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## **MODIFICATIONS**

n2y may revise this Agreement from time to time as a result of changes in applicable law, regulations, product and service offerings or n2y operations. Revisions to this Agreement when possible will be posted on this website approximately 30 days in advance. You will be prompted to review and acknowledge your consent to this Agreement if any revisions have been made before using this website and its accompanying materials and content. If you have questions regarding this Agreement, please contact n2y customer support at [\(800\) 697-6575](tel:8006976575). By using this website and its accompanying materials and content, you, whether an Authorized User or other visitor to this website, are agreeing to be bound by the then-current version of this Agreement.

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n2y shall not be liable for any direct, indirect, incidental, special, consequential or exemplary damages, including, but not limited to, damages for loss of profits, goodwill, use, data or other intangible losses (even if n2y has been advised of the possibility of such damages), resulting from: (a) the use of or the inability to use this website and its accompanying materials and content; (b) the cost of procurement of substitute goods and services resulting from any inability to use this website and its accompanying materials and content; (c) unauthorized access to or alteration of your transmissions or data; (d) statements or conduct of any third party on this website or its accompanying materials and content; or (e) any other matter relating to this website and its accompanying materials and content.

n2y's products and services are controlled and operated from US-based facilities and it makes no representations that they're appropriate or available for use in other locations. If you access or use the services from other jurisdictions, you understand that you're entirely responsible for compliance with all applicable international, United States and local laws and regulations, including but not limited to export and import regulations. n2y does not target marketing campaigns or other marketing activities to individuals or organizations outside of the US. n2y is committed to protecting its subscribers' personally identifiable information ("PII") as detailed in this Agreement.

## **CONFIDENTIALITY**

This website and its accompanying materials and content contain information and images confidential and proprietary to n2y, including, but not limited to, marketing information, product information, advertising and teacher and student data ("Confidential Information"). Accessing, using, copying, distributing, disseminating and changing Confidential Information is subject to n2y policies, restrictions and procedures regarding confidentiality, including, but not limited to, the policies set forth herein.

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You have been given access to the Confidential Information based upon your representation that you have a need for such access and that you will only use such Confidential Information for authorized use. You shall not allow any unauthorized person or entity access to this website and its accompanying materials and content (including, but not limited to, the Confidential Information) under your personal username and/or security password. You understand that any violation of these terms could result in disciplinary, legal and/or other action against you. You assume any and all liability for the acts of any unauthorized user to whom you provided access to this website and its accompanying materials and content.

If disclosure of any of the Confidential Information is requested pursuant to any subpoena or as part of any legal proceeding, deposition or cause of action, you will assert the privilege applicable to confidential business and proprietary information and will refuse to respond (to the fullest extent allowed by law). You will promptly



advise your employer (or the party providing you with access to this website and its accompanying materials and content) and n2y in writing of any such request for disclosure.

Unless otherwise prohibited by law, you agree to indemnify and hold harmless n2y from and against all liabilities, injuries, damages, losses, costs (including, but not limited to, court costs and attorneys' fees), fines, penalties and expenses directly or indirectly resulting from the input of unsolicited Confidential Information saved in free-form text entry fields by yourself or any other person authorized to enter information on your behalf.

## **USAGE POLICY**

Authorized Users may use the materials and content and the Confidential Information on this website solely for their personal use. Accessing, using, copying, distributing, disseminating and/or changing Confidential Information is subject to your underlying agreement with n2y and your compliance with this Agreement. Failure to comply with your underlying agreement with n2y or this Agreement may subject you and/or your company to immediate termination of access rights to this website and its accompanying materials and content and/or any other actions n2y may deem appropriate. Upon expiration of your subscription, all Authorized User accounts associated with your subscription will be automatically inactivated.

Authorized Users include (but are not limited to) service providers and students with a student login credential. Deactivation of a customer's account will also deactivate any associated authorized users including service provider and student login credentials.

