

## **LEAPFROG ENTERPRISES, INC.**

### **TERMS OF USE FOR LEAPFROG SCHOOL CONNECT**

THESE TERMS OF USE (THIS “AGREEMENT”) ARE A LEGALLY BINDING INSTRUMENT BETWEEN THE SCHOOL DISTRICT YOU REPRESENT (THE “SCHOOL DISTRICT”) AND LEAPFROG ENTERPRISES, INC. (“LEAPFROG”). THIS AGREEMENT GOVERNS THE SCHOOL DISTRICT’S USE OF THE LEAPFROG LEARNING PATH WEBSITE OR PROGRESS REPORTING EQUIVALENT, THE FEATURES AVAILABLE THROUGH THE LEAPFROG SCHOOL CONNECT APPLICATION AND RELATED LEAPFROG WEBSITES (COLLECTIVELY, THE “LEAPFROG SERVICES”).

BY USING THE LEAPFROG SERVICES, YOU AND THE SCHOOL DISTRICT AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT. IF YOU OR THE SCHOOL DISTRICT DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, DO NOT USE THE LEAPFROG SERVICES. THE RIGHT TO USE THE LEAPFROG SERVICES IS CONDITIONED UPON AGREEMENT TO THESE TERMS, AND LEAPFROG IS NOT WILLING TO ENTER INTO THIS AGREEMENT IF YOU AND THE SCHOOL DISTRICT ARE NOT WILLING TO ACCEPT SUCH TERMS. IF YOU ARE A STUDENT, YOU SHOULD REVIEW THESE TERMS AND CONDITIONS WITH A TEACHER OR SCHOOL ADMINISTRATOR.

WHEREVER THIS AGREEMENT REFERS TO “YOU” OR “YOUR,” IT IS MEANT TO INCLUDE THE SCHOOL DISTRICT, TEACHER AND STUDENT, EXCEPT WHERE A STUDENT IS NOT OF SUFFICIENT LEGAL AGE TO ENTER INTO A BINDING CONTRACT (SUCH AS AN E-COMMERCE TRANSACTION) OR PROVIDE ANY REQUIRED CONSENTS (SUCH AS CONSENT TO DATA COLLECTION, PROCESSING, OR TRANSFERS), IN WHICH CASE THE TEACHER OF SUCH STUDENT HEREBY ACKNOWLEDGES AND AGREES HE/SHE IS ACTING ON THE STUDENT’S BEHALF TO EFFECTUATE SUCH CONSENTS OR CONTRACTS.

**1. Definition of LeapFrog Services.** The LeapFrog Services, including the Learning Path, are web-based services provided by LeapFrog that allow you to further interact with and update certain web-enabled LeapFrog products ("Connected Products") and download software and/or files for use with certain Connected Products. Connected Products may interact with the Learning Path and related LeapFrog websites using the LeapFrog School Connect software application that runs on your personal computer (the “LeapFrog School Connect Application”).

**2. System and Software Requirements.** Use of the LeapFrog Services requires a personal computer, a Connected Product, Internet access and an installed and operating version of the LeapFrog School Connect Application. In addition to the term of this Agreement, your use of the LeapFrog School Connect Application is subject to your agreement to the Software License Agreement for the LeapFrog School Connect Application available at <http://www.leapfrog.com/en/corplinks/legal.html>. Use of the LeapFrog Services involves hardware, software, and Internet access that are not necessarily provided by LeapFrog and your ability to use the LeapFrog Services may be affected by the performance of these items.

LeapFrog does not provide you with a personal computer or Internet access. High speed Internet access is strongly recommended. You acknowledge and agree that such system requirements, which may be changed from time to time, are your responsibility. The LeapFrog Services are not part of any other product or offering, and no purchase or obtaining of any other product shall be construed to represent or guarantee you access to the LeapFrog Services.

**3. Use of Connected Products.** You agree to only use Connected Products that you own or otherwise have been given permission by LeapFrog to use whenever using the LeapFrog Services. You are responsible for ensuring that any Connected Product that you own are only used by individuals that you permit to use such Connected Product. LeapFrog may not be able to determine through technical measures whether a particular individual is an authorized user of a particular Connected Product and may provide the LeapFrog Services to unauthorized users of a particular Connected Product so LeapFrog is not responsible for the results of any such services provided to an unauthorized user of any Connected Product.

