

## TpT School Access Subscription Terms

Effective as of 05/01/2021, see previous version [here](#).

These TpT School Access Subscription Terms (“Terms”) are entered into between Teacher Synergy LLC (“TpT”, “us”, “we”, or “our”) and the educational institution named on an executed TpT School Access Quote (or “Quote as defined herein”) (“Customer”). Together with the Terms, any executed Quote(s), our [Privacy Policy](#), [Student Privacy Policy](#) and any other policies incorporated herein or attached hereto form the “Agreement” between TpT and the Customer. The individual entering the Agreement on behalf of Customer by signing a Quote represents and warrants that they are an authorized representative of and have the authority to bind the Customer to the Agreement. As to the subject matter of this Agreement, in the event of an inconsistency between these Terms, the terms of the Quote, any feature specific terms or policies, or the marketplace [Terms of Service](#), the order of precedence shall be first the terms of the applicable Quote followed by applicable feature specific terms (but only with regard to the use of such feature), followed by these Terms, provided such order of precedence shall only apply to the extent of a conflict. In the event of a conflict between the [Privacy Policy](#) and the [Student Privacy Policy](#), the [Student Privacy Policy](#) shall govern only with respect to Student Information (as defined therein) and only to the extent of the conflict.

1. **Definitions.** Capitalized terms throughout the Agreement shall have the meaning assigned in this section or elsewhere in the Agreement as applicable.
  - 1.1 **“Access Level”** means the maximum number of Resource Licenses that an Account may Access during the Service Term, as listed on the applicable Quote.
  - 1.2 **“Access” or “Accessed”** means that, with regard to a Resource, a User has obtained a Resource License by electronically viewing, downloading, printing or otherwise accessing a Resource. All Access is only permitted for the duration of the Service Term and is considered final; once Accessed, the Resource counts as a Resource License towards the Account’s overall Access Level for that Service Term. Once Accessed, a Resource may not be returned or refunded for any credit towards the remaining Access Level.
  - 1.3 **“Account”** refers to an individual School Access account provisioned by TpT to each Customer, which houses the Customer’s information, and through which Customer’s Users access the Services.
  - 1.4 **“Account Owner”** is the individual the Customer assigns to the Account Owner User Role and who has the privileges defined in sections 4.3.1 and 4.3.3. Only one User per Account may be designated as the Account Owner.
  - 1.5 **“Account Administrator”** is any one or more Users who are assigned to the Account Administrator User Role and who have the privileges defined in sections 4.3.1 and 4.3.2.
  - 1.6 **“Account Member”** is any one or more Users who is neither an Account Administrator nor an Account Owner and who has the privileges defined in section 4.3.1.
  - 1.7 **“Agreement”** means these TpT School Access Subscription Terms together with an executed Quote, our [Privacy Policy](#), [Student Privacy Policy](#), [Easel by TpT User Agreement](#) and any other policies incorporated herein. The Agreement governs the relationship between the parties and the terms and conditions on which TpT offers and Customer accepts the Services.
  - 1.8 **“Customer”** means the educational institution entity listed on the Quote which is purchasing, and will be receiving, the ordered Services.
  - 1.9 **“Customer Data”** means any data, information or material entered by or added to the Service by Customer or Customer’s Users or otherwise received by the Service from Customer or Customer’s Users in the course of accessing or using the Service, for example, Customer’s contact and billing information, Customer’s roster of Users and User Account information.
  - 1.10 **“Effective Date”** of the Agreement is the earlier of the date on which a valid Quote is signed by Customer and accepted by TpT (including electronically), or the start date of the Service Term set forth in an applicable Quote.
  - 1.11 **“Fees”** refers to the amount due as listed on the applicable Quote for the particular Services ordered, as well as any other fees that may apply.