Please note that with respect to usage of Unique Learning System®, News2you™, SymbolStix PRIME®, L<sup>3</sup> Skills® and Positivity® the maximum number of students that may utilize the materials and content under a single license is 15. A single Unique Learning System® license is also grade band specific. With respect to the usage of Polaris™, one license includes access for one service provider to produce roadmaps for all students for whom they are the IEP lead.

## **DATE OF COMMENCEMENT OF SUBSCRIPTION**

You have the option to delay commencement of your subscription to a date no later than 90 days from the date of said agreement. If a delayed commencement of subscription date is not elected and actually selected and identified on the date of your underlying agreement with n2y, your subscription shall be effective immediately.

## **SUBSCRIPTION EXPIRATION, RENEWAL AND APPLICABLE GRACE PERIOD**

Certain n2y product subscriptions are eligible for autorenewal if purchased in the n2y store for individual use via credit card. If you purchase an eligible product subscription, you will be notified of the autorenewal 30 days prior to the expiration of the same. The payment method on file for each of these subscriptions will be charged for one additional year. If you would like to opt out of autorenewal, you can do so by setting the autorenewal flag to "no" in the n2y store prior to the subscription anniversary date. The remainder of n2y product subscriptions are not eligible for autorenewal and a renewal order will need to be placed by the customer before the subscription expiration to continue service.

Payment of your subscription fee must be made in full at the time of your renewal. If you are unable to pay the renewal fee in full at the time of your renewal, you may contact n2y to request a 30-day grace period (which may be granted or denied in n2y's sole discretion). In the event you fail to pay your renewal fee in full within any agreed-upon grace period, your account shall terminate effective immediately. You will be charged a prorated renewal fee for your subscription access during the grace period in accordance with the terms and

conditions of your underlying agreement with n2y if your account is terminated for nonpayment of the renewal fee. You will be invoiced for this prorated renewal fee and payment is due upon receipt.

**PLEASE NOTE: THE GRACE PERIOD IS A PART OF YOUR YEAR-LONG SUBSCRIPTION AND NOT AN EXTENSION OF SUCH SUBSCRIPTION.**

## **PRIVACY AND SECURITY**

Generally, n2y employs commercially reasonable security measures that comply, in n2y's reasonable discretion and interpretation, with all applicable Federal and state laws and regulations regarding data privacy and security, including but not limited to the Family Educational Rights and Privacy Act ("FERPA") and the Children's Online Privacy Protection Act of 1998 ("COPPA"). These measures include appropriate administrative, physical, and technical safeguards to secure data from unauthorized access, disclosure, alteration and use. n2y will conduct periodic risk assessments and remediate any identified security vulnerabilities in a timely manner. Except as expressly provided in this Agreement, neither n2y nor its successors or assigns shall have any liability for the breach of its privacy and security measures or the integrity of its hosting services, unless caused by the willful misconduct of n2y. n2y expressly disclaims any warranty that data exchanges are or will be secure.

Data residing on the n2y server is password protected, and account access is provided only to Authorized Users. However, the safety and security of your data also depends on you. You should not upload or send to n2y sensitive information via email, as this is not secure. You are also responsible for keeping account usernames and passwords confidential. Please notify n2y if you become aware that data has been lost, stolen, or used without permission; n2y may disable access to an account in order to prevent an unauthorized third party from obtaining access to same.

## **THIRD PARTIES**

n2y will not distribute or otherwise disclose PII to any third party without the prior written consent of an applicable customer. n2y does not sell PII to third parties. n2y shall ensure that any third party that handles PII agrees to comply with this Agreement.

## **FERPA AND PII**

FERPA protects the privacy interests of students in their education records. It controls the disclosure of a student's PII from education records without the consent of the parent or eligible student. Per Federal regulation, PII includes (but is not limited to) a student's name, the name of the student's parent or other family members, the address of the student or student's family, a personal identifier, such as the student's social security number, student number, or biometric record, indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name, other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty, or information requested by a person who an educational agency or institution reasonably believes knows the identity of the student to whom the education record relates. Examples of the types of PII, student data and other data that n2y may acquire include: name, student number, picture, level, gender, birthday, parent/guardian name, address, phone, login, and more.

