

# Renaissance

## Terms of Service and License

These Terms of Service state the binding legal terms and conditions between Customer and Vendor (as defined below; hereafter "Vendor") that govern the Products and Services that Customer has contracted to receive pursuant to the Sales Order or Quote provided to Customer by Vendor.

1. **Definitions.** As used above and in these Terms of Service, capitalized words have the meaning set forth in Exhibit A or as otherwise expressly defined in these Terms of Service.
2. **License and Access to Products.**
  - a. **License.** Subject to the terms and conditions set forth in these Terms of Service, Vendor grants Customer a limited, revocable, non-exclusive, non-transferable, non-sublicensable license during the Term solely to access and use the Products for educational assessment and practice functions. No other license, express or implied, is granted by these Terms of Service.
  - b. **Access and Use Limitations.**
    - i. **Access and Use.** Customer may access and use the Products during the period beginning on the first day of the Subscription Period and ending upon the earlier of expiration of the Subscription Period or termination of the Agreement. Access may be restricted during Vendor's maintenance and updating of the Products.
    - ii. **Quantity.** The Quote sets forth a quantity for each identified Product or Service. Customer may not exceed the quantities stated in the Quote without further written agreement by the parties, or as described in Section 5(b), below.
    - iii. **Access and Use Restrictions.** Customer shall not access or use the Products for any purpose beyond the limited license granted in these Terms of Service. Without limiting the foregoing, Customer shall not: (A) copy, modify, or create derivative works of the Products, in whole or in part; (B) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available the Products; (C) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to the source code of the Products, in whole or in part; (D) use the Products or Content in any manner for (1) designing, developing, using, or deploying any software program or service including but not limited to any purpose related to the training, testing, validating or operating of any software or service incorporating a large language model, foundation model, deep machine learning, generative artificial intelligence, or any other algorithm, model, or process of a nature commonly referred to as artificial intelligence (collectively, "AI Tools"), (2) creating a tool to extract data from our content, (3) assimilating, assembling, or otherwise generating archived or cached data sets containing our content or providing such datasets to another person or entity, or (4) any data aggregation, analysis or mining purposes; (E) remove any proprietary notices from the Products; (F) allow anyone other than Customer or its Authorized Users to access or use the Products; (G) use the Products, including uploading any Customer Data, in any manner or for any purpose that infringes, misappropriates, or otherwise violates any Intellectual Property Rights or other right of any Person, or that violates any applicable law; (H) access or use the Products for any purpose not authorized under these Terms of Service; (I) share, transfer or sell Valid Login Information to anyone other than Authorized Users, and shall be responsible for any access to, or use of, the Products resulting from Customer's failure to safeguard Valid Login Information; or (J) allow multiple Persons to access or use the Products in a manner intended to avoid incurring fees. Customer agrees to promptly notify Vendor of any actual or suspected unauthorized access to or use of the Products, after which Vendor may then implement a Service Suspension.
    - iv. **Authorized Users.** Customer may permit its Authorized Users to access and use the Products in the same manner and for the same purposes as Customer, as set forth in these Terms of Service. Customer shall be responsible and liable for all access to and use of the Products by any Authorized User and any other access to the Products permitted or enabled by Customer or an Authorized User.
    - v. **Suspension.** Notwithstanding anything to the contrary in these Terms of Service, Vendor may suspend access and use for any portion or all of the Products by a Customer or Authorized User if Vendor determines in good faith that: (A) Customer or an Authorized User's access to or use of the Products and systems disrupts or poses a risk to the security or integrity of any of Vendor's Products or systems, or any of its customers or vendors; (B) Customer or an Authorized User are accessing or using the Products or systems for fraudulent or illegal activities; (C) any vendor or supplier of Vendor has suspended or terminated Vendor's access to or use of any third-party product or service necessary to the Products; or (D) Customer has not timely paid any Fees (any such suspension described in subclause (A), (B), (C), or (D) a "Service Suspension"). Vendor shall use reasonable efforts to provide written notice of any Service Suspension to Customer and to provide updates regarding resumption of access to the Products following any Service Suspension, which shall be in Vendor's sole discretion. Vendor shall use reasonable efforts to resume providing access to the Products as soon as

reasonably possible after the event giving rise to the Service Suspension is cured. Vendor will have no liability for any damages, liabilities, losses, or any other consequences of a Service Suspension.

