

## RESPONDUS MONITOR STUDENT TERMS OF USE

**Last Updated:** May 26, 2023

These Terms of Use (“Terms”), which incorporate the Respondus Help Center Terms of Use (“Help Center Terms”) included at the end of these Terms, are an agreement between you and Respondus, Inc. (“Respondus”), and between you and your instructor, (your “Instructor”), regarding your use of Respondus Monitor®. By using Respondus Monitor, you agree to these Terms in full and that you are age 14 or older, or age 16 or older in the EEA, and if under the age of 18 and located in the United States of America, such Terms have been agreed to by your parent or guardian.

NOTE: THESE TERMS CONTAIN AN ARBITRATION AND CLASS ACTION WAIVER PROVISION IN THE “ARBITRATION” SECTION BELOW THAT AFFECTS YOUR RIGHTS UNDER THESE TERMS AND WITH RESPECT TO ANY DISPUTE BETWEEN YOU AND RESPONDUS OR OUR AFFILIATES. BY USING RESPONDUS MONITOR, YOU ACKNOWLEDGE THAT YOU HAVE READ AND REVIEWED THESE TERMS IN THEIR ENTIRETY, YOU AGREE TO THESE TERMS, AND THESE TERMS CONSTITUTE BINDING AND ENFORCEABLE OBLIGATIONS ON YOU.

Respondus Monitor is a cloud-based service (“Respondus Monitor Services”) and software (“Respondus Monitor Software”) (also collectively referred to in these Terms as “Respondus Monitor”), that work together to provide a video/audio recording service, and associated data analysis of student activity captured during student assessment sessions for use in monitoring students. The purpose of such monitoring is for your Instructor to be confident that the identified individuals / students are those permitted to participate in the testing or assessment sessions, and to deter inappropriate behavior that might impact the integrity of the assessment process.

The Respondus Help Center includes software functions as a part of the Respondus Monitor Services (“Help Services”) provided by Respondus that enable users of LockDown Browser (another software solution provided by Respondus) and Respondus Monitor to troubleshoot technical issues. The Help Services may include, for example, a webcam check, system check, the ability to report an issue to Respondus, and links to knowledge base materials and technical support.

### 1. REQUIREMENTS OF YOUR INSTRUCTOR

Your Instructor is requiring its students to use Respondus Monitor for certain, or all, courses. In order to use Respondus Monitor, you must agree to these Terms in full.

a. HOW “RESPONDUS MONITOR” WILL BE USED. The use of Respondus Monitor will require individual student activity to be recorded, both audibly and visually, during certain assessment sessions, which may include a recording of you taking your exam and a recording of your computer screen during the exam. Other data related to individual student activity during assessment sessions may also be recorded by Respondus Monitor, such as, for example, without limitation, time taken by a student to answer specific questions on an assessment. The recordings are controlled by your Instructor and will be processed by an agent of your Instructor, namely, Respondus, through its Respondus Monitor Services. Respondus Monitor may analyze the recordings through automated processes to generate additional data derived from the recordings, with the additional data being associated with individual students for use by your Instructor in evaluating the recordings. This additional information includes the creation of a temporary template of facial features during automated processing, and such template is used either by the server executing the Respondus Monitor software or by the automated processing occurring on your computer to determine

whether the student who started the exam differs from the person in the video frame throughout the duration of the exam. The template is not saved on your computer or to the cloud server's database or storage and is cleared from your computer or the server's memory by Respondus Monitor after the processing is complete, which occurs immediately after exam completion on your computer and no later than two (2) days after the completion of the exam if on the server. The additional data, as well as the original recordings, may be evaluated by agents of your Instructor, to review, assess, and analyze student performance and conduct, among other things, for the purpose of improving educational processes for students, including investigating student conduct violations. Your Instructor works with Respondus to help ensure your privacy regarding the recordings and to comply with applicable laws and regulations as to any information or data (including any of the video or audio recordings). See the sections below "PRIVACY" and "PRIVACY AND SECURITY POLICY". The complete Respondus Privacy Policy is available at [www.respondus.com/privacy](http://www.respondus.com/privacy), and we recommend that you review it carefully.

