

June 4, 2021

Boom Learning  
9805 NE 116th St Suite 7198  
Kirkland WA 98034



**Re: Illinois Student Online Personal Protection Act (105 ILCS 85) student data privacy requirements for educational technology software used in Illinois schools.**

Dear Mary Oemig,

Illinois State University ("ISU"), a public Illinois university, is a body corporate and politic of the State of Illinois. ISU includes two laboratory schools: Thomas Metcalf School (Grades: PreK – 8) and University High School (Grades 9-12) ("University Laboratory Schools"). The University Laboratory Schools are using the software, Boom Learning, as part of instructional activities and would like to continue to do so. There is a new Illinois law, named the Student Online Personal Protection Act, 105 ILCS 85, ("SOPPA"), that establishes new student data privacy requirements for providers (or operators) of educational technology. Information and resources about SOPPA are available from multiple sources including the Illinois Student Privacy Alliance ([www.sdpc.a4l.org](http://www.sdpc.a4l.org)) and the Learning Technology Center of Illinois (<https://itcillinois.org/services/dataprivacy/>). In addition a copy of the law can be accessed on the Illinois legislature [website](#).

The purpose of this letter is to update and modify the terms/conditions and privacy policy for the software consistent with the requirements of SOPPA and other Illinois law. The University, as a public Illinois university, is also subject to the Illinois Procurement Code requirements, which require vendors to make certain required certifications.

The revised provisions of SOPPA become effective July 1, 2021. The primary requirements for vendors/operators include:

- Prohibitions against vendor/operators to use student data to engage in targeted advertising on behalf of the vendor/operator, against amassing student data profiles for commercial purposes, selling/renting student data, or disclosing student data to third-parties for purposes unrelated to the contract.
- Vendor/operator must maintain reasonable security procedures/practices appropriate to the nature of any data retained or collected by the vendor/operator, including appropriate procedures to respond in the event of a breach of security such as a 30-day notice obligation.
- A requirement that vendor/operators comply with federal and state student privacy protections, including the Family Educational Rights and Privacy Act (20 USC 1232g) and the Illinois School Student Records Act (105 ILCS 110).
- Appropriate procedures to return or delete student data.

ISU proposes to modify the software terms and conditions (attached at Attachment 1) to include an addendum incorporating SOPPA, Illinois Procurement Code, and ISU requirements (attached at

Attachment 2). SOPPA requires that public schools must make copies of written agreements with operators available on the school's websites.

If you have any questions or proposed modifications to these terms, please contact Stacy Brown, Procurement Manager for Technology and General Purchases, Illinois State University Purchasing Department at 100 South Fell Ave., Normal, Illinois 61761, by phone at 309-438-1045 or by e-mail at [ISUPurchasing@ilstu.edu](mailto:ISUPurchasing@ilstu.edu). If the proposed terms and conditions are acceptable, please sign the letter below and return the executed contract to [ISUPurchasing@ilstu.edu](mailto:ISUPurchasing@ilstu.edu).

Sincerely,



Ernest Olson  
Director of Purchases

### **Vendor Acceptance of University Laboratory School Software Addendum**

The individual signing this Agreement represents and warrants they the Agreement (including the Vendors Terms & Conditions as amended by the University Laboratory School Software Addendum is acceptable. The individual represents and warrants they are authorized to sign this Addendum on behalf of the named Vendor/Operator.

**Acknowledged & Accepted:**

**Vendor / Operator Signature:**

 <small>Mary Oemig (Jun 14, 2021 14:58 PDT)</small>	June 14, 2021
<b>Signature</b>	<b>Date</b>

Mary Oemig, Chief Executive Officer  
**Print Name & Title**

cc: University Laboratory Schools, [labschools@ilstu.edu](mailto:labschools@ilstu.edu)  
Illinois State University Purchasing, [ISUPurchasing@ilstu.edu](mailto:ISUPurchasing@ilstu.edu)

# Terms of Service

Modified on: Sat, 5 Jun, 2021 at 4:56 PM

Effective Date July 1, 2021 ([see archived versions \(https://help.boomlearning.com/en/support/solutions/folders/16000095966\)](https://help.boomlearning.com/en/support/solutions/folders/16000095966))

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## 1. This is a Binding Agreement!

By using Boom Learning, you are agreeing to these [Terms of Service](https://help.boomlearning.com/en/support/solutions/folders/16000095984) (<https://help.boomlearning.com/en/support/solutions/folders/16000095984>) and the [Privacy Notices](https://help.boomlearning.com/en/support/solutions/folders/16000095980) (<https://help.boomlearning.com/en/support/solutions/folders/16000095980>), applicable to you. You can find the applicable terms for you below.

IT CONTAINS A BINDING ARBITRATION PROVISION AND A WAIVER OF CLASS ACTION RIGHTS THAT AFFECTS YOUR LEGAL RIGHTS. EITHER YOU OR WE MAY ENFORCE THIS AGREEMENT. GOVERNMENT ENTITIES MAY SIGN AN [AGREEMENT](https://help.boomlearning.com/en/support/solutions/articles/16000121732-government-agency-terms-of-service) (<https://help.boomlearning.com/en/support/solutions/articles/16000121732-government-agency-terms-of-service>). TO REJECT THE ARBITRATION CLAUSE.

### 1.1 Find the terms that apply to you

The Notices and Terms are listed in the order of precedence. That means, if there is a conflict between the terms of one or more documents, the term in the document higher on the list (with the lower numeral) will prevail over the terms in the higher listed document.

### 1.1.1 Students

1. Benefit from our **Student Privacy Notice** (<https://help.boomlearning.com/en/support/solutions/articles/16000121715-student-privacy-notice>).
2. Student accounts are subsidiaries of Educator or Entity accounts.

### 1.1.2 Schools, Medical Providers, and Businesses purchasing as an "Entity" are bound by

1. Any separately signed Data Privacy Addendum or Agreement
2. Any separately negotiated and signed Service Agreement, Software License, or Master Agreement
3. The Boom Learning **Privacy Notices** (<https://help.boomlearning.com/en/support/solutions/articles/16000121725-general-privacy-notice>)
4. The Boom Learning Terms of Service
5. Any School provided Purchase Order Terms and Conditions

### 1.1.3 Educators purchasing as an individual are bound by

1. The Entity terms if your district has an Entity agreement
2. The Boom Learning **Privacy Notices** (<https://help.boomlearning.com/en/support/solutions/articles/16000121725-general-privacy-notice>)
3. The Boom Learning Terms of Service

### 1.1.4 Public Publishing Authors (Sellers) are bound by

1. The **Public Author Terms of Service** (<https://help.boomlearning.com/en/support/solutions/articles/16000121727-public-author-terms-of-service>)
2. The Boom Learning **Privacy Notices** (<https://help.boomlearning.com/en/support/solutions/articles/16000121725-general-privacy-notice>)
3. The Boom Learning Terms of Service

If you do not accept all the terms, do not use Boom Learning.

