

June 9, 2021

Gimkit, Inc.
2716 3rd Ave N
Seattle, WA 98109



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

Dear Jeffrey Osborn,

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

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

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

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

ISU proposes to modify the software terms and conditions (attached at Attachment 1) to include an addendum incorporating SOPPA, Illinois Procurement Code, and ISU requirements (attached at Attachment 2). SOPPA requires that public schools must make copies of written agreements with operators available on the school's websites.

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

Sincerely,




Ernest Olson
Director of Purchases

Vendor Acceptance of University Laboratory School Software Addendum

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

Acknowledged & Accepted:

Vendor / Operator Signature:

 June 15, 2021

Signature Date

Jeffrey Osborn, Co-Founder
Print Name & Title

cc: University Laboratory Schools, labschools@ilstu.edu
Illinois State University Purchasing, ISUPurchasing@ilstu.edu

Gimkit Terms of Service

 gimkit.com/terms-of-service

Gimkit, Inc

Last Updated: September 11, 2020

Overview

Welcome to the Gimkit, Inc (“Gimkit,” “Our,” “We,” “Us”) Terms of Service (the “Terms”). Our Terms of Service have been created to ensure Gimkit will be a safe, productive, fun environment for educators and students to teach and learn.

Please read these Terms carefully as they govern your use of our website www.gimkit.com (the “Site”) and the services and products available at or through the website.

If you have any questions, you can contact us at hello@gimkit.com. To make these Terms easier to read, the Site and our products and services are collectively called the “Services.”

Agreement to Terms

By accessing or using our Services, you agree to be bound by these Terms. If you do not agree to these Terms, don’t use the Services.

Changes to Terms or Services

We may modify the Terms and our Services at any time, in our sole discretion. If we do so, we may let you know by email and by posting a notice on the Site. It is important that you review the Terms whenever we modify them because continuing to use the Services after we have posted modified Terms on the Site indicates to us that you agree to be bound by the modified Terms. If you don’t agree to be bound by the modified Terms, please discontinue use of the Services immediately. Because our Services are evolving over time we may change or discontinue all or any part of the Services at any time, and without notice to you, at our sole discretion.

Your Privacy

Your privacy and that of your Students is important to us. We do not use personal information to market or advertise to you or Students, and we do not sell User personal data. We do use your information for certain stated purposes, such as providing and improving the Service and communicating with Educators about Gimkit features and events.

Our full Privacy Policy is incorporated in these Terms, and is available at <https://www.gimkit.com/privacy>. Please read our Privacy Policy, as it describes what information we collect from you, how we use that information, and the legal bases we have to process your information.

Creating an Account

Educator Accounts

If you are a User (who is not a Student), you also represent that you are at least 18 years old and have the legal capacity to accept these Terms. If you are not 18 or older, not a Student, or do not have parental consent to access the Service, you may not use the Service.

You agree that we may provide notice to you of updated terms by posting them on the Service. We may also email updated terms to your account email address. Use or continued use of our Service following notice of such updated terms indicates your consent to be bound by them.

Educators Associated with Schools

By nature of their role, Educators associated with Schools have additional responsibilities to the Students that they represent. In using the Service, such Educators:

(a) Must comply with our **Privacy Policy**.

(b) Represent and warrant that they have: (i) the authority to consent to our collection and use of personal information from their Students; (ii) obtained any required parental consent, including if required verifiable parental consent under the Children's Online Privacy Protection Act ("COPPA"); (iii) not received any revocation of parental consent; (iv) filed evidence of parental consent with their School administrator before using the Service; and (v) will only use the personal information provided by or otherwise collected from a Student when using the Service in accordance with the purposes for which the Student joined an Educator Class. The Educator may act as the parent's agent and for purposes of giving consent by the parent to us for the collection and use of Student information for children below the minimum age (e.g. the minimum age for COPPA is under age 13). By enrolling a Student or helping the Student use the Service, the Educator provides such consent to us and agrees that the Student's online activities are subject to these terms.

(c) Must ensure their Classes are compliant with all applicable laws related to disclosure of Student information and regulations, including The Family Educational Rights and Privacy Act ("FERPA"); and acquired FERPA-compliant disclosure consents from the parents of children under 18, or from the Students aged 18 and older; and grant us a nonexclusive license to view, download, reproduce, modify, create derivative works of, distribute, and display any information provided by or collected from a Student solely for the purposes

discussed in these Terms. Student information is the property of and under the control of the Educator. The Classes containing Student content cannot be posted publicly by Educators. Accordingly, Educators must ensure they have proper consent before sharing any Student information with third parties. If Educators invite unaffiliated guests (e.g., classroom guests or co-teachers) to participate on their Classes, they are solely responsible for (a) obtaining parental consent for sharing Student information with any guests. Gimkit has no responsibility for Educator or guest activity.