- vi. Customer Hardware, Other Software and Services. Vendor does not bear any responsibility or liability for any Third-Party Services and does not guarantee that any Third-Party Services will operate correctly or that they are compatible or interoperable with the Products.
  - vii. Product Updates, Modifications and Discontinuation. We may update the Products, modify content, provide new functionality, or otherwise change the design of any Product that does not materially impair Customer's usage of the Products. The performance of modifications may result in the temporary unavailability of the product. Vendor may discontinue a Freemium Product in its sole discretion and will provide advance written notice to applicable Customers.
  - viii. AI Technologies. Certain of our Products and Services may include, or involve the use of, AI Technologies and allow for Customer to provide input ("AI Input") and receive output ("AI Output") via the Products and/or Services. Customer is responsible for ensuring that AI Input does not violate any applicable laws and this Agreement. Customer acknowledges and agrees that AI Technologies may not be accurate and shall not solely rely on AI Output for any purpose. Customer shall not use AI Output for any purpose that could have a legal or significant effect on an individual.
3. **State Education Agency Contracts**. To the extent Customer is a School or District purchasing or receiving access to Vendor Products pursuant to or in connection with a contract between Vendor and Customer's State Education Agency or Department of Education ("Agency"), the terms of the contract between Vendor and Customer's Agency are incorporated herein, including applicable data sharing requirements.
  4. **Product Addendum(s)**. The applicable Product Addendum(s) found in 'Exhibit B - Product Addendum' shall apply to the extent Customer is accessing such Product(s) pursuant to this Agreement.
  5. **Professional Learning and Training Services**. If contracted by Customer, Vendor shall provide the Professional Learning and Training Services identified in the Quote and/or any Statement of Work agreed to by the parties in writing. All Services identified in the Quote, or any applicable Statement of Work shall be governed by these Terms of Service, including the Additional Terms and Conditions set forth in Exhibit C.
  6. **Payment Obligations**.
    - a. Fees. Customer shall pay Vendor all amounts listed in the Quote ("Fees") within 30 days of invoice date. Customer may not withhold or setoff any amounts due under the Agreement. Vendor may charge interest from the time payment was due until the time paid at the higher rate of (A) 1% per month compounded monthly, or (B) the highest rate allowed by law in Customer's state. Customer agrees that any of Vendor's Affiliates may provide the Products or Services, or issue invoices for amounts owed under any Quote or Sales Order governed by the Agreement. Amounts paid for Products and Services are not refundable, regardless of the extent they are utilized.
    - b. Adjustment for Additional Quantity. Should Customer's use of the Services identified in the Quote and/or any Statement of Work exceed the quantity listed in the Quote, purchase order, Statement of Work, or otherwise, Customer shall be responsible for the payment of additional fees which shall be billed at the applicable rates set forth in the Quote and/or Statement of Work for such usage. Customer will be notified in writing of such additional fees and Customer shall pay for such usage pursuant to Section 5(a), above.
    - c. Taxes. Fees are exclusive of any taxes unless otherwise specified on the invoice as tax inclusive. Customer must pay any applicable value added, goods and services, sales, use, privilege, excise gross receipts, or other transaction taxes, duties, or similar amounts that are owed under this agreement and which Vendor is permitted to collect from Customer under applicable law unless Customer provides Vendor with a valid tax exemption certificate authorized by the appropriate taxing authority. Vendor is responsible for all taxes based on Vendor's net income.
  7. **Term; Termination; Effect of Termination**.
    - a. Term. The term of the Agreement starts on the earlier of (i) the date that the Customer signs the Quote or (ii) the first date of the Subscription Period and continues until the end of the last Subscription Period listed in the Quote (the "Term"), except as set forth in a further written agreement of the parties.
    - b. Termination.
      - i. Uncured Breach: Either party may terminate the Agreement upon written notice if the other party does not cure a material breach within 30 days of written notice of the breach from the other party describing the breach and stating the intent to terminate.
      - ii. Non-Payment: Vendor may terminate Customer's access to the Products and the Agreement if Customer fails to pay any amount due within 10 business days of written late notice from Vendor.
    - c. Effect of Expiration or Termination. Upon expiration or termination of the Agreement:

- i. all rights and licenses to use and access the Products granted to Customer under the Agreement immediately terminate, and Customer shall cease all access to, and use of, the Products provided to Customer under the Agreement, except that (A) Customer may continue to access the Products for the limited purpose of retrieving Customer Data, during the period set forth in the Data Protection Addendum, and (B) Customer and Authorized Users may continue to access and use the free version of any Premium Hybrid Products that Customer had purchased, in Vendor's discretion, provided that these Terms of Service shall govern Customer's continuing access and use of the free version of any Premium Hybrid Products;
  - ii. Customer shall return or destroy, at Vendor's sole discretion, all Confidential Information of Vendor. Customer shall also be responsible for retrieving Customer Data from the Products, as described in the Data Protection Addendum.
  - iii. each party shall cease the use of the other party's Intellectual Property Rights; and
  - iv. Customer shall pay Vendor all amounts due under the Agreement upon the earlier of their due dates or 30 days after the effective date of termination.
- d. Survival. Notwithstanding anything to the contrary in the Agreement, all accrued payment obligations under the Agreement, any remedies for breach of the Agreement, Sections 7, 8, 9, 10, 11 and 12, and any provisions that are required by law to survive, shall survive expiration or termination of the Agreement. Further, the Data Protection Addendum and the applicable provisions of these Terms of Service shall survive expiration or termination of the Agreement to the extent that the Data Protection Addendum provides Customer limited access to the Products for the purpose of retrieving Customer Data.
8. **Intellectual Property.** Notwithstanding the limited license granted under these Terms of Service,
- a. No Transfer of Rights. As between Vendor and Customer, Vendor owns all Intellectual Property Rights in or embodied by the Products, including any modifications or adaptations made for the benefit of Customer. Except for the license set forth in Section 2 above, neither Customer nor its Authorized Users will obtain, pursuant to or by virtue of these Terms of Service or their use or access to the Products or the Services, any Intellectual Property Rights in the Products or the Services.
  - b. Customer License to Vendor. Customer grants to Vendor and its Affiliates a worldwide, perpetual, irrevocable, royalty-free license to use, distribute, disclose, and make and incorporate into the Products any suggestion, enhancement request, recommendation, correction or other feedback provided by Customer or its Authorized Users relating to the operation of the Products.
9. **Confidentiality.** Recipient may use Confidential Information provided to it by or on behalf of the other party (the "Disclosed Information") only as necessary to perform its obligations or exercise its rights pursuant to this Agreement. Recipient may not disclose the Disclosed Information to any other person or entity except its Affiliate, employee, director, shareholder, member, agent or contractor (each a "Recipient Representative") for purposes of performing Recipient's obligations or exercising Recipient's rights under this Agreement, shall require that each of its Recipient Representatives comply with all obligations of Recipient under this Section 8, and will be liable for any breach of this Section 8 by its Recipient Representative. Recipient shall treat the Disclosed Information with the same level of care that it holds its own Confidential Information. In addition to disclosure to Recipient Representatives as set forth above, Recipient may disclose Disclosed Information to the extent compelled by law, provided Recipient gives the other party prompt prior written notice of the compelled disclosure to the extent legally permitted to permit the other party to seek a protective order, and if disclosed to a government agency seek confidentiality protection if available under applicable laws and regulations. Recipient acquires no licenses or other rights to the Disclosed Information except as otherwise set forth in the Agreement. Notwithstanding anything to the contrary above, Customer PII is governed by the Data Protection Addendum and not this Section 8.
10. **Data.**
- a. Customer PII and Data Protection Addendum. Vendor shall comply with its privacy and security obligations for Customer PII as set forth in the Data Protection Addendum, available at <https://doc.renlearn.com/KMNet/R62068.pdf>, incorporated herein.
  - b. Data Ownership and License. As between Vendor and Customer, Customer owns the Customer Data. Customer grants Vendor a non-exclusive, royalty-free, worldwide license to use the Customer Data throughout the Term to perform under the Agreement and as further described in the Data Protection Addendum. As between Vendor and Customer, Vendor owns the Vendor Data. Vendor Data is not subject to the use or disclosure restrictions of this Agreement that apply to Customer Data.
  - c. Prohibited Data. Customer acknowledges and agrees that the Products are intended for academic, educational and assessment purposes. Customer shall not provide to Vendor any non-academic or non-educational related data such as social security numbers, protected health information, driver's license information, passport or visa numbers, credit card or other financial account numbers, and Vendor has no obligation to monitor for entry of such data. Customer will not: (i) use Customer Data that is subject to third party intellectual property or proprietary rights, including privacy and publicity rights, unless Customer is the owner of such rights or have permission from their rightful owner to post the material and to grant Vendor all of the license rights granted herein; (ii) use material that is unlawful, defamatory, libelous, threatening, pornographic, obscene, harassing, hateful, racially or ethnically offensive or encourages conduct that would be considered a criminal offense, violate any law or is otherwise inappropriate; or (iii) post advertisements or marketing content or solicitations of business, or any material of a commercial nature.

