

## **IMPORTANT--PLEASE READ CAREFULLY<sup>4</sup>**

The Terms is this document an agreement between you and Grayboard LLC., a Delaware limited liability company. References to "us", "we", "our" and "Grayboard" shall mean Grayboard LLC.

These Terms govern your access to and use of Grayboard software, products, and/or services (individually or collectively, the "Products") and any information, content, text, graphics, photos or other materials uploaded, downloaded, purchased, or appearing on or through the Products (collectively referred to as "Content"). Additional terms or product requirements may apply to our individual Products and are available with the relevant Product. These Terms apply to all visitors, users, and others who access and use the Products ("Users").

By accessing or using the Products you agree to be bound by these Terms.

Notwithstanding the foregoing, nothing in these Terms supersedes or limits your rights under (1) the terms and conditions of any written agreement you have entered into with Grayboard regarding the use of Products, or (2) applicable laws or regulations to the extent these Terms are prohibited by such laws or regulations. In the event of any conflict between these Terms and the terms and conditions of an applicable written agreement you have entered into with Grayboard, the terms and conditions of the written agreement shall control.

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## **1. Basic terms and accounts**

You are responsible for your use of the Products. You may use the Products only if you can form a binding contract with Grayboard. Your account with Grayboard (and use of the Product) gives you access to the services and functionality that we may establish and maintain from time to time and in our sole discretion. We may maintain different types of accounts for different types of Users. If you are accepting these Terms and using the Products on behalf of a company, organization, government, or other legal entity, then (a) "you" includes you and that entity, and (b) you represent and warrant that you are an authorized representative of the entity with the authority to bind the entity to these Terms, and that you agree to these Terms on the entity's behalf. You may use the Products only in compliance with these Terms, any agreement entered into by your institution relating to the Products, and all applicable local, state, national, and international laws, rules and regulations.

In cases where you have authorized or registered another individual, including a minor, to use your account(s), you are fully responsible for (i) the online conduct of such user; (ii) controlling the user's access to and use of the Products; and (iii) the consequences of any misuse. Grayboard requires that the parents, guardian, or other authorized adult of a minor affirmatively consent to the use of a Grayboard Product by such minor. Grayboard reserves the right to provide access to the minor's account to the minor's parents, guardian or other authorized adult, upon such adult's request. For additional information on how we use your information, please see our Privacy Policy.

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## **2. Privacy and use of personal information**

Any information that you provide to Grayboard, including first name, last name, email address, and any other information including personal information you have provided, may provide, or may be collected by us in connection with your use of the Products (“Your Information”), will be collected, maintained and used in order to provide the Products to you or your institution, or in accordance with these Terms, our privacy policy located at <http://grayboard.com/License/PP.pdf> (“Privacy Policy”), any additional terms applicable to an individual Product, and any agreement entered into by your institution relating to the Product. You understand that, through your use of the Products, you consent to the collection and use (as set forth in these Terms, the Privacy Policy and any agreement entered into by your institution relating to the Product) of Your Information, including the transfer of Your Information to the United States and/or other countries for storage, hosting, processing, and use by Grayboard.

**By using the Products, you hereby consent that Grayboard may (i) use any or all of Your Information in connection or combination with other Grayboard Products and for any reason, including to provide, maintain, protect and improve Products and to develop new Products and (ii) provide any or all of Your Information to third parties that provide certain functions and other services for Grayboard or marketing in connection with the Products, including without limitation the university, school, or other institution hosting or licensing the Products. If you do not wish to share Your Information with such third parties or for use by other Grayboard Products either now or during future use of the Products, you must opt-out of this selection by emailing [GeneralCounsel@Grayboard.com](mailto:GeneralCounsel@Grayboard.com). If you choose not to share Your Information with such third parties, including the university, school, or other institution hosting or licensing the Products, you may not be able to use or access the Grayboard Product or certain functionality of the Grayboard Product.**