Additional Information for Account Creation

Your Account should be yours – don't use the Services under the name of another person with the intent to impersonate that person, or use a username that is subject to the rights of another person without appropriate authorization. You must be a human to use the Services and an automated account is not allowed. This policy also applies beyond Account creation to the general use of the Services. "Robot" (or automatic) activity is not allowed. Keep it real, people.

We reserve the right to suspend or terminate your Account if any information provided during the registration process or thereafter proves to be inaccurate, false, or misleading, or to reclaim any Account that you create through the Services that violates our Terms. You are responsible for maintaining the confidentiality of your password and Account and agree to notify us if your password is lost, stolen, or disclosed to an unauthorized third party, or otherwise may have been compromised. You are responsible for activities that occur under your Account.

Feedback

We welcome feedback, comments, and suggestions for improvements to the Services. You can submit feedback anytime by emailing us at hello@gimkit.com. We also have a feedback center for product ideas and suggestions [here](#).

You grant to us a non-exclusive, worldwide, perpetual, irrevocable, fully-paid, royalty-free, sub-licensable, and transferable license under any and all intellectual property rights that you own or control to use, copy, modify, create derivative works based upon, and otherwise exploit the feedback for any purpose.

Member Content

For purposes of these Terms:

(i) "**Content**" means text, graphics, images, music, software, audio, video, works of authorship of any kind, and information or other materials that are posted, generated, provided, or otherwise made available through the Services; and (ii) any Content that Members (including you) provide to be made available through the Services.

You are responsible for the Content that you post to the Services, including its legality, reliability, and appropriateness. By posting Content to the Services, you grant us a non-exclusive, transferable, sub-licensable, worldwide, royalty-free right and license to use, modify, publicly perform, publicly display, reproduce, and distribute such Content on and through the Services. You agree that this license includes the right for us to make such Content available to other Members of the Services, who may also use such Content subject to these Terms.

You represent and warrant that: (i) the Content is yours (you own it) or you have the right to use it and grant us the rights and license as provided in these Terms, and (ii) the posting of the Content on or through the Services does not violate the privacy rights, publicity rights, copyrights, contract rights, or any other rights of any person.

We do not claim any ownership rights in any Content that you make available through the Services and nothing in these Terms will be deemed to restrict any rights that you may have to use and exploit your own Content. However, you grant us a non-exclusive, non-transferable, non-sublicenseable, worldwide license to use any Content submitted by you in relation to the Services, including the promotion and advertisement of Services.

Member and User Conduct

While using Gimkit and related Services be kind, respectful, and honest

We invite you to participate in our community and help us make it special. As part of that invitation, we ask that you respect other Members and Users when posting Content and using Gimkit and the services it provides.

We're all here to make learning memorable and more effective. We ask that you treat other members of the Gimkit community the way you want to be treated. We have zero-tolerance for bullying, hate speech, hurtful words or behavior, and exclusion of any kind.

By using Gimkit and our Services you Agree **NOT** to:

- use language or transmit content that may be considered offensive or profane to other Members, Users, or game participants. This includes profanity and offensive images, or other media containing obscene, hurtful, demeaning, sexually explicit, or excessively violent content.
- harass or threaten other Members or Users. Harassing behavior and language includes insults, ethnic or homophobic slurs, defamatory statements, invasive statements that may infringe on a Member's privacy, or the transmission or sharing of any content that may cause another Member or user to experience ridicule, threat, or discomfort.
- submit material that violates a third party's proprietary rights, including privacy and publicity rights, or that otherwise violates any applicable law;

- publish falsehoods or misrepresentations that could damage us, our Members, or any third party;
- publish any private information of someone (like their address or phone number) without their permission;
- submit material that is unlawful, obscene, defamatory, libelous, threatening, pornographic, harassing, hateful, racially or ethnically offensive, or encourages conduct that would be considered a criminal offense, give rise to civil liability, violate any law, or is otherwise inappropriate;
- post advertisements;
- impersonate another person or represent yourself as affiliated with us, our staff, or other industry professionals;
- solicit a User or Member's password or other Account information; or
- harvest User or Member names, addresses, or email addresses for any purpose.

This list is an example and is not intended to be complete or exhaustive. We don't have an obligation to monitor your access to, or use of, the Services, but we reserve the right to do so for the purpose of operating the Services, to ensure your compliance with these Terms, or to comply with applicable law or the order or requirement of a court, administrative agency, or another governmental body. We reserve the right, at any time and without prior notice, to remove or disable access to your Account or any Content that we consider, in our sole discretion, to be in violation of these Terms or otherwise harmful to our community or the Services.

