

## Terms of Service

K12 *Insight*, LLC (“K12 *Insight*“, “Company”, or “we”) is a Virginia limited liability company that provides a range of solutions and services (“Services”), described in Section 6, to organizations directly or indirectly affiliated with education (“Client” or “you”).

The Sales Order Form (“SOF”) executed by you through the signature of an authorized representative along with these Terms of Service referenced in the SOF, and our Privacy Policy referenced in the SOF, and any addenda attached, (all of which are hereby incorporated by reference, and collectively called the “Agreement”) form a binding agreement between the Client and K12 *Insight*.

All individuals authorized by Client to use and access the Services or who access Services on Client’s behalf, as stated in this Agreement, are also collectively referred to as “Client” in this Agreement.

### 1. LICENSED RIGHTS

**1.1. License Terms.** Subject to the terms of this Agreement, K12 *Insight* hereby grants Client a license to use and access the Services for the period of time specified in the Sales Order Form.

**1.2. Materials.** K12 *Insight* may from time to time and at its sole discretion provide additional Materials to complement the Services. K12 *Insight* hereby grants Client a limited license to use the Materials solely for Client’s own authorized internal business purposes.

**1.3. Scope.** Client agrees to use the Services solely in accordance with the Agreement and purposes expressly authorized in this Agreement.

### 2. TERM

Client is entitled to use the Services for the duration stated in the Sales Order Form only, subject to the Payment Obligations in Section 5, below. The duration of Client’s access to the Services is stated in the Sales Order Form as the “Contract Start Date” and “Contract End Date”, and subject to termination for Client’s failure to provide timely payment.

### 3. PRIVACY POLICY

**3.1. Commitment to Privacy.** K12 *Insight* and Client are bound to a Privacy Policy which is referenced in the Sales Order Form and is incorporated into this Agreement.

Use of the Services is deemed acceptance of this Privacy Policy. The Privacy Policy may be modified from time to time, to ensure compliance with evolving privacy laws. Such changes will be sent to Client via email.

## 4. DATA

**4.1. Data.** In the course of using the Services, Client, or third parties affiliated with Client, may submit content through the Services. This may include surveys questions, survey responses, details of customer contact (collectively, “Data”). Data may include Personally Identifying Information (“PII”) such as individually identifiable information about an individual collected online, including: a first and last name; a home or other physical address including street name and name of a city or town; an email address; a telephone number; a Social Security number. Our Privacy Policy governs the use and disclosure of all Data.

**4.2. Ownership of Data.** You retain ownership of your Data. K12 *Insight* does not claim ownership over any of your Data. This Agreement does not grant K12 *Insight* any licenses or rights to your Data, except for the limited rights needed to provide the Services, and as otherwise described in this Agreement or the Privacy Policy.

**4.3. Deleting Data.** Our Data deletion practices are stated in the Privacy Policy.

## 5. PAYMENT OBLIGATIONS

**5.1. Subscriptions.** Some of our Services are billed on a subscription basis (“Subscriptions”). This means that you will be billed in advance on a recurring, periodic basis (each period is called a “Billing Cycle”). Billing Cycles typically commence before the Contract Start, and correspond with the “Billed On” and “Due By” dates stated on the Invoice, depending on which subscription plan is selected when purchasing a Subscription. Payment for the first year of multi-year contracts will be Billed On the signing of the Sales Order Form, and will be Due By 30 days from the date of its signature.

**5.2. Fees for Services.** Clients shall pay all fees stated in the Sales Order Form on the dates specified in the Sales Order Form.

**5.3. Refunds.** Fees associated with Services are non-cancellable and non-refundable.

**5.4. Nonpayment.** K12 *Insight* may assess a late fee of 1.5% per month on any balance that remains unpaid after the Due By date. Failure to pay any invoice within 60 days of the Due By date is a material breach of this Agreement that entitles K12 *Insight* to immediately stop the Services without further notice and demand payment in full for all outstanding amounts, including payments owed through the duration of the final Contract End Date and accrued late fees.

**5.5. Price Changes.** The fees associated with Services shall remain as indicated in the Sales Order Form.

## 6. OUR SERVICES AND OBLIGATIONS

**6.1. Services.** K12 *Insight* will provide one or more of the following Services as selected by the Client in the Sales Order Form:

- a) Subscription to Let's Talk!™ Customer Experience Platform
- b) Subscription to Engage Survey Platform
- c) Managed Survey Project
- d) Training in Customer Service

## 7. CHANGES TO OUR SERVICES

**7.1. Services Modifications.** K12 *Insight* may from time to time make modifications to the Services in the form of software upgrades and software releases based on a variety of factors including Client feedback. Because K12 *Insight* must use substantial resources to make and support such changes, and because such changes are derived from K12 *Insight*'s existing Intellectual Property, K12 *Insight* owns all right, title, and interest in and to such changes.

