



Kenton County School District | It's about ALL kids.

## Issue Paper

**DATE:**

November 11, 2022

**AGENDA ITEM (ACTION ITEM):**

Consider/Approve the software license agreement with Pear Deck and River Ridge to purchase a building-wide platform for teachers to engage and formatively assess students electronically.

**APPLICABLE BOARD POLICY:**

01.11 General Powers and Duties of the Board

**HISTORY/BACKGROUND:**

Pear Deck is an online formative assessment tool that is designed to support proven strategies in daily classroom instruction, making it easy for teachers to follow the best practices for engaging students in online learning and to formatively assess students in real time online.

**FISCAL/BUDGETARY IMPACT:**

\$3288.01 (River Ridge Title Budget)

**RECOMMENDATION:**

Approve the contract with Pear Deck and River Ridge to purchase a building-wide platform for teachers to engage and formatively assess students electronically.

**CONTACT PERSON:**

Jena Smiddy

  
Principal/Administrator  
District Administrator  
Superintendent

Use this form to submit your request to the Superintendent for items to be added to the Board Meeting Agenda.

Principal—complete, print, sign and send to your Director. Director—if approved, sign and put in the Superintendent's mailbox.

## ORDER FORM

QUOTE # Q-248572  
DATE 11/17/2022  
EXPIRATION DATE 1/30/2023



**Bill To**  
River Ridge Elementary School (KY)  
2772 Amsterdam Rd  
Villa Hills, Kentucky 41017  
United States

**Ship To**  
Keri Armstrong  
River Ridge Elementary School (KY)  
2772 Amsterdam Rd  
Villa Hills, Kentucky 41017-4401  
United States  
(513) 460-0126  
keri.armstrong@kenton.kyschools.us

**GoGuardian**  
Limnex, Inc. dba GoGuardian  
2030 E Maple Avenue  
El Segundo, California 90245  
United States

Thank you for your interest in our products! This order form ("Order Form") identifies the GoGuardian products you have selected for subscription ("Licensed Product(s)"), the term of your initial subscription(s) to the Licensed Product(s) ("Initial Term"), the number of licenses included in your base subscription(s) ("Licenses"), as well as the fees associated with your base subscription(s), any Licenses you add to your subscription(s) during the Initial Term, and support and professional services related to the Licensed Product(s).

This Order Form, once executed by authorized representatives of Limnex, Inc. dba GoGuardian ("GoGuardian") on behalf of itself and its family of company Affiliates including Pear Deck, Inc. ("Pear Deck") and Edulastic (formally - Snapwiz, Inc. doing business as Edulastic, "Edulastic") and the organization listed below ("School," "you" or "your"), and together with the Limnex Product Terms of Service and End User License Agreement available at <https://www.goguardian.com/policies/eula> (for Limnex), <https://www.peardeck.com/terms-of-service> (for Pear Deck), or <http://edulastic.com/terms-of-service> (for Edulastic) (the "Terms" and, together with this Order Form, the "Agreement"), forms a binding contract. All capitalized terms not defined in this Order Form have the meaning given to them in the Terms. In the event of any conflict between this Order Form and the Terms, the terms set forth in this Order Form will prevail, but solely with respect to this Order Form. We do not agree to any other terms, including without limitation any terms on your School's purchase order.

QTY	PART #	DESCRIPTION	START DATE	END DATE	UNIT PRICE	EXTENDED
421	GG-PRD1Y-000001	Pear Deck Subscription with LMS Access	1/1/2023	12/30/2023	\$7.81	\$3,288.01

**TOTAL (USD): \$3,288.01**

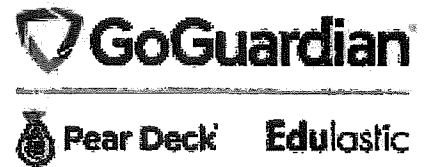
**Add-on Licenses.** If during the Initial Term or during any Renewal Term, you would like to expand your base subscription(s) to include additional Licenses, please contact GoGuardian so that we can send you an additional Order Form for those 'add-on' Licenses ("Add-Ons"). If we do not hear from you and you deploy additional Licenses, we will send you an Order Form and Invoice your Organization for subscriptions to the Add-Ons you use. Add-Ons, once deployed, will be rolled into your base subscription, and, collectively, are referred to as the "Subscription."

## RENEWAL SUBSCRIPTION TERMS

Following the Initial Term, your Subscription (including any Add-Ons during the previous term) will automatically renew on an annual basis for successive 12-month periods (each, a "Renewal Term," and together with the Initial Term, the "Term") at our then-current fees (including an Innovation Increase as defined below) for such Subscription, unless you provide us with written notice of cancellation or written intent not to renew at least sixty (60) days prior to the end of the then-current Term. Your cancellation will take effect as of the last day of your then-current Term and you will not be charged for the upcoming Renewal Term. You will not be entitled to receive a refund or credit of any subscription fees paid for your then-current Term even if you elect not to use the Subscription for the remainder of that Term.

## ORDER FORM

QUOTE # Q-248572  
DATE 11/17/2022  
EXPIRATION DATE 1/30/2023



### RENEWAL FEES

We are dedicated to improving the Licensed Products on an ongoing basis through continued innovation in research and development. For this reason, following the Initial Term, the Subscription Fee-Per License Price for each Licensed Product will be subject to an automatic fee increase equal to 5% above the Subscription Fee-Per License Price you paid for the Licensed Product in the previous term ("Innovation Increase"). Order Forms and Invoicing for Renewal Terms will reflect the Innovation Increase and your renewal subscription fees will be calculated using the increased fees for the number of Licenses included in your Subscription. You agree to pay the Subscription Fees, reflecting the Innovation Increase, due for each Renewal Term as described herein, unless you decide not to renew the Subscription with GoGuardian in accordance with this Order Form.

### PAYMENT

Full payment of the Total Base Subscription Fees for Initial Term is required before access to the Subscription is provided for the Initial Term. Your Organization is responsible for all payment of fees associated with any Add-Ons. Payment for all fees, including any fees for Add-Ons, is due within thirty (30) days of invoice date. Payment of the applicable Total Base Subscription Fees (including fees for any Add-Ons) for each Renewal Term is also due up front in full in advance of each Renewal Term. Your School is responsible for all taxes and duties unless expressly included in this Order Form.

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Email: \_\_\_\_\_

Accounts Payable Name: \_\_\_\_\_

Accounts Payable Email: \_\_\_\_\_

PO Number (Optional): \_\_\_\_\_

Additional Notes (requests  
for delayed invoicing, etc.): \_\_\_\_\_

### **FIRST AMENDMENT TO LIMINEX EULA**

This First Amendment ("**First Amendment**") to the Liminex Products Terms of Service and End User License Agreement (available at <https://www.goguardian.com/policies/eula> and as amended from time to time in accordance with the terms therein) ("**Liminex EULA**") (together, the First Amendment and Liminex EULA as the "**Agreement**") by and between Liminex, Inc. doing business as GoGuardian and acting on behalf of itself and its Affiliates, including Pear Deck, Inc. ("**GoGuardian**") and Kenton County Board of Education ("**KCBOE**") is made and entered into as of the Effective Date and shall be in effect until the last date of the Agreement.

KCBOE's Vendor Agreement is attached to and forms a part of the Agreement. In the event the Vendor Agreement is silent as to any term or condition that is expressly provided for in the Liminex EULA, the term or condition of the Liminex EULA shall apply

### **RECITALS**

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1. Pursuant to that GoGuardian EULA by and between GoGuardian and KCBOE, GoGuardian and KCBOE desire to amend the GoGuardian EULA.
  2. Capitalized terms used in this First Amendment shall have the same meaning ascribed to such terms in the GoGuardian EULA, unless otherwise defined in this First Amendment.
  3. NOW, THEREFORE, in consideration of the foregoing recitals incorporated herein and other good and valuable consideration, the receipt and sufficiency of which is hereby expressly acknowledged, the parties hereto agree to modify, supplement, and amend the GoGuardian EULA as follows:
    - a. Section 15.1 is hereby amended by replacing:
      - i. "California" with "Kentucky"; and
      - ii. "Los Angeles" with "Kenton County"
    - b. Section 15.2.1 is hereby amended by replacing "Los Angeles, California" with "Kenton County, Kentucky"

*[Signature page to First Amendment to Liminex & Kenton County Board of Education EULA]*

**Signed and Agreed:**

**For and on behalf of Kenton County Board  
of Education:**

Signature: \_\_\_\_\_

Signatory Name: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_

**For and on behalf of Liminex, Inc. DBA**

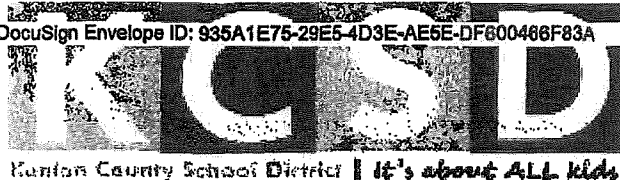
**GoGuardian:**

Signature:  \_\_\_\_\_

Signatory Name: Mike Jonas

Title: CFO

Dated: 8/31/2022



THE KENTON COUNTY BOARD OF EDUCATION 1055  
EATON DRIVE, FORT WRIGHT, KENTUCKY 41017  
TELEPHONE: (859) 344-8888 / FAX: (859) 344-1531  
WEBSITE: [www.kenton.kyschools.us](http://www.kenton.kyschools.us)  
Dr. Henry Webb, Superintendent of Schools

## **VENDOR ASSURANCES REGARDING PROTECTION OF PERSONAL AND CONFIDENTIAL INFORMATION**

### **Data Security and Breach Protocols**

Vendors that receive Personal Information from Kenton County Board of Education (herein referred to as "KCBOE") as defined by and in accordance with Kentucky's Personal Information Security and Breach Investigation Procedures and Practices Act, KRS 61.931, et seq., (the "Act"), shall secure and protect the Personal Information by, without limitation, complying with all requirements applicable to non-affiliated third parties set forth in the Act.

"Personal Information" is defined in accordance with KRS 61.931(6) as "an individual's first name or first initial and last name; personal mark; or unique biometric or genetic print or image, in combination with one (1) or more of the following data elements:

- a) An account number, credit card number, or debit card number that, in combination with any required security code, access code or password, would permit access to an account;
- b) A Social Security number;
- c) A taxpayer identification number that incorporates a Social Security number;
- d) A driver's license number, state identification card number or other individual identification number issued by any agency as defined under the Act;
- ~~e) A passport number or other identification number issued by the United States government; or f) Individually~~  
Identifiable Information as defined in 45 C.F.R. sec. 160.013 (of the Health Insurance Portability and Accountability Act), except for education records covered by the Family Education Rights and Privacy Act, as amended 20 U.S.C. sec 1232g."

