



**STANDARD TERMS OF SERVICE AND LICENSE
DISCOVERY EDUCATION, INC.**

These Standard Terms of Service and License (the “**Standard Terms**”) are applicable to any Order Form (each, an “**Order Form**”) issued by Discovery Education, Inc. (“**Discovery**”) to the entity listed in the Order Form (“**Subscriber**”) to provide access to the products and services identified therein (the “**Services**”) and to Subscriber’s use of the Services. Each Order Form shall be deemed to be part of these Standard Terms and subject to the terms and conditions set forth herein. The Standard Terms supersede all other prior and contemporaneous agreements, negotiations, communications or understandings, oral or written, with respect to the subject matter hereof. In no event shall the terms and conditions of any other purchase agreement amend or modify the terms and conditions of these Standard Terms.

1. RIGHTS OF ACCESS AND USE

- 1.1. **Grant of License.** Subject to the terms and conditions set forth herein, Discovery grants to Subscriber, and its authorized educators, administrators and students employed by Subscriber or enrolled in Subscriber’s program as listed in the Order Form (the “**Users**”), for the term of the applicable Order Form, a limited, non-exclusive, non-sublicensable, non-transferable and revocable license to access the Service(s) and any and all content included therein (the “**Content**”), and to download, stream, and edit the Content pursuant to the terms and conditions set forth in the Standard Terms. Discovery may, in its sole discretion, make changes to the Services and/or the Content. All rights not expressly granted to Subscriber and its Users pursuant to the Standard Terms are reserved to Discovery, and all uses of the Content by Subscriber and its Users not expressly permitted herein are prohibited.
- 1.2. **Access.** Discovery shall provide Subscriber access to the Services by the date identified in the Order Form. Access rights granted to Subscriber shall be limited to those access rights necessary to use of the intended functionality of the Services. Discovery reserves the right to restrict or prevent access to activities or suspected activities that involve security breaches, hacking, distributed denial of service attacks, or uploading a virus, Trojan horse, time bomb, unauthorized application, or any other harmful form of programming or vandalism.
- 1.3. **Permitted and Prohibited Uses.**
 - a. **Use for Educational, Non-Commercial Purposes Only.** Subscriber and its Users may use the Service(s) and the Content for bona fide educational and research purposes only and may not use them in any commercial or for-profit manner. Discovery reserves the right, in its sole and absolute discretion, to limit Subscriber’s and/or any Users’ use of the Service(s) in the event that Discovery, in its sole and absolute discretion, deems Subscriber’s and/or such Users’ use thereof to be inconsistent with educational and research purposes, and/or inconsistent with these Standard Terms.
 - b. **Downloading of Content.** Users may download, for noncommercial instructional use, including for lesson plans, copies of (i) images and (ii) videos and video clips designated on the website as downloadable. Copies must be deleted or erased after use or expiration of the Term, whichever occurs first. Such downloading shall be for individual User convenience only, and Users may not (1) systematically download any of the Content, (2) create distribution “libraries”, or (3) transfer, sell, rent, display, or exhibit any of the Content to any third party other than Users.
 - c. **Editing Content.** Users may edit videos and video clips designated on the Service(s) as editable, solely in connection with classroom or other school-related projects. Such videos and video clips, as edited by User, as well as any work containing User-edited videos or video clips, may not contain any libelous or unlawful materials or content or any commercial advertising materials, will not infringe upon any party’s proprietary rights, including but not limited to statutory or common-law copyright, trademark and right of privacy, and may not violate any law, regulation or right of any kind whatsoever or give rise to any actionable claim or liability. Under no circumstances may a User convert the Content from digital to analog format, such as by recording a video clip onto a DVD. Violation of this Section 1.3(c) may constitute copyright infringement. User must maintain all copyright, trademark and proprietary notices included with, attached to or embedded all editable videos and video clips without modification, obstruction or deletion. The

Content may include certain ancillary educational materials, such as student activity sheets, blackline masters and teachers’ guides (“**Ancillary Materials**”). User may modify, alter and revise the Ancillary Materials to meet specific instructional needs, provided that the following statement is prominently displayed on all such revised Ancillary Materials, in addition to any other proprietary notices, and with the understanding that Discovery or its content provider shall continue to own the Ancillary Materials: “Revised with the permission of Discovery. Discovery and its content providers are not responsible for the content or accuracy of the revision”.

