

# BROKEN ARROW PUBLIC SCHOOLS

Educating Today

Leading Tomorrow

Contract Committee Review Request  
MUST BE COMPLETED IN FULL

Date: 12/18/23

Contract/Agreement Vendor:

Goreact Sam Farley

Name of Vendor & Contact Person

sam@goreact.com

Vendor Email Address

Sign Language software and licenses

Describe Contract (Technology, program, consultant-prof Development, etc.)

Please use Summary below to fully explain the contract purchase, any titles, and details for the Board of Education to review.

ASL students and teachers

Reason/Audience to benefit

1/8/23

BOE Date

\$ 18,966.75

Amount of agreement

Person Submitting Contract/Agreement for Review: Sharon James

PLEASE SEND THROUGH APPROPRIATE APPROVAL ROUTING BEFORE SENDING TO BOARD CLERK

Principal &/or Director or Administrator:

*Sharon James*

Does this Contract/Agreement utilize technology? YES/NO

If yes, Technology Admin:

*[Signature]*

Cabinet Team Member:

*Nathan S. Ellis*

Funding Source:

37/102

Fund/Project

1000-653-100-3100-000-720

OCAS Coding



Consent



Action

Accept and Approve the NEW agreement between Broken Arrow Public Schools and Goreact for American Sign Language software and licenses. This is year 1 of a 3 year contract. This cost to the district is \$18,966.75 and will be paid using Instructional Bond funds. /S. James

Summary

This area must be complete with full explanation of contract

The Contract/Agreement should be received at least 2 weeks prior to a Board Meeting to ensure placement on the Agenda. The Contract Committee meets most Tuesdays at 8:00a.m. All Contracts/Agreements, regardless the amount, must be first approved by the Contract Committee and then presented to the Board of Education for approval and signature. The item will be placed on Electronic School Board for the board agenda by Janet Brown. By following this process, the liability of entering into an agreement is placed with the district rather than an individual.



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Proposal & Order Form  
Broken Arrow Public School for  
GoReact Video Coaching & Assessment Software

**December 14, 2023**

Provided by:

Sam Farley  
Director of Sales  
sam@goreact.com

**Internal Use Only**

ASL

N

K12 Student





## Overview

The purpose of this proposal & order form (the "**Order Form**") is to outline the provisions of certain software access and related support services requested by Broken Arrow Public School ("**Customer**") to support implementation of video-based coaching and assessment. **The pricing in this Order Form, including for software access and associated services, is valid for 90 days from the date of this Order Form.**

## Description of Services

- GoReact software access as described below
- Initial setup training and support services for instructors
- Ongoing email and phone-based customer service for instructors

## Contract Term

The GoReact license will be available for Customer beginning 01/01/2024 and ending 06/30/2027.

## Payment Terms

Invoices will be delivered to Customer by GoReact as applicable and Customer will pay such invoices within 30 days from the date of the applicable invoice.

## Incorporated Terms

The software access and services described above and this Order Form are governed by the GoReact Customer Terms found online at <http://goreact.com/customerterms>.

By execution of this Order Form, Customer acknowledges that it has reviewed, and expressly agrees to, the GoReact Customer Terms (together with the Order Form and any addenda attached thereto, the "**Agreement**").





## Pricing

Description	Quantity	Discount	Total Price
GoReact Software Access – 275 seats per year <ul style="list-style-type: none"> <li>• Unlimited recording and uploading for all users (maximum of 90 mins or 2GB per video)</li> <li>• Current and future updates to the GoReact software</li> <li>• Ability to download video files for use elsewhere</li> <li>• Use of GoReact mobile application (iOS and Android)</li> </ul>	825		\$57,750.00
Implementation <ul style="list-style-type: none"> <li>• Access to self-paced training resources</li> <li>• An assigned implementation project manager</li> <li>• 1 hour-long personalized Train the Trainer webinar session</li> <li>• 1 hour-long department/site-wide Q&amp;A session</li> </ul>	1		\$1,200.00
Video Storage, Training and Support <ul style="list-style-type: none"> <li>• 5-year, unlimited storage of GoReact video feedback session</li> <li>• Phone and web-based training for instructors and administrators as needed</li> <li>• Phone and email instructor support (during standard support hours)</li> <li>• Same-day email support for students</li> <li>• Access to GoReact online help center</li> </ul>	Included	Included	Included
Discounts <ul style="list-style-type: none"> <li>• K12 Education Discount</li> <li>• Volume Discount</li> <li>• Multi-year Upfront payment discount</li> <li>• Waived Implementation Fee</li> </ul>		(\$31,358.25) (\$4,125.00) (\$3,300.00) (\$1,200.00)	(\$39,983.25)
<b>Total</b>			<b>\$18,966.75</b>
Additional user seats during the Term may be added at the contract rate:			\$22.99 per user





## Acceptance

*Each signature below represents approval of the Agreement and is an express acknowledgement on the part of the undersigned representative of Customer that such representative has authorization to purchase the services as outlined herein and has read and hereby agrees and accepts all terms of the Agreement on behalf of Customer.*