## 1.2 Changes

We will not make material changes to the terms without first providing notice via our newsletter service. Mere reorganization of components between cross-referenced documents nor the addition of detail previously stated in our FAQs that does not alter fundamental commitments does not constitute a material change. If any term is held unlawful, void or unenforceable for any reason, it will be considered modified so that its purpose and the remaining terms can be lawfully enforced. Acceptance of the changed terms is a condition of continuing as a member. If you do not wish to accept the new or revised terms, you must cancel your membership and/or withdraw your products.

## 1.3. Who we are and how to reach us

We (also “**our**” and “**us**”) are Omega Labs Inc. dba Boom Learning, and our successors, assigns, and subsidiaries. Legal notices must be sent to 9805 NE 116th St Suite 7198, Kirkland WA 98034 or [legal@boomlearning.com](mailto:legal@boomlearning.com).

## 1.4 Who you are

**You**” means the adult Educator, Entity, or Public Author who creates an account with us. We are a service provider acting on your behalf to process data for your educational purposes. “**Entity**” includes schools, hospitals, therapy practices, and educational services business, whether for profit or non-profit, and includes sole proprietor businesses.

### **1.4.1 You promise that you are an adult and you will comply with rules for interacting with minors.**

When you accept these terms, you represent and agree that you are an adult and are not a minor. Boom Learning is a platform marketed and directed to adult users for use with students, who may be minors. Adults create accounts for students under their charge. See our Privacy Notice for rules regarding your use of Boom Learning with minors.

### **1.4.2 You agree that we can verify what you tell us.**

You authorize us, directly or through third parties, to make any inquiries we consider appropriate to verify account information you provide, including your authorization to agree to the terms or your identity.

### **1.4.3 Authorizations and account ownership**

You represent and warrant that you have permission and authorization, as required by law or policy, from your school and affected parents, guardians, and students, to bind students and your school to the terms. If you purchase an account with out-of-pocket funds for use at an entity with students, Boom Learning agrees that the school is a beneficiary of the terms. If you are an entity, a person associated with your account must have authority to bind the entity to this Agreement.

## **1.5 What we are**

Boom Learning

- is a platform at [wow.boomlearning.com](http://wow.boomlearning.com) for creating interactive, self-grading teaching resources (“**Boom Cards**”), including the ability to incorporate “assets”, such as images, artwork, fonts, video, and sound, into those Boom Cards, (the creation platform is called the “**Studio**”),
- offers **Public Authors** (<https://help.boomlearning.com/en/support/solutions/articles/16000121727-public-author-terms-of-service>) tools for selling and sharing Boom Cards on other marketplaces (“**External Marketplaces**”),
- includes a marketplace for obtaining and listing Boom Cards and assets (the “**Store**”),
- provides educator tools for managing and assigning Boom Cards (“**Classes**”) and reviewing student performance (“**Reports**”),
- offers web apps (<https://boom.cards>) and native (<https://boom.cards>) apps (Amazon, the App Store, and Google Play) for playing Boom Cards. Mobile apps are also subject to the rules and agreements of their respective app stores.

## **2. Dispute Resolution including ARBITRATION**

### **2.1 Negotiations first**

So if we have a falling out, before calling in the big guns (aka arbitration), you and we shall attempt in good faith to resolve all disputes by negotiation between representatives with the authority to settle the controversy.

### **2.2 Mediation or Copyright Claims Board second**

If negotiations do not resolve the matter, and the matter falls within the jurisdiction of the Copyright Claims Board, the matter will be referred to the Copyright Claims Board for resolution.

If negotiations do not resolve the matter, and the total amount in controversy is less than \$100,000, the matter will proceed to mediation to be conducted online through JAMSconnect. If mediation is unsuccessful in resolving the dispute or the matter has a total value greater than \$100,000, then you and we will proceed to the arbitration procedures in the next paragraph.

## 2.3 Arbitration and Class Action Waiver

Government Agencies can opt out of Arbitration, change choice of law, and change venue by completing and returning our [Government Agency Terms of Service](https://help.boomlearning.com/en/support/solutions/articles/16000121732-government-agency-terms-of-service) (<https://help.boomlearning.com/en/support/solutions/articles/16000121732-government-agency-terms-of-service>).

If we get to the stage of arbitration, any dispute, controversy or claim, arising out of or relating to these terms or to your purchase or use of Boom Cards or Boom Learning will be referred to and finally determined by arbitration administered by JAMS in King County, Washington, in accordance with JAMS' Streamlined Arbitration Rules and Procedures or, if you are situated outside of the United States, in accordance with JAMS International Arbitration Rules. By any, we really mean any, include disputes over whether we even formed an agreement, how to interpret our agreement, whether or how there was a breach, whether or how there was a termination, and even whether or not claims are arbitrable.

You and we agree that the laws applied will be the laws of the State of Washington. You and we further agree that arbitration must be on an individual basis. This means neither you nor we may join or consolidate claims in arbitration by or against other purchasers or users of Boom Learning, or litigate in court or arbitrate any claims as a representative or member of a class.

## 2.5 You and we have 180 days to bring a dispute

You and we agree that any arbitration initiated hereunder must be brought no later than one hundred and eighty (180) days after the dispute first arose, unless the matter qualifies for mediation, as described above, in which case the initiation of mediation shall toll this limitations period from the date of initiation through the date of the completion of the mediation.

## 3. Acceptable Use Policy

### 3.1 Key acceptable use policy requirements

Failure to conform to these acceptable uses can result in your account being suspended or locked out. You will

- only disclose the private information of others that you have a right to disclose and to authorized persons;
- only incorporate the intellectual property of others into materials you make or sell with permission;
- give credit where you are required to give credit;
- comply with all applicable laws that apply;
- access Boom Learning only through pages we make publicly available using your authorized login credentials;
- ensure messages and electronic instructions delivered to us do not include malicious code or otherwise attack our systems;
- create, select, share and deliver to students materials that distinguish fact from opinion and that are factually accurate (supported by verifiable and substantial evidence);
- never include any material that contains advertising or marketing content in materials intended for delivery to K-12 students;
- review all materials created, selected, shared and delivered to students to ensure they do not contain materials that biased, offensive, inappropriate, hateful, indecent, harassing or unlawful, considered in light of the age of the students who are the intended users of the materials (as judged solely by us).