For the avoidance of doubt, personal information that includes Student Data (defined below) provided to Grayboard through the use of these Products is governed by the terms of the agreement between Grayboard and the educational institution relevant to your use of the Products. As between Grayboard and you, you own all right, title and interest to all Student Data you provide or otherwise make available to us, and we do not own, control, or license such Student Data, except so as to provide the Products and as described herein. “Student Data” is any information (in any format) that is directly related to an identifiable current or former student that is maintained by a school, school district, or related entity or organization, or by us, as part of the provision of the Products. Student Data may include “educational records” as defined by the Family Educational Rights and Privacy Act (“FERPA”), 20 U.S.C. § 1232(g). Grayboard agrees to treat Student Data as confidential and not to share it with third parties other than as described in Grayboard’s agreement the educational institution.

If you have any questions regarding the privacy and use of Your Information, please contact us at [GeneralCounsel@Grayboard.com](mailto:GeneralCounsel@Grayboard.com), or your educational institution.

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### 3. Content and your rights

You are responsible for Content that you post to the Products, and any consequences thereof. The Content you submit, post, or display may be viewed by other users of the Products. You may be able to control the Content that other users of certain Products may access through the privacy options in certain Products.

You retain your rights to any Content you submit, post, or display on or through the Products. By submitting, posting or displaying Content on or through the Products, you grant us a worldwide, non-exclusive, royalty-free license (with the right to sublicense) to use, host, store, copy, reproduce,

process, adapt, modify, publish, transmit, create derivative works, communicate, display, and/or distribute such Content in any and all media or distribution methods (now known or later developed) as part of providing any of the Products. You agree that this license includes the right for Grayboard to provide, promote, and improve the Products and to make Content submitted to or through the Products available to other institutions or individuals as part of providing the Products (including after termination of your use of the Products) and in accordance with your privacy settings. You represent and warrant that you have all the rights, power and authority necessary to grant the rights granted herein to any Content that you submit.

All Content, whether publicly posted or privately transmitted, is the sole responsibility of the person who originated such Content. We may not monitor or control the Content posted via the Products, and we cannot take responsibility for such Content. Any use or reliance on any Content or materials posted via the Products or obtained by you through the Products is at your own risk.

Grayboard respects the intellectual property rights of others and expects users of the Products to do the same. We will respond to notices of alleged copyright infringement that comply with applicable law and are properly provided to us. If you believe that your Content has been copied in a way that constitutes copyright infringement, please provide us with the following information: (i) a physical or electronic signature of the copyright owner or a person authorized to act on their behalf; (ii) identification of the copyrighted work claimed to have been infringed; (iii) identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit us to locate the material; (iv) your contact information, including your address, telephone number, and an email address; (v) a statement by you that you have a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law; and (vi) a statement that the information in the notification is accurate, and, under penalty of perjury, that you are authorized to act on behalf of the copyright owner.

We reserve the right to remove Content alleged to be infringing without prior notice, at our sole discretion, and without liability to you. Our designated copyright agent for notice of alleged copyright infringement appearing on the Products is:

Grayboard Inc. Attn: General Counsel  
67 Cold Hill Road  
Granby, MA 01033  
Email: [GeneralCounsel@Grayboard.com](mailto:GeneralCounsel@Grayboard.com)

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## 4. Your license to use the products

Grayboard gives you a personal, worldwide, royalty-free, non-assignable, and non-exclusive license to use the Products, subject to these Terms and any agreement entered into by your institution relating to the Products, solely for the intended use of the Products, and not for competitive intelligence, analysis, or demonstrations. You may not copy, modify, distribute, sell, or lease any part of our Products, nor may you reverse engineer or attempt to extract the source code of any Product, unless laws prohibit those restrictions or you have our written permission.