- 1.12 **“Quote(s)”** means the TpT issued order document titled “TpT School Access Quote” memorializing the Order Terms TpT offers to Customer. Quotes are subject to the expiration date listed thereon, as applicable.
- 1.13 **“Order Terms”** means TpT’s offer to Customer as described on the Quote including the identity of the Customer to receive Services, the Services being ordered (including Access Level), the Service Term, and the Fees Customer will be charged for those Services. Customer may accept the Order Terms by signing and returning the Quote prior to the Quote expiration date. If the Order Terms are not accepted, signed, and returned by the Quote expiration date, TpT will not be required to honor the Order Terms and the Customer may not be offered the same Order Terms on any subsequently issued Quotes.
- 1.14 **“Resource(s)”** means the individual materials, as available, in the Resource Catalog that may be Accessed by Users. Resources are created and owned by TpT’s marketplace sellers (“Teacher-Authors”) and are licensed by the Teacher-Author for use through the Services. TpT cannot and does not guarantee the availability or accessibility of any particular Resource at any time.
- 1.15 **“Resource Catalog”** means the collection of Resources that are available, at any given time, through the Services. The Resource Catalog is subject to change during the Service Term as Resources may be added and/or removed throughout the Service Term at TpT or the Teacher-Author’s discretion.
- 1.16 **“Resource License”** means, when a Resource is Accessed, the limited license, as described in section 3.2.2, that a User is granted to use the Resource during the Service Term.
- 1.17 **“Services”** refers to the TpT School Access platform and features (“School Access Platform”), the Resource Catalog, Resources, and any related products or services that TpT may offer.
- 1.18 **“Service Term”** is the duration pursuant to which you can use to the Services, as determined by the start date and end date listed on the applicable executed Quote.
- 1.19 **“User(s)”** means any individual who is given access to the Services through the Customer’s Account including Account Members, Account Administrators, and the Account Owner. All Users of a Customer’s Account must be authorized employees, contractors or agents of the Customer.
- 1.20 **“User Account”** means the individual account of a User as part of the Customer’s Account.
- 1.21 **“User Roles”** means the defined roles (Account Member, Account Administrator, or Account Owner) that Users under the Account can be assigned, each of which relate to a set of privileges with respect to the use and administration of Customer’s Account. Every User must have an assigned User Role.

2. **Services description.** TpT School Access is a subscription-based service that allows, subject to this Agreement, Customer and its Users access to the School Access Platform, available standard features, and Resources, as available, in the Resource Catalog for the Service Term. TpT agrees to provide the Services as set out on the applicable Quote. TpT reserves the right to modify, and/or make improvements, or updates to the Services at its discretion and may, from time to time, offer or introduce additional features or services for which there may be additional Fees and/or terms and conditions of use, which by this reference are incorporated herein.

3. **License Grants and Use Restrictions.**

3.1 **Services.** Subject to limitations described herein and in accordance with the terms of any Quote, TpT grants Customer a limited, non-exclusive, non-transferable, non-sublicensable, worldwide, royalty-free right to (i) access and use the School Access Platform during the Service Term solely for the purposes of Accessing Resources in accordance with this Agreement and (ii) use the Accessed Resources in accordance with the applicable license terms and as further set forth in Section 3.2.2. Customer may not, and may not permit its Users or others to, (a) share or provide access to the Services to any other entity or third parties other than as specifically permitted hereunder; (b) resell, rent, lease, or sublicense the Services; (c) reverse engineer, decompile, attempt to discover or derive the source code from, or create derivative works of the Services, and/or (d) use or share Resources or Resource Licenses in violation of Section 3.2.2, for example by sharing Resources or Resource Licenses with others, including other Users. Notwithstanding the license granted herein, TpT maintains all legal right, title and interest in and to the Services, including all intellectual property and proprietary rights and this Agreement does not convey any such rights except as expressly described herein.

3.2 **Resources.** Customer's Users may Access Resources available through the Services in accordance with the following terms.

