

## TCM Contract # 2021-596

## LABSTER SOFTWARE SERVICES AGREEMENT FOR INSTITUTIONS

This Software Services Agreement (“**Agreement**”), effective as of the date of full execution hereof (the “**Effective Date**”), is by and between Labster (as defined below), on behalf of itself and its Affiliates, and the University of North Texas, a Texas university, with a principal business office located at 1155 Union Circle, #311277, Denton, TX 76203 (“**Customer**”), on behalf of itself and its Affiliates. Labster and Customer may be referred to herein collectively as the “**Parties**”, or individually as a “**Party**”.

**WHEREAS**, Labster provides access to the Services (as defined below) to its customers; and

**WHEREAS**, Customer desires to access the Services for the benefit of its Students (as defined below), and Labster desires to provide Customer access to the Services, subject to the terms and conditions of this Agreement.

**NOW, THEREFORE**, in consideration of the mutual promises, covenants, terms, and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

### 1. Definitions.

- 1.1. “**Access Credentials**” means any Authorized User’s name, identification number, password, license or security key, security token, PIN, or other security code, method, technology, or device, used alone or in combination, to verify an individual’s identity and authorization to access and use the Services.
- 1.2. “**Affiliate**” of: (a) Labster, means any other entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such entity. The term “control” (including the terms “controlled by” and “under common control with”) means the direct or indirect power to direct or cause the direction of the management and policies of an entity and/or its employees, whether through the ownership of voting securities or ownership of more than twenty-five percent (25%) of the voting securities of an entity, or by contract; or (b) Customer, means any other school within its district, or college or university system.
- 1.3. “**Aggregated Statistics**” means data and information related to Customer’s use of the Services that is used by Labster in an aggregate and anonymized manner, including to compile statistical and performance information related to the provision and operation of the Services.
- 1.4. “**Authorized User**” means Customer’s employees, including faculty and staff (individually, and collectively, “**School Personnel**”), and students (individually, and collectively, “**Student Users**”) who are authorized by Customer to access and use the Services under the rights granted to Customer pursuant to this Agreement, as further described in Section 2.
- 1.5. “**Customer Data**” means, other than Aggregated Statistics, information, data, and other content, in any form or medium, that is collected, downloaded, or otherwise received, directly or indirectly, from Customer or an Authorized User by or through the Services, or that incorporates or is derived from the processing (as such term may be defined by applicable data privacy laws) of such information, data, or content by or through the Services.
- 1.6. “**Customer Systems**” means the Customer’s information technology infrastructure, including computers, software, hardware, databases, electronic systems (including learning management systems), networks, Integrated Services (as defined below), whether operated directly by Customer or through the use of third-party services.
- 1.7. “**Documentation**” means Labster’s user manuals, handbooks, and guides relating to Customers and its Authorized Users’ use of the Services provided by Labster to Customer either electronically or in hard copy form.

- 1.8. “Harmful Code”** means any software, hardware, or other technology, device, or means, including any virus, worm, malware, or other malicious computer code, the purpose or effect of which is to: (a) permit unauthorized access to, or to destroy, disrupt, disable, distort, or otherwise harm or impede in any manner: any (i) computer, software, firmware, hardware, system, or network; or (ii) any application or function of any of the foregoing or the security, integrity, confidentiality, or use of any data processed thereby; or (b) prevent Customer or any Authorized User from accessing or using the Services as intended by this Agreement.
- 1.9. “Labster”** means: (a) if Customer is located in Canada, the United States, or Mexico (“North America”), then Labster Inc., a Delaware corporation, EIN: 81-4817248, with a principal place of business at 561 Windsor Street, Suite B302, Somerville, Massachusetts 02143; or (b) if Customer is not located in North America, then Labster ApS, a Danish private limited company, CVR: 34457808, with a principal place of business at c/o Matrikel 1 Højbro Plads 10, 1200 Copenhagen K, Denmark.
- 1.10. “Labster Materials”** means: (a) the name, logo, and domain name of Labster, the product names associated with the Services, and other trademarks; (b) the specifications, Documentation, simulations, certain audio and visual information, documents, software, and other works of authorship; and (c) any and all other information, data, documents, materials, works, other content, software, devices, hardware, products, processes, methods, algorithms, user interfaces, know-how and other trade secrets, techniques, designs, inventions, and other tangible or intangible technical material or information, including any deliverables, technical or functional descriptions, requirements, plans, or reports, that are provided or used by Labster or any subcontractor in connection with the Services or otherwise comprise or relate to the Services provided to Customer or any Authorized User in connection with the foregoing. For the avoidance of doubt, Labster Materials include Aggregated Statistics and any information, data, or other content derived from Labster's monitoring of Customer's access to or use of the Services, but do not include Customer Data.
- 1.11. “Order(s)”** means each current and future: (a) order form; (b) quotation; (c) estimate; (d) statement of work (as applicable); and (e) invoice; as well as any mutually agreed upon and executed purchase order or other ordering document.
- 1.12. “Privacy Policy”** means the Labster privacy policy, updated from time-to-time to be in compliance with applicable law, available at <https://www.labster.com/privacy-policy/>.
- 1.13. “Services”** means the software-as-a-service offering and any Labster Materials described in an applicable Order Form, including, but not limited to, the Labster's interactive advanced laboratory simulations, lab builder, quiz editor, lab manuals, websites, and customer portal.

## **2. Access and Use.**

- 2.1. Provision of Access.** Subject to and conditioned on Customer's payment of Fees and compliance with all terms and conditions of this Agreement, Labster hereby grants Customer a limited, non-exclusive, non-transferable (except in compliance with Section 14.6) right to access and use the Services during the Term for the applicable Access Period(s) (as defined below), solely for use by the Authorized Users in accordance with the terms and conditions herein. Such use is limited to Customer's and its Authorized Users' internal educational use. Labster shall: (a) share with Customer the necessary Access Credentials to allow Customer and its Authorized Users to access the Services through a Customer System; or (b) provide to a Customer's Authorized User the necessary Access Credentials to allow Customer's Authorized Users to access the Services. Except as expressly agreed to in writing by the Parties and subject to any appropriate adjustment of the Fees payable, the total number of Authorized Users will not exceed the number set forth in an applicable Order. Nothing in this Agreement shall obligate Labster to continue providing access to the Services beyond the date when Labster ceases providing such Services to users generally.

- 2.1.1. Customer Systems.** By registering for the Services using (or otherwise granting access to) Customer Systems, including any Integrated Service, Customer agrees that Labster may connect to and access the Customer Systems' account information, and may store and use certain information already associated with the Customer Systems consistent with Labster's Privacy Policy, and Customer agrees to any and all terms and conditions of the Customer Systems regarding Customer's and its Authorized Users' use of the Services. Customer agrees that any Customer System is a Third-Party Site (as defined below) and Customer and its Authorized Users are solely responsible for their interactions with the Customer Systems as a result of accessing the Services through the Customer Systems.
- 2.1.2. Integrated Service.** Labster may permit Customer's Authorized Users to register for the Services through, or otherwise associate an Authorized User's Labster account with, certain third party social networking or learning management systems (each an "**Integrated Service**"). By registering for the Services using (or otherwise granting access to) an Integrated Service, Customer and its Authorized Users agree that Labster may access the Authorized User's Integrated Service's account information, and may store and use certain information already associated with the Integrated Service consistent with Labster's Privacy Policy. Customer and its Authorized Users may revoke Labster's access to any Integrated Service at any time by updating the appropriate account settings of the respective Integrated Service. Customer agrees that any Integrated Service is a Third-Party Site (as defined below), and Customer is solely responsible for its Authorized Users' interactions with, and compliance with the applicable terms and conditions of, the Integrated Service as a result of accessing the Services through the Integrated Service.
- 2.1.3. Instructor Features.** Labster may make available certain editable features, tools, and materials within the Services, including the Labster Materials, that permit School Personnel to work with Student Users through the Services in order to provide such Student Users with tutorial, educational, and other education-related services as part of the Customer's curriculum, and to review and evaluate educational achievement and progress of such Student Users ("**Instructor Features**"). Customer and its School Personnel are responsible for complying with any and all applicable intellectual property laws and obligations from the use of any third party materials in such Instructor Features, and hereby grants to Labster a non-exclusive, perpetual, irrevocable, royalty-free, worldwide license to reproduce, distribute, modify, and otherwise use and display the resulting content derived from the Instructor Features ("**Customer Created Content**").
- 2.1.4. International Use.** Labster operates the Services from multiple locations around the world, and you consent to the collection, transmission, use, storage, and processing of content and data (including your personal information) in the locations set forth in Labster's Privacy Policy. Customer agrees to comply with and is solely responsible for ensuring compliance with all local laws, regulations, and rules in the jurisdiction in which Customer resides or its Authorized Users access the Services, if and to the extent local laws are applicable to use of the Services. The right to access and use the Services will not be granted in jurisdictions, if any, where it may be prohibited, or where Customer's and its Authorized User's use would render Labster in violation of any applicable laws or regulations, including, but not limited to, any applicable privacy laws.
- 2.2. Use Restrictions.** Customer agrees to notify its Authorized Users of the limitations set forth in this Agreement. Customer shall not use the Services for any purposes beyond the scope of the access granted in this Agreement. Unless otherwise permitted in this Agreement or required by applicable law, Customer shall not at any time, directly or indirectly, and shall not permit any Authorized Users to:
- 2.2.1.** Edit, alter, abridge, or otherwise change in any manner the content of, or to copy, modify, or create derivative works of, the Services in whole or in part;
- 2.2.2.** Rent, lease, lend, sell, license, sublicense, assign, distribute, publish, transfer, or otherwise make available the Services for any commercial purpose;