As provided in KRS 61.931(5), a "non-affiliated third party" includes any person or entity that has a contract or agreement with the KCBOE and receives (accesses, collects or maintains) personal information from the KCBOE pursuant to the contract or agreement.

The vendor hereby agrees to cooperate with the KCBOE in complying with the response, mitigation, correction, investigation, and notification requirements of the Act.

The vendor shall notify as soon as possible, but not to exceed seventy-two (72) hours, KCBOE, the Commissioner of the Kentucky State Police, the Kentucky Auditor of Public Accounts, the Commonwealth (Kentucky) Office of Technology, and the Commissioner of the Kentucky Department of Education of a determination of or knowledge of a breach, unless the exception set forth in KRS 61.932(2)(b)(2) applies and the vendor abides by the requirements set forth in that exception. Notification shall be in writing on a form developed by the Commonwealth (Kentucky) Office of Technology.

The vendor hereby agrees to report to the KCBOE, immediately and within twenty-four (24) hours, any known reasonably believed instances of missing data, data that has been inappropriately shared, or data taken off site.

The vendor hereby agrees that the KCBOE may withhold payment(s) owed to the vendor for any violation of the Act's notification requirements.

The vendor hereby agrees to undertake a prompt and reasonable investigation of any security breach as defined under the Act in accordance with KRS 61.933.

Revised 01/26/2022

Upon conclusion of an investigation of a security breach as defined under the Act as required by KRS 61.933, the vendor hereby agrees to an apportionment of the costs of the notification, investigation, and mitigation of the security breach.

In accordance with KRS 61.932(2)(a), the vendor shall implement, maintain, and update security and breach investigation procedures that are appropriate to the nature of the information disclosed, that are at least as stringent as the security and breach investigation procedures and practices established by the Commonwealth (Kentucky) Office of Technology and that are reasonably designed to protect the Personal Information from unauthorized access, use, modification, disclosure, manipulation, or destruction.

### **Student Data Security**

Pursuant to KRS 365.734, if the vendor is a cloud computing service provider (which is defined pursuant to KRS 365.734(1)(b) as any person or entity other than an educational institution that operates cloud computing services) or, through service to the KCBOE, becomes the equivalent of a cloud computing service provider, the vendor further hereby agrees that:

- The vendor shall not process student data as defined pursuant to KRS 365.734 for any purpose other than providing, improving, developing, or maintaining the integrity of its cloud computing services, unless the vendor receives express permission from the student's parent. The vendor shall work with the KCBOE to determine the best method of collecting parental permission.
- With a written agreement for educational research, the vendor may assist the KCBOE to conduct educational research as permitted by the Family Education Rights and Privacy Act of 1974, as amended, 20 U.S.C. sec. 1232g.
- Pursuant to KRS 365.734, the vendor shall not in any case process student data to advertise or facilitate advertising or to create or correct an individual or household profile for any advertisement purposes. • Pursuant to KRS 365.734, the vendor shall not sell, disclose, or otherwise process student data for any commercial purpose.
- Pursuant to KRS 365.734, the vendor shall certify in writing to the agency that it will comply with KRS 365.734(2).

### **Family Educational Rights and Privacy Act, National School Lunch Act and Child Nutrition Act**

If during the course of this agreement, the KCBOE discloses to the vendor any data protected by the Family Educational Rights and Privacy Act of 1974 (FERPA), as amended (20 U.S.C. sec. 1232g, *et seq.*), and its regulations, and data protected by the Richard B. Russell National School Lunch Act (NSLA) (42 U.S.C. sec. 1751 *et seq.*), and the Child Nutrition Act of 1966 (CNA) (42 U.S.C. sec. 1771 *et seq.*), the vendor agrees that it is bound by and will comply with the confidentiality, security and redisclosure requirements and restrictions stated in FERPA, NSLA and CNA.

The vendor hereby agrees to report to the KCBOE, immediately and within twenty-four (24) hours, any known reasonably believed instances of missing data, data that has been inappropriately shared, or data taken off site.

The vendor agrees that FERPA-protected information is confidential information. FERPA-protected information includes, but is not limited to the 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, other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name, and 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.

The vendor understands and acknowledges that any unauthorized disclosure of confidential information is illegal as provided in FERPA and in the implementing federal regulations found in 34 CFR, Part 99. The penalty for unlawful disclosure is a fine of not more than \$250,000 (under 18 U.S.C. sec. 3571) or imprisonment for not more than five years (under 18 U.S.C. sec. 3559), or both.

The vendor understands and acknowledges that children's free and reduced price meal and free milk eligibility information or information from the family's application for eligibility, obtained under provisions of the NSLA or the CNA is confidential information and that any unauthorized disclosure of confidential free and reduced price lunch information or information from an application for this benefit is illegal. The penalty for unlawful disclosure is a fine of not more than \$1,000.00 (under 7 C.F.R. 245.6) or imprisonment for up to one year (under 7 C.F.R. 245.6), or both.

In the event there is a conflict between this agreement and any other agreement between KCBOE and Vendor, the terms of this agreement shall apply.

Liminex, Inc. doing business as GoGuardian and acting on behalf of itself and its Affiliates, including Pear Deck, Inc.

Vendor Name

2030 E Maple Ave., Suite 100, El Segundo, CA 90245

Vendor Address

(888) 310-0410

Vendor Telephone

ar@goguardian.com

Vendor Email Address

DocuSigned by:

Mike Jonas

66D8C493E78744E

Signature by Vendor's Authorized Representative

Mike Jonas

Print Name

8/31/2022

Date



# Liminex Products Terms of Service and End User License Agreement

Last Updated Date: November 9, 2021

## Introduction

Welcome! Before using any of our Offerings, please take the time to review this combined Terms of Service and End User License Agreement (EULA), together with any applicable Order Form(s), the Product Privacy Policy, and, if applicable, the Data Processing Addendum (collectively, the "Agreement"). Capitalized words have the definitions set forth throughout this Agreement, including in Section 17 (Definitions).

***When does this Agreement apply?*** This Agreement governs the use of the Offerings and is a binding contract between School (sometimes referred to as "School," "you," or "your") and Liminex, Inc. doing business as GoGuardian, and acting on behalf of itself and its Affiliates ("Liminex", "we," "us", or "our"). This Agreement is distinct from our Website Terms of Service, which governs only use of our Website.

BY CLICKING AN "I AGREE" OR "I ACCEPT" BUTTON; EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT; COMPLETING THE REGISTRATION PROCESS; OR INSTALLING OR USING ANY OFFERINGS IN ANY WAY, SCHOOL AGREES TO THE TERMS OF THIS AGREEMENT. IF THE INDIVIDUAL ACCEPTING THIS AGREEMENT IS ACCEPTING THIS AGREEMENT ON BEHALF OF A SCHOOL, SCHOOL DISTRICT, CORPORATION, ORGANIZATION OR OTHER LEGAL ENTITY, SUCH INDIVIDUAL REPRESENTS AND WARRANTS THAT THEY ARE AT LEAST EIGHTEEN (18) YEARS OLD AND HAVE THE AUTHORITY, THE RIGHT, AND THE CAPACITY TO LEGALLY BIND SUCH SCHOOL, SCHOOL DISTRICT, CORPORATION, ORGANIZATION OR OTHER LEGAL ENTITY AND ITS AFFILIATES TO THIS AGREEMENT, IN WHICH CASE THE TERM "SCHOOL" SHALL REFER TO EACH SUCH ENTITY AND ITS AFFILIATES.

You are free to reject this Agreement, but if you do not agree with all of the provisions of this Agreement, then you may not use any of our Offerings in any way.

#### IMPORTANT NOTICES:

- Section 15.2 contains provisions governing how claims are resolved between us, including a requirement for binding arbitration and class action waiver.
- You understand that use of some of our Offerings may require the consent for monitoring and recording Information and communications of all users on the Managed Devices or Accounts under Applicable Law. You represent and warrant that you have obtained such requisite consent.
- We may make non-material modifications to this Agreement or changes that expand our obligations, reduce your obligations, or introduce a new product offering immediately without notice to you. Otherwise, we will only modify or replace this Agreement, after providing notice to you in accordance with Section 16.1. You are responsible for regularly reviewing your Account and our Website for any changes to the Agreement.
- Your use of, and participation in, certain Offerings may be subject to additional terms ("Supplemental Terms") and such Supplemental Terms will either be listed in this Agreement, an Order Form or will be presented to you for your acceptance when you sign up to use the supplemental Offerings. If this Agreement is inconsistent with the Supplemental Terms, the Supplemental Terms will control with respect to the Offerings with which it applies.

*1. We have included, in italics at the beginning of each section, summaries that provide short explanations of the legal language in plain English to aid in understanding, but such summaries are not legally binding.*

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# 1. GETTING ACCESS TO AND STARTED WITH OUR OFFERINGS

*1. This Section explains how to establish and maintain Account(s). This Section describes the importance of being mindful about the information and settings in an Account – the value of our tools is dependent on the accuracy of the information you provide and the proper selection of product settings.*

We generally make our Offerings available on a paid subscription-based license. As further described in Section 4.1, from time to time and in its sole discretion, we may offer limited free, trial or beta Offerings at no additional charge.

## 1.1 Ordering

You may obtain Subscriptions to our Offerings either directly from us or one of our Affiliates or indirectly through one of our Authorized Resellers. If you purchase a Subscription to an Offering through an Authorized Reseller, you will enter into an Order Form directly with such Authorized Reseller and may be subject to additional terms as agreed upon between you and the Authorized Reseller. You expressly agree that this Agreement governs your access to and use of any Offering that you acquire from an Authorized Reseller, as well your relationship with us as to any products or services you purchase through an Authorized Reseller. You further agree that we and our Affiliates have the right to enforce the terms of this Agreement with respect to such purchases. You also acknowledge that no Authorized Reseller is authorized to provide warranties with respect to any Offerings in excess of those provided by us in this Agreement. The terms regarding any value-added services provided to you by an Authorized Reseller are solely between you and the Authorized Reseller and we have no responsibility for any such services.

If during the Subscription Term, you would like to expand your base Subscription(s) to include additional licenses above your Licensed Capacity, please contact us so that we can send you an ~~additional Order Form for those Add-Ons. If we do not hear from you and you deploy additional~~ Licenses, we or, as applicable, an Authorized Reseller will send you an Order Form and Invoice you for the subscriptions to the Add-Ons that you use above your Licensed Capacity. Add-Ons, once deployed and paid, will be rolled into your base Subscription.