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## 5. Mobile software

## **A. Mobile Software**

We may make available software to access the Products via a mobile device (“Mobile Software”). To use the Mobile Software you must have a mobile device that is compatible with the Mobile Software. Grayboard does not warrant that the Mobile Software will be compatible with your mobile device. You may use mobile data in connection with the Mobile Software and may incur additional charges from your wireless provider for these services. You agree that you are solely responsible for any such charges. Grayboard hereby grants you a non-exclusive, non-transferable, revocable license to use a compiled code copy of the Mobile Software for one account on one mobile device owned or leased solely by you, for your personal use. You may not: (i) modify, disassemble, decompile or reverse engineer the Mobile Software, except to the extent that such restriction is expressly prohibited by law; (ii) rent, lease, loan, resell, sublicense, distribute or otherwise transfer the Mobile Software to any third party or use the Mobile Software to provide time sharing or similar services for any third party; (iii) make any copies of the Mobile Software; (iv) remove, circumvent, disable, damage or otherwise interfere with security-related features of the Mobile Software, features that prevent or restrict use or copying of any content accessible through the Mobile Software, or features that enforce limitations on use of the Mobile Software; or (v) delete the copyright and other proprietary rights notices on the Mobile Software. You acknowledge that Grayboard may from time to time issue upgraded versions of the Mobile Software, and may automatically electronically upgrade the version of the Mobile Software that you are using on your mobile device. You consent to such automatic upgrading on your mobile device, and agree that the terms and conditions of this Agreement will apply to all such upgrades. Any third-party code that may be incorporated in the Mobile Software is covered by the applicable open source or third-party license EULA, if any, authorizing use of such code. The foregoing license grant is not a sale of the Mobile Software or any copy thereof, and Grayboard or its third-party partners or suppliers retain all right, title, and interest in the Mobile Software (and any copy thereof). Any attempt by you to transfer any of the rights, duties or obligations hereunder, except as expressly provided for in this Agreement, is void. Grayboard reserves all rights not expressly granted under these Terms. The Mobile Software originates in the United States, and is subject to United States export laws and regulations. The Mobile Software may not be exported or re-exported to certain countries or those persons or entities prohibited from receiving exports from the United States. In addition, the Mobile Software may be subject to the import and export laws of other countries. You agree to comply with all United States and foreign laws related to use of the Mobile Software and the Products.

## **B. Chrome Extensions by Google**

The following applies to any Chrome extension you acquire from Google (“**Chrome-Sourced Extension**”): You acknowledge and agree that these Terms are solely between you and Grayboard, not Google, and that Google has no responsibility for the Chrome Sourced Extension or content thereof. Your use of the Chrome Sourced Extension must comply with the Google Terms of Service. You acknowledge that Google has no obligation whatsoever to furnish any maintenance and support services with respect to the Chrome Sourced Extension. In the event of any failure of the Chrome Sourced Extension to conform to any applicable warranty, you may notify Google, and Google will refund the purchase price for the Chrome Sourced Extension to you; to the maximum extent permitted by applicable law, Google will have no other warranty obligation whatsoever with respect to the Chrome Sourced Extension, and any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty will be solely governed by these Terms and any law applicable to Grayboard as provider of the software. You acknowledge that Google is not responsible for addressing any of your claims or those of any third party relating to the Chrome Sourced Extension or your possession and/or use of the Chrome Sourced Extension, including, but not limited to: (i) product liability claims; (ii) any claim that the Chrome Sourced Extension fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation; and all such claims are governed solely by this Agreement and any law applicable to Grayboard as provider of the software. You acknowledge that, in the event of any third-party claim that the Chrome Sourced Extension or your possession and use

of that Chrome Sourced Extension infringes that third party's intellectual property rights, Grayboard, not Google, will be solely responsible for the investigation, defense, settlement and discharge of any such intellectual property infringement claim to the extent required by these Terms. You and Grayboard acknowledge and agree that Google, and Google's subsidiaries, are third-party beneficiaries of these Terms as relates to your license of the Chrome Sourced Extension, and that, upon your acceptance of the Terms, Google will have the right (and will be deemed to have accepted the right) to enforce these Terms as relates to your license of the Chrome Sourced Extension against you as a third-party beneficiary thereof.