- 2.2.3. Reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to any software component of the Services, in whole or in part;
- 2.2.4. Remove, delete, alter, or obscure any copyright, trademark, or other proprietary notices from the Services;
- 2.2.5. Bypass or breach any security device or protection used by the Services, or access or use the Services, other than by an Authorized User through the use of his or her own then valid Access Credentials;
- 2.2.6. Input, upload, transmit, or otherwise provide to or through the Services, any information or materials that are unlawful or injurious, or contain, transmit, or activate any Harmful Code;
- 2.2.7. Damage, destroy, disrupt, disable, impair, interfere with, or otherwise impede or harm in any manner the Services, or Labster's provision of services to any third party, in whole or in part;
- 2.2.8. Access or use the Services for purposes of competitive analysis of the Services, including, but not limited to, the development, provision, or use of a competing software service or product, or any other purpose that is to Labster's detriment or commercial disadvantage;
- 2.2.9. Use the Services in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any third party, or violates any applicable law; or
- 2.2.10. Make available any part of the Services in any medium on any third party service or public forum in violation of this Agreement and the intellectual property rights protected herein, including, but not limited to, any partial or full simulations, quiz questions and answers, lab manuals, or other content.

**2.3. Reservation of Rights.** Labster reserves all rights not expressly granted to Customer in this Agreement. Except for the limited rights and licenses expressly granted under this Agreement, nothing in this Agreement grants, by implication, waiver, estoppel, or otherwise, to Customer, or any third party, any intellectual property rights or other right, title, or interest in or to the Services.

**2.4. Suspension.** Notwithstanding anything to the contrary in this Agreement, Labster may temporarily or fully suspend Customer's and any Authorized User's access to any portion or all of the Services if: (a) Labster reasonably determines that: (i) there is a threat or attack on any of the Services; (ii) Customer's, or any Authorized User's, use of the Services disrupts or poses a security risk to the Services or to any other customer or vendor of Labster; (iii) Customer, or any Authorized User, is using the Services for fraudulent or illegal activities; (iv) subject to applicable law, Customer has ceased to continue its business in the ordinary course, made an assignment for the benefit of creditors or similar disposition of its assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution, or similar proceeding; or (v) Labster's provision of the Services to Customer, or any Authorized User, is prohibited by applicable law; (b) any vendor of Labster has suspended or terminated Labster's access to or use of any third-party services or products required to enable Customer to access the Services; or (c) Customer's failure to pay any Fees in accordance with Section 5.1 (any such suspension described in subclause (a), (b), or (c), a "**Service Suspension**"). Labster shall use commercially reasonable efforts to provide written notice of any Service Suspension to Customer and to provide updates regarding resumption of access to the Services following any Service Suspension. Labster shall use commercially reasonable efforts to resume providing access to the Services as soon as reasonably possible after the event giving rise to the Service Suspension is cured. Labster will have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that Customer, or any Authorized User, may incur as a result of a Service Suspension.

**2.5. Aggregated Statistics.** Notwithstanding anything to the contrary in this Agreement, Labster shall have the right to collect and analyze data and other information, in an aggregated and anonymized manner, including to compile statistical and performance information, relating to the provision, use, and performance of various

aspects of the Services and related systems and technologies, and Labster will be free (during and after the Term) to: (a) use the Aggregated Statistics to improve and enhance the Services, for other development purposes in connection with the Services, and any other present and future Labster offerings; (b) make Aggregated Statistics publicly available in compliance with applicable law; (c) use Aggregated Statistics to the extent and in the manner permitted under applicable law and in accordance with Labster's Privacy Policy. For the avoidance of doubt, as between Labster and Customer, all right, title, and interest in Aggregated Statistics, and all intellectual property rights therein, belong to and are retained solely by Labster.

**2.6. Third Party Components.** The Services contain, or rely upon, third party components, which may include various open source software components originating from the open source software communities, which are subject to additional restrictions ("**Third-Party Software**"). Any Third-Party Software in the Services are distributed by Labster in accordance with the applicable Third-Party Software's license terms and conditions. In the event of a conflict between an applicable Third-Party Software's license and the terms of this Agreement, the Third-Party Software component's license will take precedence (but solely with respect to the Third-Party Software component(s) to which the license relates). By using any of the Services, Customer agrees to be bound by the additional terms and conditions of all applicable Third-Party Software. If Customer does not agree to be bound to such Third-Party Software license, Customer must immediately discontinue use of the Services. Where the specific license terms of the Third-Party Software component entitle Customer to receive a copy of the source code, that source code shall be made available upon Customer's written request made to Labster.

**2.7. Third-Party Sites, Products, Services, and Links.** The Services may include links or references to other web sites or services solely as a convenience to Authorized Users ("**Third-Party Sites**"). Labster does not endorse any such Third-Party Sites, or the information, materials, products, or services contained on or accessible through Third-Party Sites. ACCESS AND USE OF THIRD-PARTY SITES, INCLUDING THE INFORMATION, MATERIALS, PRODUCTS, AND SERVICES ON OR AVAILABLE THROUGH THIRD-PARTY SITES, IS SOLELY AT CUSTOMER'S OWN RISK.

### **3. Customer Responsibilities.**

**3.1. General.** Customer is responsible and liable for all uses of the Services by Customer and its Authorized Users resulting from access provided by Customer, directly or indirectly, whether such access or use is permitted by or in violation of this Agreement. Without limiting the generality of the foregoing, Customer is responsible for all acts and omissions of its Authorized Users, and any act or omission by an Authorized User that would constitute a breach of this Agreement if taken by Customer will be deemed a breach of this Agreement by Customer. Customer shall use reasonable efforts to make all Authorized Users aware of the terms and conditions of this Agreement as applicable to such Authorized User's use of the Services and shall cause Authorized Users to comply with such terms and conditions.

**3.2.** Customer shall be responsible for obtaining, maintaining, and securing any Customer Systems, including, but not limited to, any Customer or Authorized User account, passwords (including, but not limited to, administrative and user passwords) and files, and for all uses of the Customer's or its Authorized User's account or the Customer Systems with or without Customer's knowledge or consent.

**4. Service Levels and Support.** Subject to the terms and conditions of this Agreement, Labster shall use commercially reasonable efforts to make the Services available in accordance with the service levels, and provide the technical support, set out in **Exhibit A**.

### **5. Fees and Payment.**

**5.1. Fees.** Unless purchased through an authorized Labster reseller or subject to Direct Student Payment (as defined below), Customer shall pay to Labster all undisputed fees ("**Fees**") as set forth in an applicable Order in the currency and on or before the due date as set forth in the applicable Order. If Customer fails to make any payment over sixty (60) days when due, without limiting Labster's other rights and remedies: (a) Labster may charge interest on the past due amount at three percent (3%) or the highest rate permitted under applicable

law; (b) if permitted by applicable law, Customer shall reimburse Labster for all reasonable costs incurred by Labster in collecting any late payments or interest, including reasonable attorneys' fees, court costs, and collection agency fees; and (c) if such failure continues for ninety (90) days or more, Labster may suspend Customer's and its Authorized Users' access without notice to any portion or all of the Services until such amounts are paid in full. All amounts payable to Labster under this Agreement shall be paid by Customer to Labster in full without any setoff, recoupment, counterclaim, deduction, debit, or withholding for any reason (other than any deduction or withholding of tax as may be required by applicable Law). Labster may increase Fees applicable to all Orders hereunder, no more than once annually after the first contract year of the Term, by providing written notice to Customer at least sixty (60) calendar days prior to the subsequent contract year, and an applicable Order will be deemed amended accordingly.