Do not engage in any conduct in any forum hosted by Boom Learning that is harassing, threatening, fraudulent, inappropriate, hateful, pornographic, defamatory, obscene, offensive, indecent or unlawful (as judged by solely by us).

### 3.2 Bad choices have consequences

We do not have an obligation to monitor our sites and apps, but we do have a right to do so. We proactively edit and depublish Boom Cards that violate our acceptable use policy. We reserve the right to remove content, suspend you, ban you, or pursue other remedies against you at our sole discretion, any time, for any breach of the terms of this acceptable use policy or of this agreement, without notice. We reserve the right to provide information to third parties, such as our authors, schools, law enforcement, supervisory authorities, and attorneys general, to enable them to pursue legal remedies against you. You agree that we will not be liable to you or

any third party for any suspension or termination of your account. There are no refunds when an account is suspended or terminated and you will forfeit your current membership. If we terminate your account, you will not establish a new account without our permission. You will be required to pay anew to reopen an account.

### 3.3 Special rules for video

You may not embed any video in a Boom Cards deck that contains an advertisement. You are responsible for watching videos in full before embedding and ensuring that no advertisements are displayed. You are responsible for updating your videos if your hosting service changes its rules to add advertisements to your video. For Vimeo, you must have a premium Vimeo account so that your users do not see ads. You may not collect personally identifiable information from any user via a Vimeo link. You must turn off all marketing settings that collect information before including a Vimeo link in a deck.

### 3.4 You can report infringement of copyrights and we will take action.

The Digital Millennium Copyright Act provides specific guidelines for reporting infringement of your copyrights to us. It also defines what we do when we receive a complaint from you. Copyrights are rights to prevent others from copying, displaying, performing, distributing, or making a variation of a work of original expression created by you and captured in some form by you. If you believe your copyrights have been violated, tell us using our **Notice and Procedure for Making Claims of Copyright Infringement** (<https://wow.boomlearning.com/ipClaim>). We will remove items that we have a good faith belief we have a legal right and obligation to remove.

You can also report abuse or infringement informally by clicking Reviews and Report for the Boom Cards deck at issue. If you want to contact us about abuse of our acceptable use policy, trademark infringement or other matters, do not send a DMCA notice, use the Report tool for the deck or send a proper message providing sufficient information for us to identify your concern and an actionable requested remedy to [legal@boomlearning.com](mailto:legal@boomlearning.com). If you add patent or trademark claims to your DMCA notice we will reject it as nonconforming and will require you to submit again. We prefer a less formal, more flexible approach than the DMCA to arriving at a mutually agreeable messaging to give to teachers about acceptable use of your materials, but if you must use the DMCA, we expect you to get it right.

### 3.5 We can't make everyone behave all the time.

Before assigning any material, you should inspect it for suitability. If upon inspection it does not conform to your expectations, you may request a refund by identifying the deck title, deck author, and a brief statement of the issue with the deck. Refund requests must be within reasonable proximity of the purchase date. We will grant reasonable refund requests, but reserve the right to refuse for customers who abuse the process, as determined in our sole discretion.

You will see content on Boom Learning that was posted by our authors and third parties. Those third parties are solely responsible for the content they make available. You may object to content and we will determine, in our sole discretion, if it should be removed. We are not responsible for the accuracy, appropriateness, lawfulness or truthfulness of any author or third party content. We are not liable to you if you rely on author or third-party content or if you suffer damage from an author or third party. We are not liable even if you object to us about the content and we take no action. We will respond to a properly issued court order to remove content.

## 4. Talking about each other

### 4.1 Chat us up, with credit

Please talk about Boom Cards. Be sure to give credit where credit is due. Don't claim as your own things that are not. If you post an image of Boom Learning or Boom Cards to any social media site available to the public, you grant Boom Learning and/or the author permission to repost that image with appropriate credit to you.

### 4.2 Feedback and ratings



In the event you provide us or an author with suggestions, ideas or other feedback, we or the author will be free to use that feedback in any manner without restriction and without owing you money or compensation. Ratings you give must be based on using the resource for its intended purpose.

## 4.3 Boom learning names and logos

Boom Learning names and logos are the trademarks, trade names and/or service marks of Boom Learning. Our authors' names and logos are the trademarks, trade names and/or service marks of our authors. You may use our names descriptively in reviews. Use of Boom Learning and Boom Cards names and logos must comply with our guidelines. For all other uses, ask for written permission from us or our authors first.

## 4.4 Entity images or likenesses

Boom Learning agrees that for entities, absent the entity's prior written consent, it will not have any rights to (a) use any trademarks of the entity, including logos or emblems or (b) advertise or claim that the school endorses Boom Learning's services. Boom Learning may use an entity as a business reference.

## 4.5 Social reposting

You agree that Boom Learning may repost any blog, social media post, or other post you make as part of our efforts to promote your Boom Cards and/or Boom Learning. This includes posts by entities.

## 5. Payments, fees, renewals and the like

### 5.1 You pay all applicable charges.

Prices exclude taxes and currency exchange settlements unless stated otherwise. You are responsible for paying taxes or other charges. If your account is canceled, you are obligated to pay all charges made to your account before the cancellation was effective. Failure to provide valid payment may result in you being banned. Being banned does not absolve you of responsibility for amounts in arrears.

### 5.2 We provide electronic receipts, invoices, and statements.

We provide you with electronic receipts, invoices, and statements. You will receive email receipts from the payment processor you selected. You can find a record of your purchases in My Settings. These are the only receipts, invoices, and statements we provide.

### 5.3 You have 180 days to tell us we made a mistake

It is your responsibility to print or save copies for your records. If we make an error on a receipt, you must report the mistake to us within 180 days after the error appeared. If you do not inform us within 180 days, you agree that you release us from all claims of liability and loss resulting from the error and that we will not be required to correct the error or provide a refund.

### 5.4 Purchase orders

You may use purchase orders to buy points and memberships only through our **Estimate Builder** (<https://wow.boomlearning.com/estimateBuilder>). Minimum purchase requirements apply. Terms and conditions in a Purchase Order are rejected to the extent they conflict with or supersede other applicable terms as stated in Paragraph 1.1.2. All additional discount terms over those in the estimate are rejected. Net payment terms on purchase orders are accepted. Entire agreement clauses in purchase orders are rejected to the extent that they invalidated the other applicable terms set forth in Paragraph 1.1.2. Failure to pay the invoice for memberships shall result in downgrading of the memberships and removal of points. Where users already have accounts with time remaining on them and a school purchases a membership for that account, we will credit the difference either in days or points, in our sole discretion.

