” This release includes the criminal acts of others.

9. EXCLUSIONS AND LIMITATIONS

Some jurisdictions do not allow the exclusion of certain warranties or the limitation or exclusion of liability for incidental or consequential damages such as above in Section 8. Accordingly, some of the above limitations may not apply to you. If you are a New Jersey resident, or a resident of another state that permits the exclusion of these warranties and liabilities, then the limitations in Section 8 specifically do apply to you.

10. INDEMNITY

YOU AGREE TO INDEMNIFY, DEFEND, AND HOLD US HARMLESS FROM AND AGAINST ANY CLAIM OR DEMAND, INCLUDING WITHOUT LIMITATION, REASONABLE ATTORNEYS’ FEES AND DISBURSEMENTS, MADE BY ANY THIRD PARTY IN CONNECTION WITH OR ARISING OUT OF YOUR USE OF THE SERVICES, YOUR CONNECTION TO THE SERVICES, YOUR VIOLATION OF THE TERMS OR PRIVACY POLICY, YOUR VIOLATION OF AN APPLICABLE LAW, YOUR SUBMISSION, POSTING, OR TRANSMISSION OF USER CONTENT TO THE SERVICES, AND/OR YOUR VIOLATION OF ANY RIGHTS OF ANOTHER. WE RESERVE THE RIGHT, AT OUR OWN EXPENSE, TO ASSUME THE EXCLUSIVE DEFENSE AND CONTROL OF SUCH DISPUTES, AND IN ANY EVENT YOU WILL COOPERATE WITH US IN ASSERTING ANY AVAILABLE DEFENSES.

11. MODIFICATION AND TERMINATION

11.1 Modification of Services. We reserve the right at any time to modify or discontinue, temporarily or permanently, the Services (or any part thereof), with or without notice. You agree that we shall not be liable to you or any third party for any modification, suspension or discontinuance of the Services. 11.2 Termination. These Terms are effective unless and until terminated by you or us. We may, in our sole and absolute discretion, deny you access to all or part of the Services at any time for any or no reason at all, with or without notice to you. If we terminate your right to access the Services, these Terms will terminate and all rights you have to access the Services will immediately terminate; however, certain provisions of these Terms will still apply post termination, including without limitation, the Mandatory Arbitration and Class Action Waiver provisions. Termination of your account may also include, at our sole discretion, the deletion of your account and/or User Content.

12. MANDATORY ARBITRATION AND CLASS ACTION WAIVER

PLEASE READ THIS SECTION CAREFULLY. IT AFFECTS YOUR LEGAL RIGHTS, INCLUDING YOUR RIGHT TO FILE A LAWSUIT IN COURT.

12.1 Application. You agree that these Terms affect interstate commerce and that the Federal Arbitration Act governs the interpretation and enforcement of these arbitration provisions. This Section 13 is intended to be interpreted broadly and governs any and all disputes between us including but not limited to claims arising out of or relating to any aspect of the relationship between us, whether based in contract, tort, statute, fraud, misrepresentation or any other legal theory; claims that arose before these Terms or any prior agreement (including, but not limited to, claims related to advertising); and claims that may arise after the termination of these Terms. The only disputes excluded from this broad prohibition are the litigation of certain intellectual property and small court claims, as provided below.

12.2. Initial Dispute Resolution. Most disputes can be resolved without resort to arbitration. If you have any dispute with us, you agree that before taking any formal action, you will contact us and provide a brief, written description of the dispute and your contact information (including your username, if your dispute relates to an account). Except for intellectual property and small claims court claims, the parties agree to use their best efforts to settle any dispute, claim, question, or disagreement directly through consultation with us, and good faith negotiations shall be a condition to either party initiating a lawsuit or arbitration.

12.3 Binding Arbitration. If the parties do not reach an agreed-upon solution within a period of thirty (30) days from the time informal dispute resolution is initiated under the Initial Dispute Resolution provision above, then either party may initiate binding arbitration as the sole means to resolve claims, (except as provided in section 13.7 below) subject to the terms set forth below. Specifically, all claims arising out of or relating to these Terms (including the Terms' formation, performance, and breach), the parties' relationship with each other, and/or your use of EQUIP shall be finally settled by binding arbitration administered by the American Arbitration Association ("AAA") in accordance with its Consumer Arbitration Rules. The AAA rules will govern payment of all arbitration fees.

12.4 Arbitrator's Powers. The arbitrator, and not any federal, state, or local court or agency, shall have exclusive authority to resolve all disputes arising out of or relating to the interpretation, applicability, enforceability, or formation of these Terms including but not limited to any claim that all or any part of these Terms is void or voidable, whether a claim is subject to arbitration, or the question of waiver by litigation conduct. The arbitrator shall be empowered to grant whatever relief would be available in a court under law or in equity. The arbitrator's award shall be written and shall be binding on the parties and may be entered as a judgment in any court of competent jurisdiction.

12.5 Filing a Demand. To start an arbitration, you must do the following: (a) Write a Demand for Arbitration ("Demand") that (i) briefly explains the dispute, (ii) lists your and our names and addresses, (iii) specify the amount of money in dispute, if applicable, (iv) identify the requested location for a hearing if an in-person hearing is requested, and (v) state what you want in the dispute; (b) Send one copy of the Demand to the AAA, along with a copy of these Terms and the filing fee required by the AAA; and (c) Send one copy of the Demand for Arbitration to us. The parties understand that, absent this mandatory arbitration provision, they would have the right to sue in court and have a jury trial. They further understand that, in some instances, the costs of arbitration could exceed the costs of litigation and the right to discovery may be more limited in arbitration than in court. If you are a resident of the United States, arbitration may take place in the county where you reside at the time of filing, unless you and we both agree to another

location or telephonic arbitration. For individuals residing outside the United States, arbitration shall be initiated in San Diego County, California, United States, and we agree to submit to the personal jurisdiction of any federal or state court in San Diego County, California, United States, in order to compel arbitration, stay proceedings pending arbitration, or to confirm, modify, vacate, or enter judgment on the award entered by the arbitrator.

12.6 Class Action Waiver. The parties further agree that the arbitration shall be conducted in the party's respective individual capacities only and not as a class action or other representative action, and the parties expressly waive their right to file a class action or seek relief on a class basis. **YOU AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING.** If any court or arbitrator determines that the class action waiver set forth in this paragraph is void or unenforceable for any reason or that an arbitration can proceed on a class basis, then the arbitration provisions set forth above shall be deemed null and void in their entirety and the parties shall be deemed to have not agreed to arbitrate disputes.

12.7 Exception: Litigation of Intellectual Property and Small Claims Court Claims. Notwithstanding the parties' decision to resolve all disputes through arbitration, either party may bring enforcement actions, validity determinations or claims arising from or relating to theft, piracy or unauthorized use of intellectual property in state or federal court with jurisdiction or in the U.S. Patent and Trademark Office to protect its intellectual property rights ("intellectual property rights" means patents, copyrights, moral rights, trademarks, and trade secrets, but not privacy or publicity rights). Either party may also seek relief in small claims court in San Diego, California for disputes or claims within the scope of that court's jurisdiction.