### **C. Mobile Software from Google Play Store.**

The following applies to any Mobile Software you acquire from the Google Play Store ("**Google-Sourced Software**"): (i) you acknowledge that the Terms are between you and Grayboard only, and not with Google, Inc. ("**Google**"); (ii) your use of Google-Sourced Software must comply with Google's then-current Google Play Store Terms of Service; (iii) Google is only a provider of the Google Play Store where you obtained the Google-Sourced Software; (iv) Grayboard, and not Google, is solely responsible for its Google-Sourced Software; (v) Google has no obligation or liability to you with respect to Google-Sourced Software or the Terms; and (vi) you acknowledge and agree that Google is a third-party beneficiary to the Terms as relates to Grayboard's Google-Sourced Software.

### **D. Mobile Software from Microsoft Store**

The following applies to any Mobile Software you acquire from the Microsoft Store ("MS-Sourced Software"): (i) you acknowledge that the Agreement is between you and Grayboard only, and not with Microsoft Corporation ("Microsoft"); (ii) your use of MS-Sourced Software must comply with Microsoft's then-current Microsoft Store Terms of Service; (iii) Microsoft is only a provider of the Microsoft Store where you obtained the MS-Sourced Software; (iv) Grayboard, and not Microsoft, is solely responsible for its MS-Sourced Software; (v) Microsoft has no obligation or liability to you with respect to MS-Sourced Software or this Agreement; and (vi) you acknowledge and agree that Microsoft is a third-party beneficiary to the Agreement as it relates to Grayboard's MS-Sourced Software.

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## **6. Grayboard rights**

The Products are always evolving and the form, nature, and/or functionality of the Products may change from time to time without prior notice to you. In addition, Grayboard may stop (permanently or temporarily) providing the Products (or any features within the Products) to you or to users generally and may not be able to provide you with prior notice. We also retain the right to create limits on use and storage at our sole discretion at any time without prior notice to you.

All right, title, and interest in and to the Products (excluding Content provided by users or other third parties) are and will remain the exclusive property of Grayboard and its licensors. The Products are protected by copyright, trademark, and other laws of both the United States and foreign countries. Nothing in the Terms gives you a right to use the Grayboard name or any of the Grayboard trademarks, logos, domain names, and other distinctive brand features. Any feedback, comments, or suggestions you may provide regarding Grayboard, or the Products is entirely voluntary and we will be free to use such feedback, comments or suggestions as we see fit and without any obligation to you.

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## 7. Registration obligations and passwords

You may never use another User's account without permission. In consideration of your use of the Products, you agree (a) that Your Information will be true, accurate, current and complete, and (b) to maintain and promptly update Your Information to keep it true, accurate, current and complete. You are responsible for safeguarding any password that you use to access the Products (including passwords used on other Grayboard products that permit single sign-on to the Products) and for any activities or actions under your password. We encourage you to use "strong" passwords (passwords that use a combination of upper and lower case letters, numbers and symbols) with your account. You agree to (a) notify Grayboard of any unauthorized use of your password or user identification and any other breach of security, and (b) ensure that you exit from your account at the end of each session.

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## 8. Export control

As required by the laws of the United States and other countries: (a) you understand that the Products are subject to export controls under the U.S. Commerce Department's Export Administration Regulations ("EAR"); (b) you are not located in a prohibited destination country under the EAR or U.S. sanctions regulations; and (c) you will not export, re-export, or transfer the Products to any prohibited destination or persons or entities on the U.S. Bureau of Industry and Security Denied Parties List or Entity List, or the U.S. Office of Foreign Assets Control list of Specially Designated Nationals and Blocked Persons, or any similar lists maintained by other countries, without the necessary export license(s) or authorization(s).