Gimkit has a flagging process for content that is inaccurate, inappropriate, offensive, hurtful, or in violation of these Terms of Service. When a community member flags a Kit, they are asked a series of questions to identify why they have flagged it. When they have submitted their flag, we get a notification and can review the flagged Kit. Upon completing a review, Gimkit will take one of three actions:

1. If we determine the Kit content is safe, we will send an email to the flagger notifying them that the Kit has been determined to be safe and no action will be taken.
2. If we determine there is incorrect information in the Kit, we will set the Kit to private and send an email to the owner of the Kit notifying them that their Kit has been flagged as inaccurate and can be made public once the error or inaccuracy has been updated. We will also send an email to the flagger notifying them that the Kit has been removed from the community until it can be verified as accurate.
3. If we determine the Kit contains content in violation of our Terms of Service, including but not limited to hurtful, inappropriate, or offensive language or images, we will delete the Kit. We will notify the creator of the Kit that their Kit has been deleted and why. We will also notify the flagger of our action taken.

The safety and health of our community are of the utmost importance to us and multiple deleted Kits for inappropriate, offensive, hurtful, or in violation of these Terms of Service may result in account suspension or deletion.

Likewise, repeated inaccurate Kit flagging may result in account suspension or deletion.

You can remove your Content by specifically deleting it. However, in certain instances, some of your Content (such as posts or comments you make) may not be completely removed, or may not be removable (audible content), and copies of your Content may continue to exist on the Services. We are not responsible or liable for the removal or deletion of (or the failure to remove or delete) any of the Content.

Account Sharing

Gimkit accounts are intended for individual use.

Our community is built on the content created by Gimkit Members and Users and is made healthier and more vibrant by the people involved in it and the Kits they create. As such, we believe Gimkit will be a safer, more authentic community if the User accounts within it are owned and operated by individuals only and not shared.

By using the Service you are agreeing that you will be the sole owner and user of your Gimkit account.

Integrity of the Game and Community

Gimkit is fun and engaging because it is built on a game that takes strategy and knowledge to win. The Gimkit community is here to have fun learning and the integrity of the game is central to that core element of the community.

Cheating, hacking, and other behaviors intended to disrupt the game or gameplay will not be tolerated. All behaviors, including but not limited to cheating, using bots, and hacking, may result in suspension or account termination.

Our Content

Subject to your compliance with these Terms, We grant you a limited, non-exclusive, non-transferable, non-sub licensable license to access and view our content (“Our Content”) solely in connection with your permitted use of the Services. For the purposes of these Terms, Our Content shall include all text, graphics, images, site and screen layouts, arrangements and themes, music, software, audio, video, works of authorship by us or our affiliates of any kind, and information or other materials that are posted or generated by us or our affiliates.

You have the right to view and access Our Content. However, you may not copy, borrow, modify, or otherwise reproduce, and must immediately cease using, copying, borrowing, modifying, or otherwise reproducing any site and screen layouts, arrangements and themes provided through this Service. At no time is any Member permitted to: (i) transfer, sublicense, sell, lease, lend, rent, or otherwise distribute Our Content or the Services to a

third party; (ii) decompile, reverse-engineer, disassemble, or create derivative works of the Services or any Our Content; or (iii) use the Services or Our Content in any unlawful manner, for any unlawful purpose, or in any manner inconsistent with these Terms.

Intellectual Property

The Services contain material that may be protected by United States and international copyright, trademark, and other proprietary information, including, but not limited to, audio, video, graphic, photographic and text information, and all Our Content. We, and any of our licensors, exclusively own all right, title and interest in, and to the Services and Our Content, including all associated intellectual property rights. You acknowledge that the Services and Our Content are protected by copyright, trademark, and other laws of the United States and foreign countries. You agree not to remove, alter, or obscure any copyright, trademark, service mark, or other proprietary rights or notices incorporated in or accompanying the Services and Our Content. Further, you may not modify, distribute, publish, transmit, publicly display, publicly perform, participate in the transfer or sale, create derivative works of, or in any way exploit any of the Our Content, in whole or in part. Any violation of these restrictions may result in intellectual property infringement that may subject you to civil and/or criminal penalties. You will be solely liable for any damage resulting from any infringement of copyrights, trademarks, proprietary rights or any other harm resulting from a submission of information protected by intellectual property rights in a third party, if such submission is made without the express permission of the intellectual property rights holder.

DMCA/Copyright Policy

We respect copyright law and expects its visitors, Users, and Members to do the same. It is our policy to terminate in appropriate circumstances the Accounts of Users and Members who repeatedly infringe the rights of copyright holders.

The Digital Millennium Copyright Act of 1998 (the "DMCA") provides recourse for copyright owners who believe that material appearing on the Internet infringes their rights under U.S. copyright law. If you believe in good faith that Content infringes your copyright, you (or your agent) may send us a notice requesting that the Content be removed or access to it blocked. Federal law requires that your notification include the following information: (i) a physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed; (ii) identification of the copyrighted work claimed to have been infringed or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site; (iii) identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled and information reasonably sufficient to permit us to locate the material; (iv) information reasonably sufficient to permit us to contact you, such as an address, telephone number, and, if available, an electronic mail; (v) a statement that you have a good faith belief that use of the material in the manner complained of is not

authorized by the copyright owner, its agent, or the law; and (vi) a statement that the information in the notification is accurate, and under penalty of perjury, that you are authorized to act on behalf of the owner of an exclusive right that is allegedly infringed. **The notification must be sent to:**

415 1st Ave N, PO BOX 19833, Seattle, WA 98109

We provide the above contact information for purposes of the DMCA only and reserve the right to respond only to correspondence that is relevant to this purpose.