12.8 30-Day Right to Opt Out. You have the right to opt out and not be bound by the arbitration and class action waiver provisions set forth above by sending written notice of your decision to opt out to us with the subject line, "ARBITRATION AND CLASS ACTION WAIVER OPT-OUT." The notice must be sent within the later of 30 days of your first use of the Site or within 30 days of changes to this section being announced on the Site. Otherwise you shall be bound to arbitrate disputes in accordance with the terms of these paragraphs. If you opt out of these arbitration provisions, we also will not be bound by them.

12.9 Changes to This Section. We will provide thirty (30) days' notice of any changes to this section by posting on the Services. Amendments will become effective thirty (30) days after they are posted on the Services or sent to you by email. Changes to this section will otherwise apply prospectively only to claims arising after the thirtieth (30th) day. If a court or arbitrator decides that this subsection on "Changes to This Section" is not enforceable or valid, then this subsection shall be severed from the section entitled Mandatory Arbitration and Class Action Waiver, and the court or arbitrator shall apply the first Mandatory Arbitration and Class Action Waiver section in existence after you began using the Services.

12.10 Survival. This Mandatory Arbitration and Class Action Waiver section shall survive any termination of your use of the Services.

13. CONTROLLING LAW AND SEVERABILITY

These Terms shall be construed in accordance with and governed by the laws of California notwithstanding its conflicts of law principles. Any dispute arising out of these terms and conditions or the use of this site shall be initiated and conducted in the state or federal courts of San Diego County, California, and you consent to the exclusive jurisdiction of such courts.

14. GENERAL TERMS

14.1 Force Majeure. Under no circumstances shall we be held liable for any delay or failure in performance resulting directly or indirectly from an event beyond its reasonable control. 14.2 No Waiver. No waiver of any provision of these Terms will be binding unless in writing, no waiver of any provisions of these Terms will be deemed a further or continuing waiver of such provision or any other provision, and our failure to exercise or enforce any right or remedy in these Terms does not waive that right or remedy. If an arbitrator or a court of competent jurisdiction finds any provision of these Terms to be invalid, the parties agree that the court should endeavor to give effect, to the maximum extent permitted by law, to the parties' intentions as reflected in the provision, and the other provisions of these Terms will remain in full force and effect. 14.3 Third-Party Beneficiaries. You agree that, except as otherwise expressly provided in these Terms, there shall be no third-party beneficiaries to these Terms. 14.4 Statute of Limitations. Except for residents of New Jersey, you agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to the use of the Services and/or these Terms must be filed within one (1) year after such claim or cause of action arose or be forever barred. 14.5 Miscellaneous. These Terms (and all terms and conditions incorporated herein including the attached University Laboratory School Software Addendum) constitute the entire agreement between you and us and govern your use of the Services, and supersede any prior agreements between you and us on the subject matter. These Terms, and any rights or licenses granted hereunder, may not be assigned or delegated by you. These Terms, and any rights or licenses granted hereunder, may be assigned or delegated by us without restriction. These Terms bind and inure to the benefit of each party and the party's successors and permitted assigns. These Terms may not be modified by an oral statement by a representative of us. No agency, partnership, joint venture or employee-employer relationship is intended or created by these Terms. You agree that any agreements made by and between you and us in electronic form are as legally binding as if made in physical written form. If you are using the Services for or on behalf of the U.S. government, your license rights do not exceed those granted to non-government consumers. The section titles in these Terms are for convenience only and have no legal or contractual effect. Any provision of these Terms that by its nature is reasonably intended to survive beyond termination of these Terms shall survive. 14.6 Notices. We may deliver notice to you by e-mail, posting a notice on the Services or any other method we choose and such notice will be effective on dispatch.

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15. QUESTIONS

If you have any questions about these Terms, please contact us.

Acceptable Use

Effective Date: March 31, 2018 Disruption of the Service. You may not: access, tamper with, or use non-public areas of the Service, our computer systems, or the technical delivery systems of our providers; probe, scan, or test the vulnerability of any system or network or breach or circumvent any security or authentication measure; access or search the Service by any means other than our publicly supported interfaces (for example, "scraping"); attempt to disrupt or overwhelm our infrastructure by intentionally imposing unreasonable requests or burdens on our resources (e.g. using "bots" or other automated systems to send requests to our servers at a rate

beyond what could be sent by a human user during the same period of time) interfere with or disrupt the access of any user, host or network, including, without limitation, by sending a virus, overloading, flooding, spamming, mail-bombing the Service, or by scripting the creation of Content in such a manner as to interfere with or create an undue burden on the Service. Misuse of the Service. You may not utilize the Service to carry out, promote or support: any unlawful or fraudulent activities; the impersonation of another person or entity or the misrepresentation of an affiliation with a person or entity in a manner that does or is intended to mislead, confuse, or deceive others; activities that are defamatory, libelous or threatening, constitute hate speech, harassment, or stalking; the publishing or posting other people's private or personally identifiable information, such as credit card numbers, street address or Social Security/National Identity numbers, without their express authorization and permission; the sending unsolicited communications, promotions advertisements, or spam; the publishing of or linking to malicious content intended to damage or disrupt another user's browser or computer; or promotion or advertisement of products or services other than your own without appropriate authorization.

Content Standards Within the Service. You may not post any Content on the Service that: violates of any applicable law, any third party's intellectual property rights, or anyone's right of privacy or publicity; is deceptive, fraudulent, illegal, obscene, pornographic (including child pornography, which, upon becoming aware of, we will remove and report to law enforcement, including the National Center for Missing and Exploited children), defamatory, libelous or threatening, constitutes hate speech, harassment, or stalking; contains viruses, bots, worms, or similar harmful materials; or contains any information that you do not have a right to make available under law or any contractual or fiduciary duty. Violations of this Acceptable Use Policy. In addition to any other remedies that may be available to us, we reserve the right to immediately suspend or terminate your account or your access to the Service upon notice and without liability should you fail to abide by this Acceptable Use Policy. If you are a user of the Service under your employer or organization's account, we reserve the right to notify your employer or organization of any violations of this Acceptable Use Policy. Modifications. We may amend or modify this Acceptable Use Policy from time to time in its sole and reasonable discretion. We will post any such changes on our website. If you object to any such change(s), your sole recourse shall be to cease using the Service. Continued use of the Service following notice of any such changes shall constitute your acknowledgement and acceptance of such changes.

Privacy Policy

Effective Date: March 31, 2018 This Privacy Policy describes our practices regarding the collection, use and disclosure of the information we collect from and about you when you use the web-based EQUIP application (the "Services"). By accessing or using the Services, you agree to this Privacy Policy, our Terms of Service, and our Acceptable Use Policy. **IF YOU DO NOT AGREE TO THIS PRIVACY POLICY, PLEASE DO NOT USE THE SERVICES.** This Privacy Policy contains the following sections: The Information We Collect How We Use Your Information Cookies and Similar Technologies Online Analytics and Advertising How We Share and Disclose Your Information Your Choices Children's Privacy Your Rights How Long We Store Your Information Changes to Our Privacy Policy How We Protect Your Information California Privacy Rights Contact Info **THE INFORMATION WE COLLECT** We collect a variety of information that you provide directly to us. We process your information when

necessary to provide you with the Services that you have requested when accepting our Terms of Service, or where we have obtained your prior consent, or where we have a legitimate interest to do so. For example, we may have a legitimate interest to process your information for security, testing, maintenance, and enhancement purposes of the Services we provide to you, or for analytics, research, and reporting purposes. Without your information, we cannot provide you with the Services you have requested or you may be limited in your use of the Services.