11. **Indemnification.**

- a. Vendor Indemnification. Vendor shall defend and indemnify Customer and its directors, officers, shareholders, members, employees, agents and representatives against any third-party Claim (including reasonable attorneys' fees) alleging that Customer's use of the Products or Services infringes Intellectual Property Rights, except that Vendor is not responsible for any third-party Claim arising from: (i) modification of Products or Services by, or directed by, Customer, an Authorized User, or a Person who gained access to the Products or Services through the act or omission of Customer or an Authorized User; (ii) any Third-Party Service; or (iii) Customer's use of the Products or Services in violation of or for purposes not contemplated by the Agreement. If Vendor has reason to believe that any of its Products or Services may infringe a third party's Intellectual Property Rights, Vendor may, at its sole expense and option: (i) negotiate a license for Customer's continued access to and use of the Products or Services; (ii) replace or modify the Products or Services with non-infringing Products; or (iii) terminate Customer's access to the Products or Services. The indemnity provided in this Section shall be Customer's sole and exclusive remedy regarding third-party Claims arising from infringement of Intellectual Property Rights.
- b. Customer Indemnification. To the extent permitted by law, Customer shall defend and indemnify Vendor, its Affiliates, and the directors, officers, shareholders, members employees, agents and representatives of each of the foregoing, against all Claims (including reasonable attorneys' fees) brought against or incurred by Vendor: (i) alleging that the combination of a Third-Party Service or configuration provided by Customer when used with the Products, infringes or misappropriates a third party's Intellectual Property Rights, or arising from (ii) Customer's use of the Products in an unlawful manner or in violation of the Agreement, (iii) Customer's use of a Third-Party Service (iv) any breach of Customer's obligations under the Agreement; or (v) the negligence or intentional misconduct of Customer or its Authorized Users, employees contractors, agents or representatives.
- c. Indemnification Procedure. As a condition of the defense and indemnification obligations under Section 10.a or 10.b (as applicable), each party agrees to: (i) promptly notify the other in writing of any third-party Claim for which a party seeks defense or indemnification under these Terms of Service; (ii) provide the defending or indemnifying party sole control of the defense of the Claim; (iii) cooperate at the defending or indemnifying party's expense with reasonable requests in support of the defense Claim; and (iv) refrain from agreeing to or acknowledging liability for the Claim.

## 12. Warranties and Liabilities.

- a. WARRANTIES. VENDOR PROVIDES THE PRODUCTS AND SERVICES "AS IS". VENDOR MAKES NO WARRANTY OR OTHER PROMISE THAT THE PRODUCTS WILL BE UNINTERRUPTED, SECURE, OR ERROR FREE, OR THAT POSSIBLE DEFECTS WILL BE CORRECTED. VENDOR SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, REGARDING THE PRODUCTS OR SERVICES, INCLUDING WITHOUT LIMITATION TO ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, GUARANTEED OUTCOME, RESULT OR SUCCESS, OR NON-INFRINGEMENT OR TITLE, OR ANY WARRANTY OR PROMISE ARISING FROM COURSE OF DEALING, USAGE OR PERFORMANCE.
- b. CONSEQUENTIAL, SPECIAL AND SIMILAR DAMAGES. IN NO EVENT WILL EITHER PARTY OR ITS AFFILIATES HAVE ANY LIABILITY ARISING OUT OF OR RELATED TO THE AGREEMENT FOR ANY LOST PROFITS, REVENUES, GOODWILL, OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER, BUSINESS INTERRUPTION OR PUNITIVE DAMAGES, WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY EXCEPT AS TO DAMAGES INDEMNIFIED UNDER SECTION 10, EVEN IF A PARTY OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF A PARTY'S OR ITS AFFILIATES' REMEDY OTHERWISE FAILS OF ITS ESSENTIAL PURPOSE. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.
- c. OTHER LIMITS. VENDOR'S LIABILITY UNDER THESE TERMS OF SERVICE: (I) WILL BE LIMITED TO DIRECT DAMAGES, AND DOES NOT INCLUDE ANY INDIRECT, CONSEQUENTIAL, SPECIAL, EXEMPLARY, PUNITIVE OR SIMILAR DAMAGES; AND (II) WILL NOT EXCEED THE LESSER OF (A) THE FEES, OR (B) \$100,000 AND (C) WITH RESPECT TO SERVICES OR DELIVERABLES, WILL BE LIMITED TO CORRECTION OF SUCH SERVICES OR DELIVERABLES. IF CORRECTION IS IMPRACTICAL, VENDOR WILL REFUND THE FEES RELATED TO NON-CORRECTABLE SERVICES OR DELIVERABLES ON A *PRO RATA* BASIS.