b. **ACTIVITY GENERAL.** You are responsible for your conduct and activities arising during use of Respondus Monitor and for any information or data you provide to or through Respondus Monitor. If your institution or instructor permits you to use Respondus Monitor at a non-university location, you agree to select a location that adheres to all university policies and guidelines. If the location you choose is your home or personal area, you agree to allow your activity and surrounding workspace area to be recorded by video and audio and to be analyzed by the Respondus Monitor system. Neither Respondus nor your Instructor is responsible for, nor liable for, any mistakes, inaccuracies, lack of usefulness, defamation, omissions, falsehood, obscenity or otherwise offensive material in any of the information or data provided to Respondus Monitor by users. You also understand that your Instructor does not, and has no obligation to, monitor, pre-screen nor pre-approve information or data, but that your Instructor shall nonetheless have the right (but not the obligation) in its sole discretion, to refuse, delete or move any information or data that is available via Respondus Monitor, for any reason, including a violation of any of these Terms.

c. **WARRANTIES YOU PROVIDE TO YOUR INSTRUCTOR.** You warrant and represent to your Instructor that you are not infringing the intellectual property rights of others whenever you provide information or data on or through Respondus Monitor. You also agree that your Instructor is not responsible for protecting any intellectual property rights you, or another party, may assert in any information or data you provide to Respondus Monitor.

d. **OPT-OUT.** If you cease to agree with these Terms, or the privacy and security policy below at some point in the future, you may opt-out by contacting your Instructor. However, opting-out may affect how you will need to complete your course, and your Instructor makes no representations regarding how it will affect your relevant course or any ramifications from opt-out (e.g., you may not be able to complete the requirements of such course). As such, we encourage you to speak with your instructor before opting out.

e. **DISCLAIMERS.** Your Instructor disclaims responsibility or liability for the accuracy, content, completeness, legality, reliability, operability or availability of information or data in the Respondus Monitor Service or Software. Your Instructor further disclaims any responsibility for the deletion, failure to store, mis-delivery, or untimely delivery of any information or data. Your Instructor disclaims any responsibility for any harm resulting from downloading or accessing any information or data through Respondus Monitor. You will bear all risk associated with any information or data you access. Your access or use of any information or data provided by Respondus Monitor or third parties is conditioned on your agreement to these Terms including these disclaimer provisions. Further disclaimers applicable to your relationship with your Instructor, as well as with Respondus, are set forth below in the **DISCLAIMER** section under **REQUIREMENTS OF RESPONDUS AND LICENSE PROVIDED BY RESPONDUS**.

f. **PRIVACY.** The section below entitled **PRIVACY & SECURITY POLICY**, in conjunction with the full Respondus Privacy Policy available at [www.respondus.com/privacy](http://www.respondus.com/privacy), shall govern the privacy policy with respect to Respondus Monitor. You agree with all reservations of right(s), disclaimers of liability, promises, and acknowledgements governing your relationship with Respondus under the **PRIVACY & SECURITY POLICY** and the full Respondus Privacy Policy available at [www.respondus.com/privacy](http://www.respondus.com/privacy). As controller of the data, your Instructor reserves the right at all times to disclose any information or data (including recordings and any content to the extent applicable) pertaining to you or any other user, as necessary, to comply with the law, a regulation or a governmental request.

g. **MISCELLANEOUS.** All legal issues arising from or related to the use of Respondus Monitor between you and your Instructor shall be construed in accordance with the laws of the state in which your Instructor resides, or if your Instructor resides in more than one state, the state in which you attend your Instructor, or the state in which the branch of your Instructor resides with which you correspond. By using Respondus Monitor and thus agreeing to these Terms, you consent to personal jurisdiction and venue in the state and federal courts located in and serving the county in which your Instructor resides, or if your Instructor resides in more than one county, the county in which you attend your Instructor, or the county in which the branch of your Instructor resides with which you correspond. Your Instructor may terminate your use of Respondus Monitor if you violate these Terms, and will terminate your use if you use Respondus Monitor to infringe on the intellectual property rights of others. If your Instructor should fail to enforce any right or provision in these Terms, this failure shall not constitute a waiver of such right or provision or of any other rights or provisions in these Terms. If a court or trier of fact should find that one or more rights or provisions set forth in these Terms are invalid, you agree that the remainder of the right or provisions shall be enforceable and that, to the extent permitted by law, the court shall give effect to the parties' intentions, as reflected in any such right or provision that has been declared invalid or unenforceable. If you do not agree to the Terms, you will not be permitted to use Respondus Monitor. Any term that would naturally survive termination of these Terms shall survive, such as, for example, the disclaimers, limitations on liabilities, and any warranties you provide herein, and this miscellaneous section.

h. Your Instructor may terminate your access to Respondus Monitor at any time, if there is a violation of these Terms.