**5.2. Student Pay.** For the avoidance of doubt, student pay is available to sales made to customers in the United States of America only. In the event Customer elects to have its Student Users pay for the Services directly to Labster or to Customer, rather than purchase a fixed number of licenses for use by Authorized Users, the following will apply as applicable:

**5.2.1. Bookstore.** If the payment method in an applicable Order is designated as "**Bookstore Payment**", then, Customer, or its affiliated third party bookstore or agent, will, so long as Customer is in compliance with the payment terms set forth in an applicable Order, only be responsible to Labster for Fees based on the payments made to it by Student Users who purchase Labster vouchers from Customer or its affiliated third party bookstore or agent, which shall be sold to Student Users at no less than the price set forth in an applicable Order.

**5.2.2. Direct Student Payment.** If the payment method in an applicable Order is designated as "**Direct Student Payment**", then, when a Student User accesses the Services for the first time, such Student User will be provided the ability to purchase such access via credit or debit card, which will be processed in accordance with Labster's Privacy Policy. For the avoidance of doubt, Customer shall have no obligation, nor be responsible, for any Fees related to Direct Student Payments.

**5.3. Credits and Refunds.** Except as otherwise explicitly set out in this Agreement, no cancellation, credit, roll over, or refund of any Fees paid for Customer's purchased but unused licenses will be provided.

**5.4. Taxes.** All Fees and other amounts payable by Customer under this Agreement are exclusive of taxes and similar assessments. Except as otherwise required by applicable law, Customer is responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local governmental or regulatory authority on any amounts payable by Customer hereunder, other than any taxes imposed on Labster's income.

**5.5. Auditing Rights and Required Records.** The Parties agree to maintain complete and accurate records in accordance with generally accepted accounting principles during the Term and for a period of one (1) year after the termination or expiration of this Agreement with respect to matters necessary for accurately determining amounts due hereunder. During such time, either Party may, at its own expense, on reasonable prior written notice, and no more than once per calendar year, remotely inspect and audit the other Party's records with respect to matters necessary for accurately determining amounts due hereunder. Provided that if such inspection and audit reveal that: (a) Customer has underpaid Labster with respect to any amounts due and payable during the Term, Customer shall promptly pay the amounts necessary to rectify such underpayment, based on the pricing in the applicable Order, together with interest in accordance with Section 5.1; or (b) Customer has overpaid Labster with respect to any amounts due and payable during the Term, Labster shall refund Customer within thirty (30) days.

## **6. Confidential Information.**

- 6.1.** In connection with this Agreement each Party (as the “**Disclosing Party**”) may disclose or make available Confidential Information to the other Party (as the “**Receiving Party**”). “**Confidential Information**” means information in any form or medium (whether oral, written, electronic, or other) that the Disclosing Party considers confidential or proprietary, including, but not limited to, information consisting of or relating to the Disclosing Party's technology, trade secrets, know-how, business operations, plans, strategies, customers, and pricing, and information with respect to which the Disclosing Party has contractual or other confidentiality obligations, in each case whether or not marked, designated, or otherwise identified as "confidential".
- 6.2. Exclusions.** Confidential Information does not include information that the Receiving Party can demonstrate by written or other documentary records: (a) was rightfully known to the Receiving Party without restriction on use or disclosure prior to such information being disclosed or made available to the Receiving Party in connection with this Agreement; (b) was or becomes generally known by the public other than by the Receiving Party or any of its employees, agents, or consultants (“**Representatives**”) or Authorized Users (as applicable) noncompliance with this Agreement; (c) was or is received by the Receiving Party on a non-confidential basis from a third party that, to the Receiving Party's knowledge, was not or is not, at the time of such receipt, under any obligation to maintain its confidentiality; or (d) was or is independently developed by the Receiving Party without reference to or use of any Confidential Information.
- 6.3. Protection of Confidential Information.** As a condition to being provided with any disclosure of or access to Confidential Information, the Receiving Party shall, during the Term and for a period of three (3) years thereafter:
- 6.3.1.** Not access or use Confidential Information other than as necessary to exercise its rights or perform its obligations under and in accordance with this Agreement;
- 6.3.2.** Except as may be permitted by and subject to its compliance with this Section 6, not disclose or permit access to Confidential Information other than to its Authorized Users and Representatives who: (a) need to know such Confidential Information for purposes of the Receiving Party's exercise of its rights or performance of its obligations under and in accordance with this Agreement; (b) have been informed of the confidential nature of the Confidential Information and the Receiving Party's obligations under this Section 6; and (c) are bound by written confidentiality and restricted use obligations at least as protective of the Confidential Information as the terms set forth in this Section 6;
- 6.3.3.** Safeguard the Confidential Information from unauthorized use, access, or disclosure using at least the degree of care it uses to protect its similarly sensitive information, but in no event less than a reasonable degree of care;
- 6.3.4.** Promptly notify the Disclosing Party of any unauthorized use or disclosure of Confidential Information and take all reasonable steps to cooperate with Disclosing Party to prevent further unauthorized use or disclosure; and
- 6.3.5.** Ensure its Authorized Users' and Representatives' compliance with, and be responsible and liable for, any of its Authorized Users' or Representatives' non-compliance with, the terms of this Section 6.
- 6.4.** Notwithstanding any other provisions of this Agreement, the Receiving Party's obligations under this Section 6 with respect to any Confidential Information that constitutes a trade secret under any applicable law will continue until such time, if ever, as such Confidential Information ceases to qualify for trade secret protection under one or more such applicable laws (other than as a result of any act or omission of the Receiving Party or any of its Authorized Users or Representatives).

**6.5. Compelled Disclosures.** If the Receiving Party or any of its Authorized Users or Representatives is compelled by applicable law to disclose any Confidential Information then, to the extent permitted by applicable law, the Receiving Party shall: (a) promptly, and prior to such disclosure, notify the Disclosing Party in writing of such requirement so that the Disclosing Party can seek a protective order or other remedy or waive its rights thereto; and (b) provide reasonable assistance to the Disclosing Party, at the Disclosing Party's sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure. If the Disclosing Party waives compliance or, after providing the notice and assistance required under this Section 6.5, the Receiving Party remains required by law to disclose any Confidential Information, the Receiving Party shall disclose only that portion of the Confidential Information that, on the advice of the Receiving Party's legal counsel, the Receiving Party is legally required to disclose and, on the Disclosing Party's request, shall use commercially reasonable efforts to obtain assurances from the applicable court or other presiding authority that such Confidential Information will be afforded confidential treatment.

## **7. Data Privacy.**

**7.1. General.** Labster will ensure that the Services comply with, and are performed in compliance with, applicable privacy and data protection laws, rules, and regulations, and in accordance with its Privacy Policy. Specifically, if Labster will serve as a Processor of Customer Data that includes Personal Data of Data Subjects who reside in the European Union, European Economic Area, United Kingdom, or California, Labster will cooperate with Customer to comply with the General Data Protection Regulation ("**GDPR**") or California Consumer Privacy Act ("**CCPA**"), as applicable, with respect to such Personal Data and Data Subjects. For the avoidance of doubt, to the extent Customer and its Data Subjects reside in other countries not mentioned above, Labster will comply with applicable law as required and in accordance with its Privacy Policy. At Customer's written request, and if required by applicable law, the Parties agree to enter into Labster's standard customer Data Processing Agreement. All capitalized terms in this Section 7.1 not otherwise defined in this Agreement are defined in the GDPR and CCPA.