3.2.1. **Access Level.** Subject to the terms of this Agreement, Customer's Users are permitted to collectively Access up to the number of Resource Licenses associated with Customer's Access Level, per Service Term, which is listed on the applicable Quote. Resource Licenses are personal to the User who Accessed the particular Resource, may not be shared or transferred, and Access to Resource Licenses will not roll over from one Service Term to subsequent Service Term. This means that: (i) in the event that more than one User Accesses the same Resource, each User's Access counts as a used Resource License towards the Customer's overall Access Level for the applicable Service Term, (ii) Resource Licenses used by a User who is thereafter removed from the Account may not be recouped, retained, transferred or otherwise used by another User, (iii) Resources Accessed in one Service Term may only be Accessed in a subsequent Service Term by obtaining a new Resource License for such Resource in accordance with the applicable Quote and available Access Level.

3.2.2. **Resource License.** When a User Accesses a Resource through the Services, the Teacher-Author grants the Accessing User a non-exclusive, royalty free, non-transferable, revocable, limited license to use the Resource solely for that User's use for the internal and, as expressly permitted herein, instructional purposes of the Customer and only during the Service Term so long as the Accessing User maintains an active User Account with the Customer. Resource Licenses are personal to the Accessing User and may not be shared with other Users or any third parties, except that a User may use the Resource as necessary with the User's students for instructional purposes. Customer will not and will not permit its Users to reproduce, copy, distribute, display, resell, rent, lease, publish, share online (including posting to any Customer website, shared drives, centralized database, or learning management system), create derivatives of, or otherwise use Resources beyond the Resource License granted herein. A Resource License may be revoked at any time during the Service Term if TpT is no longer able to host the Resource for any reason including for example, to comply with any policies or laws. No credit or adjustment will be made to Customer's remaining Access Level as a result of a Resource License being revoked.

3.2.3. **Digital and Student Tools.** Customer and Customer's Users may use Accessed Resources with available Student Tools (as defined in our Student Privacy Policy) which are tools and other available functionality enabling digital use and interaction with students, including but not limited to Easel by TpT. Any use of Student Tools by Customer or any of Customer's Users is governed by and subject to the [Student Privacy Policy](#), and any use of the Easel by TpT is governed by and subject to the [Easel by TpT User Agreement](#), each of which are incorporated herein and made part of the Agreement by reference.

#### 4. **Account, Users, Rights and Responsibilities.**

4.1 **Account provisioning.** Prior to the start of the Service Term, TpT will provision an Account to the Customer's designated Account Owner.

4.2 **User Seats.** Customer may add or invite up to the number of Users indicated on an applicable Quote to join its Account. Each User will have a unique User Account and User Accounts may not be shared by multiple individuals. In the event that a User is removed from the Customer's Account the User's Account will be closed and a new User with a new User Account may be added to the Customer's Account.

4.3 **User Role Privileges.** Users have the following rights and responsibilities as determined by their assigned User Role.

4.3.1. **All Users.** All Users can access the Services to discover and Access Resources, subject to the limitations described herein. Any User who has been removed from the Account may no longer access the Services. TpT shall revoke all licenses and rights to use the Services and any Resource Licenses acquired by a User when the User is removed from the Account.

4.3.2. **Additional Rights of Account Administrator.** Each Account may have multiple Users assigned to the role of Account Administrator. Account Administrators can add, remove, and otherwise manage Account Members.

- 4.3.3. **Additional rights of Account Owner.** Each Account can only have one Account Owner. The Account Owner serves as the primary contact person for the Customer and has the highest level of authority out of the Users to manage the Account. Notices and other important communications related to the Account will be sent to the email address associated with the Account Owner, which must be an email address owned or controlled by, or licensed to, the Customer (e.g. within the Customer's email domain). The Account Owner can add, update or remove Users, update User Roles, and manage information and settings associated with the Account. Only the Account Owner can assign a different user as the Account Owner.
- 4.3.4. **Additional rights of TpT.** TpT reserves the right to refuse registration of, or to cancel, Accounts or login information that violate the terms and conditions set forth in this Agreement. TpT also reserves the right to transition, including without limitation at Customer's request, Account (including Account Owner) access to another individual employed by Customer if necessary for the orderly transition, maintenance, or operation of Customer's Account.