d. **Dissemination of Content.** In the course of using any Content as permitted hereunder, Subscriber and its Users may not make the Content, or any part thereof, available to any party who is not a Subscriber or a User, except as permitted herein. Subscriber and its Users must ensure that the Content is at all times kept on a secure server, viewable only by Subscriber s and/or its Users. If Subscriber wishes to use a third party to host the Content, Subscriber shall notify Discovery, and Discovery shall have the right to approve the use of such host in advance, in writing, and to approve the terms of agreement between such host and Subscriber. Notwithstanding the foregoing, if Subscriber chooses to use a third party host, Discovery disclaims all liability to Subscriber in connection with such third party host, and Discovery shall have no responsibility to Subscriber or any User to ensure that such third party host maintains its service. In addition, any Subscriber or User using the Local Host support option must use the Service(s), rather than a local directory, to search for and access the Content.

e. **Prohibited Uses.** Except as expressly set forth herein, neither Subscriber nor the Users may (i) copy, reproduce, alter, modify, transmit, perform, create derivative works of, publish, sub-license, distribute, or circulate the Service(s), the Content, or any portion thereof; (ii) disassemble, decompile, or reverse engineer the Service(s) or any portion thereof, or use a robot, spider, or any similar device to copy or catalog the Content or any portion thereof; (iii) take any actions, whether intentional or unintentional, that may circumvent, disable, damage or impair the Service(s)’s or the Content’s control or security systems, nor allow or assist a third party to do so; or (iv) use the Content in a manner that disparages the Service(s), the Content or Discovery or its content providers, or in any manner that Discovery may, in its sole discretion, deem inappropriate. Subscriber and the Users acknowledge and agree that the Service(s) and the Content possess a special, unique and extraordinary character that makes difficult the assessment of the monetary damages that would be sustained as a result of unauthorized use, and that unauthorized use may cause immediate and irreparable damage to Discovery for which Discovery would not have an adequate remedy at law. Therefore, Subscriber agrees that, in the event of such unauthorized use, in addition to such other legal and equitable rights and remedies as may be available to Discovery, Discovery shall be entitled to seek injunctive and other equitable relief without the necessity of proving damages or furnishing a bond or other security.

f. **Credentials.** Each User shall have a valid username, password, passcode, and in certain circumstances, IP authentication, for the purpose of accessing the Service(s) and the Content (the “**Log-In Information**”). Subscriber and its Users must keep all Log-In Information strictly confidential, and all Log-In Information may be used only by the assigned User. Subscriber and its Users are responsible for maintaining the security and confidentiality of all Log-In Information, and for



preventing access to the Service(s) and/or the Content by unauthorized persons using a User's Log-In Information. Unauthorized access to or use of the Service(s) and/or the Content by someone using a User's Log-In information may be attributed to such User.

- 1.4 **Subscriber Changes to Users.** Subscriber may request that Discovery change its authorized educators and schools by emailing such changes to Discovery at ContractingTeam@discoveryed.com. In the event such requested changes result in changes to the delivery of Services or Fees, Discovery shall notify Subscriber in writing.

2. PROPRIETARY RIGHTS

- 2.1. **Discovery Property.** As between Subscriber, the Users, and Discovery, the Service(s) and the Content are the property of Discovery and are protected by United States and international copyright and trademark law. By using the Service(s) and the Content, even as permitted hereunder, neither Subscriber nor any of its Users gain any ownership interest in the Service(s) or the Content.