## **2. LICENSE REQUIREMENTS PROVIDED BY RESPONDUS**

To the extent any terms below conflict with any terms under the **REQUIREMENTS OF YOUR INSTRUCTOR** above, the terms above shall govern with respect to your relationship with your Instructor and the terms below shall govern with respect to your relationship with Respondus.

In addition, you acknowledge and understand that certain actions set forth in these Terms, which may be taken by Respondus (as outlined below), shall be taken at the direction of your Instructor with Respondus acting as an agent of your Instructor.

a. **LICENSE GRANT AND ONLINE USE.** If you accept these Terms and pay the required license fees to Respondus (if required by your Instructor or Respondus, at its discretion, as set forth below in the Section entitled **FEES**), you are granted a limited, non-exclusive, non-transferable, non-assignable license to use Respondus Monitor subject to the conditions of these Terms. You may not modify, distribute, sell, or sublicense any part of Respondus Monitor. You may not reverse engineer or attempt to extract the source code of Respondus Monitor, unless laws prohibit those restrictions or you have written permission from Respondus. Respondus Monitor is licensed to you, not sold or transferred to you. You agree that you may not use Respondus Monitor in any way that conflicts with or violates these Terms or other agreements between you and any third-party, including the learning system or learning management system (hereinafter "Learning System") through which you are accessing the Respondus Monitor Services.

b. FEES. The license grant to use Respondus Monitor is separate from the license grant to use Respondus' LockDown Browser solution. If you are initiating Respondus Monitor for demonstration purposes only, you will not be charged. Also, Respondus may grant you a temporary license free-of-charge to use Respondus Monitor, at its sole discretion (such as, for example, for beta testing or pilot program purposes), but such free license grant may be terminated at any time by Respondus at its sole discretion.

c. PRIVACY & SECURITY POLICY. Respondus cares about your privacy and the security of your personal data. The Respondus Privacy Policy is available at [www.respondus.com/privacy](http://www.respondus.com/privacy), and we recommend that you review it carefully. The information below summarizes important aspects of the security used with Respondus Monitor and how we process your personal data.

Respondus Monitor uses the following methods to limit access to personal information or data (e.g., student recordings or other personal information):

- Respondus Monitor uses industry standard encryption to transfer information.
- Student identifiable information including name, grade, course name, and photos that show identification cards can only be accessed through the Learning System's architecture (e.g., LTI).
- Only users with instructor credentials for the Learning System (e.g., instructors, teaching assistants, system administrators) are able to view video sessions in conjunction with student identifiable information.

Video URLs are "one-time use" and will not function if copied. Respondus uses independent, third-party security firms to perform penetration testing and other vulnerability scans of the Respondus Monitor system. This includes a review of the Respondus Monitor architecture and the testing for vulnerabilities and exploits. Unfortunately, no data transmission over the Internet is 100% secure, and Respondus does not warrant nor guarantee the security of any information collected using its services. By agreeing to these Terms, you agree to use Respondus Monitor at your own risk, and agree that Respondus shall not be liable if a security breach occurs, if the site malfunctions, or if information is misused or mismanaged in any way to your detriment or the detriment of a student or third party, whether by Respondus, your instructor, or an unauthorized third party.