4.4 **Responsibility for Users.** Customer is responsible for all loss or damage arising from Customer's and its Users' acts, omissions or failure to keep the Account (including User Accounts) secure, for all activity that happens under its Account (including User Accounts), including the actions of its Users or other third parties (whether or not such activity was with Customer's knowledge or consent), and for ensuring that its Users comply with this Agreement. Customer shall be responsible for any breach of this Agreement by any of its Users.

4.4.1. **Login Credentials.** Customer is responsible for ensuring the security and confidentiality of its Account and for ensuring that its Users maintain the security and confidentiality of their login information (e.g., login id and password) associated with the User's School Access User Account. Customer will immediately notify TpT of any unauthorized use or access to its Account (including any User Accounts) or any other actual or suspected breach, accidental disclosure, loss or theft of any login information associated with Customer's Account. TpT will not be liable to Customer for any loss or damage arising from any unauthorized activity on the Account (including User Accounts), or any other failure to secure access to Customer's Account (including User Accounts).

4.4.2. **Prohibited Activities.** Customer must ensure that its Users comply with this Agreement and any policies or documentation pertaining to use of the Services, and Customer must not and must not permit its Users to (i) remove any title, trademark, copyright or restricted rights notices or labels from the School Access Platform, Resources or any related documentation, (ii) share accounts or passwords with anyone, (iii) post, transmit, disseminate, send, or share any Customer Data, content, Reviews (as defined below), or communication that is or may be infringing, libelous, defamatory, hateful, harassing, offensive, explicit, or otherwise objectionable or inappropriate, (iv) introduce any malicious code or viruses to the Services, (v) engage in any activity that overloads or causes a strain on the Services or otherwise impacts or impairs the ability of another Customer to use and enjoy the Services, (vi) attempt to gain unauthorized access to the Services or use the Services beyond what is permitted in this Agreement including, but not limited to, accessing or attempting to access the Services (including Resources) beyond the Customer's Access Level or Service Term.

## 5. Customer Data and Feedback

5.1 **Customer Data.** Except as provided herein, as between Customer and TpT, Customer owns the Customer Data and is responsible for the accuracy and completeness of Customer Data and for ensuring that it has the proper authority to grant TpT the right to use Customer Data in accordance with this Agreement. Customer grants TpT all necessary rights to use, access, and disclose Customer Data (i) as necessary to provide the Services, (ii) for the purpose of TpT enforcing its rights under this Agreement, (iii) for TpT's business purposes including but not limited to analytics, evaluations, benchmarking tests, studies, monitoring, and (iv) for research, development or other purposes to improve our Services.

5.2 **Insights and Activity Feed.** The Services may include features that display activity or reports related to usage of the Services, Resources Accessed by Users, or other insights or engagement information related to Customer's Account and its Users. Such activity and reports may be viewed by any Users, unless otherwise specified.

- 5.3 **Usage Data.** Data related to Customer or its Users' use of the Services which doesn't identify Customer's Users individually or personally, and Customer Data that has been anonymized or aggregated, is "Usage Data". Usage Data will be owned by TpT and may be used, retained, and disclosed by TpT in its discretion for any and all business purposes.
- 5.4 **Feedback.** As you use the Services, you may provide, or we may solicit, feedback about your experience and satisfaction, suggestions or ideas for improvements, modifications, or new features for the Services or any other aspects of our current or future business ("Feedback"), through various means, including but not limited to usability research, account management communications, interactions with our customer support team, and surveys. You agree that all Feedback is the sole property of TpT, and, as such, TpT may use your Feedback without consideration or compensation for any and all purposes in our discretion including internal business and development purposes and external marketing and promotional purposes. You hereby make and agree to make all assignments necessary to affect the foregoing ownership.
- 5.5 **Resource Ratings and reviews.** Users may have the opportunity to rate and/or leave a written review of Resource(s) the User has Accessed through the Services ("Reviews"). Customer and its Users grant TpT the right to use, display, and reproduce such Reviews including the User's name as published with such Review i) throughout the Services, as well as through any other services or platforms we may currently provide or hereinafter develop, and ii) for any and all marketing, promotion, or other business purposes in TpT's discretion.
- 5.6 **Student Data.** To the extent that TpT collects personal information from Student Users (as defined in our Student Privacy Policy) on Customer's behalf as a result of Customer's or Customer's Users' use of Student Tools, such information will be treated in accordance with our [Student Privacy Policy](#).