It is n2y's policy to limit access to this website and its materials and content through secured interfaces that require user authentication and to have in place reasonable support measures to protect PII.



Some n2y solutions may offer a feature that permits Authorized Users to share limited content with other members of their subscription group or in certain circumstances with members outside a subscription group if the feature is enabled by the Authorized User. Please be aware that you are responsible to determine the appropriateness of the content, including, but not limited to, any PII, that you decide to share via these features and for obtaining the appropriate consents where required.

## **COPPA**

The Children's Online Privacy Protection Act of 1998 ("COPPA") regulates the online collection, use and/or disclosure of personal information from and about children under the age of 13 on the internet. This notice is meant to inform you, the parents, of n2y's practices regarding its collection, use and/or disclosure of personal information from such children. Please note: If there is ever a material change in our collection, use and/or disclosure practices to which you have previously consented, this notice will be updated accordingly and provided again to you.

n2y may have collected your online contact information from your child, and, if such is the case, your name and/or the name of your child, in order to obtain your consent as required under COPPA. Your consent is required for n2y's collection, use and/or disclosure of your child's personally identifiable information ("PII") and n2y will not collect, use and/or disclose any personal information from your child if you do not provide such consent.

To obtain verifiable parental consent to n2y's collection, use and/or disclosure of your child's personal information, n2y requires you use a credit card, debit card or other online payment system that provides notification of each discrete transaction to you to purchase obtain access to this website and its accompanying materials and content. If you do not provide consent within a reasonable time from the time you are presented with this notice, n2y will delete your online contact information (if any) from its records.

In the case of a school or other organization's purchase of a subscription to access the materials and content, the law permits it to obtain parental consent to the collection of personal information on behalf of all of its students, thereby eliminating the need for individual parental consent to be given directly to the website operator.

Please note that you always have the right to consent to collection and use of your child's personal information without consent to disclosure of his or her personal information to third parties. Where applicable, n2y solutions are accessed via a separate teacher or student view. Student personal information such as name, student number, picture, level, gender, birthday, parent/guardian name, address, phone, username is entered and established via the teacher view by an adult such as a teacher, subscription administrator, parent or guardian. They are not entered by a child. Further, n2y may collect usage analytics to be presented back to you or your child or to your child's teacher (if applicable) to demonstrate progress and performance or for internal purposes to improve certain n2y products. n2y collects this information through the child's interaction with activities and assessments in the solutions. n2y will not require your child to disclose more information than is reasonably necessary to participate in an activity and will not retain personal information any longer than is necessary to fulfill the purpose for which it was collected and will de-identify or delete the information using reasonable measures to protect against its unauthorized access or use per n2y's retention policies.

You can review your child's personal information, direct us to delete said information and/or refuse to allow any further collection, use and/or disclosure of your child's information at any time. You may revoke your consent at any time by contacting n2y Customer Service at P.O. Box 550 Huron, OH 44839, or at [\(800\) 697-6575](tel:8006976575). n2y takes seriously its obligation to safeguard the confidentiality, security and integrity of personal information collected from children and takes steps to release children's personal information only to third parties who are capable of maintaining the confidentiality, security and integrity of such information and who provide assurances that they will maintain the information in such a manner. n2y does not sell your child's



personal information to third parties or use it for marketing purposes. It is important to n2y that children and their parents understand its policy and practices concerning the collection, disclosure and use of personal information. Please carefully read our Terms of Use, and if you have any questions about n2y's practices, please contact n2y Customer Service at P.O. Box 550, Huron, OH 44839, or at [\(800\) 697-6575](tel:8006976575).