## 13. Miscellaneous.

- a. Compliance with Applicable Laws. Vendor shall comply with the laws governing it as a provider of the Products and Services. Customer shall comply with the laws governing it as an educational organization or entity or its usage of the Products and Services. To the extent a law is enacted during the Term that substantially changes the obligations of Vendor as a provider of the Products and Services, Vendor may not be able to perform some or all its obligations under the Agreement and will be entitled to terminate said obligations upon written notice to Customer.
- b. Entire Agreement. The Agreement, notwithstanding anything supplementary or to the contrary in any purchase order or other document provided by Customer, constitutes the entire agreement between the parties with respect to its subject matter and supersedes all other agreements or communications, whether written or oral. Any amendments or other changes to the Agreement must be made in writing and signed by both parties.
- c. Severability. If a provision of these Terms of Service is held to be invalid or unenforceable, the remaining provisions shall continue to be valid and enforceable as if such provision had not been set forth in these Terms of Service. Both parties agree to substitute a valid provision most closely approximating the intent of the severed provision.

- d. Waiver. No waiver by a party of a right or obligation under the Agreement is binding unless it is stated in writing to the other party. Failure of a party to enforce a breach of an obligation of another party under the Agreement does not limit that party's right to enforce a subsequent or different breach of that obligation.
- e. Dispute Resolution. Before prosecuting a Claim, the party asserting the Claim must provide the other party written notice of the Claim and not file a Claim until 60 days after that notice is delivered. During those 60 days, the parties each shall make a good faith effort to resolve the dispute. This sub-Section does not apply to or limit either party's right to seek equitable relief, or Vendor's right to suspend or terminate Customer's access to or use of the Products under these Terms of Service.
- f. Limitation of Action. Any Claim by Customer must be brought within two years after the cause of action arose or such shorter period of time as required by applicable law.
- g. Governing Law. For United States-based Customers, the Agreement and all disputes or Claims arising under them are governed and shall be decided under the laws of the state, commonwealth or territory in which Customer resides based on the address set forth in the Quote, without regard to that state's, commonwealth's or territory's choice of law rules. For Customers based outside of the United States, all disputes or Claims arising under the Agreement shall be governed and decided under the laws of the State of Delaware.
- h. Notices. Notices under the Agreement shall be in writing and shall be deemed effective when delivered to the addresses set forth in the Quote (i) in-person, (ii) via the USPS, certified or registered mail, (iii) via reputable courier, addressed to the addresses set forth in the Quote, or (iv) via e-mail, in the case of notice to Vendor at [legal@renaissance.com](mailto:legal@renaissance.com) and in the case of notice to Customer, to Vendor's e-mail address of record for Customer, or other administrator.
- i. Assignment. The Agreement may be assigned only with the prior written consent of the other party which shall not be unreasonably withheld or delayed, except that Vendor reserves the right to assign the Agreement without restriction, following commercially reasonable notice to Customer prior to such an assignment, to an Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its or an Affiliate's assets. Upon valid transfer, the Agreement inures to the benefit of, and binds, the successors and assigns of the parties. Any assignment in violation of this Section is invalid.
- j. Relationship of the Parties. The parties are independent contractors, having no other business affiliation. Neither party may assume or create any obligation or make any representation or warranty on behalf of the other party. There are no third-party beneficiaries to the Agreement.
- k. Anti-Corruption. Customer represents that it has not received or been offered any bribe, kickback or payment, or any gift or thing of value from Vendor or its employees or agents that violates any law or policy applicable to Customer. Both parties agree to comply with all anti-corruption laws applicable to it.
- l. Duplicates. The Agreement may be signed separately by the parties and the signature pages combined to create an original. Authorized electronic signatures are valid. Digitized copies of an original copy of the Agreement shall be treated as an original for all purposes.
- m. Compliance with Export and Sanction Laws and Regulations. The Products and Services may be subject to export laws and regulations of the United States and other jurisdictions. Vendor and Customer each represent that it is not on any U.S. government denied-party list. Customer shall not permit Authorized User access to any Products or Services in violation of any U.S. export or sanction law or regulation.
- n. Authorization. The signatory for each party represents and warrants that it is duly authorized to enter into the Agreement.
- o. Equitable Rights. Each party acknowledges that a breach or threatened breach of Section 7 (Intellectual Property) or Section 8 (Confidentiality) may cause the non-breaching party irreparable damage, entitling it to seek equitable relief, in addition to any other remedy.
- p. Force Majeure. Except for the obligation to make payments, neither party will be liable for any failure or delay in its performance under the Agreement due to any cause beyond its reasonable control, including, without limitation, acts of war or terrorism, acts of God, earthquake, flood, pandemic, embargo, labor shortage, governmental act or failure of the Internet (not resulting from the actions or inactions of Vendor); provided that the delayed party (i) gives the other party prompt notice of such cause, (ii) uses its reasonable commercial efforts to promptly correct such failure or delay in performance, and (iii) will; not be considered in breach during the duration of the Force Majeure Event. In the event a Force Majeure Event continues for a period of 90 calendar days, either party may elect to terminate the Agreement upon notice to the other party.

## EXHIBIT A

### Definitions

**"Affiliate"** of an entity means any entity controlling, controlled by or under common control with that entity. For the purposes of this definition, "control" means the possession, directly or indirectly, of the power to direct the management and policies of an entity through the ownership of voting securities or other equity.