**7.2. Service Retirement.** K12 *Insight* may add, alter, or remove functionality from a Service at any time without prior notice. K12 *Insight* may also limit, suspend, or discontinue a Service at its discretion. If K12 *Insight* discontinues a Service, we will give you reasonable advance notice to provide you with an opportunity to export a copy of your Data from that Service. K12 *Insight* may remove content from the Services at any time in our sole discretion, although we will endeavor to notify you before we do that, if it materially impacts you, and if practicable under the circumstances.

**7.3. New Services.** K12 *Insight* may introduce new products and services to complement our existing Services. If such Services are not included in your existing Subscription, K12 *Insight* reserves the right and sole discretion to decide whether or not the new Services will be made available to you. Such Services may come at an additional cost or may be included within your Subscription license at no cost.

## 8. YOUR OBLIGATIONS

**8.1. Acceptable Uses.** You are responsible for your conduct and the use by persons you authorize to access the Services on your behalf. This includes the input of all Data, and communications with others while using the Services. Clients shall comply with the following acceptable use requirements when using the Services.

- You shall not misuse our Services by interfering with their normal operation, or attempting to access them using a method other than through the interfaces and instructions that *K12 Insight* provides.
- You shall not circumvent or attempt to circumvent any limitations that *K12 Insight* imposes on your account.
- Unless authorized by *K12 Insight* in writing, you may not probe, scan, or test the vulnerability of any *K12 Insight* system or network.
- Unless permitted by applicable law, you may not deny others access to, or reverse engineer, the Services, or attempt to do so.
- You shall not transmit any viruses, malware, or other types of malicious software, or links to such software, through the Services.
- You shall not transmit obscene, threatening, harassing, hate-oriented, defamatory, racist, illegal, or otherwise objectionable material through the Services.
- You shall not engage in abusive or excessive usage of the Services, which is usage significantly in excess of average usage patterns that adversely affects the speed, responsiveness, stability, availability, or functionality of the Services for other users. *K12 Insight* will endeavor to notify you of any abusive or excessive usage to provide you with an opportunity to reduce such usage to a level acceptable to *K12 Insight*.
- You shall not use the Services to infringe the intellectual property rights of others, or to commit an unlawful activity.
- If your use of the Services requires you to comply with state and federal education policy regulations and laws applicable to such use, you will be solely responsible for such compliance.
- If you have been issued an account by *K12 Insight* in connection with its use of the Services, you are responsible for safeguarding all passwords and any other credentials used to access that account. You, and not *K12 Insight*, are responsible for any activity occurring in your account (other than activity that *K12 Insight* is directly responsible for, which is not performed in accordance with the Client's instructions), whether or not you authorized that activity. If you become aware of any unauthorized access to your account, you must notify *K12 Insight* immediately. Accounts may not be shared and may only be used by one individual per account.
- You shall not engage in any activity that violates any law, including, but not limited to the CAN SPAM Act, the Health Insurance Portability and Accountability Act, the Children's Online Privacy Protection Act, FERPA, or any third party right, including any intellectual property rights, privacy rights or publicity rights of others. You shall not promote or condone the sending of unsolicited email to individuals not affiliated with you.
- If your Service includes the Engage Survey Platform:

- o If using anonymous or semi-anonymous surveys or intake methods, you shall take all necessary steps to prevent linking a survey response to the identity of that survey participant.
- o You must place K12 *Insight* mail server details on a list of “safe” senders, i.e., whitelist, to ensure delivery of high volumes of emails from K12 *Insight*.
- o When requesting Data from survey projects, you waive the right to Data that may directly or indirectly reveal the identity of a survey participant or participants.
- o If survey feedback includes language that includes threats, safety concerns, or harassment, K12 *Insight* will reveal all information it has related to the identity of the survey participant, provided such threat is, in K12 *Insight*'s sole judgment, very explicit. In the case of an ambiguous threat, you will be required to file a police report to receive any identity-related information from K12 *Insight*.
- If your Service includes Let's Talk! Customer Experience Platform:
  - o If a dialogue is submitted with anonymous or semi-anonymous feedback, you shall take all necessary steps to prevent linking that feedback to the identity of that customer.
  - o If a dialogue is submitted contains language that includes threats, safety concerns, or harassment, K12 *Insight* will reveal all information it has related to the identity of the customer provided such threat is, In K12 *Insight*'s sole judgment, very explicit. In the case of an ambiguous threat, you will be required to file a police report to receive identity-related information from K12 *Insight*.
- You may not resell or lease the Services.
- You shall appoint one member of your staff to serve as K12 *Insight*'s Point of Contact (“POC”).
- You shall provide reasonable timeline for all projects.
- You shall attend and actively participate in meetings with K12 *Insight* staff or representatives.
- You shall provide feedback in a timely manner for all content where K12 *Insight* staff explicitly request your feedback.
- You shall participate in Service-specific training conducted by K12 *Insight*.
- You shall implement a plan to build partnerships with community-based organizations to boost participation rates for the Services.
- You shall employ reasonable safeguards to preserve confidentiality of usernames and passwords, the failure of which may result in termination of the Services.
- You shall inform K12 *Insight* immediately if you feel someone, without permission, may have accessed information related to the Services or in any other way gained access to your account.