The use of Respondus Monitor will require individual student activity to be recorded, both audibly and visually, during certain assessment sessions, which may include a recording of you taking your exam and a recording of your computer screen during the exam. If you are using Respondus Monitor at your home or in a personal area, you agree to allow your activity and surrounding workspace area to be recorded by video and audio and then to be analyzed by the Respondus Monitor system. Other data related to individual student activity during assessment sessions may also be recorded by Respondus Monitor, such as, for example, without limitation, time taken by a student to answer specific questions on an assessment. The recordings are controlled by your Instructor and will be processed by an agent of your Instructor, namely, Respondus, through its Respondus Monitor Services. Respondus Monitor may analyze the recordings through automated processes to generate additional data derived from the recordings, with the additional data being associated with individual students for use by your Instructor in evaluating the recordings. This additional information includes the creation of a temporary template of facial identifiers during automated processing, and such template is used either in the temporary memory of the server executing the Respondus Monitor software or by the automated processing occurring on your computer to determine whether the student who started the exam differs from the person currently in the video frame being processed by the Respondus Monitor Service. The template is not saved on your computer or to the cloud server's database or storage and is cleared from your computer or the server's memory by Respondus Monitor after the processing is complete, which occurs immediately after the exam on your computer and no later than two

(2) days after the completion of the exam if on the server. The additional data, as well as the original recordings, may be evaluated by agents of your Instructor, to review, assess, and analyze student performance and conduct, and investigate alleged student conduct violations. Your Instructor works with Respondus to help ensure your privacy regarding the recordings and to comply with applicable laws and regulations as to any information or data (including any of the video or audio recordings). Respondus personnel do not review/analyze the recordings except as may be required to resolve technical problems, improve system performance, modify Respondus Monitor, investigate violations of these Terms, or as may be directed by your Instructor or applicable law enforcement.

Each student that is recorded will have a unique username or identification code (“ID”) and password through your Learning System. The ID and password will be usable by you, at the discretion of your Instructor, to allow you to transmit recordings and data to the online component of Respondus Monitor if required by your Instructor as part of an assessment activity. Instructors, administrators and other agents of your Instructor, may access those recordings and data related to you through Respondus Monitor. You must guard your password and not share it with anyone to help ensure your security and privacy of your data.

Random samples of video and/or audio recordings may be collected via Respondus Monitor and used by Respondus to improve the Respondus Monitor capabilities for instructors and students. The recordings may be shared with researchers under contract with Respondus to assist in such research. The researchers are consultants or contractors to Respondus and are under written obligation to maintain the video and/or audio recordings in confidence and under terms at least as strict as these Terms. The written agreements with the researchers also expressly limit their access and use of the data to work being done for Respondus and the researchers do not have the right to use the data for any other purposes. No personally identifiable information for students is provided with the video and/or audio recordings to researchers, such as the student’s name, course name, instructor, grades, or student identification photos submitted as part of the Respondus Monitor exam session. Other than the purposes identified above, Respondus will not share recordings or personally identifying information of any particular student (collectively, also referred to herein as “personal information or data”) with third parties (third parties do not include the student who provided the personal information, the parent/guardian of a student under the age of 18 who provided personal information, or the instructor who authorized access by the student to Respondus Monitor Services) unless specifically required by Instructor. For example, if Instructor uses third parties to manage student personal information (e.g., Instructor agents), the Instructor may direct Respondus to share the personal information with that third party under the Instructor’s direction and control.

If, in the future, Respondus, or substantially all of its assets are acquired, the maintenance of all collected personal information or data (including any recordings) may be transferred to the acquiring party, provided that the acquiring party implement a privacy and security policy at least as restrictive as this one, or otherwise compliant with current legal standards, and provided that the collected personal information and data remain under the control of your Instructor.

Respondus reserves the right at all times to disclose any information or data (including recordings and any content to the extent applicable) stored by you, your Instructor, or any other user as necessary, to comply with the law, a regulation or a governmental request, or to edit or delete any information or data, in whole or in part, that in Respondus’ sole discretion, is in violation of these Terms.