**4. Collection of Information and Privacy Terms.** The LeapFrog Services may be used in a manner that facilitates LeapFrog's collection, processing, use, and storage of certain information and data, including, but not limited to: (i) personal (e.g., name, email address, etc.) or non-personal information (e.g., demographic or login information) collected from a teacher or other adult and required in order to download, use, or register for the LeapFrog Services ("Registration Information"); (ii) technical data about your Connected Products, your computer system, and certain hardware or software connected to or stored on such devices or systems ("Technical Information"); and, (iii) information about your use of and interaction with (including offline use of and interaction with) Connected Products, LeapFrog School Connect Application, or LeapFrog Services ("Usage Information"). Registration Information, Technical Information, and Usage Information may be collectively referred to herein as "Account Data." Account Data may be captured and stored locally on your computer, and, in some instances, may be sent back to LeapFrog when you are connected to the Internet so we can provide you with the LeapFrog School Connect Application and LeapFrog Services. LeapFrog's online collection and use of your Account Data is subject to LeapFrog's most current online privacy policy available at <http://www.leapfrog.com/en/corplinks/privacy.html> ("LeapFrog Online Consumer Privacy Policy" or "LeapFrog Privacy Policy"), which is expressly incorporated into this Agreement by this reference. The LeapFrog Privacy Policy describes, in more detail, the types of information LeapFrog collects from users of LeapFrog Services and Connected Products, the way we handle such information, and the choices you may have with respect to LeapFrog's collection and use of certain information. You are strongly encouraged to read the LeapFrog Privacy Policy prior to and periodically during your use of the LeapFrog Services. By using the LeapFrog Services, you hereby unambiguously consent to the collection and processing of your Account Data by LeapFrog and consent to the use of such information in accordance with the LeapFrog Privacy Policy. You further agree to the transfer of this information, as necessary, across international borders, including, but not limited to, LeapFrog's headquarters in the United States. You further agree and give LeapFrog the right, without liability to you, to disclose any Account Data to law enforcement authorities, government officials, and/or a third party, as LeapFrog believes is reasonably necessary or appropriate to enforce and/or verify your compliance with any part of this Agreement (including, but not limited to, LeapFrog's right to cooperate with any legal

process in relation to your use of the LeapFrog Services, and/or a third party claim that your use of the LeapFrog Services is unlawful and/or infringes such third party's rights).

## **5. Purchase of Software Titles for Connected Products.**

5.1 Availability of Software Titles For Download and Terms. LeapFrog may make available for download certain software titles and/or audio files ("Software Titles") for use with certain Connected Products (such as the TAG School Reader) and/or with the LeapFrog Services. LeapFrog may modify the inventory of available Software Titles for download at any time without notice to you. You may be asked to be bound by additional terms regarding use of Software Titles before being permitted to download a Software Title and all use of Software Titles is subject to your agreement to be bound by any such software license terms accompanying the download of Software Titles, including but not limited to the "Software License Agreement for LeapFrog School Connect Software Downloads" that is available for review on the website page(s) where Software Titles are selected for download and at <http://www.leapfrog.com/en/corplinks/legal.html>.

5.2 Delivery of Software Titles. Software Titles that you select for download will be delivered to you via electronic download to the computer you are using to access and use the LeapFrog Services and will automatically be installed onto the appropriate Connected Product connected to such computer. You agree not to permit the downloading of Software Titles by individuals onto Connected Products of others who are not authorized to use or obtain copies of such Software Titles. On occasion, technical problems may delay or prevent delivery of your Software Title. Your exclusive and sole remedy with respect to any Software Title that is not delivered within a reasonable period will be, at LeapFrog's option, replacement and/or re-delivery of such Software Title.

## **6. General Usage and Access Rules**

6.1 Circumvention and Security. You agree that you will not attempt to, or encourage or assist any other person to, circumvent or modify any security technology or software that is part of the LeapFrog Services or used to monitor or enforce this Agreement.