## 5.4. Points—what and why

Points are form of pseudocurrency purchased with US dollars. Points can only be used to purchase Boom Cards and assets for making Boom Cards from Boom Learning. They enable transactions that would otherwise be cost prohibitive for us to provide. If you have insufficient points in your account to check out products you will be prompted to purchase points first. You will then go back and check out the products.

We will automatically renew your account from your unspent points balance if you have not timely renewed and have not downgraded to a free account. We may spend your points or enter a negative points balance to obtain satisfaction of a debt you owe us, including debts for dispute fee chargebacks and, for our public authors, refunds you owe use or external service fees.

Points are non-refundable and non-transferable. Points do not constitute a personal property right and have no value outside Boom Learning. Points have no cash value and cannot be exchanged for cash. If you delete an account or we delete a stale account that is no longer being used and the account has points in it at the time of deletion, all points are forfeit and are unrecoverable. Please read our **Privacy Notice** (<https://help.boomlearning.com/en/support/solutions/articles/16000121725-general-privacy-notice>) for when we delete stale accounts. We reserve the right to discontinue the availability of points at any time. If we suspect fraud or abuse regarding your points, we may cancel, suspend, or limit your ability to redeem points. We delete points we determine were obtained fraudulently. We may charge you for the value you obtain by fraudulently using points. You may not have more than 100,000 unused points in your account at any time.

## 5.5 Renewals (automatic and otherwise)

You agree that we may automatically extend or renew your account as specified below unless you downgrade your membership or request a refund of unused purchased points prior to the renewal date.

Renewals work this way

- We will send you by email a notice that your account is expiring if you have a membership (whether paid or granted as a free promotion). We will explain how to downgrade your membership in that notice.
- The notice will state that any unused points you have will be automatically applied by us to extend your membership on a pro-rata basis upon expiration.
- If you are subject to extension by having a points balance, to avoid points expenditure you must go to My Settings before the expiration date and downgrade your membership to a free tier.

**We renew your account from the date it expired, not the date of the renewal.** There are costs to maintaining your account even if you are not actively using it.

## 5.6 Upgrades, downgrades, and refunds

Downgrades and upgrades are immediate. Membership purchases are non-refundable except at our sole discretion (such as you accidentally opening and purchasing 2 accounts).

## 5.7 All sales are final.

Unless otherwise provided, all purchases and redemptions are final and nonrefundable. We may, at our sole discretion issue refunds, such as for duplicate purchases. Our decision to issue a refund for a particular customer does not obligate us to reverse redemptions to any other customer or for any other product. If we cancel or suspend your account, your right to acquire and use products stops immediately. We can only issue refunds for purchases made directly from Boom Learning. Direct all other refund requests to the site from which you made the purchase.

## 5.8 Contact us first to avoid chargebacks of dispute fees

You must contact us to request a refund. The best way to do so is when logged in from the Help Center. Please select Customer Service & Sales (including refunds) as your request type for fastest service. If you dispute a charge without contacting us or requesting a refund first, we reserve the right to charge you the dispute fee, which can be \$15 to \$20 per dispute. Users who abuse the dispute process will be locked out of their accounts. When a charge is disputed, we will reclaim the purchased items (refunding decks, removing points and expiring items). If the dispute was not valid (for example you spent the points or continued using the membership) but is nonetheless resolved against us, you will be required to pay the dispute charge before you can continue using your account. We may reclaim the dispute fee by removing points, adding a negative points balance, and/or returning redemptions until there are sufficient points to pay your fee. If the dispute is valid because you used a payment you were not authorized to use, you will be required to pay the dispute fees to regain access to your account.

## 6. What you can do with Boom Cards

### 6.1 What you can do

If you have a current account (either free or a paid membership) you can

1. Redeem them.
2. Assign them to your students. Fastplay Pins are available for all accounts. Other methods require a paid membership.
3. Display and perform with your students or demonstrate them to others associated with your school.
4. Set Custom Play settings for Hyperplay and assigned decks.
5. Give feedback, rate them, and contact the author.
6. Print them for your students.
7. Create them (subject to limits based on your account tier).
8. Share or transfer ones you've created with your team.

### 6.2 Modifications

Boom Cards are owned by their authors. You receive a right to use them. Authors reserve the right to modify Boom Cards after purchase to correct errors and omissions.

### 6.3. What you can't do with Boom Cards.

You can't use them offline; they require a connection to the internet (wired, wireless, or cellular). You may not extract or attempt to extract images, fonts, video, sound or other elements from Boom Cards using any means. Attempting to do so can result in you being banned from our system and/or subject to civil or criminal action against you. You cannot export Boom Cards decks. You may not share purchased Boom Cards with others through account sharing or other methods. You may not share decks or bundles that you purchased with other users without additional licenses. If we catch you doing it we will require you to make the sellers whole financially or forfeit your account, including all decks therein. Don't steal from fellow educators. You may not use them for a commercial purpose without the author's consent.

### 6.4 Using "assets" (you know: images, fonts, sounds, videos, gifs and more)

Use assets you made yourself or that you have permission to use. You can purchase assets for use from the Boom Store. You can also purchase them from a variety of other locations. If you do so, make sure that your permission allows use with Boom Cards. We take steps to prevent right click saving of images, so many artists will say "yes" that would otherwise say "no" to digital use. For your convenience, we keep a [list \(https://help.boomlearning.com/en/support/solutions/articles/16000060654-font-and-clip-art-permissions-granted-or-denied-list\)](https://help.boomlearning.com/en/support/solutions/articles/16000060654-font-and-clip-art-permissions-granted-or-denied-list) of people who have said "yes" to Boom Cards use. Don't use images of living people unless you have their permission (a right of publicity clearance). For dead people who have been dead less than 70 years, the question gets more complicated and you should contact an attorney for guidance.

We reserve the right to block you from accessing assets you upload, use or purchase, if we determine that you may not lawfully use the asset. We, in our sole discretion, will determine whether you are entitled to a refund for assets you purchased from an author on Boom Learning.

## 6.5 Assets purchased from the Boom Store

When you buy assets from the Boom Store, you get permission to include those assets in decks you create and to use assets included in decks with your students. You may modify assets to the extent allowed by the tools included in the Boom Learning platform. Asset authors may provide more generous terms to you. If so, their terms apply.

