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## MITTIN TERMS OF USE

1. Michigan Transition to Independence (MITTIN, us, we or our) provides innovative digital learning experiences and curricular teaching resources. MITTIN is a collaborative project between Michigan Association of Administrators of Special Education (MAASE), Michigan Council for Exceptional Children (MCEC), Great Lakes Reality Labs (GLRL) and Public Policy Associates (PPA) and accordingly, references to MITTIN include MAASE, MCEC, GLRL and PPA, unless the context provides otherwise. The “MITTIN Platform” consists of all MITTIN technology, servers, software and content located at <https://MITTIN.org> (website)MITTIN. For purposes of these Terms of Use, “Services” shall mean all services, features, functionality and content provided through the MITTIN Platform.
2. WHILE THE MITTIN PLATFORM AND SERVICES ARE USED BY STUDENTS (REFERRED TO AS USERS), WE CONTRACT WITH THE SCHOOL, NOT THE USER WHO ATTEND THAT SCHOOL. IF YOU ARE A SCHOOL OR USER THE TERMS OF USE CONTROL. HOWEVER, IF YOU ARE A USER, YOUR PRIMARY POINT OF CONTACT AND THE ENTITY WHO WILL HAVE INFORMATION ABOUT YOUR USE IS THE SCHOOL. WE CAN ASSIST USERS WITH TECHNICAL PROBLEMS AND GENERAL QUESTIONS.
3. These Terms of Service, including any documents incorporated by reference (collectively, these Terms of Use), is entered into by you and MITTIN and governs your access to and use of the MITTIN Platform and the Services. These Terms of Use applies even if your use of the MITTIN Platform and the Services are for a limited time. You and MITTIN may be referred to in these Terms of Use individually or collectively as a “Party” or the “Parties.”
4. In the event that you are an entity, the individual who is entering into these Terms of Use on your behalf represents and warrants that they are so authorized and also agrees in their individual’s individual capacity and representative capacity to follow and act in all respects in accordance with these Terms of Use and in this circumstance, you and your includes the you individually and as a representative of the entity. You also means all users or beneficiaries of Services and MITTIN Platform.
5. PLEASE READ THESE TERMS OF USE CAREFULLY. BY CLICKING THE ACCEPT BUTTON OR ACCESSING, USING OR INSTALLING THE MITTIN PLATFORM OR SERVICES, YOU REPRESENT AND WARRANT THAT YOU HAVE READ AND UNDERSTAND THESE TERMS OF USE and THAT YOU EXPRESSLY AGREE TO AND CONSENT TO BE BOUND BY ALL OF THE TERMS OF THESE TERMS OF USE. IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THESE TERMS OF USE, YOU MAY NOT ACCESS, USE OR INSTALL ANY PART OF THE MITTIN PLATFORM OR THE SERVICES. ADDITIONALLY, IF YOU ACCESS, USE OR INSTALL THE MITTIN PLATFORM OR SERVICES, YOU WILL BE DEEMED TO HAVE ACCEPTED THE TERMS. IF YOU DO NOT ACCEPT THE TERMS, YOU MAY NOT USE THE SERVICES.  
and
6. Capitalized terms not defined when they are first used are defined below in the Definitions Section.

7. If you have any questions regarding the meaning or application of these Terms of Use, please direct your questions to: MAASE, 2425 East Grand River Ave, Suite 1, Lansing, MI 48912.

**8. Accounts; Fees.**

- a. To use the MITTIN Platform and the Services you will first need to create an account (Account). When creating your Account, you must provide accurate and complete information. You are solely responsible for the activity that occurs on your Account and for keeping your Account and any password secure. You may change your password at any time by updating your Account profile within the MITTIN Platform. In addition, you agree to immediately notify MITTIN of any unauthorized use of your Account information or any other security breach. MITTIN will not be liable for any loss or damage arising from or related to use under your Account, including but not limited to resulting from your failure to comply with the provisions of these Terms of Use or to secure your Account and any password, including, but not limited to, selecting a password that is easily compromised. You are not allowed to use another user's Account. Unless previously notified otherwise, we have the right to assume that anyone using the MITTIN Platform or the Services under your Account is you and you will be responsible for such activity as though any acts were your own.
- b. By creating an Account, you represent that you are not barred by any Laws from using the Services. You agree to provide true, accurate, current and complete information in all required fields of the Account registration form. If any of the information changes, you agree to update your Account information as soon as possible. If we have reason to suspect that your registration information is not complete, current or accurate or that you have otherwise violated these Terms of Use, your Account will be subject to suspension or termination and you may be barred from using the Services.
- c. Currently, there is no fee to individual users for accessing or using the MITTIN Platform or Services. However, we may change our fee structure on a prospective basis, including charging for access to or use of some or all of the MITTIN Platform or Services. Further, having created an Account or having utilized the Services while they are free does not guarantee they will be free in the future or that MITTIN has any obligation to continue to make the MITTIN Platform or Services available for free. In the event there is a fee, you agree to pay MITTIN all applicable fees for Services, as indicated in the MITTIN Platform, for the Plan or Plans you select. MITTIN reserves the right to create or adjust its fees and other charges on a prospective basis. To the extent fees are charged, those fees are non-refundable. MITTIN, in its sole discretion, may offer refunds in the form of service credits for use in connection with payment of fees.