1. Information You Provide to Us We collect information from you through: Account and product registration and administration of your account Requests or questions you submit to us via forms or email Your communications and dealings with us Requests for customer support and technical assistance Information from and about you. The types of information we collect will depend upon the Services you use, how you use them, and what you choose to provide. The types of data we collect directly from you may include: - Name, address, telephone number and email address - Log-in details and password, if you create an EQUIP account - Any email requests or questions you submit to us. Content. In using the Services, you may upload or input various types of content related to creating classrooms and performing observations.

2. Information We Automatically Collect When you use our Services that connect to the Internet, we automatically collect certain information as described in this Section. As discussed further below, we use a variety of technologies, including cookies and similar tools, to assist in collecting this information.

Log Files When you use the Services, our servers automatically record certain information in server logs. These server logs may include information such as your web request, Internet Protocol (“IP”) address, browser type and settings, referring / exit pages and URLs, number of clicks and how you interact with links on the Services, metadata associated with uploaded Content, domain names, landing pages, pages viewed, mobile carrier, date and time stamp information and other such information.

Device Identifiers When you access the Services using a mobile device, we collect specific device information, including your MAC address and other unique device identifiers. We also collect information such as the type of device you are using, its operating system, and mobile network information, which may include your mobile phone number. We may associate this device identifier with your account and will use data associated with your device identifier to customize our Services to your device and to analyze any device-related issues.

COOKIES AND SIMILAR TECHNOLOGIES To collect the information in the “Information We Automatically Collect” section above, we and our service providers use Internet server logs, cookies, tags, and other similar tracking technologies. A web server log is a file where website activity is stored. A cookie is a small text file that is placed on your computer or mobile device when you visit a site, that enables us to: (i) recognize your computer and login session; (ii) store your preferences and settings; (iii) understand which web pages of the Services you have visited; (iv), enhance your user experience by delivering and measuring the effectiveness of content; (v) perform analytics; and (vi) assist with security and administrative functions. Tracking pixels (sometimes referred to as web beacons or clear GIFs) are tiny electronic tags with a unique identifier embedded in websites, online ads and/or email, and that are designed to provide usage information like ad impressions or clicks, email open rates, measure popularity of the Services and associated advertising, and to access user cookies. As we adopt additional technologies, we may also gather information through other methods. Please note that you can change your settings to notify you when a cookie is being set or updated, or to block cookies altogether. Please consult the “Help” section of your browser for more information (e.g., Internet Explorer; Google Chrome; Mozilla Firefox; or Apple Safari).

HOW WE USE YOUR INFORMATION We use your information (including any information

that we collect, as described in this Privacy Policy) for various purposes depending on the types of information we have collected from and about you and the specific Services you use, including to: Respond to your request for information and provide you with more effective and efficient customer service Contact you by email, postal mail, or phone regarding services, surveys, research studies, promotions, special events and other subjects that we think may be of interest to you Help us better understand your interests and needs, and improve the Services Engage in analysis, research, and reports regarding use of our Services Provide, manage, and improve the Services Protect our Services and our users Understand and resolve app crashes and other issues being reported We may view and share your Content only as necessary (i) to maintain, provide and improve the Service; (ii) prevent or address technical or security issues and resolve support requests; (iii) if we have a good faith belief, or have received a complaint alleging, that such Content is in violation of our Acceptable Use Guidelines; (iv) as reasonably necessary to allow us to comply with or avoid the violation of applicable law or regulation; (v) to comply with a valid legal subpoena, request, or other lawful process that meets the requirements of our Law Enforcement Guidelines; and (vi) as set forth in our Subscription Agreement with the Customer or as expressly permitted in writing by the Customer. We may also analyze your User Content in aggregate and on an anonymized basis, in order to better understand the manner in which our Service is being used. Combined Information. You consent that, for the purposes discussed in this Policy, we may combine the information that we collect through the Services with information that we receive from other sources, both online and offline, and use such combined information in accordance with this Policy. Aggregate/De-Identified Data. We may aggregate and/or de-identify information collected through the Services so that such information can no longer be linked to you or your device (“Aggregate/De-Identified Information”). We may use Aggregate/De-Identified Information for any purpose, including without limitation for research and marketing purposes, and may also share such data with any third parties, including advertisers, promotional partners, sponsors, event promoters, and/or others. By using the Services, you consent to such use. ONLINE ANALYTICS We use third-party web analytics services (e.g., Google Analytics) on our Services to collect and analyze the information discussed above, and to engage in auditing, research and reporting. The information (including your IP address) collected by various analytics technologies described in the “Cookies and Similar Technologies” section will be disclosed to or collected directly by these service providers, who use the information to evaluate your use of the Services, including by noting the third-party website from which you arrive, analyzing usage trends across Services and mobile devices, assisting with fraud prevention, and providing certain features to you. To prevent Google Analytics from using your information for analytics, you may install the Google Analytics Opt-out Browser Add-on by clicking here. If you receive email from us, we may use certain analytics tools, such as clear GIFs to capture data such as when you open our message or click on any links or banners our email contains. This data allows us to gauge the effectiveness of our communications and marketing campaigns. HOW WE SHARE YOUR INFORMATION From time to time, we may share Aggregate/De-Identified Information about use of the Services, such as by publishing a report on usage trends. As stated above, this Policy places no limitations on our use or sharing of Aggregate/De-Identified Information. Consent. We may also disclose your information to third parties with your consent to do so. YOUR CHOICES We provide you with a number of choices with respect to the information we collect and use as discussed throughout this Privacy Policy. For example: - You may instruct us not to use your contact information to contact you by email, postal mail or phone regarding products, services,

promotions and special events that might appeal to your interests by contacting us – see the Contact Info section below. Please note that, regardless of your request, we may still use and share certain information as permitted by this Privacy Policy or as required by applicable law. For example, you may not opt out of certain operational or service-related emails, such as those reflecting our relationship or transactions with you. CHILDREN’S PRIVACY The Services are intended for general audiences and not for children under the age of 13. If we become aware that we have collected personal information (as defined by the Children’s Online Privacy Protection Act) from children under the age of 13, we will take reasonable steps to delete it as soon as practicable. YOUR RIGHTS If you want to learn more about the information collected through the Services, or if you would like to access or rectify your information and/or request deletion of information we collect about you, or restrict or object to the processing of your information, please contact us using the contact information below. Where you have provided consent, you may withdraw your consent at any time, without affecting the lawfulness of the processing that was carried out prior to withdrawing your consent. If you are dissatisfied with the way we process your information, you may lodge a complaint with the data protection authority (“DPA”) in your jurisdiction. If you are a resident of France, your DPA is the Commission Nationale de l’Informatique et des Libertés (“CNIL”). If you are a resident of Germany, please see the DPA located in your particular state. If you are a resident of France, you may provide us with instructions regarding the manner in which we may continue to store, erase and share your information after your death, and where applicable, the person you have designated to exercise these rights after your death. HOW LONG WE STORE YOUR INFORMATION We will retain your information for the period necessary to fulfill the purposes outlined in this Policy unless a longer retention period is required or permitted by law. CHANGES TO OUR PRIVACY POLICY We reserve the right to amend this Policy at any time to reflect changes in the law, our data collection and use practices, the features of our Services, or advances in technology. We will make the revised Policy accessible through the Services, so you should review the Policy periodically. If we make a material change to the Policy, you will be provided with appropriate notice and we will seek your consent to the updated Policy in accordance with legal requirements. HOW WE PROTECT YOUR INFORMATION We take technical and organizational measures to protect your personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorized disclosure or access. However, no method of transmission over the Internet, and no means of electronic or physical storage, is absolutely secure, and thus we cannot ensure or warrant the security of that information. CALIFORNIA PRIVACY RIGHTS California law gives residents of California the right under certain circumstances to request information from us regarding the manner in which we share certain categories of personal information (as defined by applicable California law) with third parties for their direct marketing purposes. However, we do not share your personal information with third parties for their own direct marketing purposes. CONTACT INFO If you wish to contact us or have any questions about or complaints in relation to this Privacy Policy, please contact us at daniel.reinholz@sdsu.edu or niral@msu.edu