## 7.1 Account management

### 7.1. Accounts and memberships

You must have an account to use Boom Cards. There are free accounts and paid member accounts. All memberships are annual, pre-paid and non-refundable. Free accounts allow you to play purchased Boom Cards using Fastplay Pins. Paid member accounts allow you a number of benefits, including the ability to track student progress based on the number of seats you purchased, create your own Boom Cards, and get special discounts. Boom Learning reserves the right to change the terms of memberships at any time in our discretion. Changes will take effect for you on renewal.

### 7.2 Account deletion and closure

DELETION IS IRREVERSIBLE. AGAIN DELETION IS NOT REVERSIBLE.

If you have unspent purchased points you must request a refund before deleting your account (or before we delete it automatically as a stale account). Once an account is deleted, points are forfeit and non-refundable. Membership is also non-refundable.

You may add and delete students. When you delete a student, you delete the record of that student's past work. To protect student privacy, we take you at your word when you issue a deletion instruction.

To minimize privacy risk, we delete stale accounts according to the schedule in our **Privacy Notice** (<https://help.boomlearning.com/en/support/solutions/articles/16000121725-general-privacy-notice>). A teacher who deletes a school purchased account without the permission of the school is liable to the school for the loss. Schools may authorize us or a teacher to delete a school-purchased account. We may, in our discretion, close or suspend your account at any time for any reason, with or without notice. You may close your account using Delete from **My Settings** (<https://wow.boomlearning.com/settings>), at any time, without notice to us. Account closure is permanent and irreversible – decks created but not sold are permanently destroyed.

### 7.4 Account sharing is not allowed

Boom Cards are licensed to a single account operated by a single individual. Each individual, whether their account was purchased directly or by an entity, must have his or her own account. Use our colleagues feature to share students with co-workers.

Fastplay pins allow you to interact with students with no tracking of student performance. Fastplay pins expire and must be regenerated. All other assignment methods are allowed for you and the number of your students that your account tier allows. We may modify the number of students a tier is allowed at any time, at our sole discretion.

### 7.5 Referrals, rewards, and special offers

From time to time, we offer paid referrals and/or other special offers. We do not disclose who clicked a referral link to the referring party. You can find our terms for any current offers **here** (<https://help.boomlearning.com/en/support/solutions/articles/16000036052-referral-links-gadgets-and-store-traffic-information>). We are not obligated to offer rewards, referral fees, or any other special offer. We

can change or discontinue any referral, reward, or special offer program at any time, at our sole discretion. In the absence of a specific offer, you should understand that we have no obligation to compensate you for giving a review, referring a customer, or otherwise spreading the word.

## 8. Parents

Parents and legal guardians may review student accounts from the student dashboard. Parents must contact the Educator for a password reset for a student account, to correct an error in a student record, or to request an export of student performance records. We must have authorization from the Educator or a legal authority to fulfill parent requests. Please see our **Student Privacy Notice** (<https://help.boomlearning.com/en/support/solutions/articles/16000121715-student-privacy-notice>).

## 9. We are FERPA compliant

We are Family Education Rights and Privacy Act (FERPA) compliant. Please see our **Privacy Notice** (<https://help.boomlearning.com/en/support/solutions/articles/16000121725-general-privacy-notice>). Boom Learning does not require student personally identifiable information to serve its educational purpose.

## 10. Government Agency Optional Terms of Service

If you are a government or public entity required by law to use the laws of your state for choice of law, to reject arbitration, or to select local venue, please complete and return our **Government Agency Terms of Service** (<https://help.boomlearning.com/en/support/solutions/articles/16000121732-government-agency-terms-of-service>).

## 11. Data is stored in the United States

Please see our **Privacy Notice for Data Exporters** (<https://help.boomlearning.com/en/support/solutions/articles/16000121733-privacy-notice-for-data-exporters-of-data-about-non-us-data-subjects>) for details for European Economic Area, Swiss, UK, and Canadian customers.

## 12. Account ownership

### 12.1 First purchaser rule

We use a first purchaser rule to determine account ownership. If an individual buys the account, it belongs to the individual for his or her lifetime and cannot be transferred to another individual. Individuals who change entities must delete student records relating to the prior entity. Entities can pay for memberships and points in individual accounts, but doing so will not change the ownership of the account. If an individual previously purchased an account with out-of-pocket funds and the entity purchases an extended or upgraded membership for that individual, account ownership will be deemed to remain with the individual and is not transferred to the entity. Likewise, points purchased by an entity for use in an account originally purchased by an individual shall be deemed to be owned by the individual.

If an entity buys an account, it belongs to the entity and can be transferred to another individual at that entity. The entity may gift an account to an individual. An individual who purchases Boom Cards in an entity account is making a gift of those Boom Cards to the entity.

Any attempt to seize or transfer ownership inconsistent with this section shall be null and void unless supported by a notarized statement signed by both parties stating the correct ownership of the account or a court or arbitral order.

### 12.2 Entity accounts are licensed to a classroom or provider

If an entity purchases an account, the entity owns the account and is agreeing to these terms. Entity accounts belong to the classroom or provider for which they were purchased. Entities may transfer accounts they purchase between individuals if a provider changes level, leaves the entity, or goes on leave.

### 13. Security and Breach Response

Details are in our **Privacy Notice** (<https://help.boomlearning.com/en/support/solutions/articles/16000121725-general-privacy-notice>).

### 14. Representations and Warranties

#### 14.1 You WARRANT AND REPRESENT that you have made good choices

You warrant and represent (1) that any and all information and products you provide to us are truthful, accurate, complete, current and in compliance with these terms; (2) that any email address you provide is yours and that you have not impersonated any person or used a username or password that you are not authorized to use; (3) that you are fully authorized to provide the products and to authorize us to provide the products to others; and (4) that your products, and any site to which your products link, (a) comply with all applicable laws and regulations, (b) do not infringe, misappropriate or otherwise violate any third party intellectual property right, (c) do not breach the rights of any person or entity, including, without limitation, rights of publicity or privacy, and are not defamatory, and (d) do not and will not result in consumer fraud (including being false or misleading), product liability, tort, breach of contract, injury, damage or harm of any kind to any person or entity, and (e) do not advertise to students.

#### 14.2 You agree to INDEMNIFY us against your poor choices

At our request, you will defend, hold harmless, and indemnify us and our directors, officers, employees, agents, affiliates and each of their successors from and against all third-party claims, actions, demands, proceedings, damages, costs and liabilities of any kind that arise out of or relate to (1) your products, (2) your use of Boom Learning or authors' products, (3) your violation of laws or applicable regulations, (4) your breach of your warranties, representations or obligations under this agreement, (5) your direct communications with others, including direct communications between customers and authors, and (6) other claims that arise out of your actions, products or use. We will be entitled, at our expense, to participate in the defense and settlement of the claim or action with counsel of our own choosing.