**"Agreement"** means these Terms of Service together with any Quote or Statement of Work agreed to by the parties to which these Terms of Service are attached or into which these Terms of Service are incorporated by reference, together with any amendments, modifications, or renewals of such Quote or Statement of Work agreed by the parties in writing.

**"AI Technologies"** means artificial intelligence, machine learning, or similar technologies, either developed by Renaissance or third parties, that are incorporated into the Products and/or Services.

**"Authorized User"** means Customer's faculty, staff, administrators, teachers, and students accounted for in the Quote and, if applicable, the parents or legal guardians of those students, in each case who are authorized by Customer to access and use the Products under the strictly limited rights granted to Customer pursuant to the Agreement.

**"Claim"** means any lawsuit, administrative proceeding, arbitration, or other legal claim for relief.

**"Confidential Information"** means all technical and non-technical information, including without limitation patent, copyright, trade secret, and proprietary information, techniques, sketches, drawings, models, inventions, know-how, processes, apparatus, equipment, software programs and software source documents related to the current, future and proposed products and services of each of the parties, and includes without limitation, each party's respective information concerning research, experimental work, development, design details and specifications, engineering, financial information, business forecasts and marketing plans and information. Confidential Information does not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the disclosing party, (ii) was known to the receiving party prior to its disclosure by the disclosing party without breach of any obligation owed to the disclosing party, (iii) is received from a third party without knowledge of any breach of any obligation owed to the disclosing party, or (iv) was independently developed by the receiving party.

**"Content"** means all types of information including, without limitation, books, articles, recordings, documentation, photographs, graphics, video, databases or any other compilations rendered available by Vendor or accessible through the Products, as well as all related Intellectual Property Rights. For the avoidance of doubt, Content includes all original expressions in any media, as well as any derivations of such original expressions.

**"Customer"** means the school, school district, educational institution or other organization that signed the Quote.

**"Customer Data"** means: (i) data provided by the Customer in connection with the Products, including educational material; and (ii) data generated by Authorized Users' use of the Products that is associated with an individual person. The categories of data collected by Products are described in the Categories of Data Collected by Product available at <https://docs.renaissance.com/R62941>. For the avoidance of doubt, Customer Data does not include Deidentified Data or system performance, transactional, or other similar statistics or analytics.

**"Data Protection Addendum"** means the Exhibit D, Data Protection Addendum available at <https://docs.renaissance.com/R62068> and incorporated herein, and applicable to PII based on the location of the applicable individual as set forth in the Data Protection Addendum.

**"Deidentified Data"** means Customer Data that has had any PII removed to such a degree that there is no reasonable basis to believe that the remaining data can be used to identify an individual.

**"Deliverables"** means any work product or materials to be developed or delivered by Vendor in connection with the Products or Services, as well as all related Intellectual Property Rights.

**"Intellectual Property Rights"** means patents, patent rights, patent applications, and continuing (continuation, divisional, or continuation-in-part) applications, re-issues, extensions, renewals, and re-examinations of patents; registered and unregistered trademarks and service marks, trademark and service mark rights, trade names, and domain names; registered and unregistered copyrights; trade secrets and inventions, whether patentable or unpatentable; all other intellectual, industrial, or proprietary rights as now existing or that come into existence; and pending applications for and registrations of any of the foregoing; whether arising under the laws of the United States or laws of any other state, country, or jurisdiction in the world.

**"Person"** means a person, entity or organization.

**"Personally Identifiable Information or PII"** is defined in the Data Protection Addendum.

**"Premium Hybrid Products"** means the paid and free versions of the educational online software products (including, without limitation, all related Intellectual Property Rights, Deliverables and Content) including but not limited to Nearpod, Flocabulary, Freckle, and Lalilo, access to which is being provided to Customer under the Agreement.

**"Products"** means the Premium Hybrid Products and other educational online software products identified in the Quote (including, without limitation, all related Intellectual Property Rights, Deliverables and Content) distributed by Vendor or one of its Affiliates.

**"Quote"** means that certain document identified as a sales quote, or Sales Order, provided by Vendor to Customer, setting forth certain Products or Services to be obtained by Customer from Vendor for a specified Subscription Period, as well as such other business terms to which the parties agree to be bound. These Terms of Services are incorporated into each Vendor Quote or Sales Order.

**"Recipient"** means a party or its Affiliate that receives Confidential Information of the other party.

**"Sales Order"** means that certain document identified as a sales order and shall have the same meaning as Quote.

**"Services"** means those professional services identified in the Quote and any other professional, technical or support services that Vendor provides to Customer as set forth in a Quote or Statement of Work.

**"Service Suspension"** means the term as described in Section 2(b)(v).

**"Subscription Period"** means the time during which Customer's Authorized User are authorized under the Agreement to access the Products. The Subscription Period starts and ends on the dates proscribed in the Quote, unless the Agreement is terminated early by either party; then, the Subscription Period ends on the date of termination.

**"Term"** means the term as described in Section 7(a).

**"Terms of Service"** means this Terms of Service and License document and all of the exhibits to it, each of which is incorporated and made part of the Terms of Service.

**"Third-Party Services"** means hardware, software, network or internet bandwidth, content, data or services not provided by Vendor.

**"Valid Login Information"** means usernames and passwords or other credentials that Customers or Authorized Users use to access the Products.

**"Vendor"** means Renaissance Learning, Inc., or the applicable Vendor Affiliate identified on the Quote or Sales Order.

**"Vendor Data"** means the Deidentified Data and the performance, system and operational data created by Vendor.

## Exhibit B – Product Addenda

### Nearpod Platform ("Platform") Product Addendum

#### A. Additional Definitions

"*Admin User*" means a Platform User who has administrator access to the Platform for an Institution.