Links to Third-Party Websites or Resources

The Services may connect to or contain links to third-party websites (that are not affiliated) or resources. We are not responsible for the content, products or services on or available from those websites, resources or links displayed on such sites. You acknowledge sole responsibility for and assume all risk arising from your use of any third-party websites or resources.

Indemnity

You agree to defend, indemnify and hold harmless us, or our officers, directors, employees and agents, from and against any and all claims, damages, obligations, losses, liabilities, costs, debts, or expenses (including but not limited to attorneys' fees), to the extent allowed by applicable law, that arise from or are caused by: (i) your use of and access to the Services; (ii) your violation of these Terms; (iii) your violation of any third party right, including without limitation any copyright, property, moral or privacy right; or (iv) any claim that your Content caused damage to any third party. This section shall survive these Terms and your use and termination of the Services.

Termination

We may terminate your access to and use of the Services and Account at our sole discretion, at any time and without notice to you. Upon any termination, discontinuation or cancellation of Services or your Account, all provisions of these Terms which by their nature should survive will survive, including, without limitation, ownership provisions, indemnification, warranty disclaimers, limitations of liability, and dispute resolution provisions.

Warranty Disclaimers

The Services and Content are provided "AS IS," without warranty of any kind. Without limiting the foregoing, WE EXPLICITLY DISCLAIM ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT OR NON-INFRINGEMENT, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE. We make no warranty that the Services will meet your

requirements or be available on an uninterrupted, secure, or error-free basis. We make no warranty regarding the quality, accuracy, timeliness, truthfulness, completeness or reliability of any Content.

Limitation of Liability

NEITHER WE NOR ANY OTHER party involved in creating, producing, or delivering the services or content will be liable for any incidental, special, exemplary or consequential damages, INCLUDING LOST PROFITS, LOSS OF DATA OR GOODWILL, SERVICE INTERRUPTION, MOBILE DAMAGE OR SYSTEM FAILURE OR THE COST OF SUBSTITUTE SERVICES arising out of or in connection with THESE TERMS or from the use OF or inability to use the ServiceS or CONTENT, whether based on warranty, contract, tort (including negligence), PRODUCT LIABILITY or any other legal theory, and whether or not WE have been informed of the possibility of such damage, EVEN IF A limited REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

In no event will OUR total liability arising out of or in connection with THESE TERMS OR FROM THE USE OF OR INABILITY TO USE the Service or content EXCEED THE LESSER of the AMOUNTS YOU HAVE PAID TO US FOR USE OF THE SERVICES DURING THE TWELVE (12) MONTHS PRIOR TO THE CAUSE OF ACTION, OR ONE HUNDRED DOLLARS (\$100), IF YOU HAVE NOT HAD ANY PAYMENT OBLIGATIONS TO US, AS APPLICABLE.

Dispute Resolution

We prefer to resolve things amicably when possible; therefore, you agree to the following dispute resolution policy in connection with any potential claims or disputes arising from your use of the Application. Start by notifying us of your dispute by sending a notice to the contact email address listed above.

- 1. Informal Negotiations:** Parties to a dispute concerning the Terms, the Privacy Policy, or the use of the Services will attempt to informally negotiate a potential settlement or resolution to the dispute;
- 2. Arbitration:** In the event that informal negotiations are unsuccessful, the parties agree to follow the arbitration procedures set forth by the American Arbitration Association (AAA) to resolve the dispute.
- 3. Binding Arbitration:** If for any reason arbitration is unsuccessful or unavailable to the parties, parties agree to submit to binding arbitration in the jurisdiction of the State of Washington. Each of us is responsible for paying our own filing, administrative and arbitrator fees. Judgment on the arbitration award may be entered in any court having jurisdiction thereof.

Entire Agreement

These Terms constitute the entire and exclusive understanding and agreement between us and you. These Terms supersede and replace any and all prior oral or written understandings or agreements between us. If for any reason a court of competent jurisdiction finds any provision of these Terms invalid or unenforceable, that provision will be enforced to the maximum extent permissible and the other provisions of these Terms will remain in full force and effect.

You may not assign or transfer these Terms, by operation of law or otherwise, without our prior written consent. Any attempt by you to assign or transfer these Terms, without such consent, will be null and of no effect.

Any notices or other communications provided by us under these Terms, including those regarding modifications to these Terms, will be given by us (i) via email; or (ii) by posting to the Services. For notices made by email, the date of receipt will be deemed the date on which such notice is transmitted.