## 1.2 Accounts

Before accessing certain Offerings, you may be required to create an Account. When setting up your Account, you may link your Offerings with your Google and/or Microsoft account for ease of sign on and, for certain Offerings, to pull in a directory of Managed Accounts or Devices. In linking your Account to your Google and/or Microsoft account, you are granting us access to certain account information from your Google and/or Microsoft account, as permitted under the applicable terms and conditions that govern your use of that Google or Microsoft account.

### 1.2.1 Authorized Users

Within your Account, you may have the ability to enable separate sub-accounts for Authorized Users. You are responsible for issuing and maintaining such sub-accounts only for appropriate Authorized Users, as well as issuing and maintaining appropriate permission settings for each Authorized User.

## **1.2.2 School Information**

When creating an Account, you agree to (a) provide true, accurate, current and complete information necessary to create the Account and to deploy the Offerings you have subscribed to on Managed Devices or Accounts; and (b) promptly update any such Information to maintain its accuracy and completeness during the Term. Without limiting the generality of the foregoing, you agree to provide and maintain accurate, up-to-date and complete Profile Information, and for Accounts, Authorized School Personnel Information, Personal Student Information, Parent/Guardian Information, and Association Data. You acknowledge and agree that proper implementation and operation of certain Offerings depends largely on the accuracy, completeness and timeliness of the Personal Student Information, Parent/Guardian Information and Association Information ingested into the product; therefore, it is of the utmost importance that you take great care in maintaining and updating this Personal Student Information, Parent/Guardian Information and Association Information at all times during the Term.

You are responsible for ensuring the confidentiality and security of School Account Information, including protecting, and requiring your Authorized Users to protect, usernames and passwords associated with your Account, and notifying us immediately if you suspect or know that (1) a username and password is known by someone other than the applicable Authorized User; and/or (2) your Account (including any individual Authorized User account) has been compromised.

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## **1.2.3 Account Settings**

You are responsible for selecting and updating the settings in the Offerings you subscribe to as you see fit and ensuring that the selections comply with all Applicable Law, as well as any guidelines and requirements you have established, including, with respect to use of the GoGuardian Offerings, for monitoring Managed Devices or Accounts and parents' or guardians' authorization of such monitoring. If you have questions about any settings in an Offering or your Account, such as permissions and settings associated with Managed Devices or Accounts, please visit, as applicable, the GoGuardian Help Center and/or contact [support@goguardian.com](mailto:support@goguardian.com), or visit the Pear Deck Help Center and/or contact [support@peardeck.com](mailto:support@peardeck.com), or visit the Edulastic Help Center and/or contact [support@edulastic.com](mailto:support@edulastic.com).

## **1.3 Payment Terms**

Fees due for initial orders, any Add-Ons to, and any subscription renewals of Offerings shall be set forth in the applicable Order Form ("Fees"). Fees for Subscriptions you purchase directly from Liminex or one of its Affiliates shall be paid within thirty (30) days of the date of our issuance of an Invoice for such purchases, unless otherwise stated on an Order Form. Payment obligations for purchases made through an Authorized Reseller shall be as agreed upon by you and the Authorized Reseller.

Fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction; you are responsible for paying all such taxes, levies, duties and assessments associated with purchases and transactions under this Agreement.

Unless otherwise stated on an Order Form, Fees are paid in advance of each billing period. Payment obligations under this Agreement are non-cancelable and all Fees paid are non-refundable. Upon your cancellation or termination of any Subscription, you remain responsible for payment of all Fees allocable to the terminated portion of the Subscription Term referenced in the applicable Order Form without any refund owed to you, unless otherwise mutually agreed to in writing between you and us.

Upon notice to you, we may increase any Fees specified in an Order Form, provided the increase will not become effective until the expiration of the current Subscription Term. We may increase any Fees that are not specified in an Order Form at any time, with or without notice to you. We may allow you to continue using a free, trial or beta Offering on a paid Subscription basis, but your continued use and your Subscription would be subject to a completed Order Form and payment of the applicable Fee.

For certain Offerings, we will endeavor to notify you if your paid Account has delinquent fees. If delinquent fees are not paid, we will suspend your use of the Services.

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## 2. OFFERINGS

*1. This Section explains more about the Offerings, including updates to such offerings and linkages with other third party integration software that we make available to you. Offerings may experience downtime or we may suspend access to Offerings in certain situations.*

### 2.1 Access and Updates to Offerings.

We will make our Offerings to which you have subscribed available to you, subject to the terms of this Agreement. From time to time, we may also make updates to the Offerings available to you. You agree that we may automatically install or add updates, upgrades, and new features to the Offerings that we deem to be reasonable, beneficial to you, and/or reasonably necessary without advance notice to you. You acknowledge and agree that any obligation we may have to support previous version(s) of any Offering may end when we release an update, upgrade, and/or additional feature for the Offering. The license granted for a Subscription shall apply to any updates, upgrades, and/or additional features that are not distributed with a separate license or other agreement. If we make any material changes to an Offering, we will notify you within the Offering interface or by sending you an email.

With respect to an Offering accessed through or downloaded from the Apple App Store, Google Play Store, or Microsoft Store (each, an "App Store") (an "App Store Sourced Application"), you

acknowledge and agree that the availability of the App Store Sourced Application is dependent on the App Store.

## **2.2 Downtime and Suspension of Offerings.**

You acknowledge that you may experience downtime (a) as a result of our conducting maintenance; or (b) in connection with a force majeure event (as described in Section 16.5). In addition, you acknowledge that we, may at our discretion, suspend your access to the Offerings for your breach of this Agreement, if we have reasonable grounds to suspect that any School Account Information provided by you or any Authorized User is untrue, inaccurate, not current or incomplete, or if we deem it reasonably necessary to avoid or mitigate harm to us, you, any other of our customers or a third party if the Offerings were not suspended, or to comply, in our sole discretion, with legal requirements.

## **2.3 Integrations with Offerings.**

We may allow you to access certain third party software or offerings through your Account via an application programming interface ("API") or other technical connection (such software or offering, an "Integration Offering"). Because you control whether to integrate and use an Integration Offering, you are solely responsible for all interactions with the Integration Offering, including ensuring appropriate privacy, contractual, and other protections with it as well as ensuring that you are complying with any terms you are required to agree with the provider of such Integration Offering. Integration Offerings are not "Offerings" under this Agreement and are not subject to any of the warranties, service commitments or other obligations with respect to Offerings hereunder. The availability of any Integration Offering through any of our Offerings does not imply our endorsement of or affiliation with the provider of such Integration Offering. We do not control any Integration Offering and will have no liability to you in connection with any Integration Offering. We have no obligation to monitor or maintain access to Integration Offerings, and may disable the ability to integrate with them or restrict access to any Integration Offerings at any time, with or without notice to you (though we, of course, will endeavor to provide notice of any such disabling whenever reasonably practicable under the circumstances). By using or enabling any Integration Offering, you are expressly permitting us and our Affiliates to disclose your Profile Information, and, to the extent applicable to your Offering, your Authorized School Personnel Information, Personal Student Information, Parent/Guardian Information, Association Information or other information, including support requests and Log and Cookie Information to the extent necessary to utilize the Integration Offering. YOUR USE OF ANY INTEGRATION OFFERINGS IS AT YOUR OWN RISK AND IS SUBJECT TO ANY ADDITIONAL TERMS, CONDITIONS AND POLICIES APPLICABLE TO SUCH INTEGRATION OFFERINGS (SUCH AS TERMS OF SERVICE OR PRIVACY POLICIES OF THE PROVIDERS OF SUCH INTEGRATION OFFERINGS).

# 3. YOUR USE OF OFFERINGS AND YOUR RESPONSIBILITIES

*i. This Section explains that Liminex licenses our Offerings to you for certain uses. Please use our Offerings responsibly and appropriately.*

## 3.1 License Grant to You; Restrictions

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We hereby grant to you a limited, non-exclusive, non-transferable, non-sublicensable, revocable license and right to use the specific Offering(s) set forth in an Order Form and the related User Documentation, during the Subscription Term and solely for School's internal business purposes.

The rights granted to School in this Agreement are subject to the following restrictions: School shall not (a) license, sell, rent, lease, transfer, reproduce, distribute, host or otherwise commercially exploit any portion of any Offering or User Documentation, or otherwise provide access to any portion of any Offering or User Documentation to any third party (other than Authorized Users, when and as permitted herein); (b) frame or utilize framing techniques to enclose any trademark, logo, or other portion of any Offering (including images, text, page layout or form); (c) use any metatags or other "hidden text" using the names or trademarks of Liminex or any of its Affiliates; (d) modify, translate, adapt, merge, make derivative works of, disassemble, decompile, reverse compile or reverse engineer any part of any Offering or User Documentation; (e) use any manual or automated software, devices or other processes (including but not limited to spiders, robots, scrapers, crawlers, avatars, data mining tools or the like) to "scrape" or download data from any web pages contained in any Offering or User Documentation; (f) access any Offering or User Documentation in order to build a similar or competitive website, product or service; (g) access any Offering for purposes of monitoring its availability, performance or functionality, or for any other benchmarking or competitive purposes without our prior written permission; and (h) remove any copyright notices or other proprietary markings contained on or in any Offering or User Documentation. Any future release,

update or other addition to any Offering shall be subject to this Agreement. We and our suppliers reserve all rights not granted in this Agreement. Any unauthorized use of an Offering terminates your right to use all Offerings.

## 3.2 School Responsibilities

School will (a) be responsible for Authorized Users' compliance with this Agreement (including any applicable Order Form) and the User Documentation, (b) be responsible for the accuracy, quality and legality of School Account Information, and the means by which School acquires School Account Information, Activity Information, Personal Student Information, Parent/Guardian Information, and Log and Cookie Information and School's use of any such information, (c) use commercially reasonable efforts to prevent unauthorized access to or use of the Offerings, and notify us promptly of any such unauthorized access or use, (d) use the Offerings only in accordance with this Agreement, User Documentation, and all Applicable Law, and (e) comply with the terms of service of any Integration Offering with which School uses an Offering. Any use of an Offering in breach of the foregoing by School or any Authorized User that in our judgment threatens the security, integrity, or availability of an Offering may result in immediate suspension of access to any or all Offerings.