"*Educator User*" means a single, named, person of legal age who can enter into a contract in the state or country in which the User resides and in no case, is under the age of 18, and who is an instructor or school administrator who has an end-user account to use the Product and is not a student.

"*Institution*" is defined as: a licensed school, district, college, university or other education institution or education agency, whether public or private, that adopts or uses the Platform.

"*Student Users*" means those Platform users who participate in the participant portion of the Product by entering a code provided by the Educator User and accessing the lesson materials or only obtain access to a Student Account (available only in School or District License Editions) if the administrator on that account enables the Product the ability to do so.

#### B. Accounts, Passwords, and Payments

1. Nearpod Plans. The general terms of each subscription plan are available at <https://nearpod.com/pricing>.
2. Educator Accounts. Vendor has two types of accounts: individual accounts (e.g., Silver, Gold, or Platinum) or Institution accounts (e.g. School or District) as more particularly described below. All these accounts are meant for Educator Users. Students Users do not need accounts to access the Product; however, administrators of Institution accounts will have the option to enable the Student Account feature (as more particularly explained below). Additionally, Vendor offers non-education related accounts for enterprise customers. Vendor reserves the right to change, add, or remove the types of accounts offered and/or how they're named at any time. Children under the age of eighteen are not eligible to purchase access to the Platform or register for an educator account.
  - a. Individual Accounts. The Silver, Gold, and Platinum Accounts are meant for individual users, collectively or individually, as the context may require, they are referred to as "Individual Accounts". They each have different features; however, the following terms are the same for all Individual Accounts. Individuals may only register for an Individual Account if (i) they are an adult (according to the rules of the country where they are located) and (ii) are employed by a school (public or private), a school district, or other Institution. To continue to be eligible for an Individual Account, the Educator User must be continuously employed at an Institution during the subscription period and have authorization from their Institution to use the Product. Furthermore, an Individual Account user's employment status must be independently verifiable, and an Individual Account user may only use the Individual Account to provide access for students if they have authorization to do so and ability to provide consent on their behalf for purposes of COPPA. By registering for an Individual Account, Customer represents and warrants that (i) Customer has the authorization to enter into these Terms on behalf of the Institution in which Customer is employed and to use the Product as part of Customer's learning activities; (ii) that Customer has the authorization to use the Product in accordance with any requirements Customer and their Institution have under applicable laws, including, but not limited to FERPA. If at any time Customer is no longer employed at, or no longer has permission to use the Product, Customer shall notify Vendor immediately at: [privacy@nearpod.com](mailto:privacy@nearpod.com).
  - b. School Accounts. School accounts are available to elementary and secondary educational Institutions to be used exclusively by the purchasing Institution, its employees, and its students. A school will be given access for the number of Admin Users and Educator User licenses purchased for its educators and administrators. Each license must be assigned to an individual teacher within the purchasing school using their school provided email address. Shared access to a license by more than one individual, including the use of a shared email address such as is not permissible use and a violation of these Terms.
  - c. District Accounts. District accounts are available to public school districts to be used exclusively by the purchasing district's employees and its students. A district will be given access for the number of Admin User and Educator User licenses purchased for its educators and administrators. Each license must be assigned to an individual teacher within the purchasing school using their school provided email address. Shared access to a license by more than one individual, including the use of a shared email address such as is not permissible use and a violation of these Terms.
  - d. Higher Education Accounts. Higher Education Licenses are available to Institutions of higher education to be used exclusively by the purchasing Institutions' employees and its students. A higher education Institution will be given access for the number of Admin User and Educator User licenses purchased for its educators and administrators. Each license must be assigned to an individual teacher within the purchasing school using their Institution-provided email address.

Shared access to a license by more than one individual, including the use of a shared email address such as is not permissible use and a violation of these Terms.

- e. Enterprise Platform Licenses. Enterprise Licenses are available to companies to be used exclusively by the purchasing company's Student Users. A company will be given access for the number of licenses purchased for its Admin Users and Educator Users. Each license must be assigned to an individual user within the purchasing company using their company-provided email address. Shared access to a license by more than one individual, including the use of a shared email address such as is not permissible use and a violation of these Terms.
3. Student User Accounts. Admin Users of an Institutional Account shall have the ability to opt-in to this feature. The default of this feature shall be an opt-out. Should an Admin User opt-out of Student Accounts, then Student Users will be able to continue use of the Product through the participation portion of the platform by entering a "join" code.
4. Data Retention During Subscription Period:
  - a. Individual Accounts: Post Session Reports must be downloaded by Customer within 18 months after creation date. Vendor will automatically delete Post Session Reports on a rolling 18 months basis after creation date.
  - b. School, District, High Education, and Enterprise Accounts: All Post Session Reports will be maintained during the Term of the Agreement. Customer will immediately lose access to all Post Session Reports at end of Term. Customer must download Post Session Reports before the end of Term. Vendor will delete Post Session Reports three months after Expiration or Termination of the Agreement.