- 2.2. **DMCA Notice and Takedown Policy.** It is our policy to respond to alleged infringement notices that comply with the Digital Millennium Copyright Act of 1998 (the "DMCA"), or similar regulations. If you believe that your copyrighted work has been copied in a way that constitutes copyright infringement and is accessible via the Products and Services, please notify our copyright agent as set forth in the DMCA, or applicable regulation. For your complaint to be valid under the DMCA, it must contain all the elements provided in 17 USC §512(c)(3) and be submitted to the following DMCA Agent:

- DMCA Notice, Legal Department
- Discovery Education, Inc.
- 8403 Colesville Road, Suite 1200, Silver Spring, MD 20910
- Name of Agent Designated to Receive Notification of Claimed Infringement: Sam Kronthal
- Telephone Number of Designated Agent: 240-839-4239
- Email: DiscoveryEducationDMCA@discoveryed.com

3. PROTECTION OF PERSONAL INFORMATION AND DATA SECURITY.

- 3.1. While Subscriber acknowledges that no student personal information ("Student Data") is required for the use of any of the basic Discovery services, in the event Subscriber or its Users elect to use any of the functionality within the Discovery services which provide personalized pages, individual accounts, other user-specific customization, or otherwise submit or upload information (all such data is generally limited to the following: school name, first name, last name, grade level), Subscriber represents and warrants that Subscriber has all necessary authorization to provide to Discovery any Student Data it or any User provides through the Services in order to use such functions. Consent may be required for the collection, use and disclosure of Student Data obtained from children through certain online services, and to the extent required, Subscriber consents to Discovery's use of Student Data in the course of providing the Services. The parties agree to uphold their responsibilities under laws governing personal information, including: (i) the Children's Online Privacy Protection Act of 1988 ("COPPA"), the Family Educational Rights & Privacy Act of 1974 ("FERPA"), Children's Internet Protection Act ("CIPA") and any other laws, regulations and statutes, all solely to the extent applicable.
- 3.2. Discovery agrees to protect Student Data in accordance with the provisions of the Discovery Education Student Data Protection Addendum (the "DPA") located at discoveryeducation.com/Data-Protection-Addendum incorporated herein.
- 3.3. **Data Security.** Discovery shall implement commercially reasonable administrative, physical and technical safeguards designed to secure Personal Information from unauthorized access, disclosure, or use in accordance with Discovery's Security Policy attached as Schedule A to the DPA.

4. FEES AND TAXES

- 4.1. **Fees.** Subscriber shall pay Discovery the fees in the amounts specified in the Order Form (the "Fees"). Upon Subscriber's acceptance of the Order Form, Subscriber shall submit to Discovery the executed Order Form and Discovery shall issue Subscriber an invoice for the applicable Fees. In the event that Subscriber elects to pay such Fees with a credit card, Discovery shall have the right to charge Subscriber a convenience fee. Subscriber shall pay the Fees within 30 days of Discovery's invoice. Failure to pay the Fees in accordance with the Standard Terms shall constitute a material breach by Subscriber. The Fees for any Renewal Term shall be at Discovery's then current, applicable rates, as provided by Discovery.

- 4.2. **Taxes.** Subscriber certifies that Subscriber is exempt from all federal, state, and local taxes and will furnish Discovery with copies of all relevant certificates demonstrating such tax-exempt status upon request. In the event Subscriber is not exempt from certain of such taxes, Subscriber agrees to remit payment for such taxes to Discovery.

5. TERM AND TERMINATION

- 5.1. **Term.** The term ("Term") is defined in the applicable Order Form referencing the Standard Terms. The Term shall automatically renew for additional 1 year periods (each, a "Renewal Term") unless either party gives written notice of non-renewal 90 days prior to the expiration of the applicable Term or then-current Renewal Term. The Fees for the Renewal Term shall be as set forth in Section 4.1 herein.
- 5.2. **Termination for Breach.** In the event that Subscriber or its Users breach any term of the Standard Terms, and such breach is not cured within 10 days after receipt of notice thereof from Discovery, Discovery may terminate the Standard Terms in whole or in part immediately upon written notice to Subscriber.
- 5.3. **Termination for Bankruptcy.** Either party may terminate the Standard Terms immediately if any of the following events occur affecting the other party: (a) voluntary bankruptcy or application for bankruptcy; (b) involuntary bankruptcy or application for bankruptcy not discharged within 60 days; (c) appointment of receiver or trustee in bankruptcy for all or a portion of the other party's assets; or (d) an assignment for the benefit of creditors.
- 5.4. **Effect of Termination.** Upon expiration or termination of the Standard Terms, all rights granted herein shall revert to Discovery; all access to and use of the Service(s) and the Content by Subscriber and its Users must cease; and all materials downloaded from the Service(s) by Subscriber or any Users must be erased, deleted, or destroyed.