## **CALIFORNIA CONSUMER PRIVACY ACT OF 2018 NOTICE ("CCPA")**

### **What is the CCPA?**

The California Consumer Privacy Act of 2018, Cal. Civ. Code §§ 1798.100 et seq. ("CCPA") is a law enacted in the State of California with an effective date of January 1, 2020. The CCPA generally expands upon the privacy rights available to California citizens and requires certain companies to comply with various data protection requirements. The detailed text of the law are available at: TITLE 1.81.5. California Consumer Privacy Act of 2018 [1798.100 – 1798.199]

The CCPA grants Californian consumers new rights with respect to the collection of their Personal Information (as defined herein) and requires companies to comply with certain obligations, including:

- The consumer's right to receive a copy, in a readily usable format, of the specific Personal Information collected about them during the twelve (12) months prior to their request;
- The consumer's right to know a business's data collection practices, including the categories of personal information it has collected, the source of the information, the business's use of the information, and to whom the business disclosed the information it has collected about the consumer;
- The consumer's right to have such personal information deleted (with exceptions);
- The consumer's right to know the business's data sale practices and to request that their personal information not be sold to third parties;
- A prohibition on businesses on discrimination for exercising a consumer right; and
- An obligation on businesses to notify a consumer of their rights.

### **What is Personal Information?**

The CCPA defines "Personal Information" as information that "identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular" California consumer or household. Personal information does not include publicly available information or consumer information that is de-identified or aggregate consumer information.

### **How does the CCPA apply to n2y customers?**

n2y processes data on behalf of its customers who purchase subscriptions to its products. n2y shall collect, access, maintain, use, process and transfer the Personal Information of our customers and our customers' end-users solely for the purpose of performing its obligations under existing contract(s) with our customers; and, for no commercial purpose other than the performance of such obligations and improvement of the services we provide.

n2y does not "sell" our customer's Personal Information as currently defined under the CCPA, meaning that we also do not rent, disclose, release, transfer, make available or otherwise communicate that Personal Information to a third party for monetary or other valuable consideration.

n2y may share aggregated and/or anonymized information regarding use of the service(s) with third parties to help us develop and improve the services and provide our customers with more relevant content and service offerings.

## What Personal Information Does n2y Collect, for What Purpose, from Whom, and Do We Disclose it to Service Providers?

Personal Information is collected in n2y's system directly by its customers who use the data in the solutions. It is also collected by n2y to provide and develop our products and services. n2y works to maintain the trust and confidence consumers demonstrate when they share their personal information in the solutions. The chart below describes the categories of Personal Information as described in CPPA, the purpose of data collection in n2y's solutions, the source of the Personal Information, and whether n2y discloses the Personal Information for business purposes:

CPPA Categories	CPPA Descriptions/Examples	Relevance to n2y Terms of Use and Data Privacy	Purpose of Collection	Source of Collection	Disclosed to Service Provider for Business Purpose
Identifiers	name or alias, address, IP address, email, account name, and other identifiers such as social security, driver's license, or passport number, id. § 1798.140(o)(1)(A);	Some information in this category is collected (either required or optional) across n2y's public website, n2y products, the n2y store, and the solutions used to support the products and services	<ul style="list-style-type: none"> <li>Customers use of the products and services</li> <li>Product sales process</li> <li>Product servicing and support</li> <li>Marketing</li> <li>Product development</li> <li>Corporate Administration/Operations</li> </ul>	<ul style="list-style-type: none"> <li>Customers interacting with the products and product support services.</li> <li>Consumers interacting with marketing services.</li> <li>n2y employees interacting with operations systems and processes.</li> </ul>	Yes
Personal information categories listed in the California Customer Records Statute	"any information that identifies, relates to, describes, or is capable of being associated with, a particular individual, including, but not limited to," signature, physical characteristics, education, employment or employment history, and financial, medical or health insurance information, as well as the following numbers: telephone, insurance policy, bank account, credit card, and debit card, id. §§ 1798.140(o)(1)(B); 1798.80(e);	Some information in this category is collected (either required or optional) across n2y's public website, n2y products, the n2y store, and the solutions used to support the products and services	<ul style="list-style-type: none"> <li>Customers use of the products and services</li> <li>Product sales process</li> <li>Product servicing and support</li> <li>Marketing</li> <li>Product development</li> <li>Corporate Administration/Operations</li> </ul>	<ul style="list-style-type: none"> <li>Customers interacting with the products and product support services.</li> <li>Consumers interacting with marketing services.</li> <li>n2y employees interacting with operations systems and processes.</li> </ul>	Yes
Protected classification or characteristics under California or federal law	"[c]haracteristics of protected classifications under California or federal law," id. § 1798.140(o)(1)(C); prohibits your employer from subjecting you to discrimination based on your: Sexual orientation. Gender identity and	Some information in this category is collected (optional) across n2y's products	<ul style="list-style-type: none"> <li>Customers use of the products and services</li> <li>Product development</li> </ul>	Customers interacting with the products and product support services.	No