Our failure to enforce any right or provision of these Terms will not be considered a waiver of those rights. The waiver of any such right or provision will be effective only if in writing and signed by a duly authorized representative of us. Except as expressly set forth in these Terms, the exercise by either party of any of its remedies under these Terms will be without prejudice to its other remedies under these Terms or otherwise.

Questions & contact information

If you have any questions regarding these Terms, please [contact us](#).

University Laboratory School Software Addendum

Part One: Data Security Addendum

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

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

REQUIRED CONDITIONS:

1. **Order of Precedence:**

- a. To the extent, any provision in this Addendum is inconsistent or incompatible to terms included elsewhere in this Agreement, the parties agree that this Addendum shall take precedence and the conflicting provisions shall be null and void.

2. **Definitions:** The following terms shall be defined as follows for purposes of the Agreement.

- i. The term **SOPPA Covered Information** means personally identifiable information or material or information that is linked to personally identifiable information or material in any media or format that is not publicly available and is any of the following:
 1. Created by or provided to an Operator by a student or the student's parent or legal guardian in the course of the student's, parent's, or legal guardian's use of the Operator's site, service, or application for K through 12 school purposes.
 2. Created by or provided to an Operator by an employee or agent of a school or school district for K through 12 school purposes.
 3. Gathered by an Operator through the operation of its site, service, or application for K through 12 school purposes and personally identifies a student, including, but not limited to, information in the student's educational record or electronic mail, first and last name, home address, telephone number, electronic mail address, or other information that allows physical or online contact, discipline records, test results, special education data, juvenile dependency records, grades, evaluations, criminal records, medical records, health records, a social security number, biometric information, disabilities, socioeconomic information, food purchases, political affiliations, religious information, text messages, documents, student identifiers, search activity, photos, voice recordings, or geolocation information.
- ii. The term **Personally Identifiable & Protected University Data** shall include an individual's name first or last, e-mail address or password in an unencrypted or redact form when used in combination one or more of the following data elements including: an (i) identification numbers (e.g. individual's government-issued identification number or social security number, driver's license number); (ii) information protected by federal or state law (e.g. ethnicity, race, religion, disability status, veterans status, etc.), (iii) financial data (including account numbers, credit card number, or other information that would permit access to an individual's financial data; (iii) biometric or health data; or (iv.) other data that if released could create a safety or security concern for the University or members of the University community.
- iii. University Data includes any information provided by the University pursuant to the Agreement.

3. **University Data & SOPPA Covered Information Security Protections:** Vendor shall provide commercially reasonable and adequate protection on its network and systems to protect University Data and SOPPA Covered Information from unauthorized access, acquisition, destruction, use modification or disclosure that shall include but not be limited to include firewalls and intrusion detection/prevention, authentication and encryption capabilities (including mobile devices, USB storage devices and backup media) in accordance with standard industry practices.
- a. **Use of Data:** Vendor agrees that any and all University Data and SOPPA Covered Information exchanged shall be used expressly and solely for the purposes enumerated in the Agreement.
 - b. **Data Transmission & Storage:** In general, Vendor shall implement administrative, physical and technical safeguards to protect University Data and SOPPA Covered Information that are no less rigorous than accepted industry practices. Vendor agrees that University Data and SOPPA Covered Information must be stored and transmitted in accordance with standard industry encryption standards. Personally Identifiable & Protected University Data and SOPPA Covered Information may not be processed or stored outside the U.S.

- c. **Third-Party Assurances / Subcontractors:** Vendor may only release University Data and SOPPA Covered Information to a subcontractor, affiliate or other third party with the designated University authorized official's prior written consent and provided that such subcontractor, affiliate, or other third party agrees to comply with all provisions of this Agreement.
- d. **Return/Destruction of Data:**
 - i. As applicable and in accordance with law, within a reasonable time period after termination of this Agreement, for any reason, Vendor shall return or destroy (as specified by the University) all University Data and SOPPA Covered Information and indexing information received from University, or created or received by Vendor on behalf of the University. This provision shall apply to data in the possession of subcontractors or agents of Vendor.
 - ii. Destruction of University Data and SOPPA Covered Information will be conducted in accordance with standard industry practices deemed acceptable by the University and Illinois State Record Act requirements.
 - iii. Vendor shall provide proof or certification of destruction of the data to the University's Information Security Officer.
- e. **Data Processing Integrity:** As applicable, Vendor shall take commercially reasonable measures, including regular data integrity audits, to protect Data against deterioration or degradation of data quality and authenticity. Vendor will maintain appropriate contingency / recovery plans for any University Data and SOPPA Covered Information in the event of loss of data or breach.

