

***Last modified: June 22, 2020***

## **END USER LICENSE AGREEMENT AND TERMS AND CONDITIONS**

This End-User License Agreement (this "EULA" or "Agreement") is a legal agreement between you and FIRST LIGHT WEB SERVICES LLC. ("FIRST LIGHT", "Licensor") provider of IMPACT Feedback software and services (together "the Service") including all HTML files, Javascript files, graphics files, animation files, data files, technology, development tools, scripts, and programs, both in object code and source code (the "Software"), the deliverables provided pursuant to this EULA which may include associated media, printed materials, and "online" or electronic documentation. As used herein "you" or "Licensee" means a user of the service. Please carefully read this EULA and the FIRST LIGHT [Privacy Policy](#) which is incorporated into and is part of this EULA.

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1. Grant of License. Subject to the terms of this EULA, Licensor hereby grants to Licensee a limited, personal, non-transferable, non-exclusive license to use the Service (including its implementation and configuration), Cloud Materials (as applicable) and Documentation solely for operating the service.
- 1.1. Authorized Users. Licensee may permit Authorized Users to use the Service. Usage is limited to the Usage Metrics and volumes stated in the Web Services Agreement. Access credentials for the

Service may not be used by more than one individual, but may be transferred from one individual to another if the original user is no longer permitted to use the Service. Licensee is responsible for breaches of the Agreement caused by Authorized Users.

- 1.2. Subscription. Licensee understands and agrees that the Software and Services are acquired through a Software as a Service (SaaS) subscription model. Licensee is granted access to use the Software and Services during the term of the subscription of Licensee's school with the limitations set forth by said subscription and this Agreement and only as the subscription status remains active and any and all fees are paid in full and not past due.
- 1.3. Acceptable Use policy. With respect to the Service, Licensee will not:
  - 1.3.1. disassemble, decompile, reverse-engineer, duplicate, translate or make derivative works
  - 1.3.2. transfer or communicate any content or data that is unlawful or impinges on any intellectual property rights, or
  - 1.3.3. circumvent or jeopardize its operation or security.
- 1.4. Verification of Use. Licensee will monitor its own use of the Service and report any use in excess of the Usage Metrics and volume. FIRST LIGHT may monitor use to verify compliance with Usage Metrics, volume and the Web Services Agreement.
- 1.5. Suspension of Service. FIRST LIGHT may suspend or limit use of the Service if continued use may result in material harm to the Service or its users. FIRST LIGHT will promptly notify Licensee of the suspension or limitation. FIRST LIGHT will limit a suspension or limitation in time and scope as reasonably possible under the circumstances.
- 1.6. Third Party Web Services. The Service may include integrations with web services made available by third parties that are accessed through the Service and subject to terms and conditions with those third parties. These third party web services are not part of the Service and the Agreement does not apply to them.
- 1.7. Mobile Access to the Service. If applicable, Licensee may access certain Services through mobile applications obtained from third-party websites such as Android or Apple app store. The use of mobile applications may be governed by the terms and conditions presented upon download/access to the mobile application.
2. Changes to this Agreement. FIRST LIGHT reserves the right to change, modify, add to, supplement or delete any of the terms and conditions of this Agreement (including the Privacy Policies, as provided therein, which are incorporated into, a part of, and governed by this Agreement)

at any time on occasion. No modification to this Agreement shall change the terms of any then-current written agreement executed between FIRST LIGHT and an Entity. FIRST LIGHT will notify you of any material changes by email, website posting, pop-up screen or within-service announcement. If any future changes to this Agreement are unacceptable to you or cause you to no longer be in accordance with this Agreement, you must stop using the Service without delay. Your use of the Service following any revision to this Agreement constitutes your acceptance of any and all such changes. You may reject any changes by stopping use of the Service