If you have any questions regarding the above Terms, please contact Respondus by email at or by writing to: Respondus, Inc., Attn: Legal – Privacy Team, 8201 164th Ave NE, Suite 200 Redmond, WA 98052 USA, Via email: [privacy@Respondus.com](mailto:privacy@Respondus.com).

d. **USER CONDUCT.** You promise NOT to use Respondus Monitor for any of the following purposes or activities:

- i. conducting or supporting illegal activity of any type whatsoever;
- ii. transmitting or storing worms or viruses or any code of a destructive nature;
- iii. threatening, harassing, abusing, impersonating, injuring or intimidating others;
- iv. engaging in vulgar, invasive, or hateful conduct, or conduct that invades another's privacy;
- v. interfering with others' use of Respondus Monitor, unless such interference is for the purpose of complying with another section of these Terms;
- vi. delivering spam or collecting information to deliver spam, or sending unsolicited advertisements;
- vii. decompiling, disassembling, reverse engineering or otherwise attempting to discover any source code contained in Respondus Monitor;
- viii. disguising the origin of any content transmitted through Respondus Monitor or manipulating your presence on Respondus Monitor; and/or
- ix. causing the launch of any automated system(s) that access Respondus Monitor in a manner that sends more request messages to servers of Respondus in a given period of time than a human can reasonably produce in the same period by using a conventional on-line web browser.

e. **RESPONDUS USERNAME/ID AND PASSWORD POLICY.** You must guard the access credentials (e.g., user name and password) that you use to access your Instructor's learning system to help ensure your own privacy and security with respect to recordings you initiate using Respondus Monitor, and not share those credentials with others.

f. **ACTIVITY GENERAL.** You are responsible for your conduct and activities arising during use of Respondus Monitor and for any information or data you provide to or through Respondus Monitor. You agree that Respondus is not responsible for, nor liable for, any mistakes, inaccuracies, lack of usefulness, defamation, omissions, falsehood, obscenity or otherwise offensive material in any of the information or data provided to Respondus by users. You also understand that Respondus does not, and has no obligation to, monitor, pre-screen nor pre-approve information or data, but that Respondus shall nonetheless have the right (but not the obligation) in its sole discretion, to refuse, delete or move any information or data that is available via Respondus Monitor, for any reason, including a violation of any of these Terms (however, if Respondus elects to, for any reason, refuse, delete or move any recording of student activity for violation of these Terms, Respondus may save a copy of such recording for access by the Instructor).

g. **LICENSE PROVIDED TO RESPONDUS.** Respondus Monitor will save all recordings of students for a period of two (2) years. Notwithstanding the foregoing, as explained above, the template of facial features is not saved to the cloud server's database or storage and is cleared from the server's memory by Respondus Monitor after the processing is complete. Respondus does not claim ownership in the information or data Instructor or any students provide; however, by providing information or data to Respondus, you grant Respondus, and its affiliates, a fully paid-up, perpetual license to use, store, modify, copy, and transmit any such information or data for the purpose of carrying out the Respondus Monitor Services in accordance with these Terms.

h. **CHANGES.** Except as provided in the Arbitration Agreement below, Respondus reserves the right to change these Terms at any time, at its discretion, without advance notice to you, but by posting the new version of these Terms within the Respondus Monitor Software. Respondus also reserves the right to terminate Respondus Monitor at any time after the end of your current license, without notice; however, if your license is a free license, Respondus reserves the right to terminate your license at any time without notice. If your Instructor terminates use of Respondus Monitor during your current license, such that you no longer require use of Respondus Monitor, no refunds will be due or available.

i. **WARRANTIES YOU PROVIDE.** You warrant and represent during the term of this agreement to Respondus that you are not infringing the intellectual property rights of others whenever you provide information or data on or through Respondus Monitor. You also agree that Respondus is not responsible for protecting any intellectual property rights you, or another party, may assert in any information or data you provide to Respondus Monitor.

j. **OPT-OUT.** If you cease to agree with these Terms, or the privacy and security policy at some point in the future, you may opt-out by contacting your Instructor. However, opting-out may affect how you will need to complete your course, and Respondus makes no representations regarding how it will affect your relevant course or resulting grade. As such, we encourage you to speak with your instructor before opting out. Additionally, you cannot opt-out of the Arbitration Agreement if you elect to use Respondus Monitor. Respondus also cannot opt-out of the Arbitration Agreement.

k. **DISCLAIMERS.** Respondus disclaims responsibility or liability for the accuracy, content, completeness, legality, reliability, operability or availability of information or data in Respondus Monitor. Respondus further disclaims any responsibility for the deletion, failure to store, mis-delivery, or untimely delivery of any information or data. Respondus disclaims any responsibility for any harm resulting from downloading or accessing any information or data through Respondus Monitor. You will bear all risk associated with any information or data you access. Your access or use of any information or data provided by Respondus Monitor or third parties in connection with Respondus Monitor is conditioned on your agreement to these Terms including these disclaimer provisions.