#### 14.3 Everything is provided as is and subject to change without notice

**DISCLAIMER OF WARRANTIES:** Boom Learning, and the content/products found on Boom Learning, are provided "AS IS" and "AS AVAILABLE" without warranty of any kind, whether express or implied, including without limitation, the implied warranties of merchantability, fitness for a particular purpose, title or non-infringement. The entire risk arising out of use or performance of Boom Learning products remains with you. No communication, whether oral or written, from us to you creates any warranty. We and our Authors may change, suspend or discontinue Boom Learning or any product at any time for any reason, with or without notice. If we discontinue services, your resources may not be available to you. You agree that neither we nor our Public Authors shall be liable to you or any third party if Boom Learning or any product is changed, suspended or discontinued.

#### 14.4 Our liability to you is limited

**LIMITATION OF LIABILITY:** We work hard to make sure our system is available, but there are a substantial number of factors beyond our control in providing the services, including browser updates, filtering software, entity IT settings and more. As a result, we can't guarantee that any or all feature will always work or that Boom Learning will be continuously available to you or your students.

*We and our suppliers are not liable to you for any errors or inaccuracies you find in or on Boom Learning; any service, system, or process delays, latencies, failures or interruptions; or any actions you take in reliance on us, our suppliers, or the content. Our and our suppliers' liability to you is limited whether the harm to you was foreseeable or not. We and our suppliers are not liable to you for any*

*special, exemplary, or punitive damages, including loss of data, revenue, and/or profits, costs, or expenses, including legal fees and expenses, regardless of the legal theory on which you claim liability is based, even if you have advised us or our supplier of the possibility of those damages.*

*Our and our suppliers' liability to you is limited to the amount actually paid by you to us, if any, for the product(s) at issue. If you are a supplier, we will not be liable to you for amounts in excess of proceeds due and payable by us to you for the six-month period preceding the claim. YOU AGREE THAT YOU ARE WAIVING CLAIMS THAT YOU MAY NOT KNOW OR SUSPECT YOU HAVE AT THE TIME YOU ENTER INTO THIS AGREEMENT. YOU AGREE TO SPECIFICALLY WAIVE ANY CLAIMS AS A CREDITOR YOU MAY HAVE THAT YOU DO NOT KNOW OR SUSPECT EXIST IN YOUR FAVOR. YOUR WAIVER AS A CREDITOR INCLUDES WAIVER OF CLAIMS THAT WOULD HAVE MATERIALLY AFFECTED HOW YOU WOULD SETTLE A MATTER IN WHICH WE ARE A DEBTOR TO YOU. You acknowledge and agree that we cannot ensure that either content or data will be protected from theft or misuse. We have no liability arising from a failure of any system or feature that limits the use of content or data.*

*Because some states/jurisdictions do not allow the exclusion or limitation of liability for consequential or incidental damages, the above limitation may not apply to you.*

## **15. Additional Terms**

### **15.1 For your attorney (and all armchair attorneys)**

Rather than burden our users with technical, exhaustive, and precise references to the various intellectual property and related rights necessary, we instruct all attorneys reading this to understand that all necessary rights to take the actions described that are not stated explicitly are implied. Boom Learning, along with products available on it, are licensed, not sold, and ongoing access requires a current account.

### **15.2 Just because we gave you a pass once doesn't mean we have to again**

Our failure to act if you fail to comply with a term does not waive our right to act on any subsequent failure to comply or nor does it waive the term in question.

### **15.3 Going our separate ways**

This agreement is effective from your acceptance until terminated by you or us in writing or electronically. You terminate by ceasing to use Boom Learning. Any terms that by their nature are intended to apply indefinitely continue to apply, including but not limited, perpetual licenses, ownership provisions, warranties, disclaimers, indemnities, and limitations of liability. Terms that are intended to survive for a period after termination shall also survive for the designated period (such as payout holdbacks for refunds).

### **15.4 Assigning rights to others**

We may assign any rights we have under any agreement to any successor or purchaser of us or of our assets, to the extent permitted by law and provided that such successor or purchaser agrees to be bound by the terms. If you assign your rights or obligations to another party, you must give us written notice of the assignment no later than ten (10) business days following the assignment. This agreement is binding on and inures to the benefit of any successors and assigns.

### **15.5 If one of these terms falls down, they do not all fall down**

If the final judgment of a court or arbitrator declares any term invalid, void or unenforceable, then you and we agree to reduce the scope, duration, area or applicability of the term, to delete specific words or phrases, or to replace any invalid, void or unenforceable term with a term that is valid and enforceable and that comes closest to expressing the original intention of the invalid or unenforceable term.

## 15.6 English Language

It is the express wish of the parties that this Agreement and all related documents, including notices and other communications, be drawn up in the English language only. Il est la volonté expresse des parties que cette convention et tous les documents s'y rattachant, y compris les avis et les autres communications, soient rédigés et signés en anglais seulement.



# Government Agency Terms of Service

Modified on: Fri, 4 Jun, 2021 at 3:03 PM

VERSION JULY 1, 2021

When completed and signed by a person with authority to bind the school, and returned to us , it overrides any conflicting terms in the Terms of Service and Privacy Notices. Print the document on paper or to .pdf, complete the required fields, and email to [legal@boomlearning.com](mailto:legal@boomlearning.com).

## Agreement Terms

### 1. Applicability

1.1 A “**Government Entity**” is a local, state or provincial, federal or national governmental unit supervised by an elected person or body and based in the United States or its territories. This agreement is designed to serve as a master agreement between the parties.

Government Entity Name	
Street Address	
City	
County or Parish	
State/Province	
Zip or Postal Code	
Telephone Number	
Email Contact	
Termination Date (optional)	
Specifically Applicable Laws (optional field for Governmental Agency to list specific laws it expects Provider to comply with)	

1.2 “**Provider**” is Boom Learning (a dba of Omega Labs Inc., a WA corporation) with a mailing address of 9805 NE 116th ST #7198 Kirkland WA 98034 and a physical place of business at 10916 101st PL NE Kirkland WA 98033 (DO NOT MAIL TO THIS ADDRESS).