### For Customer:

\_\_\_\_\_  
Customer Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title



# GoReact Customer Terms

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These GoReact Customer Terms are entered into by and between SpeakWorks, Inc., d/b/a GoReact, a Delaware corporation ("GoReact") and the organization named herein, in the Service Agreement between such organization and GoReact (the "Service Agreement"), and/or in one or more order forms (such organization, the "Customer" and each such order form, an "Order Form"). These GoReact Customer Terms govern access to and use of the GoReact software and services set forth on the applicable Order Form (together, the "Service"). By signing these GoReact Customer Terms or on an applicable Service Agreement or Order Form incorporating these terms, Customer acknowledges and agrees to the terms and provisions of these GoReact Customer Terms, the Service Agreement, if any, any addenda attached thereto (each an "Addendum"), and any applicable Order Forms (collectively, the "Agreement"). Any Addendum to the Agreement will govern in the event of a conflict between these GoReact Customer Terms and the applicable Addendum. Any purchase order terms Customer may require must be provided to GoReact for review in advance of issuance of a purchase order. Purchase orders that Customer issues hereunder are for Customer's convenience, and the terms and conditions of any such purchase order will not apply to the Service unless accepted directly in writing by GoReact.

## 1. CUSTOMER ACCOUNT AND RESPONSIBILITIES.

For most uses of the Service, an end user needs to register as a "User" under a Customer's Service account ("Account"). A "User" is anyone who is registered for the Service under Customer's Account, and may include (but is not limited to) a Customer's employees, faculty, students, clients, consultants, contractors and agents. Customer is responsible to ensure that its contact information is accurate and kept up to date. If a User registers via an invitation from Customer, use of the Service by that User is governed by this Agreement. Each individual User must create his or her own User account for use of the Service. SHARING OF LOGINS IS NOT PERMITTED UNDER ANY CIRCUMSTANCE IN ORDER FOR GOREACT TO MAINTAIN REQUIRED LEVELS OF SECURITY AND PRIVACY. Customer understands the need for its Users to safeguard their passwords to the Service, to ensure others don't have access to them, and to log off when finished using the Service. GoReact is not responsible for any loss or damage from Customer or its Users not complying with these safeguards. Most of the Service components require a current version browser and a broadband/high-speed Internet connection. Customer and its Users are responsible for accessing these resources and for their performance and reliability. Customer shall comply with all applicable laws and regulations in connection with its use of the Service, including without limitation those related to privacy, monitoring in the workplace and electronic communications and, where required by applicable law, shall ensure it has the consent of all individuals to participate in the Service.

## 2. CUSTOMER RELATIONSHIP.

GoReact and Customer are independent contractors under this Agreement. Neither party is authorized to make statements or commitments on behalf of the other party except as noted herein. Customer will be responsible for ensuring that all access and use of the Service by its Users is in accordance with this Agreement, and any action by any of Customer's Users is considered an action by Customer. Either party may publicize the existence of this Agreement and the general nature of the parties' relationship, unless directed not to do so in writing by the other party. Fees associated with this Agreement are Confidential Information and may not be disclosed without consent of the other party; notwithstanding the foregoing, GoReact explicitly agrees that Fees may be disclosed upon request where applicable open records laws deem such as public records.

## 3. USE OF THE SERVICE.

(a) Some offerings of the Service allow Customer to download software ("Software") to a desktop or mobile device which may update automatically. So long as Customer complies with this Agreement, GoReact gives Customer a limited, nonexclusive, nontransferable, revocable right to use and access the Software and the Service. To the extent any component of the Software may be offered under an open source license, GoReact will make that license available to Customer.

(b) Customer and its Users may not use the Service for any purposes other than those described in this Agreement. Specifically, Customer and its Users must use the Service in compliance with Section 3(e) below. Customer will obtain from Users any consents necessary to allow Customer-authorized administrative Users ("Administrators") to engage in the activities described in this Agreement and to allow GoReact to provide the Service. Administrators may have the ability to access, disclose, restrict or remove Customer Data (as defined below) in or from the Account. Administrators may also have the ability to monitor, restrict, or terminate access to the Account. GoReact's responsibilities do not extend to the internal management or administration of the Service as it relates to Customer. Customer is responsible for: (i) maintaining the confidentiality of passwords and Administrator subaccounts; (ii) managing access to Administrator subaccounts; and (iii) ensuring that Administrators' use of the Service complies with this Agreement.

(c) Customer will use commercially reasonable efforts to prevent unauthorized use of the Service by its Users, and will terminate any unauthorized use of or access to the Service. Customer will not, nor will it permit others to, (i) sell, resell, or lease the Service; (ii) use the Service for activities where use or failure of the Service could lead to physical damage, death, or personal injury; or (iii) modify, translate, disassemble, create derivative works based on, reverse-assemble, reverse-compile or otherwise reverse engineer the Service. This Section 3(c) shall survive the termination of this Agreement.

(d) GoReact occasionally offers products and features that are still in testing and evaluation phase. Those products and features have been marked beta, preview, early access, evaluation, or with words or phrases with similar meanings (collectively “**Beta Services**”) and may not be as reliable as other GoReact services. Beta Services will be offered on an optional basis only, and Customer and its Users will not be required to use any Beta Services. Notwithstanding anything to the contrary in this Agreement, the following terms apply to all Beta Services, should Customer elect to use them: (i) Beta Services may not be supported and may be changed or terminated at any time without notice to Customer; (ii) Beta Services may not be as reliable or available as other GoReact Services; and (iii) GoReact will have no liability arising out of or in connection with Beta Services—Customer uses such Beta Services solely at Customer’s own risk.