School acknowledges that it is solely responsible for compliance with any legal or policy obligations related to the protection of the well-being of its students and that it understands that certain Offerings are only intended to be a tool to assist School as part of a broader program intended to fulfill any legal or policy obligations, to the extent applicable. For example, the Liminex Parties make no representation or warranty that any of the GoGuardian Offerings, alone or in combination with any other efforts, will be effective in detecting or stopping suicide, violence to self or others, or any other kind of risky behavior by a student of School or any other individual. We are not responsible for, and School expressly waives any claim for liability against the Liminex Parties related to, any student or other individual's death, illness, bodily injury, disability, emotional distress or other outcome. To the maximum extent permissible by law, such waiver shall extend to any School personnel, student, student family, estate or other third parties. To the extent that any Liminex Party is made a party to any dispute related to any such death, illness, bodily injury, disability, or other outcome, School shall indemnify us in accordance with Section 13, below.

## 3.3 General Acceptable Use Policy

We need your help to ensure that the Offerings are used safely and appropriately. You agree, represent and warrant that you and your Authorized Users will not use any Offering:

- On any computers and/or accounts on which you do not have permission to operate and on which the Offerings cannot be legally and rightfully operated.
- To do anything, including posting information that is abusive, harmful, threatening, harassing, libelous, bullying, stalking, or otherwise objectionable.
- To do anything unlawful, deceptive, misleading, illegal, unethical, malicious, or discriminatory.
- To intentionally violate another person's privacy rights under Applicable Law.
- For commercial purposes (beyond School's internal business purposes).



- To do anything to burden, compromise, or interfere with any Offering, its appearances, security, or functionality.
- In any way that jeopardizes the security of your or any other party's account.
- To advertise, solicit, or transmit commercial advertisements, including without limitation, junk e-mail, spam, or any other unsolicited messages regardless of the medium (e.g., email, text, SMS, chat, etc.).

School is responsible for any failure by any Authorized User to comply with this General Acceptable Use Policy.

## **4. SPECIAL TERMS FOR FREE, TRIAL AND BETA OFFERINGS**

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*i. This Section explains that we may make free, trial, or beta offerings available for you to test and provide us with Feedback about whether an Offering meets your needs. Because these Offerings are different from paid Subscriptions, there are special terms for them.*

### **4.1 Free or Trial Subscriptions**

If we make an Offering available to you on a free or trial basis, it is so you can use the Offering before purchasing a Subscription to determine if it meets your needs. Trial subscriptions to an Offering shall be subject in all respects to the terms of this Agreement, except that to the extent permitted by Applicable Law, we (a) may discontinue the Offering or your ability to use it at any time, with or without notice and without any further obligations to you; (b) provide the Offering to you solely "AS IS" without any warranties of any kind; and (c) will have no liability for any harm or damages suffered by you or any third party in connection with the use or inability to use the Offering during the trial period.

### **4.2 Beta Offerings**

We sometimes make new Offerings or features within existing Offerings available on a beta basis ("Beta Offerings"). Beta Offerings are generally prerelease or untested products or features. Features or offerings labeled as "alpha," "beta," or "test" within the interface of an Offering are beta

Offerings subject to this Section. Unless otherwise agreed in writing by us, any Offering or feature provided as a beta Offering shall be subject in all respects to the terms of this Agreement, except that to the extent permitted by Applicable Law, we (a) may discontinue the beta Offering or feature or your ability to use it at any time, with or without notice and without any further obligations to you (though we, of course, will endeavor to provide notice of any such disabling whenever reasonably practicable under the circumstances); (b) provide the beta Offering or feature to you solely "AS IS" without any warranties of any kind; and (c) will have no liability for any harm or damages suffered by you or any third party in connection with the use or inability to use the beta Offering or feature during the beta period. Additionally, as consideration for access to and use of any beta Offering, you agree to (1) treat the beta Offering as our Confidential Information; and (2) provide regular Feedback about the beta Offering, if requested.

## 5. TERM, TERMINATION

*i. This Section explains the duration of this Agreement as well as your and our' obligations after this Agreement ends.*

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### 5.1 Term

Unless terminated earlier in accordance with the terms of this Agreement, the Term commences on the Effective Date and continues until all of your Order Forms and Subscription Terms expire.

### 5.2 Termination

Either party may terminate this Agreement (a) if the other party is in material breach of this Agreement and fails to cure such breach within thirty (30) days after its receipt of notice thereof, or (b) upon thirty (30) days' notice to the other party. School shall continue to be responsible for all Fees for the terminated Subscription Term and other Fees agreed to in the Order Form except to the extent School terminates this Agreement as a result of our uncured material breach or we terminate this Agreement without cause (i.e., not as a result of School's uncured material breach), in which cases School shall not be obligated to pay for (and shall be entitled to a refund by us of) the Fees allocable to the unused portion of the Subscription Term.

## 5.3 Effect of Termination or Expiration

Upon termination or expiration of this Agreement, you will have no rights to continue use of (or to provide your Authorized Users with access to) the Offerings or User Documentation, and you immediately will cease accessing and/or using the Offerings and User Documentation, including by, where applicable, erasing and/or uninstalling all downloaded or copied versions of any Offerings and User Documentation, and returning to us or destroying any accompanying User Documentation in your possession or control. The following will survive any expiration or termination of this Agreement: Sections 1.2, 1.3 (for Fees incurred during the Term), 2.3, 3 (except as otherwise set forth therein), 5.2, 5.3, 6, 7, 8, 10, 11, 12, 13, 14, 15, and 16.

# 6. INTELLECTUAL PROPERTY

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*i. This Section explains that we ask that you please protect our and others' intellectual property.*

## 6.1 Ownership

We or our Affiliates (or their licensors) own all right, title and interest in and to the Offerings (including, but not limited to, all photographs, animations, statistics, graphics, text, and any other materials contained therein), the Liminex Information, including, without limitation, all intellectual property rights therein. Subject to the limited rights expressly granted to you under this Agreement, we and our Affiliates reserve all rights, title and interest in and to the Offerings and the Liminex Information, including, without limitation, all related intellectual property rights. The service marks, logos and product and service names of Liminex and its Affiliates (the "Liminex Marks") are owned by Liminex and our Affiliates. You agree not to display or use any Liminex Marks in any manner without our prior written permission. Any trademarks, service marks and logos associated with an Integration Offering may be the property of the third party provider, and you should consult with their trademark guidelines before using any of their marks.

## 6.2 Feedback

Any and all of your feedback about us or the Offerings, such as suggestions, whether made by you or any of your Authorized Users, for corrections, updates, alterations, changes, or modifications to

the Offerings ("Feedback") will be our property and you hereby assign any rights in such Feedback to us, without payment to you.

## 6.3 Protection of Our Rights

You agree to protect our Intellectual property and proprietary rights and any provider of an Integration Offering you access in connection with an Account, and notify us of any unauthorized access or use of the Offerings or Integration Offerings of which you become aware.

# 7. CONFIDENTIALITY

*i. This Section explains that each party must respect each other's Confidential Information.*

As a reminder, our Product Privacy Policy explains our commitment to protecting School Account Information, Personal Student Information, Parent/Guardian Information, Activity Information and/or Log and Cookie Information, and nothing in this Section 7 limits the parties' respective rights or obligations under the Product Privacy Policy or Section 8, below. A party will not disclose or use any Confidential Information of the other party except: (a) as reasonably necessary to perform its obligations or exercise any rights granted pursuant to this Agreement; (b) with the other party's prior written permission; or (c) to the extent required by law or order of a court or other governmental authority or regulation. Each party agrees to protect the other party's Confidential Information in the same manner that it protects its own Confidential Information of like kind, but in no event using less than a commercially reasonable standard of care consistent with Applicable Law. Notwithstanding any exceptions in the definition of Confidential Information, the parties agree to treat all Education Records as Confidential Information and disclosure thereof is allowed only to the extent permitted under FERPA.

# 8. PRIVACY AND DATA

*i. This Section explains that the parties each have responsibilities to help protect the privacy of data ingested or maintained in the Offerings. The Product Privacy Policy explains, in more detail, how we protect information.*

## 8.1 Our Privacy Responsibilities

Our Product Privacy Policy, incorporated herein by reference, explains how we collect, use, share, and safeguard School Account Information, Personal Student Information, Parent/Guardian Information, Activity Information and/or School Log and Cookie Information accessed, recorded and collected through the Offerings, including any free, trial or beta Offerings. We rely on consent

obtained from School, acting as an agent of the parent(s) or legal guardian(s) of School's students, as permitted by the Children's Online Privacy Protection Act ("COPPA") for using Offerings in connection with students under thirteen (13) years of age, if any, through a COPPA Notice and Disclosure Form we provide to you. For transparency and informational purposes, we also distribute this COPPA Notice and Disclosure Form to Subscription purchasing Schools with children of all ages, including ones who do not have students under thirteen (13) years of age. To the extent School is located in the European Union ("EU"), European Economic Area ("EEA"), or Switzerland, our Data Processing Addendum also applies to your use of the Offerings. School hereby authorizes us to use School Account Information in accordance with this Agreement, the Product Privacy Policy and, to the extent applicable, the Data Processing Addendum.

## **8.2 School Privacy Responsibilities**

You represent and warrant that your collection, provision and use of School Account Information, Personal Student Information, Parent/Guardian Information, Activity Information and/or Log and Cookie Information through and in connection with the Offerings does not violate any Applicable Laws or rights of any third party. Without limiting the foregoing, to the extent you are using the Offerings, you represent and warrant that you have obtained all requisite consent for monitoring and recording information and communications, including the Activity Information. You are solely responsible for notifying the appropriate individuals about the existence of any Offerings on the Managed Devices or Accounts they use and/or in connection with their accounts associated with School's Account and obtaining any required consent from such individuals in accordance with Applicable Law. Even if not required by Applicable Law, we recommend that you notify all users of Managed Devices or Accounts and their respective parents/guardians, teachers, and other appropriate staff about your use of Offerings. More specifically, we recommend that you provide such persons with a copy of our Product Privacy Policy, our COPPA Notice and Disclosure Form, and with respect to GoGuardian Offerings, GoGuardian's form Parental Letter, and any other parental information made available by us.

## **8.3 Educational Records; FERPA**

Where School is located in the United States and to the extent we collect, through the provision or maintenance of any Offerings, any information that constitutes an Education Record, the parties agree that we are acting as a "school official" with "legitimate educational interests" in School's students' Education Records under FERPA, or if applicable, is acting under another applicable FERPA exception listed in under FERPA regulation 34 C.F.R. § 99.31(a)(1), such as the "directory information" exception. School acknowledges and agrees that we may process School Account Information, Personal Student Information, Parent/Guardian Information, Activity Information and/or School Log and Cookie Information for the purpose of providing the Offerings and related functions. Our Product Privacy Policy explains how we cooperate with School under FERPA to fulfill Education Records requests directed from School (or through School from parents/guardians or eligible students). School represents and warrants that it is authorized to process such information, including any Education Records contained therein, and make such information available to us as set out in this Agreement and the Product Privacy Policy.