RESPONDUS MONITOR IS PROVIDED TO YOU, "AS IS," WITH NO WARRANTIES WHATSOEVER. ALL EXPRESS, IMPLIED, AND STATUTORY WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT, ARE EXPRESSLY DISCLAIMED. TO THE FULLEST EXTENT PERMITTED BY LAW, RESPONDUS DISCLAIMS ANY WARRANTIES FOR THE SECURITY, RELIABILITY, TIMELINESS, AND PERFORMANCE OF RESPONDUS MONITOR. RESPONDUS SIMILARLY DISCLAIMS, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY WARRANTIES FOR ANY INFORMATION OR ADVICE OBTAINED THROUGH RESPONDUS MONITOR.

YOU UNDERSTAND AND AGREE THAT ANY INFORMATION OR DATA DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF RESPONDUS MONITOR IS OBTAINED AT YOUR OWN DISCRETION AND RISK AND THAT YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGES TO YOUR COMPUTER SYSTEM OR LOSS OF DATA THAT MAY RESULT IN THE DOWNLOAD OF SUCH INFORMATION OR DATA. UNDER NO CIRCUMSTANCES SHALL RESPONDUS BE LIABLE TO ANY USER ON ACCOUNT OF THAT USER'S USE OR MISUSE OF AND RELIANCE ON RESPONDUS MONITOR. SUCH LIMITATION OF LIABILITY SHALL APPLY TO PREVENT RECOVERY OF DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, AND PUNITIVE DAMAGES (EVEN IF RESPONDUS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES). SUCH LIMITATION OF LIABILITY SHALL APPLY WHETHER THE DAMAGES ARISE FROM USE OR MISUSE OF AND RELIANCE ON RESPONDUS MONITOR, FROM INABILITY TO USE RESPONDUS MONITOR, OR FROM THE INTERRUPTION, SUSPENSION, OR TERMINATION OF RESPONDUS MONITOR OR BY REASON OF ANY INFORMATION OR ADVICE RECEIVED THROUGH RESPONDUS MONITOR. THE FOREGOING DISCLAIMERS, WAIVERS AND LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

l. **INTELLECTUAL PROPERTY.** All web design, text, graphics, the selection and arrangement thereof, and all software compilations, underlying source code, software and all other material

on Respondus Monitor are either the copyright or trademark of Respondus, or covered by other intellectual property rights of Respondus or a third party licensor of Respondus. Any use of Respondus Monitor beyond the purpose indicated above is strictly prohibited. You shall not acquire any rights in Respondus' intellectual property by using Respondus Monitor.

m. MISCELLANEOUS. Except as otherwise specified in these Terms, all legal issues arising from or related to the use of Respondus Monitor between you and Respondus shall be construed in accordance with the laws of the State of Washington, without regard to conflicts of law principles. Respondus may terminate your use of Respondus Monitor if you violate these Terms, and will terminate your use if you use Respondus Monitor to repeatedly infringe on the intellectual property rights of others. These Terms constitute the entire agreement between the parties with respect to the subject matter contained herein and supersede any other agreements between Respondus and you regarding Respondus Monitor. If Respondus should fail to enforce any right or provision in these Terms, this failure shall not constitute a waiver of such right or provision or of any other rights or provisions in these Terms. If a court should find that one or more rights or provisions set forth in these Terms are invalid, you agree that the remainder of the right or provisions shall be enforceable and that, to the extent permitted by law, the court shall give effect to the parties' intentions, as reflected in any such right or provision that has been declared invalid or unenforceable. If you do not agree to the Terms, you will not be permitted to use this Service. Any term that would naturally survive termination of these Terms shall survive, such as, for example, the DISCLAIMERS, WARRANTIES YOU PROVIDE, and this MISCELLANEOUS section.