(e) Customer and its Users agree not do any of the following, unless such a restriction is prohibited by applicable law:

- Reverse engineer or decompile the Service, attempt to do so, or assist anyone in doing so.
- Create derivative works of, transmit, perform, reuse, re-post, resell, display, rent, lease, license or otherwise distribute the Service, in whole or in part, unless authorized in writing by GoReact.
- Mirror or frame, or assist third parties in mirroring or framing, any of the web pages contained in the Service, or create Internet links to the Service which include login information, User names, passwords, and/or secure cookies.
- Access the Service in order to build a similar or competitive (in any way, material or immaterial) service.
- Use the Service to: (i) send unsolicited or unauthorized email, advertising, promotional materials, junk mail, spam, chain letters, pyramid schemes or any other form of duplicative or unsolicited messages, whether commercial or otherwise; (ii) harvest, collect, gather or assemble information or data regarding other Users, including email addresses; (iii) transmit any materials that are unlawful, immoral, libelous, abusive, harassing, hateful, tortuous, defamatory, threatening, harmful, invasive of another’s privacy, vulgar, obscene, pornographic, racially or ethnically offensive, encourage conduct that would be considered a criminal offense, or are otherwise objectionable or which are harmful to minors in any way; (iv) transmit any material that may infringe the intellectual property rights or other proprietary rights of third parties, including trademark, copyright, right of privacy, or right of publicity; (v) transmit any material that contains software viruses or other harmful or deleterious computer code, files or programs such as Trojan horses, worms, time bombs or cancel bots; (vi) interfere with or disrupt the integrity of any data or computer-based information or any servers or networks connected to the Service or violate the regulations, policies or procedures of such networks; (vii) attempt to gain unauthorized access to the Service, other accounts, computer systems or networks connected to the Service, through password mining or any other means; (viii) harass or interfere with another User’s use and enjoyment of the Service; or (ix) submit any content that contains any falsehoods or misrepresentations that could damage GoReact or any third party or impersonates another person.
- Use any trade name, trademark, or brand name of GoReact in metatags, keywords and/or hidden text without GoReact’s written consent.
- Use the Service for any unlawful purpose.
- Use automated systems (e.g., robots, spiders) on the Service. However, operators of public search engines may use spiders to copy materials from the Service for the sole purpose of creating publicly available searchable indices of the materials.
- Use the Service in any way which could damage, disable, overburden, or impair the Service or interfere with someone else’s use of the Service.
- Obtain or attempt to obtain any materials or information through any means not intentionally made available or provided for through the Service.
- Display or use any trademarks, service marks, logos, or product names unless authorized in writing by GoReact.
- Alter, remove or obscure any copyright notice, digital watermarks, proprietary legends or any other notice included in the Service.

#### **4. USER SUBMISSIONS.**

(a) Customer and its Users, when using the Service, will provide GoReact with videos, recordings, files, scoring, comments, other content, and so on (“**Submissions**”). Any Submission posted by Customer or its Users is the property of such party. This Agreement does not give GoReact any rights to Submissions except for the limited rights that enable GoReact to offer the Service.

(b) All Submissions must comply with section 3(e) above. Content in or on the Service may be protected by others' Intellectual Property Rights. Customer agrees to not copy, upload, download or share content unless it has the right to do so. **"Intellectual Property Rights"** means current and future worldwide rights under patent, copyright, trade secret, trademark, moral rights, and other similar rights.

(c) Customer and its Users are solely responsible for the content of any Submissions they post to the Service. GoReact may review Customer conduct and content for compliance with this Agreement; however, GoReact has no obligation to do so. GoReact is not responsible in any way for the content, quality, or accuracy of any Submissions or related content posted and shared by Users or other third parties via the Service. GoReact may remove any Submission at its sole discretion, with notice to the affected User.

(d) Customer and its Users use any Submissions at their own risk. Any User's interactions with other Users are solely the responsibility of those Users. GoReact is not responsible for anything that occurs as a result of those interactions. If there is a dispute between Users, GoReact is under no obligation to become involved in such dispute.

(e) Customer hereby grants GoReact permission to host Submissions, back them up, and share them at the direction of Customer. The Service provides Customer with features like thumbnails, downloads, document previews, sorting, editing, sharing and searching. These and other features may require GoReact systems to access, store and scan Submissions. Customer hereby grants GoReact permission to perform such actions, and this permission extends to GoReact affiliates and trusted third parties with whom GoReact works, solely for the purpose of providing the Service. Posting Submissions over the Internet involves networks not controlled by GoReact. GoReact is not responsible for Submissions that are delayed, lost, altered, or stored during transmission over those networks.