## 8.4 Data-Related Disputes

School is solely responsible for resolving disputes between it and third parties regarding ownership or access to any School Account Information, and any Personal Student Information, Parent/Guardian Information, Activity Information and/or School Log and Cookie Information, including any dispute with any Authorized User, user of a Managed Device or Account, or their families. School acknowledges and agrees that we have no obligation to resolve or intervene in such disputes.

## 8.5 Disclosure of School Information

You acknowledge, consent, and agree that we may access, preserve, and disclose your School Account Information, Personal Student Information and Parent/Guardian Information, Activity Information and/or School Log and Cookie Information if required to do so by law or in a good faith belief that such access, preservation, or disclosure is reasonably necessary to: (a) comply with legal process; (b) to enforce this Agreement or the Product Privacy Policy; (c) respond to claims that any content violates the rights of third parties; (d) respond to your requests for customer service; or (e) protect the rights, property, or personal safety of us, our users, and/or the public.

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# 9. ALERTS AND NOTIFICATIONS

**This section applies to the GoGuardian Offerings only.**

*i. This Section explains that some GoGuardian Offerings are designed to generate alerts and/or have other notification features, and that, through your settings, you have some ability to control whether to receive certain alerts and/or notifications. It is important for you to understand these features and settings, and to review alerts and notifications carefully and promptly so that you can properly intervene to help students stay safe.*

Some GoGuardian Offerings contain features that generate alerts and/or notifications for School or a designated Authorized User's review and attention related to a user's activity through a Managed Device or Account. These alerts and notifications are tools designed to help you support and protect the wellbeing of your students and school community. If you receive an alert and/or gain access to any information that triggers a legal obligation, such as a reporting or intervention duty for you (including, for an example, an alert from a GoGuardian Offering that one of your students is potentially at risk of suicide), it is your sole responsibility to fulfill that legal obligation and take any additional, responsible actions necessary to safeguard the students in compliance with Applicable

Law. In addition, to the extent you elect not to receive one or more types of alerts and/or notifications in your settings, you are solely responsible for that decision. Unless otherwise specified in the Supplemental Terms, we do not review alerts generated through any of the Offerings or take any action based on these alerts or review your settings.

Your escalation and notification list for such alert and/or notification feature in your account for a particular GoGuardian Offering may change from time to time, including because contact information changes (e.g., changes in School's Profile Information, its Authorized School Personnel Information, Personal Student Information and Parent/Guardian Information (e.g., contact information, including an Authorized User's email address, or changes in Parent/Guardian Information ), and Association Information, including, for example, the relationship of an Authorized School Personnel or a guardian/parent to a child/student changes (e.g., change in guardianship or educational rights holder). Without limiting the generality of Section 1.2.1, it is important that you maintain accurate and up-to-date Authorized School Personnel Information, Personal Student Information, Parent/Guardian Information, and Association Information to ensure the appropriateness and timeliness of any alerts and notifications generated through a GoGuardian Offering. It is also important that you remind parents/guardians to update School of any changes, including contact information and guardianship.

Additionally, without limiting the generality of the other terms of this Agreement, if your School uses GoGuardian Beacon or GoGuardian Admin (the self harm smart alerts or Beacon starter function), your School represents and warrants that your School: (1) is solely responsible for having, to the extent legally required, an up-to-date and easily available suicide prevention policy; (2) is solely responsible for having, to the extent legally required, a necessary suicide prevention program; and (3) your School will notify parents/guardians about your School's adoption of GoGuardian Beacon and educate them about suicide prevention (including, suicide risk factors, warning signs, and resources) before enabling the Guardian Notification feature (or similar functionality) of GoGuardian Beacon or GoGuardian Admin (the self harm smart alerts or Beacon starter function).

# **10. CONTENT, COPYRIGHT POLICIES, AND**

# COMMUNITY GALLERIES

*i. This Section explains how content is used in certain Offerings and the rights to such content.*

## 10.1 Content in the Services Generally.

10.1.1 You understand that all information (such as data files, fonts, written text, computer software, music, audio files, image files or other sounds, photographs, videos or other images) which you may have access to as part of, or through your use of, any Offerings ("Content") is the sole responsibility of the person from which such Content originated. All such Content that is uploaded into or generated in any Offerings by or on behalf of you or your Authorized Users shall be referred to herein as "Your Content".

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10.1.2 You should be aware that Content, other than Your Content, made available as part of any Offerings, including but not limited to third party-advertisements and sponsored-Content, may be protected by intellectual property rights which are owned by the third party that provided that Content to us (or by other persons or companies on their behalf). You may not modify, rent, lease, loan, sell, distribute or create derivative works based on such Content (either in whole or in part) unless you have been specifically told that you may do so by us or by the owners of such Content, in a separate agreement.

10.1.3 We reserve the right (but shall have no obligation) to pre-screen, review, flag, filter, modify, refuse or remove any or all Content, including Your Content, from any Offering.

10.1.4 You understand that by using any Offering, you may be exposed to Content that you may find offensive, indecent or objectionable and that, in this respect, you use any Offering at your own risk.

10.1.5 You agree that you are solely responsible for (and that neither Liminex nor any Liminex Parties from which you purchased any Offerings have any responsibility to you or to any third party for) any Content that you create, transmit or display while using any Offering and for the consequences of your actions (including any loss or damage which any Liminex Party may suffer) by doing so.

## 10.2 License to Your Content



10.2.1 You retain copyright and any other rights you already hold in Your Content that you submit, share, upload, post or display on or through, any Offering. By submitting, sharing, uploading, posting, or displaying Your Content you hereby grant to Liminex and our Affiliates a worldwide, royalty-free, and non-exclusive license to reproduce, adapt, modify, translate, publish, publicly perform, publicly display, and distribute Your Content, solely for the purpose of enabling Liminex and our Affiliates to provide you with any Offering in accordance with the terms of this Agreement and the Product Privacy Policy.

10.2.2 You understand that, in performing the required technical steps to provide any Offering to our users, we may (a) transmit or distribute Your Content over various public networks and in various media; and (b) make such changes to Your Content as are necessary to conform and adapt that content to the technical requirements of connecting networks, devices, services or media. You agree that this license shall permit us to take these actions.

10.2.3 You confirm and warrant that you have all the rights, power and authority necessary to grant the above license. You agree that you will not submit, share, upload, post or display any Content on or through, any Offering that is copyrighted, protected by trade secret or otherwise subject to third party proprietary rights, including privacy and publicity rights, unless you are the owner of such rights or have permission from their rightful owner to submit, share, upload, post or display such Content and to grant Liminex all of the license rights granted in this Section.

## 10.3 Copyright Policies

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10.3.1 It is our policy to terminate access privileges of any users who repeatedly infringe copyright(s) embedded or used in connection with our Offerings upon prompt notification to Liminex by the copyright owner or the copyright owner's legal agent. Without limiting the foregoing, if you believe that your work has been copied and posted on or within the Offerings in a way that constitutes copyright infringement, please provide our Copyright Agent with the following information: (a) an electronic or physical signature of the person authorized to act on behalf of the owner of the copyright interest; (b) a description of the copyrighted work that you claim has been infringed; (c) a description of the location on or within the Offerings of the material that you claim is infringing; (d) your address, telephone number and e-mail address; (e) a written statement by you that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent or the law; and (f) a statement by you, made under penalty of perjury, that the above information in your notice is accurate and that you are the copyright owner or authorized to act on the copyright owner's behalf. Contact information for Liminex's Copyright Agent for notice of claims of copyright infringement is as follows:

Copyright Agent

Liminex, Inc.

2030 E Maple Ave, Suite 100

El Segundo, CA 90245

We may remove any Content from the Offering if we believe or have reason to believe such Content infringes the intellectual property rights of a third party. Without prior notice and at any time, in our sole discretion, we reserve the right to remove any Content, disable your ability to share or upload Content through the Offerings, or terminate your access to any Offerings (a) for uploading or sharing such Content in violation of this Agreement; or (b) if, under appropriate circumstances, you are determined to be a repeat infringer.

10.3.2 We reserve the right in our sole discretion to decide whether your conduct is inappropriate and whether it complies with this Agreement for violations other than copyright infringement, such as, but not limited to, pornography, obscene or defamatory material, etc. We may terminate your access for such inappropriate conduct in violation of this Agreement at any time and remove any such objectionable Content, without prior notice and at its sole discretion.

## **10.4 Third Party Websites and Resources**

10.4.1 The Offerings may include hyperlinks to other websites or resources that are controlled, owned or operated by third parties. You acknowledge and agree that we have no control over any such websites or resources and you access and use such websites and resources at your own risk.

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10.4.2 Without limiting the foregoing, you acknowledge and agree that neither Liminex, its Affiliates nor any Authorized Reseller are responsible for the availability of any such external sites or resources, and that we do not endorse any advertising, products or other materials on or available from such websites or resources.

10.4.3 You acknowledge and agree that neither Liminex, its Affiliates nor any licensor or Authorized Reseller are liable for any loss or damage which may be incurred by you as a result of the availability of those external sites or resources, or as a result of any reliance placed by you on the completeness, accuracy or existence of any advertising, products or other materials on, or available from, such websites or resources.

## **10.5 Community Galleries and Gallery Content**

10.5.1 Certain Offerings may contain galleries ("Community Galleries"), which may include Content, including templates or questions, supplied by us or third parties, including other users of any Offerings ("Other Content Users"). Community Galleries include any Content, library or gallery that we choose at our discretion to make available to you as part of the Community Galleries (such content, the "Gallery Content"). As between you and the creators of Gallery Content, any intellectual property or proprietary rights remain with the creators.

**10.5.2 The Gallery Content:** (a) is meant to serve as a suggestion only; and (b) is not a substitute for professional advice or specific, authoritative knowledge or direction. We do not promise that the Gallery Content will work for your purposes, or that it is free from viruses, bugs, or other defects. The Gallery Content is provided "as is" and without warranty of any kind. You alone bear the risk of using Gallery Content. No Liminex Party provides any express warranties, guarantees and conditions with regard to the Gallery Content. To the extent permitted under Applicable Law, the Liminex Parties expressly disclaim any and all implied warranties and conditions of merchantability, fitness for a particular purpose, workmanlike effort, title and non-infringement.