6. GENERAL WARRANTIES

- 6.1. **Discovery Warranties.** Discovery represents and warrants that it has full power and authority to enter into the Standard Terms.
- 6.2. **Subscriber Warranties.** Subscriber represents and warrants that (i) it has full power and authority to enter into the Standard Terms and has received all parental and other permissions required to permit Discovery to obtain and retain information (including personal information) from Users; (ii) only Subscriber or its Users shall access the Service(s) and the Content; (iii) Subscriber and its Users will at all times use the Service(s) and the Content only as expressly permitted by the Standard Terms; (iv) in the event that Subscriber requests that Discovery customize the Service(s) interface with Subscriber's trade name, trademarks or logos, and/or digitize and/or encode and/or host any of Subscriber's content on the Content and/or the Service(s), Discovery has the right to so use and exploit any and all such trade names, trademarks, logos and content, including without limitation any and all underlying elements (the "Subscriber IP"), and (v) the Subscriber IP, any content, materials, and/or information contributed by Users, and any revisions to the Content by Users does not and will not contain any libelous, unlawful or infringing materials or content, will not infringe upon any party's proprietary rights, including without limitation statutory or common-law copyright, trademark and right of privacy, and will not violate any law, regulation or right of any kind whatsoever or give rise to any actionable claim or liability.

6.3. **Disclaimer of Warranty.** THE SERVICES AND CONTENT ARE PROVIDED AS IS, AND ALL WARRANTIES OF ANY KIND, PAST OR PRESENT, WHETHER STATUTORY, COMMON-LAW OR FROM A COURSE OF DEALING OR USAGE OF TRADE, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SECURITY AND, EXCEPT AS MAY BE OTHERWISE STATED IN THESE STANDARD TERMS, NON-INFRINGEMENT, ARE EXPRESSLY DISCLAIMED TO THE FULLEST EXTENT PERMITTED BY LAW. DISCOVERY DOES NOT GUARANTEE OR MAKE ANY REPRESENTATIONS REGARDING THE USE OR ACCURACY OF THE WEBSITE OR THE CONTENT. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY DISCOVERY EDUCATION OR ITS EMPLOYEES SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF DISCOVERY'S OBLIGATIONS HEREUNDER, AND SUBSCRIBER MAY NOT RELY ON ANY SUCH INFORMATION OR ADVICE.

7. **Release.** To the extent permitted by law, Subscriber and its Users release and waive all claims (whether known or unknown) against Discovery, its parent, subsidiaries, affiliated companies, agents or content providers, and the directors, trustees, officers, shareholders, employees, agents and representatives of each of the foregoing, from any and all claims, damages, liabilities, costs and expenses arising out of User's use of the Service(s) and the Content. California residents waive any rights they may have under Sec.1542 of the California Civil Code, which reads: "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

8. **Indemnity.** To the extent permitted by law, Subscriber and its Users shall defend, indemnify and hold Discovery, its parent, subsidiaries, affiliated companies, agents or content providers, and the directors, officers, shareholders, employees, agents and representatives of each of the foregoing, harmless against and from any and all claims, damages, liabilities, costs and expenses arising out of any violation by Subscriber and/or its Users of these Standard Terms, any downloading of the Content, any modification or edit made to any portion of the Content, and the use of any portion of the Content with products or services not supplied by Discovery.

9. LIMITATIONS OF LIABILITY

9.1. **Consequential damages exclusion.** IN NO EVENT SHALL DISCOVERY BE LIABLE FOR ANY LOST DATA, LOST PROFITS, BUSINESS INTERRUPTION, REPLACEMENT SERVICE OR OTHER SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR INDIRECT DAMAGES, HOWEVER CAUSED AND REGARDLESS OF THEORY OF LIABILITY.