The Board of Trustees of Illinois State University

EQUIP



4/3/24

Ernest Olson, Director of Purchases

University Laboratory School Software Addendum

Part One: Data Security Addendum

Vendor/Operator (referred to as Vendor or Operator) acknowledges and agrees that compliance with this Addendum in its entirety for the term of the contract and any renewals is a material requirement and condition of this contract. If the Parties determine that any clause in this section is not applicable to this contract it may be stricken without affecting the remaining subsections.

UNLESS SPECIFICALLY EXEMPTED, THE FOLLOWING CONFIDENTIALITY AND DATA SECURITY REQUIREMENTS APPLY TO ALL DATA MADE AVAILABLE TO THE VENDOR UNDER THE TERMS OF THIS AGREEMENT.

REQUIRED CONDITIONS:

1. **Order of Precedence:**
 - a. To the extent, any provision in this Addendum is inconsistent or incompatible to terms included elsewhere in this Agreement, the parties agree that this Addendum shall take precedence and the conflicting provisions shall be null and void.
2. **Definitions:** The following terms shall be defined as follows for purposes of the Agreement.
 - i. The term **SOPPA Covered Information** means personally identifiable information or material or information that is linked to personally identifiable information or material in any media or format that is not publicly available and is any of the following:
 1. Created by or provided to an Operator by a student or the student's parent or legal guardian in the course of the student's, parent's, or legal guardian's use of the Operator's site, service, or application for K through 12 school purposes.
 2. Created by or provided to an Operator by an employee or agent of a school or school district for K through 12 school purposes.
 3. Gathered by an Operator through the operation of its site, service, or application for K through 12 school purposes and personally identifies a student, including, but not limited to, information in the student's educational record or electronic mail, first and last name, home address, telephone number, electronic mail address, or other information that allows physical or online contact, discipline records, test results, special education data, juvenile dependency records, grades, evaluations, criminal records, medical records, health records, a social security number, biometric information, disabilities, socioeconomic information, food purchases, political affiliations, religious information, text messages, documents, student identifiers, search activity, photos, voice recordings, or geolocation information.
 - ii. The term **Personally Identifiable & Protected University Data** shall include an individual's name first or last, e-mail address or password in an unencrypted or redact form when used in combination one or more of the following data elements including: an (i) identification numbers (e.g. individual's government-issued identification number or social security number, driver's license number); (ii) information protected by federal or state law (e.g. ethnicity, race, religion, disability status, veterans status, etc.), (iii) financial data (including account numbers, credit card number, or other information that would permit access to an individual's financial data; (iii) biometric or health data; or (iv.) other data that if released could create a safety or security concern for the University or members of the University community.
 - iii. University Data includes any information provided by the University pursuant to the Agreement.
3. **University Data & SOPPA Covered Information Security Protections:** Vendor shall provide commercially reasonable and adequate protection on its network and systems to protect University Data and SOPPA Covered Information from unauthorized access, acquisition, destruction, use modification or disclosure that shall include but not be limited to include firewalls and intrusion detection/prevention, authentication and encryption capabilities (including mobile devices, USB storage devices and backup media) in accordance with standard industry practices.
 - a. **Use of Data:** Vendor agrees that any and all University Data and SOPPA Covered Information exchanged shall be used expressly and solely for the purposes enumerated in the Agreement.
 - b. **Data Transmission & Storage:** In general, Vendor shall implement administrative, physical and technical safeguards to protect University Data and SOPPA Covered Information that are no less rigorous than accepted industry practices. Vendor agrees that University Data and SOPPA Covered Information must be stored and transmitted in accordance with standard industry encryption standards. Personally Identifiable & Protected University Data and SOPPA Covered Information may not be processed or stored outside the U.S.
 - c. **Third-Party Assurances / Subcontractors:** Vendor may only release University Data and SOPPA Covered Information to a subcontractor, affiliate or other third party with the designated University authorized official's prior written

consent and provided that such subcontractor, affiliate, or other third party agrees to comply with all provisions of this Agreement.

d. **Return/Destruction of Data:**

- i. As applicable and in accordance with law, within a reasonable time period after termination of this Agreement, for any reason, Vendor shall return or destroy (as specified by the University) all University Data and SOPPA Covered Information and indexing information received from University, or created or received by Vendor on behalf of the University. This provision shall apply to data in the possession of subcontractors or agents of Vendor.
- ii. Destruction of University Data and SOPPA Covered Information will be conducted in accordance with standard industry practices deemed acceptable by the University and Illinois State Record Act requirements.
- iii. Vendor shall provide proof or certification of destruction of the data to the University's Information Security Officer.

- e. **Data Processing Integrity:** As applicable, Vendor shall take commercially reasonable measures, including regular data integrity audits, to protect Data against deterioration or degradation of data quality and authenticity. Vendor will maintain appropriate contingency / recovery plans for any University Data and SOPPA Covered Information in the event of loss of data or breach.

4. **Breach:**

- a. **Notice:** Vendor, including any subcontractors, affiliates, and third parties, shall report in the most expedient timeframe possible but no later than 48 hours to the University Information Security Officer (i) any breach of security involving, or potentially involving, University Data and SOPPA Covered Information, or (ii) any use or disclosure of University Data and SOPPA Covered Information other than the Permitted Uses or breach of federal and state privacy laws. Vendor shall fully cooperate with the University with respect thereto. The University Information Security Officer can be contacted e-mailing informationsecurityoffice@illinoisstate.edu.
- b. **Indemnification:** Vendor shall indemnify, defend and hold University harmless from and against all third-party claims, actions, suits and proceedings resulting from the release of any University Data and SOPPA Covered Information, including the University's costs and reasonable attorneys' fees which arise as a result of Vendor's failure to safeguard University Data and SOPPA Covered Information as provided in this Agreement. Any limitations of liability contained in the Agreement shall not be applicable to Vendor's obligations pursuant to this section.

ADDITIONAL DATA SECURITY TERMS & CONDITIONS:

Please check those terms and conditions applicable to this Agreement.

Vendor Certifications: Prior to performing services which require access to, transmission of and/or storage of **University Data & SOPPA Covered Information**, Vendor will provide a third party certification of compliance with standard industry practices in a form acceptable to the University Information Security Officer.