## 6. Fees and Payment

- 6.1 **Fees.** The Fees due for the Services are as listed on the applicable Quote. Fees are subject to change from time to time, and Customer will be charged the then-current Fees in effect for the applicable Services at the time the Quote is executed.
- 6.2 **Invoicing and Payment.** Customer will be invoiced for, and agrees to pay, the full amount of any Fees listed on each executed Quote. Payment may be made by one of the accepted payment methods designated by TpT, which TpT reserves the right to modify in its discretion. Payment will be due in full within 30 days of the date of invoice, unless otherwise indicated on the Quote, and TpT reserves the right to suspend or terminate Services in the event of late payments or unpaid Fees. All payments for the Services are non-refundable and non-cancellable, except as expressly provided herein, and are based on the Services ordered not the Services actually used. Customer will not be due any amount of a refund for any unused User seats or unused portion of the Access Level, and Customer may not reduce its User Seats or Access Level during the Service Term. In no event will the unused portion of a Customer's Access Level or any unused User seats be rolled over to the Customer's next Service Term. Customer may, during the Service Term, purchase additional User seats or upgrade its Access Level by executing an additional Quote for such increase and paying any additional Fees in accordance with this section.
- 6.3 **Taxes.** The Quote may list and TpT may charge sales tax as applicable unless TpT has first received a valid sales tax exemption form. If no sales tax is listed or charged and TpT later determines that sales tax should have been charged, TpT will invoice Customer, and Customer agrees to pay, any amount of sales tax that may be due as a result of Customer's purchase of the Services. Customer is solely responsible for any use tax that Customer may owe.

## 7. Term and Termination.

- 7.1 **Term and renewal.** All Service Terms will be for one year unless otherwise specified on the applicable Quote. The Service Term will start and end on the dates specified in the applicable Quote. To continue to use the Services after the expiration of each Service Term, Customer will have to execute a new Quote and pay the associated Fees for each subsequent Service Term. The Agreement remains in effect from the Effective Date until the end of the final Service Term (when there are no active Quotes in effect between the parties), except that certain provisions shall survive the Agreement as provided in section 7.3.
- 7.2 **Termination.**

- 7.2.1. **Expiration.** Except as provided herein, this Agreement will terminate at the expiration of the then-current Service Term if the Customer does not execute a new Quote and enter into a subsequent Service Term.
- 7.2.2. **Termination for breach.** This Agreement may be earlier terminated by Customer or TpT in the event the other party breaches a material term of this Agreement which breach is not cured within 30 days of the aggrieved party providing notice of the breach to the breaching party. Notwithstanding the foregoing, TpT may terminate the Agreement immediately if Customer violates section 3, section 4.4, or section 6. If TpT terminates the Agreement in accordance with this section 7.2.2, any outstanding or unpaid Fees will become fully due and payable. If Customer terminates this Agreement in accordance with this section 7.2.2 for TpT's uncured material breach of this Agreement, Customer will be due a prorated refund for any Fees paid for unused portion of the Services which unused portion shall be calculated by multiplying the total Fees due by the percentage of Resource Licenses remaining unused as of the date of termination (from the total number of Resource Licenses permitted by Customer's Access Level) and subtracting any unpaid Fees.