**7.2. FERPA and Educational Records.** The Parties acknowledge that: (a) Customer Data may include personally identifiable information from education records that are subject to the Family Educational Rights and Privacy Act ("**FERPA**", and such information, the "**FERPA Records**"); and (b) to the extent that Customer Data includes FERPA Records, Labster will be considered a "School Official" with "legitimate educational interests" (as those terms are used in FERPA and its implementing regulations) and will comply with FERPA accordingly. To the extent applicable, Labster will comply with FERPA and will not access or make any disclosures of student educational records to third parties without prior written notice to, and consent from, Customer, or as otherwise provided by law. Exclusive of any written agreement, Customer Data shall remain the exclusive property of the Customer and qualify as Confidential Information and subject to the restrictions of FERPA, and Customer may disclose Personally Identifiable Information of students, as that term is defined under FERPA, to Labster for limited use in connection with providing the Services. Labster will not disclose student Personally Identifiable Information to third parties or use it for any purpose other than performing its obligations hereunder.

**7.3. COPPA and Parental Consent.** If Customer allows Authorized Users under the age of eighteen (18) to use the Services, Customer consents on behalf of such Authorized Users, as required under the Children's Online Privacy Protection Act ("**COPPA**"), and other similar privacy laws, to the collection and use of such Authorized Users' personal information in the Services. Customer will obtain parental consent for the collection and use of personal information in the Services that Customer allows Authorized Users to access before allowing any Authorized Users under the age of eighteen (18) to use those services. As applicable, Customer assumes sole responsibility (and hereby agrees that Labster is not responsible) for providing appropriate notices and disclosures to, and obtaining any consents required from, parents or guardians of Authorized Users using the Services and their parents regarding such Authorized User's use of the Services and Labster's Privacy Policy, to the extent required by COPPA, FERPA, or other applicable privacy law.



**7.4. No Waiver.** Labster will not require any Authorized Users to waive any privacy rights (including, but not limited to, under FERPA, the GDPR, or CCPA) as a condition for receipt of any educational services, and any attempt to do so will be void.

**8. Security.**

**8.1. Labster's Obligations.** Labster will employ commercially reasonable security measures (including, but not limited to, password protection and encryption) reasonably acceptable to Customer that are intended to prevent access to the Services, Customer Data, and/or information by unauthorized persons. Labster will establish and maintain such other commercially reasonable safeguards (including, but not limited to, virus protection safeguards) against the destruction, loss, or alteration of the Services and other Customer Data. Labster or its agents will utilize security systems for the Services that provide notification in the event of, but not limited to, fire, improper entry, and environmental systems failure. Upon Labster's (or its agent's) discovery of any security breach, intrusion, or other event giving rise to the actual or potential unauthorized access, destruction, loss, or alteration of Customer Data, Labster shall notify Customer thereof without undue delay, and in any event in accordance with applicable law, and shall take such commercially reasonable action as may be appropriate to halt such unauthorized access, destruction, loss, or alteration.

**8.2. Customer Control and Responsibility.** Customer has, and will retain, sole responsibility for: (a) all Customer Data, including its content and use; (b) all information, instructions, and materials provided by or on behalf of Customer or any Authorized User in connection with the Services; (c) Customer Systems; (d) the security and use of Customer's and its Authorized Users' Access Credentials; and (e) all access to and use of the Services directly or indirectly by or through the Customer Systems or its or its Authorized Users' Access Credentials, with or without Customer's knowledge or consent.

**8.3. Customer Access.** Customer shall employ, and is responsible for its Authorized Users compliance with, all physical, administrative, and technical controls, screening and security procedures, and other safeguards necessary to: (a) securely administer the distribution and use of all Access Credentials and protect against any unauthorized access to or use of the Services; and (b) control the content and use of Customer Data, including the uploading or other provision of Customer Data for Processing by the Services.

**9. Intellectual Property Ownership; Feedback.**

**9.1. Labster Intellectual Property Rights.** Customer acknowledges that in providing the Services, Labster utilizes the Labster Materials which are covered by intellectual property rights owned or licensed by Labster. Other than as expressly set forth in this Agreement, no license or other rights in the Labster Materials are granted to Customer, and all such rights are hereby expressly reserved. All right, title, and interest in and to the Labster Materials, including all intellectual property rights therein, are and will remain with Labster and, with respect to Third-Party Software, the applicable third-party licensors own all right, title, and interest, including all intellectual property rights therein. Customer obtains no right, license, or authorization with respect to any of the Services except as expressly set forth in Section 2.1 or the applicable Third-Party Software license. All other rights in and to the Services are expressly reserved by Labster. In furtherance of the foregoing, Customer hereby unconditionally and irrevocably grants to Labster an assignment of all right, title, and interest in and to the Aggregated Statistics and any Customer Created Content, including all intellectual property rights relating thereto.

**9.2. Customer Data.** Labster acknowledges that, as between Labster and Customer, Customer owns all right, title, and interest, including all intellectual property rights, in and to the Customer Data. Customer hereby grants to Labster, during the Term, a non-exclusive, royalty-free, worldwide, in accordance with the terms of this Agreement and Labster's Privacy Policy, license to reproduce, distribute, and otherwise use and display the Customer Data, and perform all acts with respect to the Customer Data as may be necessary for Labster to provide the Services to Customer and its Authorized Users, and a non-exclusive, perpetual, irrevocable,

royalty-free, worldwide license to reproduce, distribute, modify, and otherwise use and display Customer Data incorporated within the Aggregated Statistics.

**9.3. Feedback.** If Customer or any of its Authorized Users or Representatives sends or transmits any communications or materials to Labster by mail, email, telephone, or otherwise, suggesting or recommending changes to the Labster Materials, including, but not limited to, new features or functionality relating thereto, or any comments, questions, suggestions, or the like, including any Customer Created Content ("**Feedback**"), Labster is free to use such Feedback irrespective of any other obligation or limitation between the Parties governing such Feedback. Customer hereby assigns to Labster, on Customer's behalf, and on behalf of its Authorized Users and Representatives', all right, title, and interest in, and Labster is free to use, without any attribution or compensation to any party, any ideas, know-how, concepts, techniques, or other intellectual property rights contained in the Feedback, for any purpose whatsoever. For the avoidance of doubt, Labster is not required to use any Feedback.

**10. Representations and Warranties; and Warranty Disclaimer.**

**10.1. Mutual Representations and Warranties.** Each Party represents and agrees to the other that:

- 10.1.1.** It is duly organized, validly existing, and in good standing as a corporation or other entity under the laws of the jurisdiction of its incorporation or other organization;
- 10.1.2.** It has the full right, power, and authority to enter into and perform its obligations, and grant the rights, licenses, consents, and authorizations it grants or is required to grant under this Agreement;
- 10.1.3.** The execution of this Agreement by its representative whose signature is set forth at the end of this Agreement has been duly authorized by all necessary corporate or organizational action of such Party; and
- 10.1.4.** When executed and delivered by both Parties, this Agreement will constitute the legal, valid, and binding obligation of such Party, enforceable against such Party in accordance with its terms.

**10.2. Customer Representations and Warranties.** Customer represents and agrees to Labster that Customer owns, or otherwise has and will have the necessary rights and consents in and relating to, the Customer Data so that, as received and used by Labster in accordance with this Agreement, the Customer Data nor any Customer Created Content, do not and will not infringe, misappropriate, or otherwise violate any intellectual property rights, or any privacy rights, including but not limited to those under the GDPR, FERPA, or COPPA, or any other rights of any third party, or violate any applicable Law

**10.3. Labster's Limited Warranty.** Labster represents and warrants that the Services will conform in all material respects to the service levels set forth in **Exhibit A** when accessed and used in accordance with the Documentation. Labster does not make any representations or guarantees regarding uptime or availability of the Services unless specifically identified in **Exhibit A**. The remedies set forth in **Exhibit A** are Customer's sole remedies and Labster's sole liability under the limited warranty set forth in this Section 10.3. THE FOREGOING WARRANTY DOES NOT APPLY, AND LABSTER STRICTLY DISCLAIMS ALL WARRANTIES, WITH RESPECT TO ANY STANDALONE THIRD-PARTY SOFTWARE.

**10.4.** EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 10.3, ACCESS TO THE SERVICES IS PROVIDED "AS IS" AND LABSTER HEREBY DISCLAIMS ALL GUARANTEES, REPRESENTATIONS, AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. LABSTER SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES WITH RESPECT TO THE SERVICES. EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 10.3, LABSTER MAKES NO WARRANTY OF ANY KIND THAT THE SERVICES, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE

WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM, OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE.