FERPA & State Privacy Protections. Vendor hereby acknowledge and agrees to comply with the limitations on the use and re-disclosure of **University Data and SOPPA Covered Information** from education records as defined in the Family Educational Rights & Privacy Act ("FERPA") 34 CFR § 99.00 et seq. Vendor agrees to comply with all applicable state privacy protections including but not limited to the Illinois School Student Records Act (105 ILCS 10), the Mental Health and Developmental Disabilities Confidentiality Act (740 ILCS 10), the Identity Protection Act (105 ILCS 85), and the Personal Information Protection Act (815 ILCS 530). Vendor agrees that the Vendor is acting as a school official with legitimate educational interest; is performing an institutional service or function for which the school would otherwise use its own employees and is using University Data and SOPPA Covered Information for an authorized purposes and in furtherance of such legitimate educational interest. Vendor further acknowledge and agrees that it shall maintain the confidentiality, and shall not re-disclose, personally Identifiable Information from education records except as authorized by the University in writing.

SOPPA. Vendor agrees to comply with all operator prohibitions and restrictions on the use and re-disclosure of **University Data & SOPPA Covered Information** from education records as outlined in the Illinois Student Online Personal Protection Act, 105 ILCS 85, et seq. These include but are not limited to:

- Vendor may not use University Data & Covered Information to engage in targeted advertising, amass profiles on student or the parents, or sell/rent any student information, or disclose info to any third-party, unless such party maintains all required security procedures and practices.
- As required by SOPPA, Vendor agrees, upon request and within reasonable period of time, to provide a copy of any student's information provided or maintained by the Vendor, as operator. Vendor agrees to correct any factual errors within 90 days of such request.
- Vendor may only use data to improve operability/functionality of operator's site, to ensure legal and regulatory compliance, to take precautions against liability, to respond to judicial process, to protect the safety/integrity of users to the site.
- In the event of a breach of SOPPA Covered Information that is attributable to the Vendor, the Vendor agrees to reimburse and indemnify University for any and all costs and expenses University incurs in investigating and remediating the breach, without regard to any limitation of liability provision including but not limited to costs and expenses associated with:
 - Providing notification to parents of students whose data was compromised;
 - Providing credit monitoring to those students whose data was exposed in a manner that a reasonable person would believe may impact the student's credit or financial security;
 - Legal fees, audit costs, fines, and any other fees or damages imposed against the University as a result of the breach; and
 - Provision of any other notification or fulfilling any other requirements as required by law.

Health Insurance Portability and Accountability Act ("HIPAA"): If the Vendor is a "covered entity" as that term is defined under HIPAA, the Vendor shall enter into a Business Associate Agreement with the University. If the Vendor is not a "covered entity" as that term is defined under HIPAA, the Vendor acknowledges i) any students working at the Vendor's site or under the Vendor's supervision and control are part of the Vendor's "workforce" as defined in HIPAA Privacy Regulations at 43 C.F.R. 160.103, and ii) no Business Associate agreement is required between the University and Facility. The Facility will provide the necessary HIPAA training to students and students will be expected to comply with HIPAA and any other confidentiality requirements of the Facility.

PCI Standards: If, in the course of providing services to University, Vendor has access to or will collect, access, use, store, process, dispose of or disclose credit, debit or other payment cardholder information, Vendor shall at all times remain in compliance with the Payment Card Industry Data Security Standard ("PCI DSS") requirements, including remaining aware at all times of changes to the PCI DSS and promptly implementing all procedures and practices as may be necessary to remain in compliance with the PCI DSS, in each case, at Service Provider's sole cost and expense.

Vendor Monitoring/Audit: With prior written notice, University (or its agent or affiliate) may audit Vendor's use of the University Data to ensure that Vendor is in compliance with the terms of this Agreement. Vendor will keep complete and accurate records of all use of University data, including a log file of all employees with access to University Data. University may at its own expense and upon no less than five working days written notice audit Vendor's use, access, or maintenance of the University Data. As part of such audit,

University is entitled to obtain physical and electronic data concerning use of University's data upon submitting a reasonable request to Vendor. Such audit will not interfere unreasonably with Vendor's business activities, will be conducted no more often than once per calendar year at a location, unless a previous audit disclosed a material breach. If an audit reveals the Vendor has breached this Agreement, University may immediately terminate the Agreement.

Illinois State University reserves the right and the parties agree to amend the Data Security Addendum and related Agreement to address required data security requirement changes in law, including those changes that may apply under the European Union General Data Protection Regulations, effective May 25, 2018.

Part 2: University & Illinois Procurement Code Addendum

The Board of Trustees of Illinois State University (University, ISU), a body corporate and politic of the State of Illinois and the Vendor are entering into a contract/agreement. For the parties' mutual convenience, the parties are using the Vendor's Contract Form. This Addendum is incorporated into the Vendor's Contract Form and made an integral part thereof.

Vendor acknowledges and agrees that the Vendor's Contract Form may include some types of clauses or sales terms not acceptable to the University because of statutory restrictions or other policy considerations. If the Parties determine that any provision of this Addendum in this section is not applicable to this contract it may be stricken without affecting the remaining subsections.

1. Order of Precedence:

- a. To the extent, any provision in this Addendum is inconsistent or incompatible to the Vendor's Contract Form, the parties agree that this Addendum shall take precedence and the conflicting provisions of the Vendor's Contract Form shall be null and void.

2. Insurance:

- a. Illinois State University shall not be required to maintain any type of insurance for the Vendor's benefit.
- b. During all times relevant to this agreement, Vendor shall maintain and keep in effect applicable general liability insurance with limits acceptable to the Board of Trustees of Illinois State University, and shall provide proof of coverage upon request. Additional insurance coverage, as specified in subsection c below, may be required for this agreement depending upon the services provided by the Vendor.
- c. Additional insurance requirements:

3. Confidential Information:

- a. Confidential Information may be made available to the Vendor under this Agreement. The Vendor agrees to i) protect any Confidential Information from unauthorized use or disclosure; ii) disclose Confidential Information only to employees and other representatives who have agreed to comply with this agreement; and iii) use the Confidential Information only for the purposes authorized in this Agreement.
- b. All Confidential Information remains the property of the University.
- c. "Confidential Information" means any information provided by the University whether of a technical, business or other nature that is disclosed to the Vendor that is designated as Confidential by the University, that is protected from disclosure by applicable state or federal law, or that the Vendor has reason to believe is confidential, proprietary, or trade secret information of the University. Confidential Information does not include any information that: (a) was acquired lawfully by the Vendor or independently developed or acquired by the Vendor outside this Agreement; (b) is or becomes part of the public domain through no fault of the Vendor; or, (c) is authorized for release by written notice from University to Vendor; or (d) is otherwise required to be disclosed by law.
- d. ISU reserves the right to disclose contract purchase information as required by the State of Illinois Freedom of Information Act without pre-notification or approval from the Vendor.

4. Governing Law:

- a. Notwithstanding any provision to the contrary, the Vendor's Contract Form shall be governed and construed in accordance with the laws of the State of Illinois.
- b. For venue purposes, it is deemed that all obligations of the parties created hereunder are performed in McLean County, Illinois.