(f) In the United States, the Children's Online Privacy Protection Act ("COPPA") may apply to Submissions, including videos and images, that include children under the age of 13 (for example, recording of an elementary school classroom for purposes of teacher development). Customer and its Users are solely responsible for COPPA compliance with relation to such Submissions, including obtaining permission from the parents of any children under the age of 13 for the purposes of using the Service. GoReact is not responsible in any way for Customer's failure to obtain such permission. (g) GoReact will use industry standard or better technical and organizational security measures to transfer, store, and process all Submissions and Users' Account information (collectively, **"Customer Data"**). These measures include administrative, physical, and technical safeguards to secure Submissions and other Customer Data from unauthorized access, disclosure, and use. GoReact will conduct periodic risk assessments and remediate any identified security vulnerabilities in a timely manner. GoReact will promptly notify Customer in the event of a confirmed security or privacy incident.

(h) In addition, while GoReact stores Submissions and other Customer Data for a length of time (typically 5 years or until termination or expiration of the Agreement, whichever is earlier), the Service is not an archive. Customer is responsible for maintaining independent archival and backup copies of any Submissions and Customer Data that Customer wishes to preserve.

## 5. SUPPORT AND ACCESSIBILITY.

Subject to payment of the Fees (as defined below) by Customer, GoReact will provide commercially reasonable support for the Service. Current support hours, resources, and contact information may be found at [goreact.com/support](https://goreact.com/support). Support may involve GoReact's support engineers based in the United States accessing Customer or User data. If the Customer or User is based in the EU or UK, Customer and User give consent to allow such access.

GoReact has designed the Service to comply with various accessibility standards, including Section 508 of the U.S. Rehabilitation Act as well as global Web Content Accessibility Guidelines (WCAG) 2.1 Level A and AA. Details regarding current accessibility support may be found at [goreact.com/compliance](https://goreact.com/compliance).

## 6. FEES AND PAYMENT.

Customer will pay, and authorizes GoReact to charge using Customer's selected payment method, all applicable fees related to the Service charged by GoReact as indicated on any applicable Order Form ("**Fees**"). If Fees are invoiced by GoReact, such Fees will be due as described on the Order Form, or if not specified, within thirty (30) days after the date of GoReact's invoice to Customer. The Fees are exclusive of, and Customer is responsible for, all applicable sales, use, value-added and other taxes, and all applicable duties, tariffs, assessments, export and import fees, or other similar charges, other than taxes based on GoReact's income in the United States. For the avoidance of doubt, Customer may provide GoReact with a valid tax exemption certificate authorized by the appropriate taxing authority. In the absence of such tax exemption certification, if GoReact pays or collects taxes for which Customer is responsible under this Agreement, the appropriate amount shall be invoiced to, and paid by, Customer. All costs and expenses incurred by Customer in connection herewith are Customer's sole responsibility. Fees are non-refundable except as required by law and as otherwise expressly stated herein. GoReact shall be entitled to withhold performance and discontinue the Service until all Fees due are paid in full.



## 7. TERM & TERMINATION.

(a) This Agreement shall commence upon execution of an Order Form by Customer and remain in effect until Customer's subscription or access to the Service (as more fully described in an Order Form) expires or terminates, or until the Agreement is otherwise terminated as provided for in this Section 7 or the Order Form ("**Term**").

(b) Either party may immediately terminate this Agreement in the event the other party commits a material breach of any provision of this Agreement which is not cured within thirty (30) days of written notice from the non-breaching party. Such notice shall expressly state the reasons for the claimed breach in sufficient detail so as to provide the breaching party a meaningful opportunity to cure such alleged breach.

(c) Upon termination or expiration of this Agreement in accordance with this Section, Customer's Account and right to access and use the Service will terminate immediately. If this Agreement is terminated for any reason other than a termination expressly permitted by this Agreement, Customer agrees that GoReact shall be entitled to all Fees due pursuant to this Agreement for the entire Term. However, if this Agreement is terminated as a result of a material breach on GoReact's part, GoReact shall refund the unused portion of any prepaid subscription Fees pursuant to this Agreement.

(d) Following termination or expiration of the Agreement, GoReact may immediately deactivate Accounts of Customer and its Users and, following a period of not less than thirty (30) days, shall be entitled to delete such Accounts, including all Submissions and Customer Data therein. During this 30-day period and upon Customer's request, GoReact will grant Customer limited access to the Service for the sole purpose of retrieving Submissions and Customer Data, provided that all amounts and Fees owed to GoReact in connection with this Agreement are paid in full. GoReact shall not be responsible for losses or damages incurred by Customer or any third party in connection with any termination or suspension of access to the Service or deletion of Submissions or Customer Data in compliance with this Section 7.

(e) GoReact reserves the right to suspend access to any Account and/or use of the Service in its reasonable discretion for any actual or reasonably suspected breach of this Agreement and/or any security, performance, or acceptable use related issues in connection with the Account. Such suspension may apply to the entire Account and/or any sub-accounts. GoReact will use commercially reasonable efforts to notify Customers of any material modifications or discontinuations of the Service in connection with this paragraph. Any future release, modification, update, or other addition to the functionality of the Service shall be subject to this Agreement.