### C. Payments.

1. Payment Terms Applicable for Individual Nearpod Licenses that are "Paid Accounts" (i.e., Gold or Platinum):
  - a. Upgrading to Paid Account. Vendor offers Customer the option of upgrading an Individual account to a Paid Account which would increase storage and enable additional features for a fee. If Customer chooses to upgrade, Customer's account will be converted to a Paid Account and will not be subject to some of the restrictions placed on Free Accounts as described at <https://nearpod.com/pricing>. Vendor may change the applicable subscription fee at any time, at our sole discretion, at the end of a subscription period as long as Vendor notifies Customer first by either email to the address associated with Customer's account or by posting on Vendor's website.
  - b. Initial Payment for Upgrade. Vendor accepts credit cards and will automatically charge Customer's payment instrument on file before upgrading an account, if available; or request the necessary payment information as needed. In the event Vendor is not able to charge Customer's payment instrument for applicable charges, Vendor may suspend Customer's account until due amounts are paid. Additionally, if Customer's balance is not paid within seven (7) calendar days after Vendor provides notification that an account is in arrears, Vendor reserves the right to delete some or all of Customer files so as to reduce storage space and to convert a Platform Paid Account back to a free account.
  - c. Automatic Renewal Charges. Plans (other than school-wide or district plans) that are not cancelled before the end of the applicable subscription period will automatically renew and Customer authorizes Vendor to collect the then-applicable subscription fee for such service using any credit card or other payment mechanism Vendor has on record for Customer. All fees and charges are prepaid and nonrefundable, and no refunds or credits for partially used subscription periods are available. If payment is not received from the credit card issuer, Customer agrees to pay all amounts due upon demand. Customer must provide current, complete, and accurate billing and credit card information, and Customer agrees to pay all costs of collection, including attorney's fees and costs, on any outstanding balance. In certain instances, the issuer of the credit card may charge a foreign transaction fee or related charges, which Customer shall be responsible to pay.
  - d. Cancelling account. Customer may cancel a Platform Paid Account at any time, by contacting [support@nearpod.com](mailto:support@nearpod.com). Cancellation will be effective upon expiration of the then-current Subscription Term. A Paid Account will continue until Customer cancels the Paid Account or Vendor terminates the account, according to the terms of this Agreement. Customer must cancel a Paid Account before it renews to avoid automatic billing of the next subscription term's fees to the credit card on file with Vendor. Should Customer elect to cancel a Paid Account, Customer will not receive any refund for payments made prior to the date of cancellation.
2. Terms Applicable for Institution Nearpod Accounts and Enterprise Accounts:
  - a. Educational Institutions shall pay the fees for use of the Product set forth in the applicable Quote, as set forth in paragraph 6 of the Terms of Service and License Agreement. Vendor accepts credit cards and certain other specified payment methods. This Agreement shall renew automatically for successive one (1) year renewal periods (each a "Renewal Term") unless Customer provides Vendor with a written notice to the contrary ninety (90) days prior to the end of each renewal term. Each Renewal Term shall incorporate and be governed by Vendor's then current pricing.
  - b. To the extent Customer uses a credit card to make payment for fees of more than Five Thousand Dollars (\$5,000.00), an additional fee may be assessed.
  - c. All fees are prepaid and nonrefundable, and Customer will not receive any refund or credit for partially used Subscriptions.

- D. **Boardworks Program on the Nearpod Platform.** To the extent Customer subscribes solely to the Boardworks Program through the Nearpod Platform, as indicated on the Quote or Sales Order, Customer will receive access to the Boardworks Program only and will not receive access to Nearpod Premium Content. Certain functionality and features of the Platform were designed for the Nearpod Content and may not be available for the Boardworks Program.
- E. **Third Party Links.** Additionally, the Product may provide users with access to third-party services through API's or content via links to third-party providers. You acknowledge and agree that Vendor is not responsible and shall have no liability for such third-party sites and services, products or services made available through them, or your use of or interaction with them. Whether the third-party content appears within the Product (such as in an embedded video player, including but not limited to YouTube), or Customer or User leaves the Product to view the third party linked content on another website, the third party is in control of and independently produces, maintains, and monitors the content and third-party sites. Customer should review the policies of these third-party sites regarding the collection and use of Customer information as their policies may differ from Vendors. Vendor does not accept any responsibility or liability for the privacy practices of third parties.
- F. **YouTube:** When Customer or its users watch third-party content made available through the Product or navigate to third party sites, such as YouTube, Customer is subject to the third party's terms of use and privacy policies. Customer expressly agrees to be bound by the YouTube Terms of Service available at: <https://www.youtube.com/t/terms>.
- G. **Google:** When Customer or its users access Google applications or content through the Product, Customer is subject to the Google Terms of Use available at: <https://policies.google.com/terms?hl=en-US> and the Google Privacy Policy available at: <https://policies.google.com/privacy?hl=en-US>. Nearpod does not sell Google user data to third parties, and will only use Google user data for the purposes of providing the Services to you. Nearpod does not transfer Google user data to third parties for reasons other than providing or improving the Nearpod services.
- H. **Authorized Use of Open Communication Tools.** Vendor may provide various open communication tools as part of the Product for Educator Users, such as blog comments, blog posts, chat forums, or message boards. By posting information or otherwise using any open communication tools as mentioned, Customer agrees that Customer will not upload, post, share, or otherwise distribute any content that: (i) is illegal, threatening, defamatory, harassing, degrading, intimidating, fraudulent, racist, and pornographic or contains any type of inappropriate or explicit language; (ii) infringes any trademark, copyright, trade secret, or other proprietary right of any party; (iii) attempts any type of unauthorized advertising; or (iv) violates any applicable law or regulation.
- I. **Publicity.** Vendor may advertise, publicly announce, or provide to any other person, information relating to the existence of this Agreement with Customer, including Customer's name for any promotion, publicity, or marketing of the Product.
- J. **Marketing.** Vendor will not use student personal information for third party marketing. Vendor may email Educator Users to provide marketing information about products and services provided by Vendor. Educator Users may opt-out of receiving marketing emails.

<b>Flocabulary Product Addendum</b>
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- 1. **General terms**
  - a. Only school staff and parents or guardians may purchase access to the Product. Children under the age of eighteen are not eligible to purchase access to the Product or register for an educator account.
  - b. School staff may invite students to participate in Product directly through individual accounts under certain plans, more fully described at: [www.flocabulary.com/plans](http://www.flocabulary.com/plans).
- 2. **Payment Terms**
  - a. The general terms of each subscription plan are available at [www.flocabulary.com/plans](http://www.flocabulary.com/plans).
  - b. **Free Trials:**
    - i. Free trials are not available to anyone under the age of 18.
    - ii. Individuals may only register for the Free Trial Offer one time per year, for a thirty-day trial period.
    - iii. Representatives of schools and districts may request one or more free trial periods as needed to evaluate the Product, which will be granted in Vendor's sole discretion.
    - iv. By registering for a free trial, Customer consents to Vendor contacting Customer to follow up on Customer's experience with the Product and potential purchase of a paid license.
  - c. **Plans paid with a credit card:**
    - i. Payments will be charged on the day Customer registers for a service and will cover the use of that service for the subscription period specified for the requested plan.