CPPA Categories	CPPA Descriptions/Examples	Relevance to n2y Terms of Use and Data Privacy	Purpose of Collection	Source of Collection	Disclosed to Service Provider for Business Purpose
	gender expression. ... Sex (including pregnancy, childbirth, and related medical conditions) Jun 22, 2017				
Commercial information	commercial information, such as records of personal property, products or services purchased or considered, and purchasing histories or tendencies, id. § 1798.140(o)(1)(D);	Some information in this category is collected (either required or optional) across n2y's public website, n2y products, the n2y store, and the solutions used to support the products and services	<ul style="list-style-type: none"> <li>Customers use of the products and services</li> <li>Product sales process</li> <li>Product servicing and support</li> <li>Marketing</li> <li>Product development</li> <li>Corporate Administration/Operations</li> </ul>	<ul style="list-style-type: none"> <li>Customers interacting with the products and product support services.</li> <li>Consumers interacting with marketing services.</li> <li>n2y employees interacting with operations systems and processes.</li> </ul>	Yes
Biometric information	biometric information, meaning physiological, biological, or behavioral characteristics, including DNA, sufficient to establish identity, such as images of the iris, retina, fingerprint, face, hand, palm, vein patterns, and voice recordings capable of producing an identifier template, as well as keystroke and gait patterns or sleep, health, or exercise data that contain identifying information, id. §§ 1798.140(o)(1)(E), 1798.140(b);	This category is not relevant to the scope and functionality of n2y's customer facing solutions and support processes covered in the n2y Terms of Use.	Not applicable	Not applicable	No
Internet or other similar network activity	internet or other network activity such as browsing history or interactions with websites, apps, or ads, id. § 1798.140(o)(1)(f);	Some information in this category is collected across n2y's public website, n2y products, the n2y store, and the solutions used to support the products and services	Consumer use of the products or services	<ul style="list-style-type: none"> <li>Customers interacting with the products and product support services.</li> <li>Consumers interacting with marketing services.</li> </ul>	Yes
Geolocation data	geolocation data, id. § 1798.140(o)(1)(g);	Some information in this category is collected across n2y's public website, n2y products, the n2y store, and the solutions used to support the products and services	<ul style="list-style-type: none"> <li>Consumer use of the products or services</li> <li>Product sales process</li> <li>Product servicing and support</li> <li>Marketing</li> <li>Product development</li> </ul>	<ul style="list-style-type: none"> <li>Customers interacting with the products and product support services.</li> <li>Consumers interacting with</li> </ul>	No



CCPA Categories	CCPA Descriptions/Examples	Relevance to n2y Terms of Use and Data Privacy	Purpose of Collection	Source of Collection	Disclosed to Service Provider for Business Purpose
			<ul style="list-style-type: none"> <li>Corporate Administration/Operations</li> </ul>	<ul style="list-style-type: none"> <li>marketing services.</li> <li>n2y employees interacting with operations systems and processes.</li> </ul>	
Sensory data	"[a]udio, electronic, visual, thermal, olfactory, or similar information," id. § 1798.140(o)(1)(h);	Some information in this category is collected (either required or optional) across n2y products.	<ul style="list-style-type: none"> <li>Customers use of the products or services</li> <li>Product servicing and support</li> <li>Product development</li> </ul>	Customers interacting with the products and product support services.	No
Professional or employment-related information	"professional or employment-related information," id. § 1798.140(o)(1)(i);	<p>This category is not relevant to the scope and functionality of n2y's customer facing solutions and support processes covered in the n2y Terms of Use.</p> <p>Some information in this category is collected (either required or optional) across n2y's public website, n2y products, the n2y store, and the solutions used to support the products and services</p>	Not applicable	Not applicable	No
Inferences drawn from other personal information	inferences drawn from any of the above information to create a consumer profile, Cal. Civ. Code § 1798.140(o)(1)(k).	Some information in this category is collected (either required or optional) across n2y's public website, n2y products, the n2y store, and the solutions used to support the products and services	<ul style="list-style-type: none"> <li>Customers use of the products or services</li> <li>Product servicing and support</li> <li>Product development</li> </ul>	Customers interacting with the products and product support services.	No