## 8. INTELLECTUAL PROPERTY OWNERSHIP.

Except for any Customer Data, all rights, title, and interest in the Service (including, but not limited to, the GoReact websites, mobile applications, content, and all software, names, logos, trademarks, service marks, brand identities, characters, trade names, graphics, designs, copyrights, trade dress, or other GoReact intellectual property appearing on the Service, and the organization, compilation, look and feel of the Service), are owned by GoReact and/or its suppliers, licensors, and business partners ("**Business Partners**"), and are protected by U.S. and international copyright and other intellectual property laws. GoReact® and the GoReact logo are registered trademarks of GoReact. The names of any actual companies and products appearing within the Service may be the trademarks of their respective owners. GoReact (and/or its Business Partners) retain all rights with respect to the Service and content except those expressly granted to Customer in this Agreement, and Customer shall not display or use any GoReact trademarks, service marks, logos, or product names without GoReact's express prior written permission. Customer shall not alter, remove or obscure any copyright notice, digital watermarks, proprietary legends or any other notice included in the Service. Except as expressly provided herein, nothing on the Service shall be construed as conferring to Customer any license under GoReact's (and/or its Business Partners') Intellectual Property Rights, whether by estoppel, implication or otherwise. In addition, Customer hereby grants GoReact a royalty-free, worldwide, transferable, sub-licensable, irrevocable, and perpetual license to use, license, commercialize, and incorporate into the Service any suggestions, enhancement requests, recommendations, proposals, ideas and other feedback provided by Customer, including its Users, without restriction.

## 9. LINKS TO THIRD PARTY SITES.

The Service may contain links to third party web sites ("**Linked Sites**"), such as external library content or links entered by Users in their Submissions. GoReact has no control over these Linked Sites or their content. GoReact cannot and does not guarantee, represent, or warrant that the content contained in the Linked Sites, including, without limitation other links, is accurate, legal, and/or inoffensive. GoReact does not endorse the content of any Linked Site, nor does GoReact warrant that a Linked Site will not contain computer viruses or other harmful code that can impact computer or other web access devices. By using the Service to link to another site,

Customer agrees and understands that such use is entirely at Customer's own risk, and that Customer may not make any claims against GoReact for any damages or losses whatsoever resulting from such use. However, if there is a problem with a Linked Site, please let GoReact know at [support@goreact.com](mailto:support@goreact.com), and GoReact may investigate the link and take appropriate action in order to improve the Service.

## **10. WARRANTY AND DISCLAIMER.**

(a) As limited by the terms of this Agreement, GoReact warrants to Customer (not to individual Users) that, during the Term, the Service will operate substantially in accordance with the documentation GoReact provides to Customer. This limited warranty shall not apply to problems that result from: (i) factors outside of GoReact's reasonable control; (ii) any failure by Customer to comply with this Agreement; (iii) any failure by Users to use the Service in accordance with this Agreement or other instructions provided by GoReact; (iv) any unauthorized use of the Service; (v) Customer's, User's or any third party's hardware, software, and equipment; (vi) User errors in entering, analyzing, or viewing Submissions; (vii) the fault or negligence of Customer, Users, operator error, improper use or misuse of the Service, or any other causes external to the Service or GoReact; or (viii) downtime as a result of scheduled maintenance performed by or for GoReact. In the event of a material breach of the foregoing warranty, Customer's sole and exclusive remedy, and GoReact's only obligation, at GoReact's discretion, will be to repair, modify or replace the nonconforming Service within thirty (30) days after GoReact receives Customer's written notice of the material nonconformity, or if GoReact determines that it is not commercially feasible to repair, modify or replace the nonconforming Service in a manner that removes such nonconformity, GoReact will refund the amount of any Fees actually paid by Customer to GoReact under this Agreement for up to the previous twelve (12) months of the Service (based on the length of time such material breach of the foregoing warranty existed) and Customer will have the option to terminate the Agreement without penalty upon written notice to GoReact within thirty (30) days of being informed of such determination.