4. **Breach:**

- a. **Notice:** Vendor, including any subcontractors, affiliates, and third parties, shall report in the most expedient timeframe possible but no later than 30 days to the University Information Security Officer (i) any breach of security involving, or potentially involving, University Data and SOPPA Covered Information, or (ii) any use or disclosure of University Data and SOPPA Covered Information other than the Permitted Uses or breach of federal and state privacy laws. Vendor shall fully cooperate with the University with respect thereto. The University Information Security Officer can be contacted e-mailing informationsecurityoffice@illinoisstate.edu.
- b. **Indemnification:** Vendor shall indemnify, defend and hold University harmless from and against all third-party claims, actions, suits and proceedings resulting from the release of any University Data and SOPPA Covered Information, including the University's costs and reasonable attorneys' fees which arise as a result of Vendor's failure to safeguard University Data and SOPPA Covered Information as provided in this Agreement. Any limitations of liability contained in the Agreement shall not be applicable to Vendor's obligations pursuant to this section.

ADDITIONAL DATA SECURITY TERMS & CONDITIONS:

Please check those terms and conditions applicable to this Agreement.

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

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

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

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

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

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

Vendor Monitoring/Audit: With prior written notice, University (or its agent or affiliate) may audit Vendor's use of the University Data to ensure that Vendor is in compliance with the terms of this Agreement. Vendor will keep complete and accurate records of all

use of University data, including a log file of all employees with access to University Data. University may at its own expense and upon no less than five working days written notice audit Vendor's use, access, or maintenance of the University Data. As part of such audit, University is entitled to obtain physical and electronic data concerning use of University's data upon submitting a reasonable request to Vendor. Such audit will not interfere unreasonably with Vendor's business activities, will be conducted no more often than once per calendar year at a location, unless a previous audit disclosed a material breach. If an audit reveals the Vendor has breached this Agreement, University may immediately terminate the Agreement.

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

Part 2: University & Illinois Procurement Code Addendum

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

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

1. **Order of Precedence:**

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

2. **Insurance:**

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

3. **Confidential Information:**

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

4. **Governing Law:**

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

5. **Term:**

- a. Notwithstanding any provision, the term of the contract (including original and renewal terms) shall not exceed 10 years in total.
- b. No term will automatically renew regardless of stated required notification periods. All renewals will only be valid with the issuance of a University purchase order or other written direction from University.

6. **Indemnification/Hold Harmless/Limitation of Liability:**

- a. It is understood and agreed that neither party to this agreement shall be liable for any negligent or wrongful acts, either of commission or omission, chargeable to the other, unless such liability is imposed by law, and that this agreement shall not be construed as seeking to either enlarge or diminish any obligation or duty owed by one party against the other or against a third party.
- b. The University shall not agree to any additional provision:
 - i. Requiring the University to indemnify or hold harmless the Vendor for any act or omission.
 - ii. Releasing the Vendor or any other entity or person from its legal liability, or limiting liability, or unlawful or negligent conduct or failure to comply with any duty recognized or imposed by applicable law.
 - iii. Requiring the University to make payments for total or partial compensation or payment for lost profit or liquidated damages if the Agreement is terminated before the end of the term.
 - iv. Limiting the liability of the Vendor for property damage or personal injury.
 - v. Binding the University to any arbitration or to the decision of any arbitration board, commission, panel or other entity.
 - vi. Obligating the University to pay costs of collection or attorney's fees.
 - vii. Granting the Vendor a security of interest in property of Illinois State University.
 - viii. Changing the time period within which claims can be made or actions can be brought under the laws of the State of Illinois.
 - ix. Requiring the University to waive the sovereignty of Illinois, waiver of any right to a jury trial, increasing the University's liability beyond that authorized in the Illinois Tort Claims Act, or authorizing Vendor to execute any settlement obligation that would bind the University without the consent of the Board of Trustees of Illinois State University and/or the Illinois Attorney General, as applicable.

7. **Payment Obligations:**

- a. All amounts, including but not limited to interest and/or late charges, owed by the University under the Vendor's Contract Form shall be made in accordance with applicable provisions of the Illinois Prompt Payment Act.

8. **Independent Contractor:** In Vendor's performance under this Agreement, the Vendor acts and will act as an independent contractor and not as an agent or employee of Illinois State University.

9. **Use of University Name & Facilities:** Vendor shall not use the name of the University in any written material including but not limited to brochures, letters, and circulars, without the prior written consent of University. If

applicable, Vendor's use of University Facilities shall comply with all University policies, procedures and requirements.

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

11. **Procurement Code Required Certifications:**

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

12. **Compliance:**

- a. **Statutory Compliance:** All commitments by the University under this Agreement are subject to constitutional and statutory limitations and restrictions binding upon the University. Vendor agrees to comply with all applicable federal, state, and local laws, orders and regulations.
- b. **University Policies and Procedures:** Vendor agrees to comply with applicable University policies and procedures, as applicable.