**10.5.3** If you choose to submit Your Content to become part of the Community Galleries ("Your Gallery Submission"), you direct and authorize Liminex and its affiliates to host, link to, and otherwise incorporate Your Gallery Submission into any Offering, and you hereby grant to Liminex and its Affiliates, and the Other Content Users an irrevocable, perpetual, worldwide, royalty-free, non-exclusive license to:

- (A) reproduce Your Gallery Submission or any component thereof;
- (B) create and reproduce derivative works of Your Gallery Submission [or any component thereof; or
- (C) publicly display and distribute copies of Your Gallery Submission or any components or derivatives thereof ("Your Gallery Submission License").

**10.5.4** For the avoidance of doubt, we reserve, and you hereby grant us, the right to syndicate Your Gallery Submission and to use Your Gallery Submission in connection with any of the Offerings.

While you may stop distributing Your Gallery Submission through the Community Galleries at any time, doing so will not in any way affect our right or the right of Other Content Users to exercise the rights granted to us as part of Your Gallery Submission License under this Agreement. To stop distributing Your Gallery Submission through the Community Galleries, (1) for Pear Deck Offerings, you must send an email to support@peardeck.com, in which case Your Gallery Submission will be removed in accordance with our standard procedures; and (2) for Edulastic Offerings, you must delete Your Content or change Your sharing level permissions.

**10.5.5** You represent and warrant that (a) you own or have obtained the necessary legal rights to provide Your Gallery Submissions, and will maintain these rights for as long as Your Gallery Submission is made available to Other Content Users; and (b) all of Your Gallery Submissions abide by the posted Program Policies.

**10.5.6** We claim no ownership over any of Your Gallery Submission. You retain copyright and any other rights, including all intellectual property rights, you already hold in Your Gallery Submissions. You agree that you are responsible for protecting and enforcing those rights and that we have no obligation to do so on your behalf.

**10.5.7** You agree that you are solely responsible for (and that we have no responsibility to you or to any third party for) any of Your Gallery Submissions that you submit. We are not in any way responsible for the subsequent use or misuse by any Other Content User or other third party who accesses Your Gallery Submission through any Offering or otherwise.

# **11. APP STORE SOURCED APPLICATION**

*i. This Section explains terms related to accessing and downloading an App Store Sourced Application.*

## **11.1 Accessing and Downloading an App Store Sourced Application from an App Store**

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You acknowledge that the Agreement is between you and Liminex or one of its Affiliates, and not with the App Store. We, not the App Store, are solely responsible for Offerings, the content thereof, maintenance, support services, and warranty therefor, and addressing any claims relating thereto (e.g., product liability, legal compliance or intellectual property infringement). You agree to comply with, and your license to use the Offerings is conditioned upon your compliance with all terms of agreement imposed by the applicable App Store when using the Offerings. You acknowledge that the App Store (and its subsidiaries) are third-party beneficiaries of the Agreement and will have the right to enforce it.

## **11.2 Accessing and Downloading an App Store Sourced Application from the Apple App Store**

**11.2.1** You acknowledge and agree that (a) the Agreement is concluded between you and us only, and not Apple, and (b) we, not Apple, are solely responsible for the App Store Sourced Application and content thereof. Your use of the App Store Sourced Application must comply with the Apple App Store Terms of Service. You agree to only use an App Store Sourced Application that is accessed

through or downloaded from the Apple App Store (a) on an Apple-branded product that runs the iOS (Apple's proprietary operating system) and (b) as permitted by the "Usage Rules" set forth in the Apple App Store Terms of Service.

11.2.2 You acknowledge that Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the App Store Sourced Application.

11.2.3 In the event of any failure of the App Store Sourced Application to conform to any applicable warranty, you may notify Apple, and if applicable, Apple will refund the purchase price for the App Store Sourced Application to you and to the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the App Store Sourced Application. As between the Liminex Parties and Apple, any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty will be the sole responsibility of the Liminex Parties.

11.2.4 You and the Liminex Parties acknowledge that, as between the Liminex Parties and Apple, Apple is not responsible for addressing any claims you have or any claims of any third party relating to the App Store Sourced Application or your possession and use of the App Store Sourced Application, including, but not limited to: (a) product liability claims; (b) any claim that the App Store Sourced Application fails to conform to any applicable legal or regulatory requirement; and (c) claims arising under consumer protection or similar legislation.

11.2.5 You and the Liminex Parties acknowledge that, in the event of any third-party claim that the App Store Sourced Application or your possession and use of that App Store Sourced Application infringes that third party's intellectual property rights, as between the Liminex Parties and Apple, the Liminex Parties, not Apple, will be solely responsible for the investigation, defense, settlement and discharge of any such intellectual property infringement claim.

11.2.6 The parties acknowledge and agree that Apple, and Apple's subsidiaries, are third-party beneficiaries of the Agreement as related to your license of the App Store Sourced Application, and that, upon your acceptance of the terms and conditions of the Agreement, Apple will have the right (and will be deemed to have accepted the right) to enforce the Agreement as related to your license of the App Store Sourced Application against you as a third-party beneficiary thereof.

11.2.7 Without limiting any other terms of the Agreement, you must comply with all applicable third-party terms of agreement when using the App Store Sourced Application.

# 12. WARRANTIES, DISCLAIMER, AND RELEASE

*I. This Section explains that we strive to provide you with our Offerings with a certain level of skill and care, but we cannot promise that our Offerings are perfect.*

We provide the Offerings using a commercially reasonable level of skill and care, but we cannot make guarantees about the operation, use or results achieved through the use of the Offerings. ACCORDINGLY, TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW, EACH OFFERING IS PROVIDED ON AN "AS-IS" AND "AS AVAILABLE" BASIS, WITH ALL FAULTS, WITHOUT WARRANTY OF ANY KIND, AND SCHOOL'S USE IS AT ITS SOLE RISK. THE ENTIRE RISK OF SATISFACTORY QUALITY AND PERFORMANCE RESIDES WITH SCHOOL. THE

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LIMINEX PARTIES MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND HEREBY SPECIFICALLY DISCLAIM ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION ALL WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, QUIET ENJOYMENT, ACCURACY, OR NON-INFRINGEMENT. THE LIMINEX PARTIES MAKE NO WARRANTY THAT ANY OFFERINGS WILL MEET SCHOOL'S REQUIREMENTS, WILL BE AVAILABLE ON AN UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE BASIS, OR WILL BE ACCURATE, RELIABLE, FREE OF VIRUSES OR OTHER HARMFUL CODE, COMPLETE, LEGAL, OR SAFE. SCHOOL IS SOLELY RESPONSIBLE FOR THE SCHOOL ACCOUNT INFORMATION, THE MEANS BY WHICH SCHOOL ACQUIRES SCHOOL ACCOUNT INFORMATION, ACTIVITY INFORMATION, PERSONAL STUDENT INFORMATION, PARENT/GUARDIAN INFORMATION, AND SCHOOL LOG AND COOKIE INFORMATION, AND ALL COMMUNICATIONS AND INTERACTIONS BASED ON THE OFFERINGS, INCLUDING ANY AUTOMATICALLY GENERATED ALERTS THAT SCHOOL MAY RECEIVE. WE ARE NOT A MEDICAL HEALTHCARE PROVIDER. SCHOOL UNDERSTANDS AND AGREES THAT LIMINEX AND THE OTHER LIMINEX PARTIES ARE UNDER NO OBLIGATION OTHER THAN TO PROVIDE THE OFFERINGS TO SCHOOL IN ACCORDANCE WITH THE TERMS OF THIS AGREEMENT.

SCHOOL HEREBY RELEASES EACH OF THE LIMINEX PARTIES AND THEIR RESPECTIVE SUCCESSORS IN RIGHTS FROM ANY CLAIMS, DAMAGES, AND DEMANDS OF EVERY KIND ARISING OUT OF OR IN ANY WAY RELATED TO ANY CLAIMS MADE BY SCHOOL, ANY AUTHORIZED USER, ANY USER OF A MANAGED DEVICE OR ACCOUNT OR THEIR FAMILIES. IF APPLICABLE LAW REQUIRES ANY WARRANTIES WITH RESPECT TO ANY OFFERING, ALL SUCH WARRANTIES ARE LIMITED IN DURATION TO NINETY (90) DAYS FROM THE DATE OF

FIRST USE. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR HOW LONG AN IMPLIED WARRANTY LASTS, SO THE ABOVE EXCLUSION AND/OR LIMITATION MAY NOT APPLY TO SCHOOL. NOTHING IN THIS AGREEMENT EXCLUDES, RESTRICTS OR MODIFIES ANY GUARANTEE, WARRANTY, TERM OR CONDITION, RIGHT OR REMEDY IMPLIED OR IMPOSED BY ANY APPLICABLE LAW WHICH CANNOT LAWFULLY BE EXCLUDED, RESTRICTED OR MODIFIED.

## **13. INDEMNIFICATION**

School agrees, to the extent permitted by Applicable Law (and in the United States, the School's state laws), to indemnify, defend and hold Liminex and the other Liminex Parties harmless from any losses, costs, liabilities and expenses (including reasonable attorneys' fees) relating to or arising from (a) School's failure to receive any consents or provide any notices required to be received or provided under Applicable Law in respect of all users of Managed Devices or Accounts, including for the monitoring and recording of Activity Information in connection therewith; (b) errors in the School Account Information, including Association Information, Parent/Guardian Information, Personal Student Information, and School's selection of settings in the Offerings and maintenance of Authorized User accounts and their permission levels; (c) School's acts or omissions relating to or regarding alerts generated through GoGuardian Beacon or GoGuardian Admin; (d) School's failure to comply with Applicable Laws, including Applicable Mental Health Laws; (e) School's violation of any rights of another party, including any users of Managed Devices or Accounts, (f) Your Content that you submit, share, upload, post or display on or to any Offering; (g) any use by other users of the Offerings of Your Content; and (h) any claim that Your Content violates any Applicable Laws or that it violates or infringes the rights of any third party. We reserve the right, at our own expense, to assume the exclusive defense and control of any third party claims for which we are entitled to indemnification under this Section 13, and in any event, School agrees to cooperate with us in asserting any and available defenses.