(b) EXCEPT AS EXPRESSLY STATED OTHERWISE HEREIN, THE SERVICE (INCLUDING GOREACT WEBSITES, MOBILE APPLICATIONS, AND ALL OTHER FEATURES ON THE SERVICE) ARE PROVIDED TO CUSTOMER "AS IS" AND "AS AVAILABLE" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, FITNESS FOR A PARTICULAR PURPOSE, TITLE, MERCHANTABILITY, OR NON-INFRINGEMENT. SHOULD APPLICABLE LAW NOT PERMIT THE FOREGOING EXCLUSION OF EXPRESS OR IMPLIED WARRANTIES, THEN GOREACT HEREBY GRANTS THE MINIMUM EXPRESS OR IMPLIED WARRANTY REQUIRED BY SUCH APPLICABLE LAW. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY CUSTOMER FROM GOREACT, ITS EMPLOYEES, AGENTS, SUPPLIERS OR ANY OTHER PERSONS SHALL CREATE ANY WARRANTY, REPRESENTATION OR GUARANTEE NOT EXPRESSLY STATED IN THIS SECTION. ADDITIONALLY, GOREACT DOES NOT MAKE ANY WARRANTIES THAT THE SERVICE WILL BE UNINTERRUPTED, TIMELY, SECURE OR ERROR FREE, OR THAT CUSTOMER'S USE OF THE SERVICE WILL MEET CUSTOMER'S EXPECTATIONS, OR THAT THE SERVICE IS CORRECT, ACCURATE, OR RELIABLE, OR THAT THE OVERALL SYSTEM THAT MAKES THE SERVICE AVAILABLE (INCLUDING BUT NOT LIMITED TO THE INTERNET, OTHER TRANSMISSION NETWORKS, AND CUSTOMER'S LOCAL NETWORK AND EQUIPMENT) WILL BE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. THE CONTENT PROVIDED ON THE SERVICE IS FOR CONVENIENCE ONLY AND GOREACT DOES NOT WARRANT, ENDORSE, GUARANTEE, OR ASSUME RESPONSIBILITY FOR ANY USER SUBMISSION, OPINION, STATEMENT, PRODUCT, ADVICE, RECOMMENDATION OR SERVICE MADE, PROMOTED, ADVERTISED OR OFFERED BY ANY GOREACT USER, THIRD PARTY, OR OTHER ENTITY MADE AVAILABLE THROUGH THE SERVICE OR ANY LINKED SITES OR FEATURED IN ANY BANNER OR OTHER ADVERTISING. GOREACT WILL NOT BE A PARTY TO OR IN ANY WAY BE RESPONSIBLE FOR ANY TRANSACTION OR OTHER INTERACTION BETWEEN CUSTOMER AND THIRD PARTIES INCLUDING OTHER PROVIDERS OF PRODUCTS OR SERVICES, LINKED SITES, APP STORES, OR OTHER USERS OR CUSTOMERS OF THE SERVICE. IF CUSTOMER IS LOCATED IN CALIFORNIA, CUSTOMER HEREBY EXPRESSLY WAIVES ANY APPLICATION OF CALIFORNIA CIVIL CODE SECTION 1542 IN CONNECTION WITH THE FOREGOING.

## **11. LIMITATION OF LIABILITY.**

(a) CUSTOMER AGREES THAT THE CONSIDERATION WHICH GOREACT RECEIVES HEREUNDER DOES NOT INCLUDE CONSIDERATION FOR ASSUMPTION BY GOREACT OF THE RISK OF CUSTOMER INCIDENTAL OR CONSEQUENTIAL DAMAGES. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO ANYONE FOR LOST PROFITS OR REVENUE OR FOR INCIDENTAL, CONSEQUENTIAL, PUNITIVE, COVER, SPECIAL, RELIANCE OR EXEMPLARY DAMAGES, BUSINESS INTERRUPTION, LOSS OF USE OR DATA, OR INDIRECT DAMAGES OF ANY TYPE OR KIND HOWEVER CAUSED, WHETHER FROM BREACH OF WARRANTY, BREACH OR REPUDIATION OF CONTRACT, NEGLIGENCE, OR ANY OTHER LEGAL CAUSE OF ACTION FROM OR IN CONNECTION WITH THIS AGREEMENT (AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES TO THE MAXIMUM EXTENT PERMITTED BY LAW) OR OTHERWISE.

(b) THE MAXIMUM LIABILITY OF EITHER PARTY, TOGETHER WITH ALL OF SUCH PARTY'S AFFILIATES, SUPPLIERS, BUSINESS PARTNERS AND SUBCONTRACTORS, WHATSOEVER ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY LICENSE, USE OR OTHER EMPLOYMENT OF THE SERVICE, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED

ON BREACH OR REPUDIATION OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, TORT, OR OTHERWISE, SHALL IN NO CASE EXCEED, IN THE AGGREGATE, THE EQUIVALENT OF TWELVE (12) MONTHS OF FEES APPLICABLE AT THE TIME OF THE EVENT GIVING RISE TO THE CLAIM. THE ESSENTIAL PURPOSE OF THIS PROVISION IS TO LIMIT THE POTENTIAL LIABILITY OF THE PARTIES ARISING FROM THIS AGREEMENT. THE PARTIES ACKNOWLEDGE THAT THE LIMITATIONS SET FORTH IN THIS SECTION ARE INTEGRAL TO THE AMOUNT OF FEES CHARGED IN CONNECTION WITH MAKING THE SERVICE AVAILABLE TO CUSTOMER AND THAT, WERE GOREACT TO ASSUME ANY FURTHER LIABILITY OTHER THAN AS SET FORTH HEREIN, SUCH FEES WOULD OF NECESSITY BE SET SUBSTANTIALLY HIGHER.

THE LIMITATIONS OF LIABILITY SET FORTH IN THIS SECTION SHALL NOT APPLY TO INDEMNITY OBLIGATIONS HEREIN. Certain jurisdictions do not allow the exclusion of implied warranties or limitations of liability for incidental or consequential damages, so the exclusions set forth above may not apply to Customer.

## **12. RESPONSIBILITY AND DISPUTE RESOLUTION.**

(a) Each party hereby agrees that it is responsible for its own acts and behavior and the results thereof. As permitted in accordance with applicable law, and with respect to any claim or action arising out of the activities described or performed under this Agreement, the parties mutually agree that each will also remain responsible for any and all liabilities, claims, damages, charges and expenses (collectively referred to as “**Liability**”) incurred by reason of the acts or omissions of its employees, governing board members, students, faculty, or agents; and that neither party shall by this Agreement transfer such Liability to the other party.