- c. **Nondiscrimination:** Vendor agrees to comply with all applicable federal and state nondiscrimination, equal opportunity and affirmative action laws, orders and regulations. Vendor shall not engage in unlawful discrimination or harassment against any person because of race, color, religion, sex, national origin, ancestry, age, marital status, protective order status, disability, unfavorable discharge from the military, or status as a disabled veteran or a veteran of the Vietnam era in the performance of this agreement.
- d. **Taxes:** The Agreement shall not obligate the University to pay taxes unless otherwise required by law.
- e. **Withholding/Legal Status:** Vendor shall provide true and correct information regarding its Federal Tax Payer Identification Number (FEIN), tax withholding status and legal status information. Any change in the Vendor's tax withholding status must be immediately reported to the University by Vendor. If a W-8 or W-9 form is required, payment will not be made prior to receipt of a completed form.
- f. **Export Control:**
 - i. University agrees to comply with applicable U.S. laws, regulations, orders or other restrictions on exports and further shall not sell, license or re-export, directly, or indirectly, any information, data, products, items subject to the Agreement to any person or entity for sale in any country or territory, if, to the knowledge of University, such action would cause the Vendor to be in violation of any such laws or regulations now or hereafter in effect.
 - ii. Vendor shall also notify the University if any of the individuals, equipment, data, services provided or other commitments made or subject to the Agreement are subject to the U.S. Export Administration Regulations, controlled by the International Traffic in Arms Regulations, subject to Office of Foreign Assets Control restrictions, or otherwise subject to export restrictions by a federal agency.

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

Certifications and Additional Terms

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

This subsection, in its entirety, also applies to subcontractors used on this contract. Vendor shall include these Standard Certifications in any subcontract used in the performance of the contract using the Standard Subcontractor Certification form provided by the State.

If the contract extends over multiple fiscal years, including the initial term and all renewals, Vendor and its subcontractors shall confirm compliance with this section in the manner and format determined by the State by the date specified by the State and in no event later than July 1 of each year that the contract remains in effect.

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

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

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

2. Vendor certifies it and its employees will comply with applicable provisions of the United States Civil Rights Act, Section 504 of the Federal Rehabilitation Act, the Americans with Disabilities Act, and applicable rules in performance of this contract.
3. **This applies to individuals, sole proprietorships, partnerships and LLCs, but is otherwise not applicable.** Vendor, if an individual, sole proprietor, partner or an individual as member of a LLC, certifies he/she is not in default on an educational loan. 5 ILCS 385/3.
4. Vendor certifies that is has reviewed and will comply with the Department of Employment Security Law (20 ILCS 1005/1005-47) as applicable.
5. **This applies only to certain service contracts and does NOT include contracts for professional or artistic services.** To the extent there was a current Vendor providing the services covered by this contract and the employees of that Vendor who provided those services are covered by a collective bargaining agreement, Vendor certifies (i) that it will offer to assume the collective bargaining obligations of the prior employer, including any existing collective bargaining agreement with the bargaining representative of any existing collective bargaining unit or units performing substantially similar work to the services covered by the contract subject to its bid or offer; and (ii) that it shall offer employment to all employees currently employed in any existing bargaining unit who perform substantially similar work to the work that will be performed pursuant to this contract. This does not apply to heating, air conditioning, plumbing and electrical service contracts. 30 ILCS 500/25-80.

6. Vendor certifies it has neither been convicted of bribing or attempting to bribe an officer or employee of the State of Illinois or any other State, nor made an admission of guilt of such conduct that is a matter of record. 30 ILCS 500/50-5.
7. If Vendor has been convicted of a felony, Vendor certifies at least five years have passed after the date of completion of the sentence for such felony, unless no person held responsible by a prosecutor's office for the facts upon which the conviction was based continues to have any involvement with the business. 30 ILCS 500/50-10.
8. If Vendor or any officer, director, partner, or other managerial agent of Vendor has been convicted of a felony under the Sarbanes-Oxley Act of 2002, or a Class 3 or Class 2 felony under the Illinois Securities Law of 1953, Vendor certifies at least five years have passed since the date of the conviction. Vendor further certifies that it is not barred from being awarded a contract. 30 ILCS 500/50-10.5.
9. Vendor certifies it is not barred from having a contract with the State based upon violating the prohibitions related to either submitting/writing specifications or providing assistance to an employee of the State of Illinois by reviewing, drafting, directing, or preparing any invitation for bids, a request for proposal, or request of information, or similar assistance (except as part of a public request for such information). 30 ILCS 500/50-10.5(e).
10. Vendor certifies that it and its affiliates are not delinquent in the payment of any debt to the State (or if delinquent have entered into a deferred payment plan to pay the debt). 30 ILCS 500/50-11, 50-60.
11. Vendor certifies that it and all affiliates shall collect and remit Illinois Use Tax on all sales of tangible personal property into the State of Illinois in accordance with provisions of the Illinois Use Tax Act. 30 ILCS 500/50-12.
12. Vendor certifies that it has not been found by a court or the Pollution Control Board to have committed a willful or knowing violation of the Environmental Protection Act within the last five years, and is therefore not barred from being awarded a contract. 30 ILCS 500/50-14.
13. Vendor certifies it has neither paid any money or valuable thing to induce any person to refrain from bidding on a State contract, nor accepted any money or other valuable thing, or acted upon the promise of same, for not bidding on a State contract. 30 ILCS 500/50-25.
14. Vendor certifies it has read, understands and is not knowingly in violation of the "Revolving Door" provisions of the Illinois Procurement Code. 30 ILCS 500/50-30.
15. Vendor certifies that if it hires a person required to register under the Lobbyist Registration Act to assist in obtaining any State contract, that none of the lobbyist's costs, fees, compensation, reimbursements or other remuneration will be billed to the State. 30 ILCS 500/50-38.
16. Vendor certifies that it will not retain a person or entity to attempt to influence the outcome of a procurement decision for compensation contingent in whole or in part upon the decision or procurement. 30 ILCS 500/50-38.
17. Vendor certifies it will report to the Illinois Attorney General and the Chief Procurement Officer any suspected collusion or other anti-competitive practice among any bidders, offerors, contractors, proposers, or employees of the State. 30 ILCS 500/50-40, 50-45, 50-50.
18. Vendor certifies that if it is awarded a contract through the use of the preference required by the Procurement of Domestic Products Act, then it shall provide products pursuant to the contract or subcontract that are manufactured in the United States. 30 ILCS 517.
19. Vendor certifies steel products used or supplied in the performance of a contract for public works shall be manufactured or produced in the United States, unless the executive head of the procuring Agency/University grants an exception. 30 ILCS 565.
20. Drug Free Workplace
 - 20.1 If Vendor employs 25 or more employees and this contract is worth more than \$5,000, Vendor certifies it will provide a drug free workplace pursuant to the Drug Free Workplace Act