5. Term:

- a. Notwithstanding any provision, the term of the contract (including original and renewal terms) shall not exceed 10 years in total.
 - b. No term will automatically renew regardless of stated required notification periods. All renewals will only be valid with the issuance of a University purchase order.
6. **Indemnification/Hold Harmless/Limitation of Liability:**
- a. It is understood and agreed that neither party to this agreement shall be liable for any negligent or wrongful acts, either of commission or omission, chargeable to the other, unless such liability is imposed by law, and that this agreement shall not be construed as seeking to either enlarge or diminish any obligation or duty owed by one party against the other or against a third party.
 - b. The University shall not agree to any additional provision:
 - i. Requiring the University to indemnify or hold harmless the Vendor for any act or omission.
 - ii. Releasing the Vendor or any other entity or person from its legal liability, or limiting liability, or unlawful or negligent conduct or failure to comply with any duty recognized or imposed by applicable law.
 - iii. Requiring the University to make payments for total or partial compensation or payment for lost profit or liquidated damages if the Agreement is terminated before the end of the term.
 - iv. Limiting the liability of the Vendor for property damage or personal injury.
 - v. Binding the University to any arbitration or to the decision of any arbitration board, commission, panel or other entity.
 - vi. Obligating the University to pay costs of collection or attorney's fees.
 - vii. Granting the Vendor a security of interest in property of Illinois State University.
 - viii. Changing the time period within which claims can be made or actions can be brought under the laws of the State of Illinois.
 - ix. Requiring the University to waive the sovereignty of Illinois, waiver of any right to a jury trial, increasing the University's liability beyond that authorized in the Illinois Tort Claims Act, or authorizing Vendor to execute any settlement obligation that would bind the University without the consent of the Board of Trustees of Illinois State University and/or the Illinois Attorney General, as applicable.
7. **Payment Obligations:**
- a. All amounts, including but not limited to interest and/or late charges, owed by the University under the Vendor's Contract Form shall be made in accordance with applicable provisions of the Illinois Prompt Payment Act.
8. **Independent Contractor:** In Vendor's performance under this Agreement, the Vendor acts and will act as an independent contractor and not as an agent or employee of Illinois State University.
9. **Use of University Name & Facilities:** Vendor shall not use the name of the University in any written material including but not limited to brochures, letters, and circulars, without the prior written consent of University. If applicable, Vendor's use of University Facilities shall comply with all University policies, procedures and requirements.
10. **COVID-19 ON CAMPUS Requirements:** While on campus, contractors and subcontractors agree their employees shall use best efforts to follow all applicable COVID-19 safety requirements, guidelines, standards, and best practices issued by applicable local, state, and federal authorities, including but not limited to, the U.S. Center for Disease Control and Prevention, the Occupational Safety and Health Administration, the Governor of the State of Illinois and the Illinois Department of Public Health. Consistent with applicable law, Contractor/Vendor also agrees to immediately notify the University Environmental Health and Safety Department if it receives information regarding a contractor or subcontractor employee who a) has received a positive COVID-19 diagnosis and b) has been present on campus in the

last 7 days prior to contractor's receipt of such information. Contractor/Vendor should contact Environmental Health and Safety at 309-438-8325 to provide this notice.

11. **Force Majeure Provisions:** It is agreed that no claim for damages, losses or liability may be made by either party upon the occurrence of any circumstance, whether directly or indirectly, beyond the control of either party (including without limitation strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, business interruptions, disease, national or local emergency, government action or inaction, travel restrictions, loss or malfunctions of utilities, communications or computer (software and hardware) services ("a Force Majeure Event")), to the extent that such circumstance delays or otherwise makes it illegal or impossible for a party to satisfy its performance obligations under the Agreement. In the event of a Force Majeure Event, the parties agree to negotiate in good faith any modifications of the terms of this Agreement that may be necessary or appropriate in order to resume performance obligations under the Agreement. However, the contract is subject to termination/cancellation by the non-declaring party, unless the parties mutually agree, in writing, to amend the Agreement. As soon as reasonably practicable after a Force Majeure Event occurs, the non-declaring party will provide a written notice to the other party (or parties) that specifies the Agreement termination date. In the event of a termination due to a Force Majeure Event, the Vendor will refund to University all recoverable expenses and 50% of any documented, reasonable, nonrecoverable expenses incurred by Vendor prior to the date of termination. Vendor agrees to provide University with documentation, acceptable to the University, in its sole discretion, that details reasonable, nonrecoverable expenses retained by Vendor relating to the Force Majeure Event.

12. **Certifications:**

- a. If the total value of this contract is in excess of \$50,000, Vendor acknowledges and agrees that compliance with the attached Certifications and Additional Terms for the term of the contract and any renewals is a material requirement and condition of this contract. By executing the contract Vendor certifies compliance with this subsection in its entirety, and is under a continuing obligation to remain in compliance and report any non-compliance.
- b. This subsection, in its entirety, applies to subcontractors used on the contract. Vendor shall include these Standard Certifications in any subcontract used in the performance of the contract using the Standard Subcontractor Certification form provided by the University.
- c. If this contract extends over multiple fiscal years, including the initial term and all renewals, Vendor and its subcontractors shall confirm compliance with this section in the manner and format determined by the University by the date specified by the University and in no event later than July 1 of each year that this contract remains in effect.

13. **Compliance:**

- a. **Statutory Compliance:** All commitments by the University under this Agreement are subject to constitutional and statutory limitations and restrictions binding upon the University. Vendor agrees to comply with all applicable federal, state, and local laws, orders and regulations.
- b. **University Policies and Procedures:** Vendor agrees to comply with applicable University policies and procedures.
- c. **Nondiscrimination:** Vendor agrees to comply with all applicable federal and state nondiscrimination, equal opportunity and affirmative action laws, orders and regulations. Vendor shall not engage in unlawful discrimination or harassment against any person because of race, color, religion, sex, national origin, ancestry, age, marital status, protective order status, disability, unfavorable discharge from the military, or status as a disabled veteran or a veteran of the Vietnam era in the performance of this agreement.
- d. **Taxes:** The Agreement shall not obligate the University to pay taxes unless otherwise required by law.
- e. **Withholding/Legal Status:** Vendor shall provide true and correct information regarding its Federal Tax Payer Identification Number (FEIN), tax withholding status and legal status information. Any change in the Vendor's

tax withholding status must be immediately reported to the University by Vendor. If a W-8 or W-9 form is required, payment will not be made prior to receipt of a completed form.

f. **Export Control:**

- i. University agrees to comply with applicable U.S. laws, regulations, orders or other restrictions on exports and further shall not sell, license or re-export, directly, or indirectly, any information, data, products, items subject to the Agreement to any person or entity for sale in any country or territory, if, to the knowledge of University, such action would cause the Vendor to be in violation of any such laws or regulations now or hereafter in effect.
- ii. Vendor shall also notify the University if any of the individuals, equipment, data, services provided or other commitments made or subject to the Agreement are subject to the U.S. Export Administration Regulations, controlled by the International Traffic in Arms Regulations, subject to Office of Foreign Assets Control restrictions, or otherwise subject to export restrictions by a federal agency.

14. Assignment: This contract may not be assigned, in whole or in part, by either party without the prior written approval of the other party, except in connection with a merger or sale of all or substantially all of the assets of such party provided, however, that the obligations of such party under this Contract shall not be extinguished or otherwise affected by any such assignment.

15. Technology Accessibility: This applies to information technology contracts and is otherwise not applicable. Vendor certifies that information technology, including electronic information, software, systems and equipment (including websites and mobile applications), developed or provided under this contract comply with the applicable requirements of the Illinois Information Technology Accessibility Act Standards as published at (www.dhs.state.il.us/iitaa) 30 ILCS 587. Illinois' IITAA accessibility standards exactly match the United States' Section 508 Standards and the World Wide Web Consortium's Web Content Accessibility Guidelines (WCAG) 2.0 Level AA. In the event that an accessibility assessment conducted or obtained by Vendor reveals an issue of non-compliance, Vendor will endeavor to correct the issue.