- You shall provide and maintain an accurate Client profile, including valid contact information.
- You are solely obligated to back-up and download all necessary Data relating to the Services.

## 9. JOINT OBLIGATIONS FOR A SUCCESSFUL ENGAGEMENT

**9.1. Our Partnership.** Client and K12 *Insight* shall be responsible to perform, at a minimum, the following functions for all Service components and for the optional features selected in the Sales Order Form:

- K12 *Insight* and Client shall jointly agree upon all timelines. While we understand that unforeseen circumstances could delay project deadlines, please know that any delays you experience with regard to deliverables may result in an overall delay of the project and, by extension, subsequent projects.
- Shortening any stage of the process or departing from the project plan introduces quality risks.

## 10. PROPRIETARY RIGHTS

**10.1. K12 *Insight* Intellectual Property.** K12 *Insight* owns all right, title, and interest in and to the Services, Materials, and K12 *Insight*'s registered and unregistered, domestic and foreign, trademarks, service marks, trademark applications, service mark applications, trade names, patents, patent applications, copyrights, copyright applications, discoveries, know-how, trade secrets, algorithms, user interfaces of and relating to the Services, including any and all surveys created by K12 *Insight* prior to or during this engagement with Client, all reports, findings, and analysis created by K12 *Insight* (all collectively "Intellectual Property").

**10.2. Maintaining K12 *Insight* Intellectual Property Notices.** Client shall not remove any copyright or trademark notices attached to K12 *Insight* Intellectual Property, including those appearing on all templates, reports, communications, and electronic surveys at any time during or after the terms of this Agreement, unless specifically authorized by K12 *Insight*.

**10.3. Client Intellectual Property.** Client owns all right, title and interest in its own intellectual property including its trademarks, questionnaires independently developed by Client using the Services but without consultation from K12 *Insight*, provided they are not derived from K12 *Insight*'s Intellectual Property, as well as survey participant responses collected through the Services.

**10.4. Limited License to Your Content.** You grant K12 *Insight* a worldwide, royalty free license to use, reproduce, modify, adapt, create derivative works, and otherwise use your Data and intellectual property, but only for the limited purposes of providing the Services to you and as otherwise permitted by K12 *Insight*'s Privacy Policies. For

example, K12 *Insight* needs access to your participant responses and Data in order to develop reports for your use. This license also extends to any trusted third parties we work with to the extent necessary to provide the Services to you. If you provide K12 *Insight* with feedback about the Services, we may use your feedback without any obligation to you.

## **11. DISCLAIMERS AND LIMITATIONS OF LIABILITY**

**11.1. Warranty.** K12 *Insight* represents and warrants that the Services shall be provided in a workmanlike manner that conforms to the relevant, prevailing industry standards.

**11.2. WARRANTY DISCLAIMER.** EXCEPT FOR THE WARRANTY ABOVE, K12 *INSIGHT* PROVIDES THE SERVICES AS IS AND EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, INCLUDING, BUT NOT LIMITED TO, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND QUIET ENJOYMENT. CLIENT UNDERSTANDS THAT K12 *INSIGHT* IS DEPENDENT ON CERTAIN THIRD-PARTIES AND ON MATTERS OUTSIDE ITS CONTROL FOR DELIVERING THE SERVICES. K12 *INSIGHT* EXPRESSLY DISCLAIMS THAT SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, VIRUS-FREE, ERROR-FREE, ACCURATE OR RELIABLE. ANY MATERIAL OR DATA OBTAINED OR DOWNLOADED THROUGH THE SERVICES, INCLUDING PARTICIPANT RESPONSES, CUSTOMER FEEDBACK, MOBILE APPLICATIONS, REPORTS, DASHBOARDS, AND SAMPLE SURVEYS, IS DONE AT CLIENT'S OWN RISK AND CLIENT SHALL REMAIN SOLELY RESPONSIBLE FOR ANY DAMAGE CAUSED BY SUCH MATERIAL, INCLUDING ANY LOSS OF DATA OR DAMAGE TO CLIENT'S COMPUTER SYSTEMS. K12 *INSIGHT* SHALL NOT BE RESPONSIBLE FOR CLIENT'S FAILURE TO STORE, DOWNLOAD, OR BACKUP ITS DATA. CLIENT SHALL REMAIN RESPONSIBLE TO EVALUATE THE ACCURACY, RELIABILITY, COMPLETENESS AND USEFULNESS OF ANY AND ALL CONTENT DELIVERED THROUGH THE SERVICES.