7.3 **Effect of Termination.** Upon any termination of this Agreement or expiration of any Service Term, Customer and its Users will immediately cease any use or access of the Services and any Resources. All licenses granted in section 3 expire and are hereby revoked as of the date of termination of this Agreement or expiration of any Service Term. This means that Customer may not and will not permit its Users to continue using any Resources Accessed during the Service Term after the Service Term ends, and Customer agrees to destroy or return any copies of any Resources, documentation, notes, Confidential Information or other materials relating to the Service that may still be in its or its Users possession. For example, Customer must ensure that any copies of Resources that have been downloaded, printed, or otherwise saved by Customer's Users are destroyed and will no longer be used after the Service Term. If Customer enters a subsequent Service Term, its available Resource Licenses, as applicable to its Access Level for such subsequent Service Term (as determined on the applicable Quote), may be used to enable Customer's Users to continue using Resources Accessed in the previous Service Term but such Resource Licenses will count towards the subsequent Service Term's Access Limit. The following provisions of the Agreement shall survive termination of the Agreement: sections 1, 3, 4.4.2, 5, 6.2, 6.3, 7, 8, 9, 10, 11, 13, and 14.

## 8. Confidentiality.

- 8.1 **Definition.** "Confidential Information" means information and materials provided by a party ("Discloser") to the other party ("Recipient") that (i) are identified as confidential at the time of disclosure, or (ii) a reasonable person should understand to be confidential based on the nature of the information and materials and all other relevant factors. Notwithstanding the foregoing, information that (a) was already rightfully known by or disclosed to the Recipient without restriction at or before the time of disclosure by Discloser, (b) is or becomes publicly known without fault of the Recipient, or (c) is or was independently developed by the Recipient without access to or reliance on the Confidential Information shall not be considered Confidential Information. Customer's Confidential Information includes Customer Data except for any such Customer Data that is also Usage Data. TpT's Confidential Information includes the terms of this Agreement, including pricing terms offered under any Quote, TpT's non-public business plans, all non-public aspects of the Services (including the Beta Features (as defined below)). Due to the unique nature of TpT's Confidential Information, Customer agrees that any breach or threatened breach of this section 8.1 by Customer will cause not only financial harm to TpT, but also irreparable harm for which money damages will not be an adequate remedy. Therefore, TpT shall be entitled, in addition to any other legal or equitable remedies, to an injunction or similar equitable relief against any such breach or threatened breach without the necessity of posting any bond.
- 8.2 **Permitted use and disclosure.** Customer may only use the Confidential Information of TpT as necessary to exercise its rights and meet its obligations under this Agreement and may only share such Confidential Information as may be necessary with its employees, contractors, or agents (together "Representatives") (i) having a need to know the Confidential Information, and (ii) who have been apprised of and agree to restrictions at least as protective of the Confidential Information as this Agreement. Customer shall be responsible for any breach of its obligations hereunder by any of its Representatives. TpT may use Customer's Confidential Information, and may share Customer's Confidential Information with employees, contractors, and subcontractors as needed to provide the

Services to Customer. Notwithstanding the foregoing, Recipient's disclosure of the Discloser's Confidential Information in response to a government request, a court order or other legal process, or as otherwise required by law, will not be a violation of this section; provided that prior to any such disclosure, Recipient shall use reasonable efforts to (a) promptly notify Discloser in writing of such requirement to disclose, and (b) cooperate with Discloser in protecting against or minimizing any such disclosure or obtaining a protective order.

8.3 **Obligations.** Except as provided above, the Recipient may not use the Discloser's Confidential Information for any purpose beyond those described in section 8.2, must hold in confidence; may not disclose, or permit other to disclose, Discloser's Confidential Information to any third parties; and must exercise at least the same degree of care to protect the Discloser's Confidential information from unauthorized access as it would its own Confidential Information, but no less than reasonable care.