## **14. LIMITATIONS AND EXCLUSIONS OF LIABILITY**

### **14.1 Disclaimer of Certain Damages**

TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL LIMINEX OR ANY OTHER LIMINEX PARTY BE LIABLE TO SCHOOL OR ANY THIRD PARTY FOR PERSONAL INJURY, PROPERTY DAMAGE, ANY LOST PROFITS, LOST DATA OR INFORMATION, COSTS OF PROCUREMENT OF SUBSTITUTE PRODUCTS, LOSS OF GOODWILL, WORK STOPPAGE, COMPUTER OR DEVICE FAILURE OR MALFUNCTION, OR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES ARISING FROM OR RELATING TO THIS AGREEMENT OR SCHOOL'S USE OF, OR INABILITY TO USE, ANY OFFERING, EVEN IF LIMINEX OR THE OTHER LIMINEX PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. ACCESS TO, AND USE OF, THE OFFERINGS IS AT SCHOOL'S OWN DISCRETION AND RISK, AND SCHOOL WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO ANY DEVICES OR COMPUTER SYSTEMS USED TO ACCESS OR USE ANY OFFERING, OR LOSS OF DATA OR INFORMATION RESULTING THEREFROM.

## **14.2 Cap on Liability**

TO THE MAXIMUM EXTENT PERMITTED BY LAW, NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, THE AGGREGATE LIABILITY OF LIMINEX AND ANY OTHER LIMINEX PARTIES FOR ANY DAMAGES ARISING FROM OR RELATING TO THIS AGREEMENT OR SCHOOL'S USE OR INABILITY TO USE AN OFFERING (WHETHER ORDERED DIRECTLY FROM A LIMINEX PARTY OR THROUGH AN AUTHORIZED RESELLER) FOR ANY CAUSE WHATSOEVER, AND UNDER ANY LEGAL THEORY, INCLUDING NEGLIGENCE, TORT OR STRICT LIABILITY, AND REGARDLESS OF THE FORM OF THE ACTION, WILL AT ALL TIMES BE LIMITED TO THE FEES ACTUALLY PAID BY SCHOOL (WHETHER TO A LIMINEX PARTY OR AN AUTHORIZED RESELLER) FOR THE OFFERING GIVING RISE TO SUCH CLAIM FOR CALENDAR YEAR IN WHICH SUCH CLAIM AROSE. THE EXISTENCE OF MORE THAN ONE CLAIM WILL NOT ENLARGE THIS LIMIT. SCHOOL AGREES THAT OUR LICENSORS AND SUPPLIERS WILL HAVE NO LIABILITY OF ANY KIND ARISING FROM OR RELATING TO THIS AGREEMENT. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES OR LIABILITY FOR DEATH OR PERSONAL INJURY, SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO SCHOOL.

## **14.3 Basis of the Bargain**

THE LIMITATIONS OF DAMAGES SET FORTH ABOVE ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN US AND YOU.



# **15. GOVERNING LAW AND DISPUTE RESOLUTION**

## **15.1 Governing Law and Venue**

This Agreement and any dispute arising from or relating to this Agreement are governed by the laws of the state of California, United States, without regard to its conflict of law principles. You further agree to accept service of process by mail. To the extent the parties are permitted under this Agreement to initiate litigation in court, the parties consent to exclusive personal jurisdiction and venue in the courts located in Los Angeles County, California. If School is a United States public and accredited educational institution, domiciled in a state within the United States that expressly requires a different choice of law other than California law, then School's state's law will apply. If School is a United States public and accredited educational institution domiciled in a state within the United States that expressly requires venue or jurisdiction of a different state, then School's state's required venue and jurisdiction will apply.

## **15.2 Dispute Resolution; Binding Arbitration; Class Action Waiver ("Arbitration Agreement")**

In the event of a dispute, claim, or controversy arising out of or relating to this Agreement, any Offering, any person's access to and/or use of the Offering, and/or the provision of content, features, and/or technology on or through the Offering (collectively, "Claims"), the parties must first give the other notice of the Claim. This notice must include a brief written statement with the name, address, and contact information of the party giving it, as well as the facts giving rise to the Claim and the relief requested. You must send any such notice to Liminex by email to [legal@goguardian.com](mailto:legal@goguardian.com) AND by U.S. Mail to Liminex, 2030 E Maple Ave Suite 100, El Segundo, CA 90245. If we have your contact information, we will send any such notice to you by U.S. Mail and your email address.

The parties shall use reasonable, good faith efforts to resolve any Claim through consultation and good faith negotiations within thirty (30) days from the date that any notice of a Claim is sent. After thirty (30) days, you or we may resort to the other alternatives described in Section 15.2.1.

Notwithstanding the foregoing, the notice requirement in this section and the 30-day negotiation period required shall not apply to Claims involving patents, copyrights, moral rights, trademarks, trade secrets or piracy or unauthorized use of an Offering.

## **15.2.1 Binding Arbitration**

*Arbitration Rules and Forum* Except as otherwise specifically set forth below, any Claims between you and us, if unresolved through informal consultation and negotiation pursuant to the preceding paragraph, shall be resolved by binding arbitration to be held in Los Angeles, California.

Notwithstanding the foregoing, if School is a United States public and accredited educational institution domiciled in a state within the United States that expressly requires a different location for arbitration other than Los Angeles, California, then School's state's required location for binding arbitration will apply. If School that is a United States public and accredited educational institution and your consent to binding arbitration is expressly prohibited by the laws of the state within the United States in which School's educational institution is domiciled, then this Section is hereby waived. The Federal Arbitration Act governs the interpretation and enforcement of this Arbitration Agreement. The arbitration shall be conducted by a single arbitrator, governed by JAMS pursuant to its Comprehensive Arbitration Rules & Procedures (collectively, "JAMS Rules"), as modified by this Agreement, and administered by JAMS. The JAMS Rules and fee information are available at

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[www.jamsadr.org](http://www.jamsadr.org) or by calling JAMS at 1-800-352-5267. The arbitrator shall have exclusive authority to (a) determine the scope and enforceability of this Arbitration Agreement, and (b) resolve any dispute related to the interpretation, applicability, enforceability or formation of this Arbitration Agreement including, but not limited to, any claim that all or any part of this Arbitration Agreement is void or voidable. The arbitrator will decide the rights and liabilities, if any, of each party. The arbitration proceeding will not be consolidated with any other matters or joined with any other cases or parties.

*Exceptions: Litigation of Intellectual Property and Small Claims Court Claims* Claims concerning patents, copyrights, moral rights, trademarks, and trade secrets, and Claims of piracy or unauthorized use of any Offering shall not be subject to arbitration under this Section 15.2.1. In addition, the parties may choose to pursue a Claim in small claims court where jurisdiction and venue over the parties otherwise qualify for such small claims court and where the Claim does not include a request for any type of equitable relief.

*Authority of Arbitrator* In binding arbitration, the arbitrator shall have the authority (a) to grant motions dispositive of all or part of any Claim; (b) to award monetary damages; and (c) to grant any non-monetary remedy or relief available to an individual under Applicable Law, the arbitral forum's rules, and this Agreement (including the Arbitration Agreement). The arbitrator shall issue a written award and statement of decision describing the essential findings and conclusions on which the award is based, including the calculation of any damages awarded. The arbitrator has the same authority to award relief on an individual basis that a judge in a court of law would have. The award of the arbitrator is final and binding upon you and us.

**Confidentiality** All aspects of the arbitration proceeding, including but not limited to the award of the arbitrator and compliance therewith, shall be strictly confidential. Both parties agree to maintain confidentiality unless otherwise required by law. This paragraph shall not prevent either party from submitting to a court of law any information necessary to enforce this Agreement, to enforce an arbitration award, or to seek injunctive or equitable relief.

### **15.2.2 Class Action Waiver**

THE PARTIES HEREBY WAIVE ANY CONSTITUTIONAL AND STATUTORY RIGHTS TO SUE IN COURT AND HAVE A TRIAL IN FRONT OF A JUDGE OR A JURY. The parties are instead electing that all Claims not otherwise resolved informally as permitted above shall be resolved by arbitration under this Arbitration Agreement. An arbitrator can award on an individual basis the same damages and relief as a court and must follow this Agreement as a court would. However, there is no judge or jury in arbitration, and court review of an arbitration award is subject to very limited review.

## **16. MISCELLANEOUS**

### **16.1 Changes to this Agreement**

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Before we make a material change to this Agreement, we will notify you as described in this Section. We may make immaterial changes (e.g., correcting a typographical error or another immaterial change) without notifying you. Please regularly review our Website and your Account for any changes. On our Website, we provide notice of any changes by posting the updated Agreement with a "Last Updated" date indicating the date of our most recent update. If we make material changes to this Agreement, we will also take an additional step (beyond posting on our Website) of notifying you of changes in another way that we believe is reasonably likely to reach you, such as emailing you at your email address associated with your Account, posting an announcement on our Website, or via a pop up in our Offering. Some changes may require your consent before further use of the Offerings is permitted. If you do not agree to any change(s), you agree to stop using the Offerings, and email us at [terms@goguardian.com](mailto:terms@goguardian.com). Otherwise, your continued use of the Offerings after a change made in accordance with this provision constitutes your acceptance of such change(s).

### **16.2 Entire Agreement**

This Agreement, including any applicable Order Forms and any terms and policies that are incorporated into this Agreement by reference (including by reference to a URL), including any applicable Supplemental Terms, constitutes the entire agreement between you and the Liminex Parties with respect to the subject matter hereof and supersedes all prior agreements between you and the Liminex Parties and any other contractual obligations any Liminex Party or you may have to the other, whether written or oral, relating to the same subject matter. We reject additional or conflicting terms of School's form-purchasing document you provide to us in connection with your

procurement of access to any Offering. The headings of this Agreement are for readability only and do not constitute terms.

## **16.3 Language**

You agree that this Agreement and all related documents shall be drawn up in the English language.

## **16.4 Severability**

If any provision of this Agreement is invalid or unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under Applicable Law and the remaining provisions will continue in full force and effect.

## **16.5 Force Majeure**

Our failure to comply with any provision of this Agreement due to an act of God, hurricane, war, fire, riot, earthquake, terrorism, act of public enemy, actions of governmental authorities outside of our control (excepting compliance with applicable codes and regulations), or other force majeure event will not be considered a breach of this Agreement.

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## **16.6 No Third Party Beneficiaries**

You agree that, except as otherwise expressly provided in this Agreement, there shall be no third party beneficiaries to this Agreement.

## **16.7 Electronic Communications**

The communications between you and Liminex or its Affiliates may take place via electronic means, whether you use an Offering or send us e-mails, or whether we post notices on or through any Offering or communicate with you via e-mail. For contractual purposes, you (a) consent to receive communications from us in an electronic form; and (b) agree that all terms and conditions, agreements, notices, disclosures, and other communications that we provide to you electronically satisfy any legal requirement that such communications would satisfy if it were to be in writing. The foregoing does not affect your statutory rights.