**11.3. LIMITATION OF LIABILITY.** K12 *INSIGHT* LIABILITY FOR DAMAGES UNDER THIS AGREEMENT ARE LIMITED TO DIRECT MONETARY DAMAGES, AND THE AMOUNT OF SUCH DAMAGES SHALL EQUAL THE AGGREGATE FEES PAID BY CLIENT WITHIN THE PAST YEAR OF SERVICE UP TO A MAXIMUM OF \$5,000. IN NO EVENT WILL K12 *INSIGHT* BE LIABLE FOR PROVIDING SUBSTITUTE SERVICES OR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, OR SPECIAL DAMAGES, INCLUDING BUT NOT LIMITED TO DAMAGES RESULTING FROM, LOST PROFITS, LOST REVENUE, LOST DATA, OR INABILITY TO USE THE SERVICES, WHETHER IN AN ACTION IN CONTRACT OR TORT, EVEN IF K12 *INSIGHT* HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE. CLIENT ACKNOWLEDGES THAT K12 *INSIGHT* HAS SET ITS PRICES AND ENTERED INTO THIS AGREEMENT IN RELIANCE ON THE

DISCLAIMERS OF WARRANTIES AND LIMITATION OF LIABILITY AND THE SAME FORM AN ESSENTIAL BASIS FOR THE BARGAIN BETWEEN THE PARTIES.

## **12. INDEMNITY.**

Client agrees to indemnify, hold harmless, and settle or defend at its own expense, K12 *Insight* and its directors, officers, employees, and agents against claims for death, illness, personal injury, property damage, losses, and improper business practices, and for Client's own negligence arising from its use of the Services under this Agreement, Client's reliance on the Services and any reports, dashboard, or any unauthorized access by persons using Client's login credentials due to Client's negligence.

K12 *Insight* agrees to indemnify, hold harmless, and settle or defend at its own expense the Client and the Client's directors, officers, employees, and agents against claims for infringement and K12 *Insight* gross negligence in the performance of the Services under this Agreement. However, K12 *Insight*'s obligation to indemnify shall not apply to any claims resulting from Client's sole willful misconduct or sole negligence. As a condition to K12 *Insight*'s defense and indemnification, the indemnified Client shall provide K12 *Insight* with prompt written notice of any claims and permit K12 *Insight* to control the defense, settlement, adjustment or compromise of any such claim.

**12.1. Infringing Services.** If any Service becomes, or in K12 *Insight*'s opinion is likely to become, subject of a claim of infringement, K12 *Insight* must either provide Client the right to continue to use that Service, or replace or modify the Service so it is no longer infringing. If neither of the foregoing is commercially and reasonably available to K12 *Insight*, Client shall return all Materials relating to the Services to K12 *Insight*, or the Service may be deactivated by K12 *Insight*, and K12 *Insight* must then refund Client a prorated amount of the fees paid for the infringing Service based on the remaining contracted period. K12 *Insight* shall have no obligation or liability hereunder for any claim resulting from: (a) modification of the Services by any party other than K12 *Insight*, (b) modification of the Services by K12 *Insight* in accordance with Client's designs, specifications, or instructions; (c) use other than as granted in this Agreement; (d) use of a superseded version of the Services if the infringement claim could have been avoided by using a current version available to Client.