**9. License Grant.**

- a. MITTIN may make certain components of the MITTIN Platform or Services available for download through several methods, which may change without advanced notice and may include third-party app stores and file downloads from websites. Subject to your compliance with the terms and conditions of these Terms of Use, MITTIN grants you a limited, revocable, nonexclusive, non-sublicensable, non-transferable, license to access and use the object code versions of such components solely for the purpose of using the Services. Except as expressly granted in this paragraph, no right, title or interest in any downloaded materials or software is transferred to you as a result of any such downloading or copying.

- b. The limited license granted herein does not extend to any collection, aggregation, copying, duplication, display or derivative use of the MITTIN Platform or the Services or any use of data mining or similar data gathering and extraction tools for any purpose.
- c. Subject to the terms of these Terms of Use and your compliance with such terms, where you pay for Services, MITTIN shall use commercially reasonable efforts with its available resources to provide such Services, for remote electronic access and use, for lawful purposes only and in accordance with these Terms of Use, by you approximately 24 hours per day, seven days per week, every day of the year, except for:
  - i. Scheduled downtime;
  - ii. Service downtime or degradation due to a Force Majeure event;
  - iii. Any other circumstances beyond MITTIN's reasonable control, including communication interruptions, your use of Third-Party Materials, misuse of the MITTIN Platform or Services or use of the MITTIN Platform or Services other than in compliance with the express terms of these Terms of Use; and,
  - iv. Any suspension or termination of your access to or use of the MITTIN Platform or Services as permitted by these Terms of Use.

**10. Service and System Control.** Except as otherwise expressly provided in these Terms of Use:

- a. MITTIN has and will retain sole control over the ownership, operation, provision, maintenance and management of the MITTIN Platform and the Services including the: (i) MITTIN Systems; (ii) selection, deployment, modification and replacement of the MITTIN Platform and Services; and (iii) performance of any maintenance, upgrades, corrections and repairs.
- b. You have and will retain sole control over the ownership, operation, maintenance and management of and all access to and use of, your network, hardware and information technology infrastructure (collectively, "Your Systems") and sole responsibility for all access to and use of the Services by any person by or through Your Systems or any other means controlled by you.

**11. Modification of the MITTIN Platform and the Services.** MITTIN reserves the right, in its sole discretion, to make any changes to the MITTIN Platform or the Services that it deems necessary or useful from time to time without advanced notice, including but not limited to: (a) maintain or enhance (i) the quality or delivery of MITTIN's services to its customers, (ii) the competitive strength of or market for MITTIN's services or (iii) the cost efficiency or performance of the MITTIN Platform or the Services; (b) to comply with applicable Law or (c) make other changes to the MITTIN Platform or the Services as it deems necessary or appropriate from time to time. To the maximum extent authorized by law, you agree that MITTIN will not be liable for any damage caused by such a modification, suspension or discontinuance of the MITTIN Platform or Service. Your continued use of the MITTIN Platform and the Services after those changes will indicate your acceptance of the changes.

**12. Reservation of Rights.** Except for the limited use of the MITTIN Platform and Services as may be expressly provided for in these Terms of Use, nothing in these Terms of Use grants any right, title or interest in or to you (including any license under) of any Intellectual Property Rights in or relating to the MITTIN Platform, the Services or Third-Party Materials, whether expressly, by implication, estoppel or otherwise. All right, title and interest in and to the MITTIN Platform, the Services and any other MITTIN Properties and the Third-Party

Materials are and will remain with MITTIN and the respective rights holders in the Third-Party Materials.