6.2 Compliance with Laws Generally. The LeapFrog Services are controlled and operated by LeapFrog from its offices in the United States. You agree to comply with all local, state, federal, international and national laws, statutes, ordinances, and regulations that apply to your use of the LeapFrog Services.

6.3 Responsibility For Your Individual Content. The LeapFrog Services may offer features that allow you to, among other things, submit, store, manipulate and/or distribute content selected or produced by you ("Individual Content"). You represent and agree that any use by you of such features for Individual Content shall be your sole responsibility, shall not infringe or violate the intellectual property or other rights of any other party or violate any laws, contribute to or encourage infringing or otherwise unlawful conduct and that you have obtained all necessary rights, licenses or clearances necessary to engage in such activities.

6.4 Access by LeapFrog to Connected Products. LeapFrog may access Connected Products that are connected to a computer that is online and connected to the Internet while the LeapFrog Services are being used for purposes of collecting data and altering authorizations for Software Titles. You acknowledge that LeapFrog is permitted to engage in such activities as part of the LeapFrog Services and in order to assist LeapFrog in enforcing terms regarding the use of the LeapFrog Services, Connected Products and Software Titles.

## **7. Intellectual Property and Removal of Features or Discontinuance.**

7.1 Acknowledgement of Ownership. You agree that the LeapFrog Services, including but not limited to graphics, audio clips, and editorial content, contains proprietary information and material that is owned by LeapFrog and/or its licensors, and is protected by applicable intellectual property and other laws, including but not limited to copyright, and that you will not use such proprietary information or materials in any way whatsoever except for use of the LeapFrog Services in compliance with the terms of this Agreement. No portion of the LeapFrog Services may be reproduced in any form or by any means. You agree not to modify, rent, lease, loan, sell, distribute, or create derivative works based on the LeapFrog Services, in any manner, and you shall not exploit the LeapFrog Services in any unauthorized way whatsoever, including but not limited to, by trespass or burdening network capacity.

7.2 Removal of Content or Features; Discontinuation of LeapFrog Services. Notwithstanding any other provision of this Agreement, LeapFrog and its licensors reserve the right to temporarily or permanently change, suspend, remove, or disable access to any content, features or other materials comprising the LeapFrog Services at any time without notice, including permanent termination of all or any part of the LeapFrog Services. LeapFrog may also impose limits on the use of or access to certain features or portions of the LeapFrog Services, in any case and without notice or liability. Further, for purposes of clarification, any references in this Agreement to features that may be provided does not mean such features will necessarily be provided.

7.3 Trademarks. All LeapFrog logos and trademarks used in connection with the LeapFrog Services are trademarks or registered trademarks of LeapFrog in the U.S. and/or other countries. Other trademarks, service marks, graphics, and logos used in connection with the LeapFrog Services may be the trademarks of their respective owners. You are granted no right or license with respect to any of the aforesaid trademarks and any use of such trademarks.

**8. Termination.** If you fail to comply with any of the provisions of this Agreement, LeapFrog, at its sole discretion and with or without notice to you, may: (i) terminate this Agreement, and/or (ii) preclude access to the LeapFrog Services (or any part thereof).

## **9. Disclaimer of Warranties; Liability Limitations.**

9.1 Uninterrupted Service. LEAPFROG DOES NOT GUARANTEE, REPRESENT, OR WARRANT THAT YOUR USE OF THE LEAPFROG SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, AND YOU AGREE THAT FROM TIME TO TIME LEAPFROG MAY REMOVE THE LEAPFROG SERVICES FOR INDEFINITE PERIODS OF

TIME FOR MAINTENANCE PURPOSES. YOU FURTHER ACKNOWLEDGE THAT LEAPFROG'S CONTINUED PROVISION OF THE LEAPFROG SERVICES RELIES UPON THE GENERAL OPERATION OF THE INTERNET AND WORLD WIDE WEB AND CERTAIN FACTORS NECESSARY FOR THE CONTINUOUS OPERATION OF THE INTERNET AND WORLD WIDE WEB ARE BEYOND LEAPFROG'S CONTROL.

9.2 No Warranties. YOU EXPRESSLY AGREE THAT YOUR USE OF, OR INABILITY TO USE, THE LEAPFROG SERVICES IS AT YOUR SOLE RISK. THE LEAPFROG SERVICES IS PROVIDED "AS IS" AND "AS AVAILABLE" FOR YOUR USE, WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NONINFRINGEMENT. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, THE ABOVE EXCLUSION OF IMPLIED WARRANTIES MAY NOT APPLY TO YOU.