Illinois State University Certifications and Additional Terms

Vendor acknowledges and agrees that compliance with this subsection in its entirety for the term of the contract and any renewals is a material requirement and condition of this contract. By executing this contract Vendor certifies compliance with this subsection in its entirety, and is under a continuing obligation to remain in compliance and report any non-compliance.

This subsection, in its entirety, applies to subcontractors used on this contract. Vendor shall include these Standard Illinois Certifications in any subcontract used in the performance of the contract.

A contractor or subcontractor that has entered into a contract for more than one year in duration for the initial term or any renewal term shall certify, by January 1 of each fiscal year covered by the contract after the initial fiscal year, to the applicable chief procurement officer of any changes that affect its ability to satisfy the requirements of Article 50 of the Procurement Code pertaining to eligibility for contract award. If a contractor or subcontractor is not able to truthfully certify that it continues to meet all requirements, it shall provide with its Standard Illinois Certifications a detailed explanation of the circumstances leading to the change in certification status. If a contractor or subcontractor continues to meet all requirements of this Article, it shall not be required to submit any certification or if the work under the contract has been substantially completed before contract expiration, but the contract has not yet expired. A contractor or subcontractor that makes a false statement material to the Standard Illinois Certifications is, in addition to any other penalties or consequences prescribed by law, subject to liability under the Illinois False Claims Act for submission of a false claim. 30 ILCS 500/50-2.

If the Parties determine that any certification in this section is not applicable to this contract it may be stricken without affecting the remaining subsections.

1. As part of each certification, Vendor acknowledges and agrees that should Vendor or its subcontractors provide false information, or fail to be or remain in compliance with the Standard Illinois Certification requirements, one or more of the following sanctions will apply:
 - the contract may be void by operation of law,
 - the State may void the contract, and
 - the Vendor and its subcontractors may be subject to one or more of the following: suspension, debarment, denial of payment, civil fine, or criminal penalty.

Identifying a sanction or failing to identify a sanction in relation to any of the specific certifications does not waive imposition of other sanctions or preclude application of sanctions not specifically identified.

2. Vendor, if an individual, sole proprietor, partner or an individual as member of a LLC, certifies he/she is not in default on an educational loan. 5 ILCS 385/3.
3. Vendor, if an individual, sole proprietor, partner or an individual as member of a LLC, certifies he/she has not received (i) an early retirement incentive prior to 1993 under Section 14-108.3 or 16-133.3 of the Illinois Pension Code or (ii) an early retirement incentive on or after 2002 under Section 14-108.3 or 16-133.3 of the Illinois Pension Code. 30 ILCS 105/15a; 40 ILCS 5/14-108.3; 40 ILCS 5/16-133.
4. For contracts other than construction contracts subject to the requirements of 30 ILCS 500/30-20 and 30 ILCS 500/33-10, Vendor certifies that it is a legal entity as of the date for submitting this bid, offer, or proposal. A person (other than an individual acting as a sole proprietor) must be a duly constituted legal entity to qualify as a bidder or offeror prior to submitting a bid, offer, or proposal. The legal entity must be authorized to transact business or conduct affairs in Illinois prior to execution of the contract. 30 ILCS 500/20-43.
5. For construction contracts subject to 30-20 and 33-10 of the Procurement Code, Vendor shall be registered with the Secretary of State as part of the pre-qualification process. 30 ILCS 500/20-43.
6. To the extent there was a current Vendor providing the services covered by this contract and the employees of that Vendor who provided those services are covered by a collective bargaining agreement, Vendor certifies (i) that it will offer to assume the collective bargaining obligations of the prior employer, including any existing collective bargaining agreement with the bargaining representative of any existing collective bargaining unit or units performing substantially similar work to the

services covered by the contract subject to its bid or offer; and (ii) that it shall offer employment to all employees currently employed in any existing bargaining unit who perform substantially similar work to the work that will be performed pursuant to this contract. This does not apply to heating, air conditioning, plumbing and electrical service contracts. 30 ILCS 500/25-80.

7. Vendor certifies it has neither been convicted of bribing or attempting to bribe an officer or employee of the State of Illinois or any other State, nor made an admission of guilt of such conduct that is a matter of record. 30 ILCS 500/50-5.
8. If Vendor has been convicted of a felony, Vendor certifies at least five years have passed after the date of completion of the sentence for such felony, unless no person held responsible by a prosecutor's office for the facts upon which the conviction was based continues to have any involvement with the business. 30 ILCS 500/50-10.
9. If Vendor or any officer, director, partner, or other managerial agent of Vendor has been convicted of a felony under the Sarbanes-Oxley Act of 2002, or a Class 3 or Class 2 felony under the Illinois Securities Law of 1953, Vendor certifies at least five years have passed since the date of the conviction. Vendor further certifies that it is not barred from being awarded a contract and acknowledges that the State shall declare the contract void if this certification is false. 30 ILCS 500/50-10.5.
10. Vendor certifies it is not barred from having a contract with the State based upon violating the prohibitions related to either submitting/writing specifications or providing assistance to an employee of the State of Illinois by reviewing, drafting, directing, or preparing any invitation for bids, a request for proposal, or request of information, or similar assistance (except as part of a public request for such information). 30 ILCS 500/50-10(b), 30 ILCS 500/50-10.5(e).
11. Vendor certifies that it and its affiliates are not delinquent in the payment of any debt to the State (or if delinquent has entered into a deferred payment plan to pay the debt or is actively disputing or seeking resolution), and Vendor and its affiliates acknowledge the State may declare the contract void if this certification is false or if Vendor or an affiliate later becomes delinquent and has not entered into a deferred payment plan to pay off the debt. 30 ILCS 500/50-11, 50-60.
12. Vendor certifies that it and all affiliates shall collect and remit Illinois Use Tax on all sales of tangible personal property into the State of Illinois in accordance with provisions of the Illinois Use Tax Act and acknowledges that failure to comply may result in the contract being declared void. 30 ILCS 500/50-12.
13. Vendor certifies that it has not been found by a court or the Pollution Control Board to have committed a willful or knowing violation of the Environmental Protection Act within the last five years, and is therefore not barred from being awarded a contract. 30 ILCS 500/50-14.
14. Vendor certifies it has neither paid any money or valuable thing to induce any person to refrain from bidding on a State contract, nor accepted any money or other valuable thing, or acted upon the promise of same, for not bidding on a State contract. 30 ILCS 500/50-25.
15. Vendor certifies it is not in violation of the "Revolving Door" provisions of the Illinois Procurement Code. 30 ILCS 500/50-30.
16. Vendor certifies that it has not retained a person or entity to attempt to influence the outcome of a procurement decision for compensation contingent in whole or in part upon the decision or procurement. 30 ILCS 500/50-38.
17. Vendor certifies that if it has hired a person required to register under the Lobbyist Registration Act to assist in obtaining any State contract, that none of the lobbyist's costs, fees, compensation, reimbursements, or other remuneration were billed to the State. 30 ILCS 500/50-38.
18. Vendor certifies it will report to the Illinois Attorney General and the Chief Procurement Officer any suspected collusion or other anti-competitive practice among any bidders, offerors, contractors, proposers, or employees of the State. 30 ILCS 500/50-40, 50-45, 50-50.
19. Vendor certifies steel products used or supplied in the performance of a contract for public works shall be manufactured or produced in the United States, unless the executive head of the procuring Agency/University grants an exception. 30 ILCS 565.
20. Drug Free Workplace