### **13. User Data; Storage; Security.**

- a. The MITTIN Platform may enable you to upload, share and store information, documents and other materials within or related to your Account (User Data). For more information about the information we collect (including, without limitation, User Data), see our Privacy Notice [NOTE: "Privacy Notice" should be a link]. As between you and us, you retain ownership of User Data. You grant MITTIN a royalty free, worldwide, non-exclusive, transferable license to access, use, process, copy, distribute, perform, export and display all User Data as necessary: (a) to provide, maintain and update the Services; (b) to prevent or address service, security, support or technical issues; (c) as required by law; (d) as permitted by the Privacy Notice [NOTE: "Privacy Notice" should be a link]; and (e) as expressly permitted by you in writing or affirmatively within the MITTIN Platform. You represent and warrant that you have secured all rights in and to the User Data as may be necessary to grant this license.
- b. MITTIN will use commercially reasonable efforts to employ security measures. You acknowledge that those security measures may be vulnerable to unauthorized access or use notwithstanding MITTIN's efforts. In consideration of our provision of the MITTIN Platform and the Services, you accept the full risk of any security failures. MITTIN will use commercially reasonable methods to notify you in the event we become aware of any unauthorized access to your User Data.

### **14. Termination.**

- a. MITTIN may, directly or indirectly and by the use of a disabling device or any other lawful means, suspend, terminate or otherwise deny your access to or use of all or any part of the MITTIN Platform or the Services, without incurring any resulting obligation or liability, if: (a) MITTIN receives a judicial or other governmental demand or order, subpoena or law enforcement request that expressly or by reasonable implication requires MITTIN to do so; or (b) MITTIN believes, in its sole discretion, that (i) you have failed to comply with these Terms of Use or accessed or used the MITTIN Platform or the Services beyond the scope of the rights granted or for a purpose not authorized under these Terms of Use, (ii) you are, have been or are likely to be involved in what MITTIN perceives to be any fraudulent, misleading, inappropriate or unlawful activities or (iii) these Terms of Use expires or is terminated. Upon suspension or termination, your right to use the MITTIN Platform and the Services will immediately cease. You agree that any suspension or termination of your access to or use of the MITTIN Platform and the Services may be effected without prior notice. This section does not limit any of MITTIN's other rights or remedies, whether at law, in equity or under these Terms of Use. To the maximum extent permitted by law, MITTIN shall not be liable even if its assessments of the conduct noted above prove not to be accurate.
- b. Upon termination or expiration of your Account for any reason MITTIN may, in its discretion but subject to applicable law (including laws requiring MITTIN to comply with deletion requests), delete or retain, for such period as may be allowed by law, User Data and other information. To the maximum extent allowed by law we shall not be liable for the deletion of User Data or other information or for the election not to do so within a certain timeframe. You remain solely responsible for the export or transfer of User Data and other information to another site or medium at your expense prior to any

expiration or termination of your Account. Subject to its obligations under these Terms of Use and applicable law and as of the effective date of these Terms of Use, MITTIN intends typically to maintain historical User Data and other information for not less than 30 days after an Account is terminated and; however, MITTIN does not and cannot guarantee that it will maintain such data for such period. Accordingly, use appropriate precautions in preserving and protecting your data

**15. Prohibited Uses.** You may use the MITTIN Platform and the Services only for lawful purposes and in accordance with these Terms of Use. You agree not to use the MITTIN Platform and the Services or permit any other party to use the MITTIN Platform and the Services:

- a. In any way that violates any applicable Law or gives rise to civil or criminal liability;
- b. For the purpose of soliciting, distributing or exploiting personally identifiable information;
- c. To send, knowingly receive, upload, download, use or re-use any material which does not comply with these Terms of Use;
- d. To transmit or procure the sending of, any advertising or promotional material, including any “junk mail”, “spam” or any other similar solicitation;
- e. To impersonate or attempt to impersonate MITTIN, a MITTIN employee, another customer or user or any other person or entity (including, without limitation, by using e-mail addresses associated with any of the foregoing);
- f. To engage in any other conduct that restricts or inhibits anyone’s use or enjoyment of the MITTIN Platform or the Services or which, as determined by us, may harm MITTIN or users of the MITTIN Platform and the Services or expose them to liability;
- g. For any purpose that constitutes a criminal offense or illegal civil conspiracy; and/or,
- h. To disclose private medical, financial or personally identifiable information of another person, except as permitted by Law.
- i. Additionally, you agree not to directly or indirectly:
  - i. Use the MITTIN Platform or Services in any manner that could disable, overburden, damage or impair the MITTIN Platform or Services or interfere with any other party’s use of the MITTIN Platform or the Services, including their ability to engage in real time activities through the MITTIN Platform;
  - ii. Use any robot, spider or other automatic device, process or means to access the MITTIN Platform or Services for any purpose, including monitoring or copying any of the material on the MITTIN Platform;
  - iii. Use any manual process to monitor or copy any of the material on the MITTIN Platform or through the Services or for any other unauthorized purpose without our prior written consent;
  - iv. Use any device, software or routine that interferes with the proper working of the MITTIN Platform or Services;
  - v. Input, upload, transmit or otherwise provide to or through the MITTIN Platform or the MITTIN Systems, any information or materials that are unlawful or injurious or contain, transmit or activate any software, hardware or other technology, device or means, including any virus, worm, Trojan horse, logic

bomb, malware or other malicious computer code, including but not limited to any such technology, means or device 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 you or others from accessing or using the MITTIN Platform or the Services. The foregoing does not include any MITTIN disabling device authorized by MITTIN;

- vi. Attempt to gain unauthorized access to, interfere with, damage or disrupt any parts of the MITTIN Platform, Services, the MITTIN System, the server on which the MITTIN Platform is stored or any server, computer or database connected to the MITTIN Platform;
- vii. Reproduce, duplicate, copy, sell, resell, reverse engineer, disassemble, decompile, decode, adapt or otherwise attempt to derive or gain access to the source code of the MITTIN Platform or Services, in whole or in part or otherwise exploit for any commercial purposes, any portion of, use of or access to the MITTIN Platform or the Services;
- viii. Frame or mirror any part of the MITTIN Platform or Services without our prior written consent;
- ix. Access or use the MITTIN Platform, the Services or MITTIN Properties in any manner or for any purpose that infringes, misappropriates or otherwise violates any Intellectual Property Right or other right of MITTIN or of any third party (including any unauthorized access, misappropriation, use, alteration, destruction or disclosure of the data of any MITTIN user or customer); and/or,
- x. Otherwise attempt to interfere with the proper working of the MITTIN Platform or the Services.

16. If we believe in our discretion that you are engaging or attempting to engage in any violation of these Terms of Use, then (without limitation) we may, but shall not have a duty, to: (a) block your access to the MITTIN Platform or Services; (b) suspend or terminate any Services being provided to you; (c) implement corrective or remedial measures; (d) pursue any remedies permitted by Law; or (e) pursue you for any damages caused by you or anyone using your Account.

#### **17. User Contributions, Feedback and Other Submissions.**

- a. By submitting, uploading or otherwise transmitting any data, feedback or other data in any other form of communication to or with the MITTIN Platform (“User Contributions”), you warrant and represent that you are the owner of the User Contributions or that you have all the rights necessary to submit, upload or otherwise use any of the User Contributions for any such actions. You also understand and acknowledge that you are responsible for any User Contributions you submit and you, not MITTIN, have full responsibility for that content. We are not responsible or liable (and disclaim such responsibility to the maximum extent allowed by law) to any third party, for the content or accuracy of any User Contributions.
- b. By submitting, uploading or otherwise transmitting User Contributions you grant and you represent and warrant that you have the right to grant, to MITTIN an irrevocable,

perpetual, worldwide non-exclusive license to use, copy, perform, display and distribute any User Contributions and to prepare derivative works of or incorporate into other works, the User Contributions and to grant and authorize sublicenses of the foregoing.