## CCPA Privacy Policy Right to Know about Personal Information Collected and/or Disclosed

### Request to Know:

You may request and, subject to certain exemptions, the following will be provided:

- The specific pieces of Personal Information that n2y has about you.
- The categories of Personal Information collected about you in the preceding 12 months.
- The categories of the sources from which the Personal Information is collected.
- The categories of Personal Information that n2y disclosed for a business purpose about you.
- The categories of service providers to whom the Personal Information was disclosed for a business purpose.
- The business or commercial purpose for collecting Personal Information.

### Request to Delete:

You may request deletion of Personal Information collected from you. Please note that this right does not apply in instances where n2y needs to retain the Personal Information such as (but not limited to) any of the following to:

- Provide goods or services to you;
- Detect or resolve issues regarding security or functionality-related issues;
- Comply with the law;
- Conduct research in the public interest; and
- Safeguard the right to free speech.

**Request to "Do Not Sell":**

n2y does not sell personal information of its users for monetary or other valuable consideration.

**Submitting Requests to Know and Requests to Delete**

Beginning January 1, 2020, if you are a California resident and would like to submit a CCPA request, you may:

- Contact n2y by phone at [\(800\) 697-6575](tel:8006976575) or
- Initiate a request by completing an online request form by visiting: [n2y CCPA Request Form \(via partner OneTrust\)](#)

Only you, or a person you authorize to act on your behalf may make a verifiable consumer request related to your Personal Information. You may also make a verifiable consumer request on behalf of your minor child. To authorize another person to make a verifiable request on your behalf, you must provide that person with written permission clearly describing their authority to make a request on your behalf. That individual must also be able to verify their identity and provide documentation of their authority to act on your behalf. An individual to whom you have provided a power of attorney pursuant to Sections 4000 – 4465 of the California Probate Code may also make a request on your behalf.

In order to verify your identity, at a minimum, the following information will be collected:

- Name
- Your n2y subscription IDs (if you are the owner of the subscription(s))
- Name of the n2y subscription owner (if you are not the owner of the subscription)
- Date of birth
- Email and email validation confirmation
- Phone number
- Home address

The information you provide will be used to verify your identity and to respond to your CCPA request and for no other purpose. This information is used to verify your identity using reasonable methods in order to process your rights request. These methods may include matching information you provide with information already maintained by n2y or through the use of a third-party identity verification service. If you are not the subscription owner (or designated subscription administrator contact on the customer account), the subscription owner/administrator will be contacted as obligated in existing contracts to perform or authorize the release of the requested information.

We cannot respond to your request or provide you with Personal Information if we are not able to verify your identity or authority to make the request or confirm the Personal Information relates to you.

You are not required to have an account with n2y to make a verifiable request.



n2y will not discriminate against you for exercising your rights under the CCPA. In particular, n2y will not:

- Deny you goods or services;
- Charge you different prices for goods or services, whether through denying benefits or imposing penalties;
- Provide you with a different level or quality of goods or services; or
- Threaten you with any of the above.

**Contact for More Information:**

Please contact n2y by phone at [\(800\) 697-6575](tel:8006976575) to:

- See how a consumer with a disability may access this Notice in an alternative format; or
- For questions or concerns about n2y's privacy policies and practices.