20.2 If Vendor is an individual and this contract is worth more than \$5000, Vendor certifies it shall not engage in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance during the performance of the contract. 30 ILCS 580.

21. Vendor certifies that neither Vendor nor any substantially owned affiliate is participating or shall participate in an international boycott in violation of the U.S. Export Administration Act of 1979 or the applicable regulations of the United States Department of Commerce. 30 ILCS 582. Vendor certifies that no foreign-made equipment, materials, or supplies furnished to the State under the contract have been or will be produced in whole or in part by forced labor or indentured labor under penal sanction. 30 ILCS 583.
22. Vendor certifies that no foreign-made equipment, materials, or supplies furnished to the State under the contract have been produced in whole or in part by the labor of any child under the age of 12. 30 ILCS 584.
23. This applies to information technology contracts and is otherwise not applicable. Vendor certifies that information technology, including electronic information, software, systems and equipment, developed or provided under this contract comply with the applicable requirements of the Illinois Information Technology Accessibility Act Standards as published at (www.dhs.state.il.us/iitaa). 30 ILCS 587.
24. **This only applies to vendors who own residential buildings but is otherwise not applicable.** Vendor certifies, if it owns residential buildings, that any violation of the Lead Poisoning Prevention Act has been mitigated. 410 ILCS 45.
25. Vendor certifies it has not been convicted of the offense of bid rigging or bid rotating or any similar offense of any state or of the United States. 720 ILCS 5/33 E-3, E-4.
26. Vendor certifies it complies with the Illinois Department of Human Rights Act and rules applicable to public contracts, which include providing equal employment opportunity, refraining from unlawful discrimination, and having written sexual harassment policies. 775 ILCS 5/2-105.
27. Vendor certifies it does not pay dues to or reimburse or subsidize payments by its employees for any dues or fees to any “discriminatory club.” 775 ILCS 25/2.
28. Vendor warrants and certifies that it and, to the best of its knowledge, its subcontractors have and will comply with Executive Order No. 1 (2007). The Order generally prohibits Vendors and subcontractors from hiring the then-serving Governor’s family members to lobby procurement activities of the State, or any other unit of government in Illinois including local governments if that procurement may result in a contract valued at over \$25,000. This prohibition also applies to hiring for that same purpose any former State employee who had procurement authority at any time during the one-year period preceding the procurement lobbying activity.
29. Vendor certifies that if an individual, sole proprietor, partner or an individual as a member of a LLC, he/she has not received an early retirement incentive prior to 1993 under Section 14-108.3 or 16-133.3 of the Illinois Pension Code or an early retirement incentive on or after 2002 under Section 14-108.3 or 16-133.3 of the Illinois Pension Code. 30 ILCS 105/15a; 40 ILCS 5/14-108.3; 40 ILCS 5/16-133.
30. Vendor certifies that it has read, understands, and is in compliance with the registration requirements of the Elections Code (10 ILCS 5/9-35) and the restrictions on making political contributions and related requirements of the Illinois Procurement Code. Vendor will not make a political contribution that will violate these requirements. 30 ILCS 500/20-160 and 50-37.
31. A person (other than an individual acting as a sole proprietor) must be a duly constituted legal entity and authorized to transact business or conduct affairs in Illinois prior to submitting a bid or offer. If you do not meet these criteria, then your bid or offer will be disqualified. 30 ILCS 500/20-43.

Additional Terms:

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

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

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

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

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

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

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