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## 9. Termination

We may suspend or terminate your accounts or cease providing you with all or part of the Products at any time for any reason, including, but not limited to, if we reasonably believe: (i) you have violated these Terms, (ii) you create risk or possible legal exposure for us; or (iii) our provision of the Products is no longer commercially viable. In such a termination event, the license granted hereunder shall automatically terminate. In all such cases, the Terms shall terminate, including, without limitation, your license to use the Products, except that the following Sections shall continue to apply: 2, 3, 5, 6, 9, 10, and 11.

Further, if you stop using the Products for more than 60 days, your accounts may be deleted and Grayboard assumes no responsibility for Content deleted following inactivity. If you wish to delete your Grayboard Product account(s) in their entirety(ies), you may contact us via [GeneralCounsel@Grayboard.com](mailto:GeneralCounsel@Grayboard.com) and specify which Grayboard Product account(s) you wish to delete. We will delete your specified accounts within a reasonable time, unless prohibited by law. Nothing in this Section shall affect Grayboard's rights to change, limit, or stop the provision of the Products without prior notice, as provided above in Section 5.

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## 10. Disclaimers and limitations of liability

Please read this Section carefully since it limits the liability of Grayboard and its parents, subsidiaries, affiliates, related companies, officers, directors, employees, agents, representatives, partners, and/or licensors (collectively, the “Grayboard Entities”). Each of the Subsections below only applies up to the maximum extent permitted under applicable law. Nothing in this Section is intended to limit any rights you may have which may not be lawfully limited.

### A. The Products are Available “AS-IS”

Your access to and use of the Products or any Content are at your own risk. You understand and agree that the Products are provided to you on an “AS IS” and “AS AVAILABLE” basis. Without limiting the foregoing, to the maximum extent permitted under applicable law, THE GRAYBOARD ENTITIES DISCLAIM ALL WARRANTIES AND CONDITIONS, WHETHER EXPRESS OR IMPLIED, OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. No advice or information, whether oral or written, obtained from any of the Grayboard Entities or through the Products, will create any warranty not expressly made herein.

### B. HIPAA Disclaimer

Grayboard does not warrant or provide any assurances that your use of the Products will comply with the Health Insurance Portability and Accountability Act of 1996, as amended (“HIPAA”). If you are a health care provider, health plan, insurer, health care information clearinghouse or other entity that may be considered a “covered entity” under HIPAA or a “business associate” of a “covered entity” under HIPAA, you shall take all steps necessary to comply with HIPAA and shall be responsible for any applicable compliance with HIPAA. You agree, that you will not provide Grayboard with any protected health information (as that term is defined under HIPAA) and that Grayboard is therefore not deemed to be a business associate of Client for purposes of compliance with HIPAA.

### C. Links

The Products may contain links to third-party websites or resources. You acknowledge and agree that the Grayboard Entities are not responsible or liable for: (i) the availability or accuracy of such websites or resources; or (ii) the content, products, or services on or available from such websites or resources. Links to such websites or resources do not imply any endorsement by the Grayboard Entities of such websites or resources or the content, products, or services Available from such websites or resources. You acknowledge sole responsibility for and assume all risk arising from your use of any such websites or resources.

### D. Limitation of Liability

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE GRAYBOARD ENTITIES SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, OR ANY LOSS OF PROFITS OR REVENUES, WHETHER INCURRED DIRECTLY OR INDIRECTLY, OR ANY LOSS OF DATA, USE, GOOD-WILL, OR OTHER INTANGIBLE LOSSES, RESULTING FROM (i) YOUR ACCESS TO OR USE OF OR INABILITY TO ACCESS OR USE THE PRODUCTS; (ii) ANY CONDUCT OR CONTENT OF ANY THIRD PARTY ON, THROUGH, OR ASSOCIATED WITH THE PRODUCTS, INCLUDING WITHOUT LIMITATION, ANY DEFAMATORY, OFFENSIVE OR ILLEGAL CONDUCT OF OTHER USERS OR THIRD PARTIES; (iii) ANY CONTENT OBTAINED FROM THE PRODUCTS; OR (iv) UNAUTHORIZED ACCESS, USE OR ALTERATION OF YOUR TRANSMISSIONS OR CONTENT.