1.3 The entire agreement of the parties shall consist of the following, In the event of any conflicting terms, order of precedence shall be:

1. Any separate data privacy agreement or rider signed by the parties.
2. This Government Agency Terms Agreement.
3. Any rate sheet provided to Government Entity.
4. The Boom Learning Privacy Notice, and any applicable documents incorporated therein by reference, to the extent not superseded by the above listed documents.
5. The Boom Learning Terms of Service, and any applicable documents incorporated therein by reference, to the extent not superseded by the above listed documents.
6. Any purchase order provided by Government Entity, to the extent not superseded by the above listed documents and only to the extent applicable to the product and quantities purchased.

## 2. Applicable Laws and Dispute Resolution

2.1 The governing law for the formal legal action shall be the governing laws of the city, county, state or province, and nation of the Government Entity listed herein. Government Agency may opt to specify a particular law or laws applicable to the data it is supplying to Provider; provided, however, that doing so does not excuse Provider from compliance with all applicable laws. Any data that must be kept in confidence under such laws shall be considered "**Protected Data**".

2.2 The parties agree to strike in its entirety all references to arbitration in Provider's Terms of Service and Privacy Policies. The parties agree in good faith to use the following lower-cost options to resolve disputes before resorting to court action:

- negotiation between representatives with the authority to settle the controversy.
- if negotiations do not resolve the matter, then:
  - If the matter is in the subject matter jurisdiction of the Copyright Claims Board, and the Copyright Claims Board accepts the matter, to use the Copyright Claims Board to resolve the matter;
  - If the total amount in controversy is less than \$100,000, to use virtual mediation through JAMSconnect or another online mediator of Government Agency's choosing; and
- If none of the above are available or successful in resolving the dispute, the parties may proceed with formal legal action.

2.3 The venue for formal legal action shall be the courts of the county or parish listed by the Government Agency in this document, which shall be a county or parish in which the Government Agency has a location. If the Government Agency fails to list a county or parish, the venue shall be in any county or parish within the state or province in which the Government Agency is located. If Government Agency fails to list a state or province, then the venue shall be in King County in the State of Washington.

## 3. Indemnification

3.1 Provider agrees to indemnify and hold harmless the Government Entity for the damages and costs arising out of any negligence, gross negligence, or willful misconduct attributable to Provider's agents and employees concerning student data, copyright, or trademark. Such costs include reimbursing the costs of providing breach notifications attributable to Provider's negligence or misconduct, and providing replacement content or obtaining rights for continued use. Provider shall maintain general liability and cyber liability insurance.

3.2 Provider shall have no indemnification obligations to the Government Agency for damages and costs arising out of any negligence, gross negligence, or willful misconduct attributable to the Government Agency, its employees or its agents for any claim whatsoever, including but not limited to: violations of privacy rights, copyrights, and trademark rights by the affirmative acts of Government Agency and its employees and agents.

3.3 Provider shall have no liability to the Government Entity for any liability arising from the Government Entity's actions in assigning a resource that collects information in violation of a law that applies and for any failure by the Governmental Entity to provide a student with any required information regarding their rights.

## 4. Disclosure and Deletion of Protected Data

4.1 Provider shall not disclose Protected Data other than to those of its employees or agents who have a need to know such Protected Data to provide the services contracted under this agreement. All Protected Data shall remain the property of the Government Entity. All parent or student requests for access to Protected Data will be direct to the school.

4.2 Government Entity consents to the delegation of duties to the subcontractors and subprocessors listed in the **[Subcontractor and Subprocessors disclosure list](https://help.boomlearning.com/en/support/solutions/articles/16000121757-subcontractor-and-subprocessor-disclosure)** (<https://help.boomlearning.com/en/support/solutions/articles/16000121757-subcontractor-and-subprocessor-disclosure>) unless an objection is filed with Provider in writing and is accepted by Provider

4.3 At all times, Provider supplies Government Entity with self-help tools to delete Protected Data. Data deletion is irreversible. Upon expiration, Government Entity is expected to promptly (within 90 days) use the tools provided to delete Protected Data no longer required by Government Entity. Deletion instructions result in unrecoverable and irreversible data deletion. Government Entity is also provided self-help tools to export reports of student progress. In the event Government Entity is unable to issue instructions using the provided self-help tools, Government Entity may **contact** (<https://www.boomlearning.com/help>) Provider to perform deletion or export. If Government Entity fails to promptly delete Protected Data from expired and non-renewed Government Entity accounts, Provider may delete that data as specified in Provider's Privacy Policy.

## 5. Audits

Provider will provide responses to all reasonable requests for information made by Government Entity, including responses to information security and audit questionnaires, provided that Government Entity will not exercise this right more than once per year. Provider's answers to such responses are Provider's confidential information. Government Entity agrees to hold any such answers in strictest confidence. Such audits are subject to reasonable time and manner restrictions. Provider will cooperate reasonably with any state or federal agency with jurisdiction in connection with any audit or investigation of Provider and/or the delivery of the services. Provider will provide to verified agents of Government Entity reasonable access to the Government Entity's Protected Data and Provider's staff and agents.

## 6. Data Breach

6.1 A security incident that rises to the level of a data breach is an incident of data loss or unauthorized data access that (a) compromises the confidentiality or integrity of the data and in doing so (b) is likely to cause harm to the data subjects impacted. A breach includes harms that can be substantial (financial information, account credentials, medical information); it excludes speculative harms — a harm must be reasonably likely. Unauthorized access to data that is encrypted is not a breach if the encryption key is not accessed or acquired.

6.2 In the event of a breach arising because another person at the Government Agency accesses Protected Data, Provider shall co-operate with Government Entity and take such reasonable commercial steps as are directed by Government Entity to assist in the investigation, mitigation, and remediation of each Protected Data Breach, provided that Government Entity shall reimburse Provider for expenses arising from a breach attributable to Government Entity's employees and agents.

6.3 **Notice recipients and delivery.** In many cases, we do not collect or store information about students that would enable us to contact students or their parents directly. We will contact the account holder for the affected individual(s) using the information we have on file. Where Government Entity has not provided Provider with contact information for data subjects, Government Entity shall be responsible for notifying data subjects. Such notification shall be at Provider's expense solely where the breach is attributable to the conduct of Provider's employees, agents, subcontractors or subprocessors.

6.4 **Notice content.** Notice will include in plain language What Happened, What Information Was Involved, When It Occurred, What We are Doing, What You Can Do, and For More Information.

6.5 **Notice timeline.** We will provide notice as soon as reasonably possible, provided that we may delay notice if a law enforcement agency determines that the notice will impede a criminal investigation. Educators will be notified without undue delay and within 7 days of determining that a data breach affecting school User Data has occurred. We will

provide Educators with sufficient information to allow the school to meet any obligations to report or inform students or staff of the breach.