- ii. Plans (other than school-wide or district plans) that are not cancelled before the end of the applicable subscription period will automatically renew and Customer authorizes Vendor to collect the then-applicable subscription fee for such service using any credit card or other payment mechanism Vendor have on record for Customer.
- iii. Subscription fees are non-refundable, though a subscription can be canceled anytime. If you cancel your subscription, you will have access until your next billing date and will not be billed again.
- iv. For individual accounts that are paid monthly, Customer may have the option to pause Customer's account from time to time. If Customer exercises this option, upon re-activation of Customer's account, the monthly pricing shall automatically be adjusted to the then-current pricing for the applicable plan.
- d. Plans paid for with a purchase order: By submitting a purchase order, Customer agrees to pay the fees owed in full within thirty (30) days of receiving an invoice from Vendor, unless otherwise specified on an Order Form.

<b>Boardworks Platform - Product Addendum</b>
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Annual Tech and Maintenance Fee: Existing users of the Boardworks Product on the Boardworks Platform will receive continued access upon payment of the annual maintenance fee, as set forth in the Quote or Sales Order. Customer shall receive access to the Product on the Boardworks Platform for one year, subject to the terms of the Terms of Use and License.

## EXHIBIT C

### Additional Terms and Conditions – Professional Learning Services (as applicable)

To the extent Customer has ordered Professional Learning Services as part of the Quote, Customer agrees to the following additional terms for any Professional Learning or Training Services (“Training”) made available to it either remotely or on-site:

- A. **Required Facility and Infrastructure:** Customer will provide facilities for use by its remote attendees, as well as any on-site Training, that are conducive to adult learning, including, without limitation, a computer, broadband Internet connection and two-way sound for each of Customer’s participants.
- B. **Scheduling Training:** Customer will request dates for onsite Training at least four (4) weeks in advance and at least ten to fourteen (10-14) business days in advance for remote sessions. Customer will receive a planning questionnaire at the time of scheduling, and Customer shall promptly return its response to the questionnaire to allow Renaissance to confirm the requested dates. Renaissance may be unable to schedule Training for certain of its products if Customer has not completed required System Management Workshops prior to the Training.
- C. **Reserving Training Dates:** The Quote or Agreement for the Training must be fully executed between the parties before Vendor will reserve or schedule Customer’s requested Training sessions.
- D. **On-Site Training Pre-Planning Meeting:** To the extent Customer has requested on-site Training, Customer must participate in a pre-planning virtual meeting with Vendor at least four weeks in advance of the scheduled on-site Training. The preplanning activity allows Vendor to tailor the Training content to the specific needs of the participants. Vendor will focus the Training on learning outcomes agreed to during the pre-planning meeting. Vendor will also strive to adapt the Training to meet needs raised at the Training.
- E. **Rescheduling Training:** In the event Customer experiences any scheduling issues which necessitate the rescheduling of a Training session, Customer shall notify Vendor immediately. Vendor will work with Customer to reschedule Training sessions which are cancelled with more than forty-eight (48) hours advance notice. In the event Customer fails to request cancellation and does not appear for the scheduling Training, or requests cancellation of a scheduled Training with less than forty-eight (48) hours’ advance notice to Vendor, Customer shall pay a Cancellation Fee which is equal to the price of the cancelled Training session(s) to cover the expenses incurred. The Cancellation fee covers the expenses and costs incurred by Vendor for the Training. To the extent a force majeure event has occurred which necessitated the Training with less than forty-eight (48) hours-notice, Customer shall inform Renaissance as soon as possible of the force majeure event.
- F. **Training Utilization Period:** Customer will schedule all Training to occur within the Subscription Period memorialized in the corresponding Quote. To the extent Customer fails to utilize all Services during the Subscription Period, Customer will incur a Cancellation Fee equal to the price of the remaining Services to cover the costs already incurred by Vendor during the Subscription Period, unless otherwise agreed by Vendor.
- G. **Vendor Training Providers:** Vendor may utilize the services of its contracted Consultants to provide the Training. Vendor remains liable for all actions of its Consultants in providing the Training, and Vendor contracts with Consultants will include terms which require Consultant to comply with the terms of this Agreement.
- H. **Audio and Video Tools and Copyrights:** Vendor will provide the Training using its selected digital tools, including a video call platform which has been selected for delivering remote professional learning. Customer may not video or audio record the Training without prior written consent from Vendor. The Training materials are protected by copyright law, and Customer is not permitted to copy or share the Vendor Training Materials with any other Schools, Districts, or third party.
- I. **Participation Limits:** The pricing provided for a Training session is based on attendance for remote and on-site Training sessions which include one Renaissance trainer and Customer is capped at thirty (30) participants. To the extent Customer requests more than thirty (30) participants attend a Training, Customer will notify Vendor no less than ten days in advance of the scheduled remote Training, and no less than thirty (30) days in advance of an onsite Training, which will allow Renaissance to secure additional staff. If Customer does not provide notice and additional participants attend a Training, any remaining Training hours on the Customer’s contract will be allocated to cover the additional participant. To the extent Customer has no remaining allocated Training hours, Vendor may invoice Customer a prorated additional fee for Training provided to an excess of thirty (30) participants.
- J. **Alternative Services:** In the event Customer would like to utilize Training hours for alternate services, Customer may notify Vendor, and the parties may mutually memorialize an alternate Training plan via a written amendment.