## **11. Indemnification.**

### **11.1. Labster's Indemnification Obligations.**

**11.1.1.** Labster shall indemnify and defend Customer from and against any and all third party claims for losses, damages, liabilities, costs (including reasonable attorneys' fees) ("**Losses**") incurred by Customer: (a) from Labster's gross negligence or more culpable act or omission (including recklessness or willful misconduct); or (b) resulting from any third party claim, suit, action, or proceeding ("**Claim**") that the Services, or any use of the Services in accordance with this Agreement, infringes or misappropriates such third party's intellectual property rights, including, but not limited to, patents, trademarks, copyrights, or trade secrets.

**11.1.2.** If such a Claim is made or appears possible, Customer agrees to permit Labster, at Labster's sole discretion, to: (a) modify or replace the Services, or component or part thereof, to make it non-infringing; (b) obtain the right for Customer to continue its use; or (c) if Labster determines that neither (a) or (b) is commercially reasonably available, Labster may terminate this Agreement, in its entirety or with respect to the affected component or part, effective immediately upon written notice to Customer, and provide Customer a prorated refund for any remaining Term or Access Period as of Labster's termination effective date.

**11.1.3.** This Section 11.1 will not apply to the extent that the alleged infringement or misappropriation arises from: (a) Customer's use of the Services in combination with data, software, hardware, equipment, or technology not provided by Labster, or authorized by Labster in writing, or continued use after Labster notifies Customer of any alleged or actual infringement or misappropriation; (b) modifications to the Services not made by Labster; (c) Customer Data; or (d) Customer Systems.

**11.2. Customer's Indemnification Obligations.** To the extent permitted by applicable law, Customer shall indemnify and defend Labster from and against any Losses resulting from any Claim incurred by Labster: (a) from Customer's or its Authorized Users' or Representatives' gross negligence or more culpable act or omission (including recklessness or willful misconduct); (b) that the Customer Data, any use or processing of the Customer Data in accordance with this Agreement, or any permissible changes to the Services as provided for hereunder, including but not limited to Customer Created Content, infringes or misappropriates any third party's intellectual property rights including, but not limited to, patents, trademarks, copyrights, or trade secrets; (c) from Customer's or its Authorized User's use of the Services in combination with: (i) Customer's use of the Services in combination with data, software, hardware, equipment, or technology not provided by Labster, or authorized by Labster in writing; (ii) modifications to the Services not made by Labster; (iii) Customer Data; or (iv) Customer Systems; or (d) any other materials or information (including any documents, data, specifications, software, content, or technology) provided by or on behalf of Customer or any Authorized User, including Labster's compliance with any specifications or directions provided by or on behalf of Customer or any Authorized User to the extent prepared without any contribution by Labster.

**11.3. Indemnification Procedure.** Each party shall promptly notify the other in writing of any Claim for which such Party believes it is entitled to be indemnified pursuant to Section 11.1 or Section 11.2, as applicable. The Party seeking indemnification (the "**Indemnitee**") shall reasonably cooperate with the other Party (the "**Indemnitor**") at the Indemnitor's sole cost and expense. The Indemnitor shall promptly assume control of the defense and shall employ counsel of its choice to handle and defend the same, at the Indemnitor's sole cost and expense. The Indemnitee may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing. The Indemnitor shall not settle any Claim on any terms or in any manner that adversely affects the rights of any Indemnitee without the Indemnitee's prior written consent, which shall not be unreasonably withheld or delayed. If the Indemnitor fails or refuses to assume control of the

defense of such Claim, the Indemnitee shall have the right, but no obligation, to defend against such Claim, including settling such Claim after giving written notice to the Indemnitor, in each case in such manner and on such terms as the Indemnitee may deem appropriate. The Indemnitee's failure to perform any obligations under this Section 11.3 will not relieve the Indemnitor of its obligations under this Section 11, except to the extent that the Indemnitor can demonstrate that it has been materially prejudiced as a result of such failure.

**11.4. Sole Remedy.** THIS SECTION 11 SETS FORTH CUSTOMER'S SOLE REMEDIES AND LABSTER'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THE SERVICES INFRINGE, MISAPPROPRIATE, OR OTHERWISE VIOLATE ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

**12. Limitations of Liability.** IN NO EVENT WILL EITHER PARTY BE LIABLE UNDER, OR IN CONNECTION WITH, THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: (a) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES; (b) INCREASED COSTS, DIMINUTION IN VALUE, OR LOST BUSINESS, PRODUCTION, REVENUES, OR PROFITS; (c) LOSS OF GOODWILL OR REPUTATION; (d) USE, INABILITY TO USE, LOSS, INTERRUPTION, DELAY, OR RECOVERY OF ANY DATA, OR BREACH OF DATA OR SYSTEM SECURITY; OR (e) COST OF REPLACEMENT GOODS OR SERVICES, IN EACH CASE REGARDLESS OF WHETHER THE PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE. EXCEPT FOR A PARTY'S INDEMNIFICATION OBLIGATIONS HEREIN, OR FOR A PARTY'S FRAUD OR FRAUDULENT MISREPRESENTATION, IN NO EVENT WILL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER TO LABSTER UNDER THIS AGREEMENT IN THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM. IF ANY APPLICABLE LAW OR AUTHORITY HOLDS ANY PORTION OF THIS SECTION TO BE UNENFORCEABLE, THEN THE PARTIES' LIABILITY WILL BE LIMITED TO THE FULLEST POSSIBLE EXTENT PERMITTED BY APPLICABLE LAW.

**13. Term and Termination.**

**13.1. Term.** The initial term of this Agreement begins on the Effective Date and, unless terminated earlier pursuant to this Agreement's express provisions, will continue in effect until three (3) years from such date (the "**Initial Term**"). This Agreement will renew for up to two (2) additional, successive, one (1) year terms unless earlier terminated pursuant to this Agreement's express provisions, or either Party gives the other Party written notice of non-renewal at least sixty (60) days prior to the expiration of the then-current term (each a "**Renewal Term**" and together with the Initial Term, the "**Term**").

**13.2. Access Period.** As set out in an applicable Order, the "**Access Period**" is the period of time that Customer and its Authorized Users will be licensed to access and use of the Services in accordance with the terms of this Agreement. Except as required by applicable law, each Access Period shall be renewed automatically on or about the one (1) year anniversary of the start of the Access Period ("**Renewal Access Period**"), unless Customer provides written notice to Labster to the contrary no less than thirty (30) days prior to the end of the then-current Access Period. Any licenses which have not been used during the Access Period or Renewal Access Period will expire and will not be refunded, nor will they roll over, or be credited towards, any Renewal Access Period.

**13.3. Termination.** In addition to any other express termination right set forth in this Agreement:

**13.3.1.** Labster may terminate an applicable Order, and this Agreement (if there are no other active Orders), effective upon written notice to Customer, if Customer: (a) fails to pay any amount when due under such Order, and such failure continues more than sixty (60) days after Labster's delivery of written notice thereof; or (b) breaches any of its obligations under Section 2 or Section 9.

- 13.3.2.** Either Party may terminate an applicable Order, and this Agreement (if there are no other active Orders), effective on written notice to the other Party, if the other Party materially breaches this Agreement (except for breaches subject to the terms of Section 4), and such breach: (a) is incapable of cure; or (b) being capable of cure, remains uncured for thirty (30) days after the non-breaching Party provides the breaching Party with written notice of such breach. In the event of Customer's termination due to Labster's uncured breach, Customer will receive a prorated refund of any prepaid but unused Fees from the effective date of termination through the end of the applicable Access Period.
- 13.3.3.** Either Party may terminate any and all Orders and this Agreement, effective immediately, upon written notice to the other Party, if the other Party: (a) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (b) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law; (c) makes or seeks to make a general assignment for the benefit of its creditors; or (d) applies for or has appointed a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.
- 13.4. Effect of Expiration or Termination.** Upon expiration or earlier termination of this Agreement: (a) Customer shall immediately discontinue use of the Services and, without limiting Customer's obligations under Section 6, Customer shall delete, destroy, or return all copies of the Labster Materials and certify in writing to Labster that the Labster Materials have been deleted or destroyed; and (b) Labster will promptly return, delete, or destroy all Customer Data it is not otherwise legally required or permitted to maintain. No expiration or termination will affect Customer's obligation to pay all Fees that may have become due before such expiration or termination, nor, except as expressly provided for in Section 13.3.2, entitle Customer to any refund.