3. Privacy and Protection of Personal Information. FIRST LIGHT respects the privacy of visitors to, and users of, the Service. Information collected from you and any individual you provide access to use the Service is subject to FIRST LIGHT's Privacy Policies. Please see FIRST LIGHT's Privacy Policies at the links set forth at the beginning of this Agreement for more information on the collection and use of your information. By accepting this Agreement, you agree to all of the terms of the Privacy Policies, which are a part of this Agreement. If you are a school representative that provides a user with access to use the Service, you agree to hold all user information you may receive in confidence and in compliance with all applicable laws.
4. Intellectual Property. FIRST LIGHT Ownership. FIRST LIGHT owns all intellectual property rights in and related to the Service, Materials, Documentation, Consulting Services, design contributions, related knowledge or processes, and any derivative works of them. All rights not expressly granted to Licensee are reserved to FIRST LIGHT and its licensors.
  - 4.1. Licensee Ownership. Licensee retains all rights in and related to the Licensee's personal information.
  - 4.2. Non-Assertion of Rights. Licensee covenants, on behalf of itself and its successors and assigns, not to assert against FIRST LIGHT and its Affiliates or licensors, any rights, or any claims of any rights, in any Service, Materials, Documentation, or Consulting Services.
  - 4.3. Unless otherwise specified in writing, all materials that are part of the Service are owned, controlled, or licensed by FIRST LIGHT and its licensors and are protected by law from unauthorized use. The entire contents of the Service (including without limitation all visual content, audio visual content, text (including without limitation, exam and survey questions) (the "Content"), and the arrangement, sequence, structure, and organization of the Service, are copyrighted under the United States copyright laws

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- 4.4. If you elect to submit to FIRST LIGHT any essay or other works of authorship or comments, feedback, suggestions, ideas and other submissions in connection with your use of or otherwise relating to the Service, whether in writing or orally (collectively, “Submissions,” but excluding any material to the extent it constitutes an “education record” under that federal law known as Family Educational Rights and Privacy Act), you agree in consideration of your use of the Service that FIRST LIGHT may use such Submission (including reproduce, distribute, perform and display), modify such Submission, and act on such Submission (by executing on an idea, practicing a process, making, offering and selling a product, or creating further ideas, processes or products from or incorporating your Suggestion), in each case without owing any royalty or otherwise accounting to you, and you agree to not assert any right you may have in such Suggestion against FIRST LIGHT or any party FIRST LIGHT authorizes to act on the foregoing rights or any successor-in-interest to FIRST LIGHT. You agree such rights may be exercised or further authorized anywhere in the world and will survive any termination of your account(s), the Service, or this Agreement. You represent and warrant that any Submissions are your original creations, that you have all rights to the Submissions, and that the Submissions do not infringe or violate the rights of any party, including without limitation any intellectual property rights or rights or privacy or publicity.
5. Passwords. FIRST LIGHT utilizes several methods that allow you to record and store information in your account. You are responsible for all actions on the Service by you or under your Service password or account and for taking all reasonable steps to ensure that no unauthorized person shall have access to your Service password or account. Without limiting the foregoing:
  - 5.1. you are responsible for all actions taken by individuals that you provide access to use the Service; and
  - 5.2. it is your sole responsibility to

- 5.2.1. govern the use of any login code and password;
  - 5.2.2. authorize, monitor, and control access to and use of your Service account and password;
  - 5.2.3. immediately inform FIRST LIGHT of any need to deactivate a password. You grant FIRST LIGHT and all other persons or entities involved in the operation of the Service the right to transmit, monitor, retrieve, store, and use any information recorded and/or stored in your account in regards to the management of the Service.
6. Usage Rules. As a condition of your use of and access to the Service, you shall not: (a) copy or adapt the Service's software including but not limited to Flash, GoLang, HTML, Java, CSS, JavaScript or other code; (b) reverse engineer, decompile, reverse assemble, modify or attempt to discover any software (source code or object code) that the Service create to generate web pages or any software or other products or processes accessible through the Service; (c) distribute any virus, time bomb, trap door, or other harmful or disruptive computer code, mechanism or program; (d) interfere with or circumvent any security feature of the Service or any feature that restricts or enforces limitations on use of or access to the Service; (e) sell the Service or any part thereof including but not limited to user accounts and access to them in exchange for anything of value; (f) violate any applicable law, including without limitation any applicable export laws; (g) allow another person or entity to use your identity in order to access the Service; or (h) publicly post or otherwise disseminate any details regarding the Service's questionnaires (including the questions or answers) except fair use of such details under applicable copyright law for scholarly or newsworthy purposes.
  7. Publicity. Neither party will use the name of the other party in publicity activities without the prior written consent of the other.
  8. No Professional Advice. The Service and the Content are provided for informational purposes only. FIRST LIGHT DOES NOT PROVIDE MEDICAL, LEGAL, CERTIFIED FINANCIAL, OR ANY PROFESSIONAL ADVICE NOR DOES THE SERVICE CONSTITUTE THE PRACTICE OF MEDICINE, LAW, OR ANY OTHER PROFESSION. Any information provided to you by FIRST LIGHT as a result of your participation in the Service is being provided to you solely for your educational and informational benefit and should not be considered medical, legal, or professional advice or a substitute for the foregoing. You agree that you bear all responsibility for your own

decisions you may elect to make based on any information you learn in connection with the Service.