- 20.1 If Vendor employs 25 or more employees and this contract is worth more than \$5,000, Vendor certifies it will provide a drug free workplace pursuant to the Drug Free Workplace Act.
- 20.2 If Vendor is an individual and this contract is worth more than \$5,000, Vendor certifies it shall not engage in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance during the performance of the contract. 30 ILCS 580.
21. Vendor certifies that neither Vendor nor any substantially owned affiliate is participating or shall participate in an international boycott in violation of the U.S. Export Administration Act of 1979 or the applicable regulations of the United States. Department of Commerce. 30 ILCS 582.
22. Vendor certifies it has not been convicted of the offense of bid rigging or bid rotating or any similar offense of any state or of the United States. 720 ILCS 5/33 E-3, E-4.
23. Vendor certifies it complies with the Illinois Department of Human Rights Act and rules applicable to public contracts, which include providing equal employment opportunity, refraining from unlawful discrimination, and having written sexual harassment policies. 775 ILCS 5/2-105.
24. Vendor certifies it does not pay dues to or reimburse or subsidize payments by its employees for any dues or fees to any "discriminating club." 775 ILCS 25/2.
25. Vendor certifies that no foreign-made equipment, materials, or supplies furnished to the State under the contract have been or will be produced in whole or in part by forced labor or indentured labor under penal sanction. 30 ILCS 583.
26. Vendor certifies that no foreign-made equipment, materials, or supplies furnished to the State under the contract have been produced in whole or in part by the labor of any child under the age of 12. 30 ILCS 584.
27. Vendor certifies that any violation of the Lead Poisoning Prevention Act, as it applies to owners of residential buildings, has been mitigated. 410 ILCS 45.
28. Vendor warrants and certifies that it and, to the best of its knowledge, its subcontractors have and will comply with Executive Order No. 1 (2007). The Order generally prohibits Vendors and subcontractors from hiring the then-serving Governor's family members to lobby procurement activities of the State, or any other unit of government in Illinois including local governments if that procurement may result in a contract valued at over \$25,000. This prohibition also applies to hiring for that same purpose any former State employee who had procurement authority at any time during the one-year period preceding the procurement lobbying activity.
29. Vendor certifies that information technology, including electronic information, software, systems and equipment, developed or provided under this contract comply with the applicable requirements of the Illinois Information Technology Accessibility Act Standards as published at (www.dhs.state.il.us/iitaa). 30 ILCS 587.
30. Vendor certifies that it has read, understands, and is in compliance with the registration requirements of the Elections Code (10 ILCS 5/9-35) and the restrictions on making political contributions and related requirements of the Illinois Procurement Code. 30 ILCS 500/20-160 and 50-37. Vendor will not make a political contribution that will violate these requirements.
31. Vendor certifies that if it is awarded a contract through the use of the preference required by the Procurement of Domestic Products Act, then it shall provide products pursuant to the contract or a subcontract that are manufactured in Illinois or the United States. 30 ILCS 517.
32. Vendor certifies that, for the duration of this contract it:
- will post its employment vacancies in Illinois and border states on the Department of Employment Security's IllinoisJobLink.com website or its successor system; or
 - will provide an online link to these employment vacancies so that this link is accessible through the <https://illinoisjoblink.illinois.gov/> website its successor system; or

- is exempt from 20 ILCS 1005/1005-47 because the contract is for construction-related services as that term is defined in section 1-15.20 of the Procurement Code; or the contract is for construction and vendor is a party to a contract with a bona fide labor organization and performs construction. 20 ILCS 1005/1005-47.
33. Vendor certifies it is not prohibited by federal agencies pursuant to a United States Department of Homeland Security Binding Operational Directive due to cybersecurity risks. 30 ILCS 500/25-90.

Additional Terms:

Assignment and Subcontracting: (30 ILCS 500/20-120) Any contract may not be assigned or transferred in whole or in part by Vendor without the prior written consent of the University. For purposes of this section, subcontractors are those specifically hired by the Vendor to perform all or part of the work covered by the contract. Vendor shall describe the names and addresses of all subcontractors to be utilized by Vendor in the performance of the resulting contract, together with a description of the work to be performed by the subcontractor and the anticipated amount of money that each subcontractor is expected to receive pursuant to a subsequent contract. Vendor shall notify the University in writing of any additional or substitute subcontractors hired during the term of a resulting contract, and shall supply the names and addresses and the expected amount of money that each new or replaced subcontractor will receive pursuant to the Contract. All subcontracts must include the same certifications and disclosures that Vendor must make as a condition of their contract.

Audit / Retention of Records: (30 ILCS 500/20-65) Vendor and its subcontractors shall maintain books and records relating to the performance of the resulting contract or subcontract and necessary to support amounts charged to the University. Books and records, including information stored electronically, shall be maintained by the Vendor for a period of three years from the later of the date of final payment under the contract or completion of the contract, and by the subcontractor for a period of three years from the later of final payment under the term or completion of the subcontract. If federal funds are used to pay contract costs, the Vendor and its subcontractors must retain its records for a minimum of five years after completion of work. Books and records required to be maintained under this section shall be available for review or audit by representatives of: the University, the Auditor General, the Executive Inspector General, the Chief Procurement Officer, State of Illinois internal auditors or other governmental entities with monitoring authority, upon reasonable notice and during normal business hours. Vendor and its subcontractors shall cooperate fully with any such audit and with any investigation conducted by any of these entities. Failure to maintain books and records required by this section shall establish a presumption in favor of the University for the recovery of any funds paid by the University under the contract for which adequate books and records are not available to support the purported disbursement. The Vendor or subcontractors shall not impose a charge for audit or examination of the Vendor's books and records.

Availability of Appropriation (30 ILCS 500/20-60): Any resulting contract is contingent upon and subject to the availability of funds. The University, at its sole option, may terminate or suspend this contract, in whole or in part, without penalty or further payment being required, if the Illinois General Assembly or the federal funding source fails to make an appropriation sufficient to pay such obligation. If funds needed are insufficient for any reason, the University has discretion on which contracts will be funded.

Transportation Sustainability Procurement Program Act (30 ILCS 530/10 (b): All contracts for freight, small package delivery, and any transportation of cargo require providers to report the amount of energy the service provider consumed to provide those services to the State and the amount of associated greenhouse gas emissions, including energy use and greenhouse gases emitted as a result of the provider's use of electricity in its facilities and the energy use and greenhouse gas emissions by the service provider's subcontractors in the performance of those services.

Expatriated Entity: For purposes of this provision, an expatriated entity is an entity that meets the definition outlined in 30 ILCS 500/1-15.120. Per 30 ILCS 500/50-17, no business or member of a unitary business group, as defined in the Illinois Income Tax Act, shall enter into a contract with a State agency under this Code if that business or any member of the unitary business group is an expatriated entity unless the Chief Procurement Officer:

- a) Has determined the contract is awarded as a sole source; or
- b) the purchase is of pharmaceutical products, drugs, biologics, vaccines, medical supplies, or devices used to provide medical and health care or treat disease or used in medical or research diagnostic tests, and medical nutritionals regulated by the Food and Drug Administration under the Federal Food, Drug, and Cosmetic Act.