#### **14. Miscellaneous.**

- 14.1. Notices.** All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "**Notice**") must be in writing and addressed to the other Party at the addresses set forth above (or to such other address that may be designated by the Party giving Notice from time to time in accordance with this Section 14.1). All Notices must be delivered by personal delivery, nationally recognized overnight courier (with all fees prepaid), facsimile or via email attachment (with confirmation of transmission), or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only: (a) upon receipt by the receiving Party; and (b) if the Party giving the Notice has complied with the requirements of this Section 14.1.
- 14.2. Force Majeure.** In no event shall either Party be liable to the other Party, or be deemed to have breached this Agreement, for any failure or delay in performing its obligations under any Order and this Agreement (except for any obligations to make payments), if and to the extent such failure or delay is caused by any circumstances beyond such Party's reasonable control, including but not limited to acts of God, flood, fire, earthquake, explosion, war, terrorism, invasion, riot or other civil unrest, strikes, labor stoppages or slowdowns or other industrial disturbances, epidemic or pandemic, or passage of law or any action taken by a governmental or public authority, including imposing an embargo (each a "**Force Majeure Event**"), and so long as the Party provides prompt Notice to the other Party, then such Party's obligations hereunder will be extended for the period of time of such Force Majeure Event.
- 14.3. Amendment and Modification; Waiver.** No amendment to or modification of any Order or this Agreement is effective unless it is in writing and signed by an authorized representative of each Party. No waiver by any Party of any of the provisions hereof will be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement: (a) no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement will operate or be construed as a waiver thereof; and (b) no single or partial exercise of any right, remedy, power, or privilege hereunder

will preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

**14.4. Severability.** If any provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the Parties shall negotiate in good faith to modify this Agreement so as to implement their original intent as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

**14.5. Governing Law, Jurisdiction, Mediation, and Arbitration; Class Waiver.**

**14.5.1.** The rights and obligations of the Parties under this Agreement shall not be governed by the 1980 UN Convention on Contracts for the International Sale of Goods, but instead shall be governed by and construed under the laws of, without regard to its conflict of laws rules:

**14.5.1.1.** If the Labster contracting entity, as described in Section 1.9, is Labster Inc., then the laws of the State of New York, USA with such Claims to be resolved solely in the appropriate courts of New York, New York, USA and the Parties hereby expressly consent to such jurisdiction, forum, and venue of such courts;

**14.5.1.2.** If the Labster contracting entity, as described in Section 1.9, is Labster ApS, then the laws of Denmark, with such Claims to be resolved solely in the appropriate courts of Copenhagen, Denmark and the Parties hereby expressly consent to such jurisdiction, forum, and venue of such courts; or

**14.5.1.3.** To the extent that applicable local law prevents certain Claims from being resolved in the applicable court set forth in Section 14.5.1.1 or Section 14.5.1.2, as applicable, then Customer may file such Claim in its local federal courts. Likewise, if applicable local law prevents Customer's local court from applying the governing law as set forth in Section 14.5.1.1 or Section 14.5.1.2, as applicable, to resolve such Claim, then such Claim will be governed by the applicable local laws of Customer's country, state, or other place of residence as applicable.

**14.5.2.** In the event of any Claim arising out of this Agreement, the Parties agree to escalate the Claim to members of their respective senior management team, and such personnel shall negotiate in good faith to attempt to resolve the dispute.

**14.5.3.** To the extent permitted by applicable law, in the event the Parties' senior managers are unable to resolve the Claim, except as otherwise provided in this Agreement, the matter must be submitted for confidential and non-binding mediation to a nationally recognized mediator or mediation service ("**Mediator**"), which, in any such instance, will be chosen by Labster in the applicable jurisdiction either with: (a) the American Arbitration Association or JAMS; or (b) the International Chamber of Commerce International Court of Arbitration. Either Party may commence mediation by providing a written request for mediation to the other Party and to the Labster chosen Mediator, setting forth the subject matter of the Claim and the relief requested. The Parties will cooperate with the Mediator and each other in selecting an individual mediator from Mediator's panel of neutrals, and in scheduling the mediation proceedings. The Parties agree to: (a) participate in the mediation in good faith; (b) pay their respective attorneys' fees; and (c) share equally the costs of mediation. All conduct and statements, whether oral or written, made in the course of the mediation by any of the Parties, their agents, employees, experts, and attorneys, and by the individual mediator and any employees of the Mediator, are confidential, privileged, and inadmissible for any purpose, including impeachment, in any arbitration, litigation, or other proceeding between the Parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation.

- 14.5.4.** To the extent permitted by applicable law, in the event the Mediator is unsuccessful, the Parties agree to resolve all Claims solely by confidential and binding arbitration in the applicable jurisdiction before a single nationally recognized arbitrator or arbitration service ("**Arbitrator**"), which, in any such instance, will be chosen by Labster in the applicable jurisdiction either with: (a) the American Arbitration Association or JAMS; or (b) the International Chamber of Commerce International Court of Arbitration, and for Customer on an individual basis only (i.e., Customer may not bring a claim in arbitration or in court as a class action or in a representative capacity, nor participate as a member in any such class or representative action). This Section 14.5.4 is a written agreement to arbitrate governed by the applicable laws of the designated jurisdiction. The Parties agree to pay their respective attorneys' fees, and further agree that any Claim, mediation, and/or arbitration (including the materials, proceedings, and existence thereof) are Confidential Information.
- 14.5.5.** Notwithstanding the foregoing, each Party acknowledges and agrees that a breach or threatened breach by such Party of any of its obligations under Section 6 or, in the case of Customer, Section 2.2, would cause the other Party irreparable harm for which monetary damages would not be an adequate remedy, and each Party agrees that, in the event of such breach or threatened breach, the other Party will be entitled, prior to any request for mediation, to equitable relief, including a restraining order, an injunction, specific performance, and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity, or otherwise.
- 14.6. Assignment.** Customer may not assign any of its rights or delegate any of its obligations hereunder, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without the prior written consent of Labster. Any purported assignment or delegation in violation of this Section will be null and void. In the event of assignment by Labster, upon Notice thereof to Customer, Customer shall have the one-time right to terminate all Orders and this Agreement within thirty (30) days of receipt of such Notice with no further liability hereunder, and receive a prorated refund of any prepaid Fees from the effective date of such termination through the end of the applicable Access Period. No assignment or delegation will relieve the assigning or delegating Party of any of its obligations hereunder. This Agreement is binding upon and inures to the benefit of the Parties and their respective permitted successors and assigns.
- 14.7. Export Regulation.** The Parties shall comply with all applicable federal and international laws, regulations, and rules, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), that prohibit or restrict the export or re-export of the Services or any Customer Data outside the EU, UK, and US.
- 14.8. Non-Solicitation.** During the term of this Agreement and for a period of one (1) year following termination, for any reason, neither Party shall directly or indirectly solicit, encourage, or attempt to hire or engage any employee of the other Party to become employed by the Party, or to become engaged as a contractor or subcontractor except through the other Party, without the other Party's prior written consent, except that either Party shall not be precluded from hiring any employee who: (a) initiates discussions regarding such employment without any direct or indirect solicitation by the Party; (b) responds to any public advertisement placed by the Party; or (c) has been terminated by the other Party prior to commencement of employment discussions between the Party and such employee.
- 14.9. Relationship of the Parties.** This Agreement shall not be construed as creating any agency, partnership, joint venture, or any other form of association, for tax purposes or otherwise, between the Parties. The Parties shall at all times be and remain independent contractors. Except as expressly agreed to by the Parties in writing or in this Agreement, neither Party shall have any right or authority, express or implied, to assume or

create any obligation of any kind, or to make any representation or warranty, on behalf of the other Party, or to bind the other Party in any respect whatsoever.

**14.10. Binding Effect and Third-Party Beneficiaries.** Except if specifically stated in this Agreement, neither Party, nor any of their respective employees or agents, will have the power or authority to bind or obligate the other Party. This Agreement is for the sole benefit of the Parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

**14.11. Public Announcements.** Neither Party shall issue or release any announcement, statement, press release, or other publicity or marketing materials relating to this Agreement or, unless expressly permitted under this Agreement, otherwise use the other Party's trademarks, service marks, trade names, logos, domain names, or other indicia of source, association, or sponsorship, in each case, without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed; provided, however, that Labster may, without Customer's prior written consent, include Customer's name and other indicia in solely in its lists of Labster's current or former customers of Labster in promotional and marketing materials.