## 9. **Warranties and Disclaimers.**

9.1 **Warranties by Customer.** Customer represents and warrants that (i) the individual entering this Agreement for Customer is a duly authorized representative of Customer with authority to enter into this Agreement on Customer's behalf and bind Customer to the terms of this Agreement, (ii) that Customer will comply with all local, state, and federal laws and regulations as applicable to its use of the Services, (iii) the execution, delivery and performance of this Agreement does not and will not conflict with any agreement, instrument, judgment or understanding, oral or written, to which it is a party or by which it may be bound, and (iv) Customer Data does not and will not infringe any patent, trademark, trade secret, copyright, right of publicity or any other proprietary right of any other person or entity.

9.2 **WARRANTY DISCLAIMER.** TO THE FULLEST EXTENT PERMITTED BY LAW, THE SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE" AND TPT MAKES NO WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED INCLUDING ANY WARRANTIES AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, OR AVAILABILITY. TPT CANNOT AND DOES NOT GUARANTEE THAT THE SERVICES WILL BE FREE OF ERRORS, BUGS, OR OTHER DEFECTS OR THAT ANY SUCH DEFECTS WILL BE REMEDIED. TPT CANNOT AND DOES NOT MAKE ANY GUARANTEES AS TO THE QUALITY, ACCURACY, EFFECTIVENESS, SUITABILITY OR APPROPRIATENESS OF ANY RESOURCES, THAT RESOURCES WILL BE FREE OF INFRINGEMENT, OR THAT ANY PARTICULAR RESOURCE WILL BE OR REMAIN AVAILABLE THROUGH THE SERVICES.

10. **Limitation of liability.** TO THE FULLEST EXTENT PERMITTED BY LAW, UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY, INCLUDING, BUT NOT LIMITED TO, TORT, CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR OTHERWISE, SHALL TPT BE LIABLE TO YOU OR ANY OTHER PERSON (A) FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY CHARACTER; (B) ANY LOST DATA, LOST PROFITS, OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR (C) FOR ANY MATTER BEYOND ITS REASONABLE CONTROL. TPT'S LIABILITY FOR DAMAGES OF ANY KIND WHATSOEVER ARISING OUT OF THIS AGREEMENT OR CUSTOMER'S USE OF THE SERVICES SHALL BE LIMITED TO THE TOTAL FEES PAID BY CUSTOMER TO TPT (IF ANY) FOR THE SERVICES IN THE TWELVE MONTH PERIOD PRIOR TO THE CLAIM ARISING OR \$100 (U.S.), WHICHEVER IS GREATER, EXCEPT WHERE NOT PERMITTED BY APPLICABLE LAW, IN WHICH CASE TPT'S LIABILITY SHALL BE LIMITED TO THE MINIMUM AMOUNT PERMITTED BY SUCH APPLICABLE LAW. ALL THE FOREGOING LIMITATIONS SHALL APPLY EVEN IF TPT HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES. ALL THE FOREGOING LIMITATIONS ALSO APPLY WITH RESPECT TO TPT'S LICENSORS, CONTRACTORS AND AGENTS. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION AND EXCLUSION MAY NOT APPLY SUCH CASES.

11. **Indemnification.** Customer agrees to indemnify, defend, and hold harmless TpT from and against any and all damages, costs, expenses (including reasonable attorney's fees) arising from third party claims related to (i) Customer's or any of its Users', agents', employees', or contractors' misuse of the Services, (ii) Customer's or any of its Users', agents', employees', or contractors' gross negligence or willful misconduct, (iii) TpT's use of any Customer Data, (iv) Customer's breach of any representation, warranty, covenant or other agreement made herein, or (v) Customer Data infringing any patent, trademark, trade secret, copyright, right of publicity or any other proprietary right of any other person or entity.