## **DATA ACCESSIBILITY**

n2y supports student and parent access to PII for review and correction. PII is most often created by the classroom teacher or other school administration team members in accordance with the applicable school or district's policies. Typically, corrections can most easily be facilitated by parents and/or students notifying the applicable classroom teacher or school administrator. In almost all cases, schools and school districts have policies that permit these resources to make the desired corrections directly in the system. If your situation is different or you need further assistance, please contact n2y customer support at [\(800\) 697-6575](tel:8006976575).

## **CONTENT RETENTION**

n2y generally purges and/or de-identifies PII and other Authorized User data ninety (90) days following termination of a subscription. n2y performs daily system backups of production data for purposes of disaster recovery. These backups are encrypted, stored offline and are not directly accessible by Authorized Users. These backups are purged on a rolling twelve (12) month schedule. Upon written request, n2y may (in its sole discretion) consider an alternate content retention policy in certain circumstances. De-identified PII may be used by n2y for educational, product improvement and other similar purposes; n2y will not use PII for marketing.

## **DATA BREACH OR SECURITY INCIDENT**

n2y has internal protocols in place to deal with a breach of PII. n2y will notify an affected subscriber no later than seven (7) business days after n2y become aware of any breach of or security incident involving PII. n2y will take prompt corrective action to remedy any breach or security incident, mitigate, to the extent practicable, any harmful effect of such breach or security incident and the corrective action n2y has taken or will take to prevent future similar breaches or security incidents.

## **PRIVACY PLEDGE**

As a public commitment for the responsible collection and use of student data, n2y is a signatory to the Student Privacy Pledge 2020 (the "Pledge") of the Future of Privacy Forum and the Software & Information Industry Association (SIIA). n2y believes this Agreement is consistent with the Pledge and will ensure that any current and future subcontractors and business partners operate in a consistent manner by agreeing to comply with this Agreement. The Pledge is available for review at: [Student Data Privacy Pledge](#)

## **CUSTOMER FEEDBACK**

n2y welcomes feedback from customers regarding its products and services. Contact us at [\(800\) 697-6575](tel:80069746575) or follow the Submit a Request link at [n2y.com](https://n2y.com). You agree that any feedback given is entirely voluntary and n2y shall have a non-exclusive, perpetual, irrevocable, worldwide, royalty-free license for its benefit to use, disclose, reproduce, license or otherwise distribute and exploit the feedback provided to it as it sees fit, entirely without obligation or restriction of any kind on account of intellectual property rights or otherwise.

## TERMINATION

n2y reserves the right, in its sole discretion, to terminate your access to all, or any part, of this website and its accompanying materials and content at any time and without notice for any reason. n2y, in its sole discretion, may also discontinue operating this website and terminate this Agreement at any time and without notice for any reason.

## NO WAIVER

The failure of n2y to enforce any terms and conditions of this Agreement or to respond to any breach by you or other parties shall not in any way be deemed a waiver of n2y's right to enforce any terms or conditions of this Agreement.

## GOVERNING LAW AND VENUE

By using this website and its accompanying materials and content, you agree that the laws of the State of Ohio without regards to principles of conflict of laws, will govern this Agreement and any dispute that may arise between you and n2y. Further, you expressly agree that exclusive jurisdiction for any dispute resides in the courts of Erie County, Ohio.

## SEVERABILITY

All provisions of this Agreement are severable and neither this Agreement nor any provision hereof shall be affected by the invalidity, inapplicability or unenforceability of any other provision of this agreement.

## QUESTIONS?

If you have any questions about this Agreement, you may contact us at [\(800\) 697-46575](tel:80069746575).

EO The attached Illinois State University Laboratory School Software Addendum is hereby incorporated into the above Agreement.

The Board of Trustees of Illinois State University

 11/29/22  
Director of Purchases, Ernest Olson Date

 , CFO 12/2/2022  
Authorized Representative Date

n2y LLC



## 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.
13. **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.
22. 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.
23. 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.
24. 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/ilitaa](http://www.dhs.state.il.us/ilitaa)). 30 ILCS 587.
25. **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.
26. 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.
27. 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.
28. 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.
29. 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.
30. 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.
31. 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.
32. 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.