## **16.8 Assignment**

This Agreement, and your rights and obligations hereunder, may not be assigned, subcontracted, delegated or otherwise transferred by you without our prior written consent, and any attempted

assignment, subcontract, delegation, or transfer in violation of the foregoing will be null and void. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

## **16.9 Notice**

Where we require that you or any Authorized Users provide an e-mail address, you are responsible for ensuring that we are provided with the most current e-mail address for the designated Authorized User. In the event that the last e-mail address provided to us is not valid, or for any reason is not capable of receiving any notices required/ permitted by this Agreement, our dispatch of the e-mail containing such notice to such address will nonetheless constitute effective notice. You may give notice to us at the following address: 2030 E Maple Ave, Suite 100, El Segundo, CA 90245. Such notice shall be deemed given when received by us by letter delivered by nationally recognized overnight delivery service or first class postage prepaid mail at the above address.

## **16.10 Waiver**

Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

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## **16.11 Export Control**

You may not use, export, import, or transfer any Offering except as authorized by U.S. law, the laws of the jurisdiction in which you obtained the Offering, and any other Applicable Laws. By using any Offering, you represent and warrant that (a) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country and (b) you are not listed on any U.S. Government list of prohibited or restricted parties. You will not permit any Authorized User to access or use any Offering, or deploy any Offering on any device or account, in a U.S.-embargoed country or region or in violation of any U.S. export law or regulation.

# **17. DEFINITIONS**

For the purposes of this Agreement, the following capitalized terms will have the meanings set forth for each of them below:

**17.1 Add-on** means any additional license to an Offering, beyond the original Licensed Capacity purchased, the parties agree to add to School's Subscription during a Subscription Term.

**17.2 Activity Information** means information about online account and activity collected at the Account level, in connection with Managed Devices or Accounts, including, for GoGuardian Offerings, chats (within GoGuardian Teacher), a student's browsing history, IP address automatically collected by GoGuardian, online content, screenshots, and key input patterns (but not the actual inputs) to identify behaviors like gaming, and, for Pear Deck Offerings, information about the student's activity within a presentation, including engagement with and any student content generated in the session, and, Your Content that is uploaded into or generated in any Offerings. This may include free text, multiple choice answers, drawings, or URLs.

**17.3 Affiliate** means any entity that directly or indirectly controls, is controlled by, or is under common control with a party. "Control" for purposes of this definition means the power to direct or cause the direction of the management and policies of the subject entity, whether through equity ownership, a credit arrangement, franchise agreement or other contractual arrangement.

**17.4 Applicable Law** means any applicable federal and state laws, rules and regulations, applicable to the parties and/or the Offerings, including but not limited to the Family Educational Rights and Privacy Act ("FERPA"), and the Applicable Mental Health Laws.

**17.5 Applicable Mental Health Law** means any federal and state laws, rules and regulations applicable to School's suicide and self-harm program and use of GoGuardian Beacon or GoGuardian Admin (self-harm smart alerts and/or Beacon Starter), including applicable law mandating staff training, certain suicide staff roles such as suicide prevention coordinators, and school prevention, intervention, and post-intervention policies.

**17.6 Association Information** means information associating a particular student or other user of a Managed Device or Account to a particular Managed Device or Account, as well as information about associations between any such user of a Managed Device or Account with School, an organizational unit or other grouping within the school (e.g., grade, class, cohort), a parent or guardian or a school official or Authorized School Personnel. Association Information does not include Activity Information.

**17.7 Authorized Reseller** means an entity authorized by Liminex or one of its Affiliates to sell Subscriptions to one or more Offerings under the terms of this Agreement and with which School has contracted directly to purchase the Offerings.

**17.8 Authorized User** means an individual who is authorized by School to use an Offering, for whom School has purchased or provisioned a Subscription, and to whom School (or, when applicable, Liminex or one of its Affiliates, at School's request) has supplied access credentials (for Offerings utilizing authentication). Authorized Users include, for example, Authorized School Personnel and agents and third parties such as students and parents/guardians.

**17.9 Authorized School Personnel** means an Authorized User who is an employee, teacher, or official of a School or a School's district.

**17.10 Authorized School Personnel Information** means information about Authorized School Personnel, including permission levels associated with the Authorized School Personnel, chat messages between students and teachers using an Offering, such as GoGuardian Teacher, unique account identifiers generated by a us, and other relevant unique identifiers.

**17.11 Confidential Information** means (a) any software utilized by us in the provision of any Offering and its respective source code; (b) each party's business or technical information, including but not limited to the User Documentation, information relating to software plans, designs, costs, prices and names, business opportunities, personnel, research, development or know-how that is designated by the disclosing party as "confidential" or "proprietary" or the receiving party knows or should reasonably know is confidential or proprietary; and (c) any special pricing or other non-standard terms agreed to by the parties in an Order Form or other separate written document. Confidential Information will not include any information that: (w) is or becomes generally known to the public without breach of any obligation owed to the disclosing party; (x) was known to a party prior to its disclosure by the other party without breach of any obligation owed to the other party; (y) was independently developed by a party without breach of any obligation owed to the other party; or (z) was or is received from a third party without breach of any obligation owed to the other party.

**17.12 Deidentified Information** means aggregated and anonymized data which may be derived from School Account Information, Personal Student Information, Parent/Guardian Information, School Log and Cookie Information, or Activity Information; provided such Deidentified Information cannot reasonably be used to identify any Authorized User, user of a Managed Device or Account, or any other individual.

**17.13 Education Records** means "education records" as defined under the FERPA regulation 34 CFR § 99.3.

**17.14 Account** means an account created by or on behalf of School that is associated with one or more Offerings for which School has a Subscription, which is then used by School to manage access and use of the Offering(s) by School and its Authorized Users.

**17.15 Liminex Information** means (a) all Deidentified Information; and (b) any information collected by Liminex or its Affiliates independently and without access to, reference to or use of any School Account Information, Personal Student Information, Parent/Guardian Information, School Log and Cookie Information, or Activity Information.

**17.16 Offering** mean any product or service, including Professional Services, made available by Liminex or its Affiliates, including the GoGuardian Offerings, the Pear Deck Offerings, and the Edulastic Offerings.

**17.17 GoGuardian Offering(s)** means Liminex's suite of products and services, including Professional Services, provided under the GoGuardian brand, other than the Websites.

**17.18 Pear Deck Offering(s)** means Liminex's suite of products and services, including Professional Services, provided under the Pear Deck brand, other than the Websites.

**17.19 Edulastic Offering(s)** means Liminex's suite of products and services, including Professional Services, provided under the Edulastic brand, other than the Websites.

**17.20 Liminex Parties** means Liminex, its Affiliates, including Pear Deck and Edulastic, and each of their respective licensors, suppliers, officers, directors, employees, shareholders, agents and representatives.

**17.21 Licensed Capacity** means the number of licenses to an Offering covered by a Subscription during a Subscription Term (e.g., depending on the particular offering, the number of accounts, authorized devices, installations, seats).

**17.22 Managed Device or Account** means any device and/or account of a student or user for which School deploys or installs an Offering or seeks participation from an Offering for such purpose in accordance with the terms of this Agreement.

**17.23 Order Form** means a written or online ordering document, communication, form, statement of work, or other documentation that specifies the Offering(s) to be provided and which is either executed or submitted by you, and then accepted by a Liminex, one of its Affiliates or one of their Authorized Resellers. Each Order Form identifies the purchased Offering(s), any applicable fees, and, for licensed products and services, the Subscription Term and Licensed Capacity, as well as any other terms as agreed to between the parties. If an Order Form with School indicates that any School Affiliates will be receiving access to the Offering(s) hereunder, each of them will be bound by the terms of this Agreement as if they were an original party hereto.

**17.24 Parent/Guardian Information** means any data or information provided, submitted, or made available in an Offering about a parent or guardian of a student user of a Managed Device or Account, including the individual's association with a particular child and his or her contact information (e.g., email address).

**17.25 Content** means all information (such as data files, fonts, written text, computer software, music, audio files, image files or other sounds, photographs, videos or other images) which you may have access to as part of, or through your use of, any Offerings.

**17.26 Personal Student Information** means information provided, submitted, or made available in an Offering about a student user of a Managed Device or Account (including, the student's School-managed account information, Activity Information, grade and attendance data, and location information to the extent collected) that may, alone or in combination with other available information, be reasonably used to identify a current or former student enrolled in a K-12 School, including Educational Records defined herein.

**17.27 Professional Services** means any supplemental technical, training, support, consulting or implementation services that Liminex or one of its Affiliates provides to you, as set forth in an Order Form. Any purchased Professional Services, whether provisioned in connection with or support of another GoGuardian Offering or Pear Deck Offering, shall be deemed an Offering hereunder.

**17.28 School** means the school, school district, corporation, organization or other legal entity identified on an Order Form on whose behalf the individual accepts this Agreement and, and any Affiliates of that school, school district, corporation, organization or other legal entity have entered into Order Form(s) (for so long as they remain Affiliates).

**17.29 School Account Information** means Profile Information, Authorized School Personnel Information, and Association Information.

**17.30 School Affiliate** means any Affiliate of School that has been designated in an Order Form as authorized to access the Offerings under this Agreement.



**17.31 School Log and Cookie Information** means analytics, log and event information, such as IP address, Internet service provider (ISP), date and time stamp, browser language, browser type, amount of time spent on particular portions of the Offerings, service diagnostics and technical logging information, device information, and/or other general usage data, automatically collected by or on behalf of Liminex or an Affiliate.

**17.32 School Profile Information** means the name, email address, and phone number of the individual ordering the Offering on School's behalf, as well as the School's name, address, billing address, of the School or Authorized User, as applicable, the number of devices, number of students, and network configuration, and to the extent an Account is created for School, the password created for such Account.

**17.33 Subscription** means a time-limited right granted to School to access and use one or more licenses to an Offering under the terms of this Agreement.

**17.34 Subscription Term** means the period of time for which you subscribe (whether through a standard license or as part of a trial or beta license) to a particular Offering, as specified in an Order Form. For the avoidance of doubt, "Subscription Term" includes the initial Subscription Term agreed to in the Order Form and any subsequent renewal Subscription Term under that Order Form.

**17.35 User Documentation** means the online user guides, documentation, and help and training materials we make accessible at GoGuardian Help Center, the Pear Deck Help Center, or the Edulastic Help Center, or such other URL we identify from time to time, and any other materials we provide as part of the Offerings, all as may be updated from time to time.

**17.36 Website(s)** means the Liminex or its Affiliates' websites made available online to the public that are not the Offerings.