12. **Trial Access and Beta Features.** In the event that TpT allows any Customer (i) to use the Services for any period prior to the start date of the Customer's Service Term; (ii) to test or use any portion of the Services without entering a Quote or paying applicable Fees; or (iii) early access to features that are not yet publicly available ("Beta Features") any such access is "Trial Access", Customer understands and agrees that, (a) notwithstanding anything to the contrary in the Agreement, the terms of the Agreement apply to any such Trial Access, except in the case of any direct conflict with this section 12, in which case this section 12 shall apply, and (b) Trial Access is at Customer's own risk, (c) TpT makes no representations or warranties of any kind with respect to the Trial Access or any Beta Features, (d) TpT may revoke Trial Access at any time with or without warning or cause, (e) TpT may never make the Beta Features publicly available and may modify or remove Beta Features at any time, (f) TpT will not be liable to Customer for any loss, damage, or expense Customer may incur as a result of the Trial Access or using any Beta Features. TpT is not obligated to offer Trial Access or Beta Features to any Customer, and reserves the right to condition Trial Access or access to Beta Features on a commitment by Customer to provide Feedback in the form of user research calls, surveys or other forms.
13. **Government Agencies & Public Entities** If you are a federal, state, or local government or government agency in the United States and are using TpT in your official capacity, the following amendments to these Terms apply:
- 13.1 **Federal Governments & Entities.** If you are a federal government or federal government entity, the provisions entitled "Indemnification," and "Governing Law" apply to your official use of the Services only to the extent permitted by federal laws or regulations.
- 13.2 **State and Local Governments & Entity.** If you are a state or local government, or state or local government entity, the provisions entitled "Indemnification," and "Governing Law," will apply to your official use of the Services only to the extent permitted by your jurisdiction's laws.
14. **General.**
- 14.1 **Entire Agreement.** The Agreement constitutes the entire understanding and agreement between TpT and the Customer and supersedes any and all previous or alternative terms, conditions, documents, or agreements whether oral or in writing as to the subject matter of this Agreement. For the avoidance of doubt, no force or effect will be given to any additional terms or conditions that may be contained in any Customer document (including but not limited to purchase orders, vendor agreements, procurement solicitations, or other procurement documentation) unless explicitly in reference to the Services described in this Agreement and agreed to by TpT in writing, and regardless of any failure by TpT to object.
- 14.2 **Publicity.** Customer permits TpT to use the Customer's name, logos, and/or likeness, and, notwithstanding anything to the contrary in this Agreement, including without limitation any confidentiality and non-use obligations, information related to the Customer's location (e.g., address, neighborhood, geographical area, city, and state) on any published customer lists, as a reference with other potential customers, and in other marketing and promotional materials or campaigns in order to identify Customer as a customer of the Services and may disclose information as to which Resources Customer's Users have Accessed. Customer may not use TpT's name, logos, or likeness for any purposes without TpT's prior written consent.
- 14.3 **Assignment.** Customer may not assign or transfer any of its rights, responsibilities, or obligations of this Agreement to any third party without the prior written consent of TpT. TpT may, in its discretion and without prior consent, assign its rights, responsibilities, and obligations to any successor to all or substantially all of its assets (whether by sale of assets or equity, merger, consolidation or otherwise).
- 14.4 **Relationship.** Customer and TpT are each independent contractors. This Agreement creates no employment, partnership, joint venture, or other relationship between the parties.
- 14.5 **Modifications.** TpT may amend the Agreement from time to time. TpT will notify Customer of any material changes by sending an email to the Account Owner and/or posting notice on the Services. Each such notice will provide an effective date of the change and your continued use of the Services beyond the effective date of the change serves as your agreement thereto. No modifications of the Agreement by Customer will have any force or effect unless agreed to in writing by TpT.



- 14.6 **Severability.** If any provision of this Agreement is determined to be illegal or unenforceable, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable.
- 14.7 **Governing Law.** This Agreement shall be governed by and construed under the laws of the State of New York and the United States without regard to conflicts of laws provisions thereof. Exclusive jurisdiction and venue for actions related to this Agreement will be the state and federal courts located in New York County, New York, and both parties consent to the jurisdiction of such courts with respect to any such actions.