- c. We have the right, but not the obligation, to:
- i. Delete any User Contributions for any or no reason in our sole discretion;
  - ii. Take any action with respect to any User Contribution that we deem necessary or appropriate in our sole discretion, including if we believe that the User Contribution violates these Terms of Use, infringes any Intellectual Property Right or other right of any person or entity, threatens the personal safety of users of the MITTIN Platform or the public or could create liability for MITTIN;
  - iii. Disclose your identity or other information about you to any third party who claims that material posted by you violates their rights, including their Intellectual Property Rights or their right to privacy;
  - iv. Take appropriate legal action, including without limitation, referral to law enforcement, for any illegal or unauthorized use of the MITTIN Platform;
  - v. Without limiting the foregoing, we have the right to fully cooperate with any law enforcement authorities or court order requesting or directing us to disclose the identity or other information of anyone posting any materials on or through the MITTIN Platform. **YOU WAIVE AND RELEASE MITTIN FROM ANY CLAIMS RESULTING FROM ANY ACTION TAKEN BY MITTIN DURING OR AS A RESULT OF ITS INVESTIGATIONS AND FROM ANY ACTIONS TAKEN AS A CONSEQUENCE OF INVESTIGATIONS BY MITTIN OR LAW ENFORCEMENT AUTHORITIES;**
  - vi. To review User Contribution before it is posted within the MITTIN Platform or Services. We assume no liability and expressly disclaim any such liability, for any action or inaction regarding transmissions, communications or content provided by any user or third party. We expressly disclaim liability and have no liability or responsibility to anyone, for performance or nonperformance of the activities described in this Section, notwithstanding any notice to us of potential violations or material harm. We shall also not be liable if any protective or remedial measures we implement are not sufficient to remedy the harm.

18. **Privacy.** Your privacy is important to MITTIN. Our Privacy Notice [**NOTE: "Privacy Notice" should be a link**] describes how we collect, use and protect the information we collect from you.

19. **Links to Third-Party Sites and Resources.** For your convenience, the MITTIN Platform may contain links to other websites and resources provided by third parties. These links are provided for your convenience only. We have no control over the contents or accessibility of those websites and resources and accept no responsibility for them or for any loss or damage that may arise from your use of those sites or their content. If you decide to access any of the third-party websites or resources linked to the MITTIN Platform, you do so entirely at your own risk and subject to the terms and conditions of use for those websites or resources. We have not reviewed the contents of those websites and resources, which should not be treated and is not intended to be endorsement by us.

**20. Content and Services Provided by Third Parties.** The MITTIN Platform and Services may contain content supplied by parties other than MITTIN. Any opinions, advice, judgments, statements or other information or content expressed or made available by third parties are those of the respective author(s) and not of MITTIN. MITTIN make no guarantees to the accuracy, completeness, accessibility or usefulness of any content, nor its merchantability or fitness for a particular purpose.

**21. Intellectual Property Rights.**

- a. All materials, including images, illustrations, designs, icons, photographs, text, software, graphics, videos, music and sounds that are part of the MITTIN Platform and our Services are protected by International, U.S. and state Laws, including copyright laws, international treaties and other intellectual property laws. All copyrighted or trademarked material or other intellectual property used by us in connection with the MITTIN Platform and our Services are owned by us or others who have given us permission to use their protected intellectual property.
- b. All right, title and interest in and to the MITTIN Platform, the Services, the MITTIN Properties and Third-Party Materials, including all Intellectual Property Rights therein, are and will remain, respectively, owned by MITTIN and the respective rights holders in the Third-Party Materials. You have no right or license with respect to the MITTIN Platform, the Services, the MITTIN Properties or Third-Party Materials except as expressly authorized under these Terms of Use.
- c. The MITTIN name and logo and all related names, logos, product and service names, designs and slogans are trademarks of MITTIN or licensors. You must not use such marks without the prior permission written of MITTIN. All other names, logos, product and service names, designs and slogans on the MITTIN Platform are the trademarks of their respective owners.
- d. All other rights are expressly reserved by MITTIN and the respective third-party licensors. You hereby unconditionally and irrevocably assign to MITTIN your entire right, title and interest in and to any Intellectual Property Rights that you may claim, purport to acquire or acquire in or relating to any of the MITTIN Platform and Services whether acquired by operation of Law, contract, assignment or otherwise. In furtherance of the foregoing, you hereby unconditionally and irrevocably assign to MITTIN any and all right, title and interest in and to the Resultant Data, including all Intellectual Property Rights relating thereto. MITTIN may access your Account and User Data to prepare Resultant Data.
- e. You hereby grant to MITTIN a royalty-free, worldwide, transferable, sublicensable, irrevocable, perpetual license to use or incorporate into the MITTIN Platform and Services any suggestions, enhancement requests, recommendations or other feedback provided by you.
- f. If you believe any of the content on the MITTIN Platform or provided in, on or through the Services or the MITTIN Systems infringes the Intellectual Property Rights of another, you should contact us at: MAASE, 2425 East Grand River Ave, Suite 1, Lansing, MI 48912, immediately.