6.6 Provider may not report a breach directly to the applicable state regulators unless directed in writing by the Government Entity. The Government Entity agrees to indemnify and hold Provider harmless from any fines, fees, or liabilities assessed against Provider for not reporting the breach. Where this paragraph is inconsistent with state and local law, Provider may report the breach directly to the applicable state regulators with no liability to Government Entity and without such report being a breach of this agreement.

## 7. Termination

7.1 This agreement will terminate on the last expiration date of the last accounts purchased by the Government Entity or on the date specified in the header, whichever is sooner. In the event the Government Entity enters a date in the header, Government Entity is responsible for contacting Provider and requesting a renewal in writing if the agreement expires before the last purchase account expires. If the Government Entity does not request such a renewal, the Government Entity is responsible for instructing its users to cease using Provider in a manner that collects Protected Data on the expiration of the Addendum.

7.2 As a penalty for Provider's noncompliance with its obligations under this Agreement, the Government Entity may terminate its relationship with Provider in writing and demand a refund of all unredeemed purchased points and a pro-rata refund of the remaining portion of the annual membership. Such termination shall be effective on delivery of the notice by email to [legal@boomlearning.com](mailto:legal@boomlearning.com), by certified mail to 9805 NE 116th ST #7198 Kirkland WA 98034, or by in-person delivery (not mail) to 10916 101st PL NE Kirkland WA 98033.

7.3 Should any provision of the agreement be invalid or unenforceable, then the remainder of the agreement shall remain valid and in force. The invalid or unenforceable provision shall be either (i) amended as necessary to ensure its validity and enforceability, while preserving the parties' intentions as closely as possible or, if this is not possible, (ii) construed in a manner as if the invalid or unenforceable part had never been contained therein.

## 8. Acceptance

This agreement is a general offer of terms to any party that is a Government Entity as defined herein. To accept the terms, complete the form below and return. By signing and returning this Government Agency Terms of Service agreement, the authorized representative of the Government Entity warrants and represents that it is a Government Entity. Any Government Agency Terms of Service agreement signed and returned to Provider by a party that is not a Government Entity is null and void.

I hereby warrant and represent that I, \_\_\_\_\_ (printed name), have the authority to sign and bind the Government Entity, pursuant to a policy adopted by the Government Entity's governing board or body, to this agreement with Provider and to bind the teachers, staff, agents and employees of the Government Entity to its terms.

Signed: \_\_\_\_\_ Date: \_\_\_\_\_  
Title: \_\_\_\_\_  
Government Agency Name: \_\_\_\_\_

I hereby warrant and represent that I, Mary Oemig (printed name), have the authority to sign and bind the Provider to this agreement with Government Agency.

Signed:   
Mary Demig (Jun 14, 2021 14:58 PDT)

Date: June 14, 2021

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Chief Executive Officer

Boom Learning (a dba of Omega Labs Inc.)

## 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](mailto: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

### 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 or other written direction from University.

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. **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.

11. **Procurement Code Required Certifications:**

- a. 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.

12. **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, as applicable.

- 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.

**12. 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.

## Certifications and Additional Terms

Vendor acknowledges and agrees that compliance with this subsection in its entirety for the term of any resulting contract and any renewals is a material requirement and condition of the 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.

This subsection, in its entirety, also applies to subcontractors used on this 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 State.

If the 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 State by the date specified by the State and in no event later than July 1 of each year that the contract remains in effect.

If the Parties determine that any certification in this section is not applicable to the 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 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 certifies it and its employees will comply with applicable provisions of the United States Civil Rights Act, Section 504 of the Federal Rehabilitation Act, the Americans with Disabilities Act, and applicable rules in performance of this contract.
3. **This applies to individuals, sole proprietorships, partnerships and LLCs, but is otherwise not applicable.** 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.
4. Vendor certifies that is has reviewed and will comply with the Department of Employment Security Law (20 ILCS 1005/1005-47) as applicable.
5. **This applies only to certain service contracts and does NOT include contracts for professional or artistic services.** 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.

6. 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.
7. 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.
8. 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. 30 ILCS 500/50-10.5.
9. 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 500/50-10.5(e).
10. Vendor certifies that it and its affiliates are not delinquent in the payment of any debt to the State (or if delinquent have entered into a deferred payment plan to pay the debt). 30 ILCS 500/50-11, 50-60.
11. 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. 30 ILCS 500/50-12.
12. 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.
13. 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.
14. Vendor certifies it has read, understands and is not knowingly in violation of the "Revolving Door" provisions of the Illinois Procurement Code. 30 ILCS 500/50-30.
15. Vendor certifies that if it hires 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 will be billed to the State. 30 ILCS 500/50-38.
16. Vendor certifies that it will not retain 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 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.
18. 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 subcontract that are manufactured in the United States. 30 ILCS 517.
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 \$5000, 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. 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.
22. 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.
23. This applies to information technology contracts and is otherwise not applicable. 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](http://www.dhs.state.il.us/iitaa)). 30 ILCS 587.
24. **This only applies to vendors who own residential buildings but is otherwise not applicable.** Vendor certifies, if it owns residential buildings, that any violation of the Lead Poisoning Prevention Act has been mitigated. 410 ILCS 45.
25. 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.
26. 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.
27. Vendor certifies it does not pay dues to or reimburse or subsidize payments by its employees for any dues or fees to any "discriminatory club." 775 ILCS 25/2.
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 if an individual, sole proprietor, partner or an individual as a member of a LLC, he/she has not received an early retirement incentive prior to 1993 under Section 14-108.3 or 16-133.3 of the Illinois Pension Code or 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.
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. Vendor will not make a political contribution that will violate these requirements. 30 ILCS 500/20-160 and 50-37.
31. A person (other than an individual acting as a sole proprietor) must be a duly constituted legal entity and authorized to transact business or conduct affairs in Illinois prior to submitting a bid or offer. If you do not meet these criteria, then your bid or offer will be disqualified. 30 ILCS 500/20-43.



**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.

**Sexual Harassment Policy:** Per 30 ILCS 500/50-80, Vendor agrees that it has a sexual harassment policy that meets the requirements of or is otherwise in accordance with Section 2-105 of the Illinois Human Rights Act (775 ILCS 5/2-105). Vendor agrees to provide a copy of the policy to the University upon request.






# il\_ISU Laboratory School\_DPA

Final Audit Report

2021-06-14

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