IN NO EVENT SHALL THE AGGREGATE LIABILITY OF THE GRAYBOARD ENTITIES EXCEED THE GREATER OF ONE HUNDRED U.S. DOLLARS (U.S. \$100.00) OR THE AMOUNT YOU PAID GRAYBOARD, IF ANY, IN THE PAST SIX MONTHS FOR THE PRODUCTS GIVING RISE TO THE CLAIM.

THE LIMITATIONS OF THIS SUBSECTION SHALL APPLY TO ANY THEORY OF LIABILITY, WHETHER BASED ON WARRANTY, CONTRACT, STATUTE, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, AND WHETHER OR NOT THE GRAYBOARD ENTITIES HAVE BEEN INFORMED OF THE POSSIBILITY OF ANY SUCH DAMAGE, AND EVEN IF A REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

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## **11. General terms**

### **A. Waiver and Severability**

The failure of Grayboard to enforce any right or provision of these Terms will not be deemed a waiver of such right or provision. In the event that any provision of these Terms is held to be invalid or unenforceable, then that provision will be limited or eliminated to the minimum extent necessary, and the remaining provisions of these Terms will remain in full force and effect.

### **B. Governing Law**

These Terms and any action related thereto will be governed by the laws of the Commonwealth of Massachusetts without regard to or application of its conflict of law provisions or your state or country of residence. All claims, legal proceedings, or litigation arising in connection with the Products will be brought solely in the federal or state courts located in Springfield, Massachusetts, United States, and you consent to the jurisdiction of and venue in such courts and waive any objection as to inconvenient forum.

### **C. U.S. Government Users and U.S. Government Restricted Rights**

Certain of the components that comprise the Products are “commercial items” as that term is defined at 48 C.F.R. 2.101, consisting of “commercial computer software” and/or “commercial computer software documentation” as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government end users acquire the Software with only those rights set forth herein.

The Products, any Mobile Software and all upgrades to the foregoing (if any) are provided with restricted rights. Use, duplication, or disclosure by the U.S. Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs (c)(1) and (2) of the Commercial Computer Software-Restricted Rights at 48 CFR 52.227-19, as applicable.

Contractor/manufacture is Grayboard LLC., 67 Cold Hill Road, Granby, MA 01033. All rights not specifically granted in this Agreement are reserved by Grayboard.

### **D. Entire Agreement**

These Terms and our **Privacy Policy** are the entire and exclusive agreement between Grayboard and you regarding the Products, and these Terms supersede and replace any prior agreements between Grayboard and you regarding the Products. Other than members of the group of companies of which Grayboard Inc. is the parent, no other person or company will be third party beneficiaries to the Terms.

Notwithstanding the foregoing, nothing in these Terms supersedes or limits your rights under (1) the terms and conditions of any written agreement you have entered into with Grayboard regarding the use of Products, or (2) applicable laws or regulations to the extent these Terms are prohibited by such laws or regulations. In the event of any conflict between these Terms and the terms and conditions of an applicable written agreement you have entered into with Grayboard, the terms and conditions of the written agreement shall control.

We may revise these Terms from time-to-time, the most current version will always be at the referenced link. If the revision, in our sole discretion, is material we will notify you through the Products or through the email associated with your profile. By continuing to access or use the Products after those revisions become effective, you agree to be bound by the revised Terms.

These Products are operated and provided by Grayboard:

Grayboard LLC., 67 Cold Hill Road, Granby, MA 01033USA.

If you have any questions about these Terms, please email: [GeneralCounsel@Grayboard.com](mailto:GeneralCounsel@Grayboard.com).

**Effective: January 18, 2017**