## **13. CONFIDENTIAL INFORMATION**

**13.1. Defining Confidential Information.** The parties understand the provision of Services may require the use and disclosure of certain confidential information. Unless required by local, state, or federal laws, the Client shall hold in confidence and shall not use or disclose to any third party, or use for any purpose other than as expressly authorized in this Agreement, the terms and pricing of Services under this Agreement,



any software or documentation related to the Services, K12 *Insight* sample questions and templates, trade secrets, technical know-how, inventions, Materials, product development plans, pricing, marketing plans, client lists and email addresses, whether disclosed orally or in writing, or other information understood to be K12 *Insight*'s confidential information received from the other party (collectively, "Confidential Information"). Confidential Information does not include information that: (a) is known to Client prior to any disclosure and can be so proven by written records; (b) is received at any time by Client in good faith from a third party lawfully in possession of it and having the right to disclose the same, and can be so proven by written records; (c) is as of the date of receipt by Client in the public domain or subsequently enters the public domain other than by reason of acts or omissions of the employees or agents of the Client, which acts or omissions have not been consented to by K12 *Insight*, and can be so proven by written records; (d) becomes publicly available through no fault of Client; (e) or is independently developed by or on behalf of Client without resort to K12 *Insight*'s Confidential Information as can be shown by reasonable documentary evidence.

## **14. TERMINATION**

**14.1. Termination for Cause.** Either K12 *Insight* or Client may terminate this Agreement in response to any material breach that remains uncured for thirty (30) days following written notice of material breach to the breaching party ("Cause").

**14.2. No Cause Termination.** Client shall not terminate this Agreement for convenience or any reason other than stipulated in [Section 14.1](#).

**14.3. Ceasing Services.** Upon termination of this Agreement or the rights licensed herein, Client shall cease using the Services and related Materials immediately. Upon termination, K12 *Insight* shall not have any obligation to make available or provide access to the Services. Accordingly, Client should download all information desired prior to the earlier of the Contract End Date stated in the Sales Order Form, termination, or the deletion periods otherwise stated herein.

## **15. GENERAL PROVISIONS**

**15.1. Governing State.** This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia, without regard to its own or other conflict of law principles. The parties shall use good faith and all reasonable efforts to resolve disputes arising from or relating to this Agreement by negotiating with each other first. Any disputes unresolved by good faith resolution attempts may then be brought in a court of competent jurisdiction in Fairfax County, Virginia.

**15.2. Entire Agreement.** This Agreement and the additional terms referenced herein represents the entire final Agreement between the parties and supersedes all prior

Agreements relating to the use of the Services, whether written or oral, unless otherwise expressly permitted in this Agreement. Any terms and conditions appearing on a purchase order or similar document issued by you do not apply to the Services, do not override or form a part of this Agreement, and are void. In the event of any conflict between these Terms of Service and any other terms referenced herein, these Terms of Service shall govern. Any changes requested to our Agreement must be made in a written and signed addendum, which shall be incorporated by reference upon acceptance by *K12 Insight*.

**15.3. Changes to Terms.** *K12 Insight* may require changes to this Agreement to reflect changes in applicable law or updates to the Services, and to account for new Services or functionality. *K12 Insight* will provide written notice of any material changes to this Agreement, to permit you a reasonable chance to review and consent to the same. Changes will be effective no sooner than the day written notice is provided to the Client. If you do not want to agree to any changes made to the terms for a Service, you should stop using that Service, because by continuing to use the Services you indicate your agreement to be bound by the updated terms.

**15.4. Waiver.** The failure by *K12 Insight* to enforce any right or provision of the Agreement shall not constitute a waiver of that provision or any other provision of the Agreement.

**15.5. Force Majeure.** The parties understand that there may be an occurrence of an event or effect that cannot be reasonably anticipated or controlled, which even by the exercise of reasonable diligence cannot prevent non-performance. These occurrences and events include, but are not limited to: acts of God; acts of war; acts of public enemies; strikes; fires; explosions; outages; general Internet brownouts or blackouts or shortage of bandwidth; hacking; actions of the elements; or other similar causes beyond the control of Client or *K12 Insight* in the performance of this Agreement. Upon the occurrence of such event or effect, the parties shall agree to excuse performance under this Agreement and not hold the other liable for the delay in or failure of performance under this Agreement. Any such delay in or failure of performance shall not constitute default or give rise to any liability for damages.

**15.6. Transfer of Rights.** Client shall not assign or otherwise transfer the rights under this Agreement by operation of law or otherwise, without *K12 Insight's* prior written consent. Any entity that acquires merges with, or otherwise combines in any manner with Client shall not acquire any rights to the Services under this Agreement, without *K12 Insight's* prior written consent. *K12 Insight* reserves the right to assign this Agreement and the Services provided herein.

**15.7. Severability.** If any provision of this Agreement is determined to be invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall remain in full force and effect.

**15.8. Recovery.** In the event *K12 Insight* must initiate mediation, arbitration, litigation, or otherwise become a party to any other action at law or other proceeding against the

Client or related to Client to enforce any of the terms of this Agreement, or by reason of any breach or default, K12 *Insight* shall in any such action or proceeding be entitled to recover from Client all costs and reasonable attorneys' fees it incurred.