**14.12. Nondiscrimination.** The Parties will comply with all applicable state and federal laws, rules, regulations, and executive orders governing equal employment opportunity, immigration, and nondiscrimination, including, but not limited to, the Americans with Disabilities Act, the Rehabilitation Act of 1973, and Title IX, as may be amended from time to time. Each Party represents and agrees that it does not discriminate against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibits discrimination against all individuals based on their race, color, religion, sex, or national origin.

**14.13. Accessibility of the Services.** Labster agrees to continue to use reasonable commercial efforts to provide the Services in an accessible manner as described at <https://www.labster.com/accessibility/>, which may be updated from time-to-time.

**14.14. No Rule of Strict Construction.** This Agreement will be deemed jointly chosen by the Parties to express their mutual intent, and no rule of strict construction will be applied against either Party. No provision of this Agreement will be interpreted in favor of, or against, either of the Parties by reason of such Party having drafted such provision or this Agreement.

**14.15. Titles and Headings; Clerical Errors.** The title and section headings of this Agreement are inserted for convenience only and are not intended to affect the meaning or interpretation of this Agreement. Clerical errors are subject to correction by mutual agreement of the Parties.

**14.16. Entire Agreement.** This Agreement, together with any other documents incorporated herein by reference and all related Exhibits, constitutes the sole and entire agreement of the Parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, and representations and warranties, both written and oral. In the event of any inconsistency between the statements made in the body of this Agreement, the related Exhibits, and any other documents incorporated herein by reference, the following order of precedence governs: (a) first, this Agreement, including its Exhibits and any other documents referenced herein; and (b) second, any Order. For the avoidance of doubt, no other documents provided by the Customer in relation to its purchase and use hereunder or with any Order, such as a purchase order, which is used for administrative purposes only, or its purchase terms and conditions, will have any effect and will be null and void.

**14.17. Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together are deemed to be one and the same agreement.




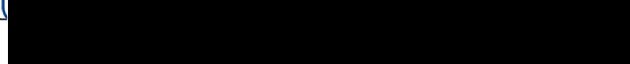
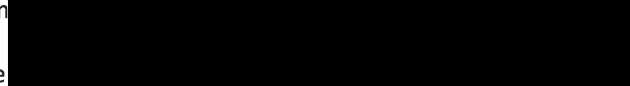
**14.18. Survival.** All provisions which by their nature and context impose continuing obligations on Party or both Parties shall survive any termination or expiration of this Agreement.

**IN WITNESS WHEREOF**, the authorized representatives of the Parties have executed this Agreement as of the Effective Date.

**Labster**

By:   
Name:   
Title:   
Date: 8/23/2021

**Customer**

By:   
Name:   
Title:   
Date: 8/24/2021

**EXHIBIT A**  
**SERVICE LEVELS AND SUPPORT**

1. **Service Levels.** Subject to the terms and conditions of this Agreement, Labster will use commercially reasonable efforts to make the Services available at least ninety-nine and one half percent (99.5%) of the time as measured over the course of each calendar quarter during the Term (each such calendar month, a “**Service Period**”), excluding unavailability as a result of any of the Exceptions described below in Section 2 (the “**Availability Requirement**”). “**Service Level Failure**” means a material failure of the Services to meet the Availability Requirement. “**Available**” means the Services are available for access and use by Customer and its Authorized Users over the Internet and operating in material accordance with the Specifications.
2. **Exceptions.** For purposes of calculating the Availability Requirement, the following are “**Exceptions**” to the Availability Requirement, and neither the Services will be considered un-Available nor any Service Level Failure be deemed to occur in connection with any failure to meet the Availability Requirement or impaired ability of Customer or its Authorized Users to access or use the Services that is due, in whole or in part, to any: (a) act or omission by Customer or any Authorized User, or access to or use of the Services by Customer or any Authorized User, or using Customer’s or an Authorized User’s Access Credentials, that does not strictly comply with this Agreement and the Specifications; (b) Customer’s or its Authorized User’s internet connectivity; (c) Force Majeure Event; (d) failure, interruption, outage, or other problem with any Customer Systems, or other matter not supplied by Labster pursuant to this Agreement; (e) Scheduled Downtime (as defined below); or (f) disabling, suspension, or termination of the Services pursuant to Section 2.4 of the Agreement.
3. **Scheduled Downtime.** Labster will use commercially reasonable efforts to: (a) schedule downtime for routine maintenance of the Services between the hours of 7AM and 10AM GMT; and (b) give Customer at least twenty-four (24) hours prior notice of all scheduled outages of the Services (“**Scheduled Downtime**”).
4. **Support Services.** The Services include Labster’s standard customer support services (“**Support Services**”) available at <https://help.labster.com/en> (or a successor website address), via email to [customer.support@labster.com](mailto:customer.support@labster.com), or via the live chat function within the Services. Support Services resolution times are dependent on the severity level that the Labster support team assigns to the request. Labster will use commercially reasonable efforts to resolve reported issues within the applicable Request Resolution Time (as set forth in Section 4.2 below) for the severity level of the issue, as set forth below:

**4.1. Response and Resolution.**

- 4.1.1. **Problem Severity Levels 1 and 2.** If a Problem Severity Level 1 or 2 request cannot be corrected to the reasonable satisfaction of the requestor within the Request Resolution Time after the requestor makes the initial request for Technical Support, Labster will:
  - 4.1.1.1. Promptly escalate the request to Labster’s technical support management;
  - 4.1.1.2. Continue to take all available actions which will most expeditiously resolve the request;
  - 4.1.1.3. Provide timely reports to the requestor of the steps taken and to be taken to resolve the request, the progress to correct, and the estimated time of correction until the request is resolved; and
  - 4.1.1.4. Provide increasing levels of technical expertise and Labster management involvement, as needed, in finding a solution to the request until it has been resolved.
- 4.1.2. **Problem Severity Levels 3 and 4.** If a Problem Severity Level 3 or 4 request cannot be corrected to the reasonable satisfaction of the requestor within the Request Resolution Time after the requestor makes the initial request for Technical Support, Labster will nonetheless continue to work to resolve the request in an expeditious manner.

## **4.2. Technical Support Problem Severity Levels.**

### **4.2.1. Problem Severity Level 1.**

Description: This Problem Severity Level is associated with: (a) one or more components of the Services are non-functional or not accessible; (b) unauthorized exposure of all or part of the Customer Data; or, (c) loss or corruption of all or part of the Customer Data.

Request Response Time: One (1) business day

Request Resolution Time: Two (2) business days

### **4.2.2. Problem Severity Level 2.**

Description: This Problem Severity Level is associated with significant and/or ongoing interruption of an Authorized User's use of one or more components of the Services and for which no acceptable work-around is available.

Request Response Time: One (1) business day

Request Resolution Time: Ten (10) business days

### **4.2.3. Problem Severity Level 3.**

Description: This Problem Severity Level is associated with minor and/or limited interruption of an Authorized User's use of one or more components of the Services.

Request Response Time: Two (2) business days

Request Resolution Time: On a case-by-case basis as determined by Labster in its sole discretion.

### **4.2.4. Problem Severity Level 4.**

Description: This Problem Severity Level is associated with general questions pertaining to the components of the Services, or other issues which are not included in Problem Severity Levels 1, 2, or 3.

Request Response Time: Two (2) business days

Request Resolution Time: On a case-by-case basis as determined by Labster in its sole discretion.

**4.3. Data Backup.** Notwithstanding Labster's obligations set forth in Section 8.1 of the Agreement, the Services do not replace the need for the Customer to maintain regular data backups or redundant data archives. LABSTER HAS NO OBLIGATION OR LIABILITY FOR ANY LOSS, ALTERATION, DESTRUCTION, DAMAGE, CORRUPTION, OR RECOVERY OF CUSTOMER DATA.

**4.4. Minimum System Requirements.** Operating the Services requires minimum system requirements detailed at: <https://help.labster.com/en/articles/1077008-what-are-the-minimum-system-requirements-for-labster-simulations>. Such requirements may be updated from time-to-time as provided for at such, or its successor, page.