9. Limitation of Liability.

9.1. Unlimited Liability. Neither party will exclude or limit its liability for damages resulting from:

9.1.1. unauthorized use or disclosure of Confidential Information,

9.1.2. either party's breach of its data protection and security obligations that result in an unauthorized use or disclosure of personal data, or

9.1.3. death or bodily injury arising from either party's gross negligence or willful misconduct.

9.2. Liability Cap. Subject to Sections 1.1 and 9.3, the maximum aggregate liability of either party (or its respective Affiliates or FIRST LIGHT' subcontractors) to the other or any other person or entity for all events (or series of connected events) arising in any twelve month period will not exceed the annual subscription fees paid by Licensee's school for the Service directly causing the damage for that twelve month period. Any "twelve month period" commences on the Subscription Term start date or any of its yearly anniversaries.

9.3. Exclusion of Damages. Subject to Section 9.1, neither party (nor its respective Affiliates or FIRST LIGHT' subcontractors) will be liable to the other party for any special, incidental, consequential, or indirect damages, loss of good will or business profits, work stoppage or for exemplary or punitive damages, and

10. Third Party Claims. You agree to hold harmless First Light from and against all third-party claims and actions brought against First Light arising out of your use of the Service or that of any individual you provide access to use the Service and/or your breach or alleged breach.

11. Disputes. The prevailing party in any action to enforce this Agreement shall be entitled to recover costs and expenses including, without limitation, attorneys' fees. This Agreement is made within the exclusive jurisdiction of the United States, and its jurisdiction shall supersede any other jurisdiction of either party's election.

11.1. To expedite resolution and control the cost of any dispute, controversy or claim related to this Agreement ("Dispute"), you and FIRST LIGHT agree to first attempt to negotiate any Dispute (except those Disputes expressly provided below) informally for at least thirty (30) days before initiating any arbitration or court proceeding. Such informal negotiations commence upon written notice from one person to the other. You will send your notice to

FIRST LIGHT WB SERVICES. (ATTENTION: LEGAL DEPARTMENT),

PO Box 755  
Bellingham, WA 98227  
[support@firstlightweb.com](mailto:support@firstlightweb.com)

12. Severability. No Waiver.

- 12.1. The failure of FIRST LIGHT to require or enforce strict performance by you of any provision of this Agreement or to exercise any right under them will not be construed as a waiver or relinquishment of FIRST LIGHT's right to assert or rely upon any such provision or right in that or any other instance.
- 12.2. You and FIRST LIGHT agree that if any portion of this Agreement is found illegal or unenforceable, in whole or in part by any court of competent jurisdiction, such provision will, as to such jurisdiction, be ineffective to the extent of such determination of invalidity or unenforceability without affecting the validity or enforceability thereof in any other manner or jurisdiction and without affecting the remaining provisions of this Agreement, which will continue to be in full force and effect.
- 12.3. Miscellaneous. FIRST LIGHT operates and controls the Service from its offices in North America. FIRST LIGHT makes no representation that the Service is appropriate or available in other locations. This Agreement is effective until terminated by either party. You may terminate this Agreement by destroying all Service-related materials obtained from the Service, FIRST LIGHT or any other website or source. The privileges granted to you under this Agreement will terminate immediately and automatically without notice from FIRST LIGHT if, in its sole discretion, you fail to comply with any term or provision of this Agreement or for any reason in FIRST LIGHT's sole discretion. Neither the course of conduct between the parties nor trade practice will act to modify this Agreement at any time without any notice to you. You may not assign this Agreement without FIRST LIGHT's prior written consent, which may be withheld in FIRST LIGHT's sole discretion, and any assignment without such consent shall be deemed null and void. This Agreement contains the entire understanding of you and FIRST LIGHT, and supersedes all prior understandings between the parties concerning its subject matter, and cannot be changed or modified by you. The section headings used in this

Agreement are for convenience only and will not be given any legal import. Upon FIRST LIGHT's request, you will furnish FIRST LIGHT any documentation, substantiation or releases necessary to verify your compliance with this Agreement. You agree that this Agreement will not be construed against FIRST LIGHT by virtue of having drafted it. You hereby waive any and all defenses you may have based on the electronic form of this Agreement and the lack of signing by the parties hereto to execute this Agreement.

13. Statute of Limitations. You and FIRST LIGHT both agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the Service or this Agreement (including the Privacy Policies) must be filed within ONE (1) YEAR after such claim or cause of action arose or will be forever barred.