(b) Each party agrees that before it or any employee, agent or representative of the party files a claim or suit with a federal or state agency or court or other public forum, it shall provide thirty (30) days’ prior written notice to the other and that, within such thirty (30) day period (or longer, if extended by mutual desire of the parties), authorized representatives of the parties shall meet (or confer by telephone) at least once in a good faith attempt to resolve the perceived dispute.

## **13. INDEMNITY.**

(a) GoReact shall, at its own expense and subject to the limitations set forth in this Section and any limitations of applicable law (including legal restrictions to which Customer may be subject), defend Customer from and against any and all allegations, threats, claims, suits, and proceedings brought by third parties (collectively “**Claims**”) alleging that the Service, as used in accordance with this Agreement, infringes third party registered U.S. copyrights, patents or trademarks, or misappropriates a trade secret, and shall hold Customer harmless from and against liability, damages, and costs finally awarded by a court of competent jurisdiction, including, without limitation, reasonable attorneys’ fees (collectively, “**Losses**”) to the extent based upon such a Claim. Excluded from the indemnification obligations in this paragraph are Claims to the extent arising from (i) use of the Service in violation of this Agreement or applicable law, (ii) use of the Service after GoReact notifies Customer to discontinue use because of an infringement claim, or (iii) modifications to the Service or use of the Service in combination with any software, application or service made or provided other than by GoReact.

(b) If a Claim of infringement is brought or threatened, GoReact may, at its sole option and expense, use commercially reasonable efforts either (i) to procure a license that will protect Customer against such Claim without cost to Customer; (ii) to modify or replace all or portions of the Service as needed to avoid infringement, such update or replacement having substantially similar or better capabilities; or (iii) if (i) and (ii) are not commercially feasible, terminate the Agreement and refund to the Customer a pro-rata refund of the prepaid and unused Fees for the terminated portion of the Term. The rights and remedies granted Customer under this paragraph state GoReact’s entire liability, and Customer’s exclusive remedy, with respect to any claim of infringement of the Intellectual Property Rights of a third party.

(c) In the event of a potential indemnity obligation under this Section, Customer shall: (i) promptly notify GoReact in writing of such Claim; (ii) allow GoReact to have sole control of its defense and settlement (subject to the rights and responsibilities of any applicable attorney general office if Customer is a government entity); and (iii) upon request of GoReact, cooperate in all reasonable respects, at GoReact’s cost and expense, with GoReact in the investigation, trial, and defense of such Claim and any appeal arising therefrom. The indemnification obligations under this Section are expressly conditioned upon Customer’s compliance with this Section. The indemnification obligations contained in this Section shall survive termination of this Agreement for one year.

## **14. IRREPARABLE HARM AND INJUNCTIVE RELIEF.**

The Service and the content made available through the Service is the result of significant investment by GoReact in developing, organizing, and presenting various tools and Submissions for the convenience of its Users. By using the Service, Customer hereby

acknowledges and recognizes the uniqueness of the services provided by the Service and GoReact's substantial investments in such services as described herein, such that a breach of this Agreement by Customer could result in irreparable harm to GoReact for which money damages or other legal remedies may not adequately compensate. Accordingly, as permitted by applicable law, in the event of a breach of this Agreement, GoReact may seek equitable remedies, including without limitation preliminary and permanent injunctive relief.

## **15. CONFIDENTIALITY.**

(a) For purposes of this Agreement, "**Confidential Information**" includes, unless otherwise restricted by applicable law, the terms of this Agreement, Customer Data, each party's proprietary technology, business processes and technical product information, designs, issues, all communication between the parties regarding the Service and any information that is clearly identified in writing at the time of disclosure as confidential. Confidential Information shall not include information which: (i) is or becomes known publicly, without fault of the receiving party, subsequent to disclosure by the disclosing party; (ii) is generally known in the industry before disclosure; (iii) is disclosed to the receiving party on a non-confidential basis by a third party who has the right to make such disclosure; (iv) the receiving party can demonstrate with written records, was independently developed prior to the effective date of this Agreement without use of or reference to the disclosing party's Confidential Information; (v) is aggregate statistical data regarding GoReact's products and services that does not contain any personally identifiable, User-specific or Customer-specific information, or (vi) is considered a public record under applicable open records laws.

(b) Each party agrees: (i) to keep confidential all Confidential Information; (ii) not to use or disclose Confidential Information to any third party except as directed by the disclosing party and only to the extent necessary to perform its obligations or exercise rights under this Agreement; and (iii) to protect the confidentiality thereof in the same manner as it protects the confidentiality of similar information and data of its own and to make Confidential Information available to authorized persons only on a "need to know" basis. Either party may disclose Confidential Information on a need-to-know basis to its employees, agents, representatives, contractors and service providers who have executed written agreements requiring them to maintain such information in strict confidence and use it only to facilitate the performance of their services in connection with the performance of this Agreement.