**22. Additional Disclaimer of Warranties.**

- a. You acknowledge and agree that computer and telecommunications systems are not fault-free and occasional periods of downtime occur. MITTIN does not guarantee the



MITTIN Platform or the Services will be uninterrupted, timely, secure or error-free or that content loss will not occur. You understand that MITTIN cannot and does not guarantee or warrant uninterrupted services or that files available for downloading from the Internet, wireless networks, the MITTIN Platform or Services will be free of viruses or other destructive code. You are responsible for implementing sufficient procedures, safeguards, controls and checkpoints to satisfy your particular requirements for anti-virus protection and accuracy of data input and output and for maintaining a means external to the MITTIN Platform for any preservation, retention and reconstruction of any lost data. MITTIN HEREBY DISCLAIMS LIABILITY AND WILL NOT BE LIABLE, FOR ANY LOSS OR DAMAGE CAUSED BY ANY DENIAL-OF-SERVICE ATTACKS, VIRUSES OR OTHER HARMFUL MATERIAL THAT MAY INFECT YOUR SYSTEMS, COMPUTER PROGRAMS, USER DATA OR OTHER PROPRIETARY MATERIAL WHETHER DUE TO YOUR USE OF THE MITTIN PLATFORM, ANY SERVICES OR OTHERWISE OR ITEMS OBTAINED THROUGH THE MITTIN PLATFORM OR SERVICES OR TO YOUR DOWNLOADING OF ANY MATERIAL POSTED ON THE MITTIN PLATFORM OR AVAILABLE THROUGH THE MITTIN SERVICES OR ON ANY WEBSITE LINKED TO THE MITTIN PLATFORM.

- b. YOUR USE OF THE MITTIN PLATFORM AND ANY SERVICES IS AT YOUR OWN RISK. THE MITTIN PLATFORM AND THE SERVICES ARE PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS, WITHOUT ANY WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED. NEITHER MITTIN, NOR ANY LICENSORS, SERVICE PROVIDERS, DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS, MAKE ANY WARRANTY OR REPRESENTATION WITH RESPECT TO THE COMPLETENESS, SECURITY, RELIABILITY, QUALITY, ACCURACY OR AVAILABILITY OF THE MITTIN PLATFORM OR THE SERVICES. WITHOUT LIMITING THE FOREGOING, MITTIN DOES NOT REPRESENT OR WARRANT THAT THE MITTIN PLATFORM OR THE SERVICES WILL BE ACCURATE, RELIABLE, ERROR-FREE OR UNINTERRUPTED, THAT DEFECTS WILL BE CORRECTED, THAT THE MITTIN PLATFORM OR THE SERVICES ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS OR THAT THE MITTIN PLATFORM OR ANY SERVICES WILL OTHERWISE MEET YOUR NEEDS OR EXPECTATIONS.
- c. MITTIN HEREBY DISCLAIM ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE.
- d. THE FOREGOING DOES NOT AFFECT ANY WARRANTIES WHICH CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW AND ALL SUCH WARRANTIES THAT CANNOT BE DISCLAIMED SHALL BE LIMITED TO THE MAXIMUM EXTENT AUTHORIZED BY LAW.

### **23. Limitation on Liability.**

- a. IN NO EVENT WILL MITTIN BE LIABLE FOR DAMAGES OF ANY KIND, UNDER ANY LEGAL THEORY, ARISING OUT OF OR IN CONNECTION WITH YOUR USE OR INABILITY TO USE, THE MITTIN PLATFORM OR ANY SERVICES, INCLUDING ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL,

CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO, LIABILITY FOR PERSONAL INJURY, PAIN AND SUFFERING, EMOTIONAL DISTRESS, LOSS OF REVENUE, LOSS OF PROFITS, LOSS OF BUSINESS OR ANTICIPATED SAVINGS, LOSS OF USE, LOSS OF GOODWILL, LOSS OF DATA AND WHETHER CAUSED BY A DATA BREACH, TAMPERING OR OTHER UNAUTHORIZED ACCESS OR USE OF YOUR ACCOUNT OR USER DATA, TORT (INCLUDING NEGLIGENCE), BREACH OF CONTRACT OR OTHERWISE, EVEN IF FORESEEABLE. THE FOREGOING DOES NOT AFFECT ANY LIABILITY WHICH CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW.

- b. IN NO EVENT SHALL MITTIN'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THESE TERMS OF USE, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED \$500.