9.2. **Aggregate Liability.** To the maximum extent permitted by law, in no event shall Discovery's aggregate liability with respect to any matters whatsoever arising under or in connection with the Standard Terms exceed the lesser of (i) total fees paid by Subscriber to Discovery under the Standard Terms within the twelve-month period prior to the date the cause of action giving rise to liability arose or (ii) \$100,000. The foregoing liability is cumulative with all payments for claims or damages in connection with the Standard Terms being aggregated to determine satisfaction of the limit.

10. CONFIDENTIALITY

10.1. Discovery understands that government entities, such as Subscriber, may be required to disclose information pursuant to applicable open records acts. Prior to any such disclosure, Subscriber shall make any claim of privilege that may be applicable to prevent such disclosure and will make reasonable efforts to give Discovery reasonable prior notice and a reasonable opportunity to resist such disclosure. In all other respects, all provisions of these Standard Terms and materials provided by Discovery which are designated as confidential or should reasonably be presumed to

be treated as confidential ("Confidential Information") shall be kept strictly confidential by Subscriber and may not be disclosed without prior written consent, except for any disclosure required by any order of a court or governmental authority with jurisdiction over Subscriber.

10.2. **Communications from Discovery.** Discovery may periodically contact Users for customer service purposes. By accessing the Service(s) and the Content, Users consent to receive such communications. Subscriber shall promptly provide Discovery with any and all information regarding its Users and/or use of the Service(s) and the Content by its Users that Discovery reasonably requests. Subscriber agrees that Discovery may reference its business relationship with Subscriber in its marketing, press releases or sales materials.

11. MISCELLANEOUS

11.1. **Changes.** Discovery reserves the right to change these Standard Terms (excluding the Order Form) from time to time. Such changes will become effective when Discovery posts the revised Standard Terms. Subscriber and Users should check the Standard Terms from time to time, as they are bound by the Standard posted on Discovery's website at the time of access. Any revised Standard Terms shall supersede all previous versions.

11.2. Failure to perform by reason of any law, natural disaster, labor controversy, encumbered intellectual property right, war or any similar event beyond a party's reasonable control shall not be a breach hereof.

11.3. **Governing Law.** The Standard Terms shall be construed and enforced under the laws of the state of New York, USA without reference to the choice of law principles thereof. User hereby consents to and submits to the jurisdiction of the federal and state courts located in the State of New York. User waives any defenses based upon lack of personal jurisdiction or venue, or inconvenient forum. If any provision herein is unenforceable, then such provision shall be of no effect on any other provision hereof.

11.4. **No waiver.** No waiver of any breach hereof shall be deemed a waiver of any other breach hereof.

11.5. **Survival.** All representations, warranties, and indemnities shall survive the expiration or prior termination of the Standard Terms.

11.6. Section headings are provided for convenience only and shall not be used to construe the meaning of any section hereof.

11.7. **Entire Agreement.** The Standard Terms contain the entire understanding and supersedes all prior understandings between the parties relating to the subject matter herein. The terms and conditions set forth herein shall not be binding on Discovery, or any of its affiliates, until fully executed by an authorized signatory for both Subscriber and Discovery (or its applicable affiliate). Signatures may be exchanged in counterparts. Signatures transmitted electronically by fax or PDF shall be binding and effective as original ink signatures.

11.8. **Assignment.** The rights and obligations of either party under the Standard Terms may not be transferred or assigned directly or indirectly without the prior written consent of the other party, except that Discovery may assign the Standard Terms without restriction to an entity that acquires substantially all of its stock, assets, or business. Except as otherwise expressly provided herein, the provisions hereof will inure to the benefit of, and be binding upon, the successors, assigns, heirs, executors and administrators of the parties.

11.9. **Relationship of the Parties.** The parties are independent contractors and not joint venture partners or otherwise affiliated. Neither party has any right or authority to assume or create any obligations of any kind or to make any representation or warranty on behalf of the other party, whether express or implied, or to bind the other party in any respect whatsoever. There are no third-party beneficiaries to the Agreement.

11.10. **Professional Development Services.** Any content provided by Discovery during any Professional Development, in any format (the "PD Content") is the property of Discovery. Subscriber acknowledges that it does not gain any ownership interest in the PD Content by using the PD Content.