(c) Notwithstanding the foregoing, this paragraph will not prohibit the disclosure of Confidential Information to the extent that such disclosure is required by law (including applicable open records and public information laws to which Customer may be subject) or order of a court or other governmental authority or regulation, provided that the receiving party, to the extent legally permissible, promptly notifies the disclosing party in writing of such required disclosure and reasonably cooperates with the disclosing party to seek an appropriate protective order, at disclosing party's sole expense. In the event that such protective order or other remedy is not obtained, or disclosing party grants a waiver hereunder, receiving party may furnish that portion (and only that portion) of the Confidential Information which receiving party is legally compelled to disclose and will exercise its reasonable efforts to obtain reliable assurance that confidential treatment will be accorded any Confidential Information furnished.

## **16. ASSIGNMENT.**

Neither this Agreement nor any rights under this Agreement may be assigned or otherwise transferred by either party, in whole or in part without the prior written consent of the other party, which consent shall not be unreasonably withheld; provided, however, that GoReact may assign, without Customer's consent, this Agreement, to (i) a wholly owned subsidiary of GoReact, or (ii) any entity which acquires all or substantially all of the assets of GoReact or into which GoReact is merged or consolidated or to any entity controlling or controlled by GoReact. Subject to the foregoing, this Agreement will be binding upon and will inure to the benefit of the parties and their respective successors and assigns.

## **17. PRIVACY; FERPA; GDPR.**

(a) GoReact may track web traffic origination and patterns for visitors to its website and Users of the Service, and may analyze this data for trends and statistics in the aggregate, but this information will be maintained, used and disclosed in aggregate form only and it will not contain personally identifiable information. GoReact may use this aggregate information to analyze trends, administer the Service, track users' movement, and gather broad demographic information for aggregate use.

(b) Where Customer is a qualifying educational agency or institution under the U.S. Family Educational Rights and Privacy Act ("**FERPA**"), GoReact acknowledges that for the purposes of this Agreement it is designated as a "school official" with "legitimate educational interests" in Customer Data and associated metadata, as defined under FERPA and its implementing regulations, and agrees to abide by the limitations and requirements imposed on school officials under those regulations. As part of Customer's use of the Service, GoReact may collect data that is defined as Personally Identifiable Information ("**PII**") by FERPA. GoReact agrees to use

such PII only for the purpose of fulfilling its duties under the Agreement, and will not monitor, share, or disclose any such PII to any third party except as provided for in this Agreement, as required by law, or as directed in writing by an authorized representative of Customer. GoReact specifically agrees not to use any PII for purposes of targeted advertising. Customer agrees that de-identified data, from which all PII-qualifying identifiers have been removed in accordance with FERPA definitions, is not PII and may be used for lawful purposes.

(c) Where Customer and/or its Users are based in the EU or the UK, the Customer, Users and GoReact all agree to comply with the requirements of the General Data Protection Regulations as apply in the EU or the UK ("EU GDPR" or "UK GDPR"). GoReact's privacy policy applies in relation to GoReact's collection and processing of personal data. Customer agrees that it has obtained the appropriate consents, if required, from Users in order to provide their personal data to GoReact so that GoReact may provide the Service in accordance with this Agreement.

(d) GoReact may transfer personal data of EU or UK data subjects to the United States in order to perform its obligations under this Agreement, including to provide support. Any such transfers are performed by GoReact (i) subject to the safeguard of the standard data protection clauses being in place between GoReact and the Customer as required by EU GDPR or UK GDPR; or (ii) subject to a derogation for the specific situation of consent being given to the transfer. Standard data protection clauses ("SCC's") may be added to the terms of this Agreement; please contact your GoReact representative for more information.

## **18. GENERAL.**

(a) The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. If Customer uses the Service outside the United States of America, Customer is responsible for following applicable local laws.

(b) Except for obligations of payment, neither party shall be liable for any delay or failure in performing hereunder if such failure arises, directly or indirectly, out of causes beyond the reasonable control of such party, including acts of strike, shortages, failure of suppliers, riots, insurrection, fires, floods, storms, earthquakes, epidemics, acts of God, war, government action, labor conditions, lightning, power surges or failures, terrorism, failure of telecommunications services (including the Internet), or acts or omissions of communications carriers. Performance shall be deferred until such cause of delay is removed, provided that the delayed party shall notify the other party of such occurrence.

(c) Terms in this Agreement are subject to limitations of applicable law. If any provision of this Agreement is held to be invalid or unenforceable, such provision shall be struck and the remaining provisions shall be enforced. Headings are for reference purposes only and in no way define, limit, construe or describe the scope or extent of such section. Either party's failure to act with respect to a breach by the other party does not waive the non-breaching party's right to act with respect to subsequent or similar breaches.

(d) This Agreement sets forth the entire understanding and agreement between Customer and GoReact with respect to the subject matter hereof, and supersedes any prior or contemporaneous understanding, whether in written or oral form, regarding this subject matter. GoReact may revise this Agreement from time to time, and the most current version will always be posted on the GoReact website. GoReact will notify Customer (by, for example, sending an email to the email address associated with the applicable account) of any such revision. By continuing to access or use the Services after revisions become effective, Customer agrees to be bound by the revised terms. If Customer does not agree to the revised terms, Customer may terminate the Service without penalty within 30 days of receiving notice of the change.

(e) In addition to and subject to the Sections noted as surviving above, the following Sections shall survive termination of this Agreement: 6, 7, 8, 10, 11, 12, 14, 15, 16, 17, and 18.