**24. Dispute Resolution; Class Action Waiver; Governing Law and Jurisdiction.**

- a. Consultation. In the event a Dispute arises between you and MITTIN, you and MITTIN agree to first contact each other by notice as provided in these Terms of Use and in such notice provide a written description of the problem, all relevant information and documents and a proposed resolution. You and MITTIN will make good faith efforts to resolve the matter through discussion. If, after 90 days, you and MITTIN are unable to resolve the Dispute, after such good faith negotiations, the Dispute may be referred to binding arbitration at the election of either party, in accordance with this Section and these Terms of Use.
- b. Jurisdiction. To the maximum extent this paragraph is legally enforceable, the Parties hereby consent and irrevocably agree to submit to the sole and exclusive jurisdiction of the state and federal courts sitting in Michigan for the purposes of any suit, action or other proceeding arising out of or relating any of the following ("Covered Matters"): (i) these Terms of Use (including its formation, existence, performance thereunder, application, voidability, enforceability, interpretation, construction, termination, validity and any non-contractual obligations, whether created by statute, regulation or other duties arising out of or relating to the Agreement) and any instruments and/or documents delivered in connection therewith; the (ii) Parties' relationship with each other, including but not limited to any violations of any duties and any tortious conduct; (iii) the MITTIN Properties; (iv) the MITTIN Platform; (v) the Services (including any transactions conducted through the Services); (vi) the Privacy Notice; (vii) claims relating to any of the foregoing that arose before these or any prior Terms of Service (or any versions thereof) (including, without limitation, claims relating to advertising); (viii) and claims relating to any of the foregoing that may arise after the termination of these Terms of Use. To the extent permitted by applicable law, the Parties hereby waive and agree not to assert, by way of motion, as a defense or otherwise, in any such suit, action or proceeding brought in such courts, any claim that such Party is not subject personally to the jurisdiction of the above-named courts, that such Party is exempt or immune from attachment or execution by such courts in the event that any of the above-named courts enters an order of attachment or execution, that the suit, action or proceeding is brought in an inconvenient forum or that the venue of the suit, action or proceeding is improper.

- c. Choice of Law. These Terms of Use and Covered Matters shall be governed and construed by the laws of the State of Michigan, without regard to the application of its law governing conflicts of laws.
  - d. Injunctions/Equitable Relief. Notwithstanding anything to the contrary, it is agreed that your breach of these Terms of Use with respect to Intellectual Property Rights or with respect to the safety, integrity and operation of the site and/or your Account may result in immediate and irreparable harm and continuing damage to us and our remedy at law for any such breach or threatened breach, may be inadequate and, accordingly, in addition to such other remedies as may be available to us at law or in equity in such event, we shall be entitled to seek (and any court of competent jurisdiction may issue) a decree of specific performance and a temporary and permanent injunction without posting bond or furnishing other security.
  - e. Waiver of Jury Trial. TO THE MAXIMUM EXTENT AUTHORIZED BY LAW, EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY FOR ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THESE TERMS OR THE TRANSACTIONS CONTEMPLATED HEREBY.
  - f. Limitation on Time to File Claims. ANY CAUSE OF ACTION OR CLAIM YOU MAY HAVE ARISING OUT OF OR RELATING TO THESE TERMS OF USE (INCLUDING BUT NOT LIMITED TO ITS BREACH), OUR PRIVACY NOTICE, THE MITTIN PLATFORM OR THE SERVICES THESE TERMS OF USE MUST BE COMMENCED WITHIN ONE YEAR AFTER THE CAUSE OF ACTION ACCRUES, OTHERWISE, THE CAUSE OF ACTION OR CLAIM SHALL BE PERMANENTLY BARRED.
25. **Waiver and Severability**. No waiver by MITTIN of any term or condition set forth in these Terms of Use shall be deemed a further or continuing waiver of that term or condition or a waiver of any other term or condition and any failure of MITTIN to assert a right or provision under these Terms of Use shall not constitute a waiver of that right or provision. If any provision of these Terms of Use is held by a court or other tribunal of competent jurisdiction to be invalid, illegal or unenforceable for any reason, these Terms of Use, the remainder of the Agreement shall be unaffected and shall continue to be fully valid, binding and enforceable.
26. **Notice and Electronic Communications**. Except as otherwise expressly specified in the Agreement, all notices, permissions and approvals hereunder shall be in writing and shall be deemed to have been given only upon: (a) personal delivery; (b) the fifth business day after mailing; (c) the first business day after sending by email; or (d) the second business day after being sent by internationally-recognized overnight courier. Notices must be addressed as follows: if to us, to MAASE, 2425 East Grand River Ave, Suite 1, Lansing, MI 48912; and, if to you, to the email address that you have provided us. It is agreed that all agreements, notices, disclosures and other communications provided in accordance with the Agreement satisfy any legal requirement that such communications be in writing. It is agreed that a printed version of these Terms of Use and/or any notice given in electronic form shall be admissible in judicial or administrative proceedings based upon or relating to this Terms of Use to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form.
27. **Entire Agreement**. These Terms of Use, including our Privacy Notice, constitutes the sole and entire agreement between you and MITTIN with respect to the MITTIN Platform and the