9.3 Disclaimer of Certain Damages. IN NO CASE SHALL LEAPFROG, ITS DIRECTORS, OFFICERS, EMPLOYEES, AFFILIATES, AGENTS, CONTRACTORS, OR LICENSORS BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING FROM YOUR USE OF THE LEAPFROG SERVICES OR ANY PORTION THEREOF OR FOR ANY OTHER CLAIM RELATED IN ANY WAY TO YOUR USE OF THE LEAPFROG SERVICES OR ANY PORTION THEREOF, INCLUDING, BUT NOT LIMITED TO, ANY ERRORS OR OMISSIONS IN ANY CONTENT, OR ANY LOSS OR DAMAGE OF ANY KIND INCURRED AS A RESULT OF THE USE OF ANY CONTENT POSTED, TRANSMITTED, OR OTHERWISE MADE AVAILABLE VIA THE LEAPFROG SERVICES, EVEN IF ADVISED OF THEIR POSSIBILITY. BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR THE LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, IN SUCH STATES OR JURISDICTIONS, LEAPFROG'S LIABILITY SHALL BE LIMITED TO THE EXTENT PERMITTED BY LAW.

9.4 Disclaimer of Losses, Intrusions and Attacks. LEAPFROG DOES NOT REPRESENT OR GUARANTEE THAT THE LEAPFROG SERVICES WILL BE FREE FROM LOSS, CORRUPTION, ATTACK, VIRUSES, INTERFERENCE, HACKING, OR OTHER SECURITY INTRUSION, AND LEAPFROG DISCLAIMS ANY LIABILITY RELATING THERETO.

**10. Waiver and Indemnity.** BY USING THE LEAPFROG SERVICES, YOU AGREE TO INDEMNIFY AND HOLD LEAPFROG, ITS DIRECTORS, OFFICERS, EMPLOYEES, AFFILIATES, AGENTS, CONTRACTORS, AND LICENSORS HARMLESS WITH RESPECT TO ANY CLAIMS ARISING OUT OF YOUR BREACH OF THIS AGREEMENT, YOUR IMPROPER USE OF THE LEAPFROG SERVICES, OR ANY ACTION TAKEN BY LEAPFROG AS PART OF ITS INVESTIGATION OF A SUSPECTED VIOLATION OF THIS AGREEMENT BY YOU OR AS A RESULT OF ITS FINDING OR DECISION THAT A VIOLATION OF THIS AGREEMENT BY YOU HAS OCCURRED.

**11. Changes.** LeapFrog reserves the right, at any time and from time to time, to update, revise, supplement, and otherwise modify this Agreement and the referenced LeapFrog Privacy Policy and to impose new or additional rules, policies, terms, or conditions on your use of the LeapFrog Services. Such updates, revisions, supplements, modifications, and additional rules, policies, terms, and conditions (collectively referred to in this Agreement as "Additional Terms") will be: (i) effective immediately unless expressly noted otherwise within such Additional Terms, and (ii) incorporated into this Agreement. Your continued use of the LeapFrog Services following the adoption of any Additional Terms will be deemed to constitute your acceptance of any and all such Additional Terms. All Additional Terms are hereby incorporated into this Agreement by this reference.

**12. Miscellaneous.** This Agreement is governed by the laws of the State of California, without reference to its principles of conflicts of laws. If any provision of this Agreement shall be unlawful, void, or unenforceable in your jurisdiction, then that provision shall be deemed severed from this Agreement and shall not affect the validity or enforceability of the remaining provisions of this Agreement. This Agreement is the complete, final and exclusive statement of the agreement between the parties with respect to the subject matter hereof, and supersedes any proposal or prior or contemporaneous agreement or communications between us (whether oral or written) relating to the subject matter hereof. No failure or delay (in whole or in part) on the part of either party to exercise any right or remedy hereunder shall operate as a waiver thereof or affect any other right or remedy. Waiver of a breach shall not waive the right to enforce any subsequent breach under this Agreement.