## LABSTER ORDER FORM

<b>Labster Inc.</b>	<b>Labster Contact: Will Amaral</b>
<b>561 Windsor Street, B302</b>	<b>Labster Contact Phone: +1 (857) 837-3274</b>
<b>Somerville, MA 02143</b>	<b>Labster Contact E-Mail: w.amaral@labster.com</b>

<b>Customer:</b>	<b>Customer Contact: Legrande Slaughter</b>
<b>Ship To Address:</b> 1155 Union Cir Denton, TX 76203 United States	<b>Customer Contact Phone: (940) 565-3515</b>
<b>Bill To Address:</b> 1155 Union Cir Denton, TX 76203 United States	<b>Customer Contact E-Mail:</b> legrande.slaughter@unt.edu

**Billing Contact Name:** Shelley Pavero  
**Billing Contact Email:** invoices@untsystem.edu  
**Billing Contact Phone Number:** 940-369-5500

**Payment Method:** Institution

Qty	Cost per License	Product Code	Product/Service Description	Access Period (License Start/End Dates)
1	\$45,000.00	OTS-ALL	<b>Fall 2021</b> CHEM 1430 CHEM 1440 CHEM 3210 CHEM 3220 <b>Spring 2022</b> CHEM 1430 CHEM 1440 CHEM 3210 CHEM 3220 <b>Summer 2022</b> CHEM 1430 CHEM 1440 CHEM 3210 CHEM 3220  Unlimited Licenses & LMS Integration Academic Year 2021-2022	<i>August 24, 2021 - August 23, 2022</i>
<b>TOTAL</b>				<b>\$45,000.00</b>

**Labster Order Form Terms and Conditions**

1. This Order Form and Customer's purchase and/or use of the Products and Services set forth above shall be governed by the terms and conditions set forth in the applicable Software Services Agreement for Institutions by and between Labster and Customer, or Customer's Affiliate, as executed by each Party's authorized representatives (the "Agreement").

2. Order Form Effective Date: This Order Form shall be effective and binding on the Parties, for the Access Period, as of the date of full execution by each Party's authorized representatives.

3. Payment Method:

**“Institution” - All initial and subsequent payments shall be due Net 10. Unless otherwise specified, all dollars (\$) are United States currency. Customer shall be invoiced for the Fees due upon signature of this Order Form.**

**Signatures:**

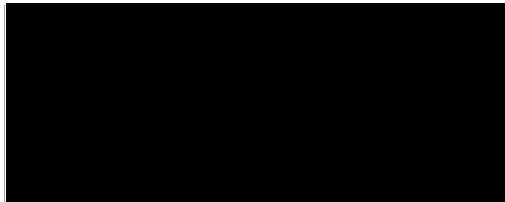
**On behalf of Labster**

**Signature:**

**Name:**

**Title:**

**Date:**



9/7/2021

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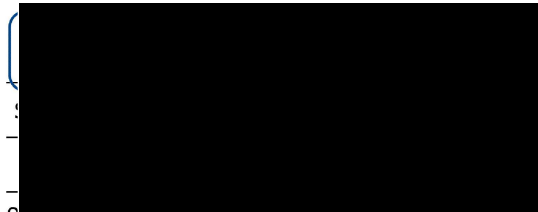
**On behalf of Customer**

**Signature:**

**Name:**

**Title:**

**Date:**



9/7/2021

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## STANDARD ADDENDUM TO AGREEMENT

Contracts with the University of North Texas System and the University of North Texas (collectively, "UNT") are subject to the following terms and conditions, which are incorporated for all purposes into the Agreement to which they are attached. In the event of a conflict between the Agreement and this Addendum to Agreement, this Addendum shall govern. Any term or condition of the Agreement that is not superseded by a term or condition of this Addendum shall remain in full force and effect.

**Payment.** In accordance with Chapter 2251 of the Texas Gov't Code: (a) payment shall be made no later than thirty days following the later of (i) delivery of the goods or completion of the services and (ii) delivery of an invoice to UNT; and (b) interest, if any, on past due payments shall accrue and be paid at the maximum rate allowed by law. Vendor must be in good standing, not indebted to the State of Texas, and current on all taxes owed to the State of Texas for payment to occur. Invoices and any required supporting documents must be presented to: University of North Texas – Business Service Center, 1112 Dallas Dr. Ste. 4000, Denton, TX 76205.

**Eligibility to Receive Payment.** By entering into and performing under this Agreement, Vendor certifies that under Section 231.006 of the Texas Family Code and under Section 2155.004 of the Texas Gov't Code, it is not ineligible to receive the specified payment and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

**Tax Exempt.** UNT is exempt from the payment of taxes and will provide necessary documentation confirming its tax exempt status.

**Breach of Contract Claims Against UNT.** Chapter 2260 of the Texas Gov't Code establishes a dispute resolution process for contracts involving goods, services, and certain types of projects. To the extent that Chapter 2260, Texas Gov't Code, is applicable to this Agreement and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by the parties to attempt to resolve any claim for breach of contract against UNT that cannot be resolved in the ordinary course of business.

**Governing Law and Venue.** This Agreement shall be construed and enforced under and in accordance with the laws of the State of Texas. The Agreement is made and entered into, and is performable in whole or in part in Denton County, Texas, and venue for any suit filed against UNT shall be subject to the mandatory venue statute set forth in § 105.151 of the Texas Education Code.

**No Excess Obligations.** In the event this Agreement spans multiple fiscal years, UNT's continuing performance under this Agreement is contingent upon the appropriation of funds to fulfill the requirements of the contract by the Texas State Legislature. If the Legislature fails to appropriate or allot the necessary funds, or if such appropriation is reduced by the veto of the Governor or by any means provided in the appropriations act, UNT shall issue written notice to Vendor that UNT may terminate the Agreement without further duty or obligation.

**Travel Expenses.** Reasonable travel, meals, and lodging expenses shall be charged in accordance with and shall not exceed State of Texas travel, meal, and lodging reimbursement guidelines applicable to employees of the State of Texas.

**Insurance.** UNT, as an agency of the State of Texas, is insured for general liability insurance under a self-insurance program covering its limits of liability. The parties agree that such self-insurance by UNT shall without further requirement, satisfy all insurance obligations of UNT under the Agreement.

**Public Information.** UNT shall release information to the extent required by the Texas Public Information Act and other applicable law. If requested, Vendor shall make public information available to UNT in an electronic format. The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this contract and Vendor agrees that the contract can be terminated if Vendor knowingly or intentionally fails to comply with a requirement of that subchapter. Further, Vendor agrees (1) to preserve contracting information for the duration of the contract and according to UNT records retention requirements; (2) to promptly provide contracting information to UNT when requested; and (3) upon completion of the contract to provide, at no cost, all contracting information to UNT or to preserve all contracting information according to UNT's records retention requirements.

Required Posting of Contracts on Website. Vendor acknowledges and agrees that UNT is required by Section 2261.253 of the Texas Gov't Code to post each contract it enters into for the purchase of goods or services from a private vendor on its Internet website, including any terms and conditions otherwise marked confidential and/or proprietary.

Israel Non-Boycott Verification. If the Agreement is subject to Texas Gov't Code Section 2271.002, Vendor hereby represents, verifies, and warrants that it does not boycott Israel and will not boycott Israel during the term of the Agreement.

Limitations. UNT is subject to constitutional and statutory limitations on its ability to enter into certain terms and conditions of the Agreement, which may include those terms and conditions relating to: liens on UNT property; disclaimers and limitations of warranties; disclaimers and limitations of liability for damages; waivers, disclaimers, and limitations on legal rights, remedies, requirements, and processes; limitations of time in which to bring legal action; granting control of litigation or settlement to another party; liability for acts or omissions of third parties; payment of attorney's fees; dispute resolution; and indemnities. Terms and conditions relating to these limitations will not be binding on UNT, except to the extent not prohibited by the Constitution and the laws of the State of Texas.

VENDOR: L \_\_\_\_\_ er Inc.

UNIVERSITY OF NORTH TEXAS

By: \_\_\_\_\_

By: \_\_\_\_\_

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

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

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

Date: 8/24/2021

Date: 8/23/2021

## **Declaration of Procurement Method**

The attached contract document has been issued as a result of either a sole source or proprietary justification approved by the University of North Texas System Procurement Department.

The approved justification form is on file with the UNT System Procurement Department records.