Services and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to the MITTIN Platform and the Services.

28. **Geographic Restrictions.** MITTIN is based in the State of Michigan in the United States. We provide the MITTIN Platform and our Services for use by persons located in the United States. We make no claims that the MITTIN Platform or any of the Services are accessible or appropriate outside of the United States. Access to the MITTIN Platform and the Services may not be legal by certain persons or in certain countries. If you access the MITTIN Platform or use the Services from outside the United States, then you do so on your own initiative and at your own risk.
29. **Changes in Regulations.** It is our policy to comply with the legal requirements applicable to the provision of our services to our customers and to other users. Accordingly, if applicable Laws conflict with the terms of these Terms of Use in effect from time to time, these Terms of Use shall automatically be amended to the extent necessary to cause it to comply with those requirements, regardless of whether we have provided you with notice of those changes.
30. **Changes to the Agreement.** These Terms of Use was last modified on the date first written above. If we change these Terms of Use, except as noted in the preceding Section, we will post those changes on the MITTIN Platform and we may notify you by email to the email address specified in your Account. You are responsible for ensuring that we have an up to date active email address for you and that you periodically visit these Terms of Use to check for any updates. **YOU ARE HEREBY ADVISED THAT YOUR CONTINUED USE OF THE MITTIN PLATFORM AND THE SERVICES CONSTITUTES YOUR ACCEPTANCE OF ANY AMENDMENTS TO AND THE MOST RECENT VERSION OF THESE TERMS OF USE.**
31. **Force Majeure.** Neither Party shall be liable for delays or failures to perform their obligations under these Terms of Use (other than your obligation to pay MITTIN Fees due hereunder) to the extent the failure was caused by events such as an act of God, war, act of terrorism, power or communication system failure, act of government or any other cause beyond the reasonable control of that Party. If a force majeure event occurs, the Party affected by it shall provide prompt notice of it to the other Party.
32. **Beneficiaries.** These Terms of Use is between you and us. There are no third-party beneficiaries.
33. **Definitions.** All capitalized terms not defined elsewhere in these Terms of Use shall have the following meanings, unless the context clearly requires otherwise.
  - a. “Account” means registration with MITTIN, which may be with different registration requirements depending on the level and type of usage.
  - b. “Dispute” means any dispute, controversy, difference or claim arising out of or relating to these Terms of Use.
  - c. “FAA” means Federal Arbitration Act.
  - d. “Intellectual Property Rights” means any and all registered and unregistered rights granted, applied for or otherwise now or hereafter in existence under or related to any patent, copyright, rights of publicity, trademark, trade secret, database protection, domain registration or other intellectual property rights Laws and all similar or

equivalent rights or forms of protection in any part of the world, including any improvements, derivative works and modifications related thereto.

- e. “Law” means any statute, law ordinance, regulation, rule, code order, constitution, treaty, common law, judgment, decree or other requirement of any federal, state, tribal, local or foreign government or political subdivision thereof or any arbitrator, court or tribunal of competent jurisdiction.
- f. “Resultant Data” means information, data and other content that is derived by or through the MITTIN Platform or the Services and is sufficiently different from User Data so that User Data cannot be reverse engineered or otherwise identified from the inspection, analysis or further processing of that information, data or content.
- g. “Third-Party Materials” means all materials and information in any form or medium, including software, documents, data, content, specifications, products, equipment or components of or relating to the MITTIN Platform that are not proprietary to MITTIN.

If you have questions or concerns regarding our policies, contact us at MAASE, 2425 East Grand River Ave, Suite 1, Lansing, MI 48912.