### **3. DISPUTES, GOVERNING LAW, VENUE and JURISDICTION**

By using Respondus Monitor, you agree that these Terms shall be governed by the laws of the State of Washington USA without regard to its conflict of law provisions.

For any cause of action initiated against Respondus relating to these Terms, you and Respondus agree to submit to the exclusive and personal jurisdiction of the court system for Redmond, Washington USA.

### **4. ARBITRATION**

Respondus operates in interstate commerce and this Arbitration Agreement is a contract evidencing a transaction involving commerce that is governed by the Federal Arbitration Act ("FAA"), 9 U.S.C. §§ 1 *et seq.* This Agreement contains the rules and procedures that you must follow to resolve any disputes between you and Respondus—please read it carefully. It contains procedures for MANDATORY BINDING ARBITRATION AND A CLASS ACTION WAIVER. You agree that, by agreeing to these Terms of Use, the U.S. Federal Arbitration Act governs the interpretation and enforcement of this provision, and that you and Respondus are each waiving the right to a trial by jury or to participate in a class action.

**Scope of Arbitration Agreement.** You acknowledge and agree that any dispute or claim relating in any way to your access or use of Respondus Monitor or to any other aspect of your relationship with Respondus will be resolved by binding arbitration, rather than in court, except that (1) you may assert claims in small claims court if your claims qualify, so long as the matter remains in such court and advances only on an individual (non-class, non-representative) basis; and (2) you or Respondus may seek equitable relief in court for infringement or other misuse of intellectual property rights (such as trademarks, trade dress, domain names, trade secrets, copyrights, and patents). This Arbitration Agreement shall apply, without limitation, to all claims that arose before this or any prior agreement. **NOW OR IN THE FUTURE, THERE MAY BE LAWSUITS AGAINST RESPONDUS ALLEGING CLASS, COLLECTIVE, AND/OR REPRESENTATIVE CLAIMS. SUCH CLAIMS, IF SUCCESSFUL, COULD RESULT IN SOME MONETARY RECOVERY TO YOU. THE EXISTENCE OF SUCH CLASS, COLLECTIVE, AND/OR REPRESENTATIVE LAWSUITS DOES NOT MEAN THAT SUCH**

**LAWSUITS WILL ULTIMATELY SUCCEED. BUT IF YOU AGREE TO ARBITRATION WITH RESPONDUS, YOU ARE AGREEING IN ADVANCE THAT YOU WILL NOT PARTICIPATE IN OR SEEK TO RECOVER MONETARY OR OTHER RELIEF UNDER SUCH CLASS, COLLECTIVE, AND/OR REPRESENTATIVE LAWSUITS. INSTEAD, BY AGREEING TO ARBITRATION, YOU MAY BRING YOUR CLAIMS AGAINST RESPONDUS IN AN INDIVIDUAL ARBITRATION PROCEEDING. IF SUCCESSFUL ON SUCH CLAIMS, YOU COULD BE AWARDED MONEY OR OTHER RELIEF BY AN ARBITRATOR.**

**Arbitration Rules and Forum.** This Arbitration Agreement is governed by the Federal Arbitration Act in all respects. To begin an arbitration proceeding, you must send a letter requesting arbitration and describing your claim to our registered agent, C T Corporation System, 711 Capitol Way South, Suite 204, Olympia, Washington 98501. The arbitration will be conducted by the American Arbitration Association (“AAA”) under its rules, including the AAA’s Supplementary Procedures for Consumer-Related Disputes. The AAA’s rules are available at [www.adr.org](http://www.adr.org) or by calling the AAA at 1-800-778-7879. Payment of all filing, administration, and arbitration fees will be governed by the AAA’s rules. We will reimburse those fees for claims totaling less than \$10,000 unless the arbitrator determines the claims are frivolous. Likewise, Respondus will not seek attorneys’ fees and costs in arbitration unless the arbitrator determines the claims are frivolous. If the AAA is not available to arbitrate, the parties will select an alternative arbitral forum.

**Arbitrator Powers.** The arbitrator, and not any federal, state, or local court or agency, shall have exclusive authority to resolve any dispute relating to the interpretation, applicability, enforceability or formation of this Arbitration Agreement including, but not limited to any claim that all or any part of this Arbitration Agreement is void or voidable. The arbitration will decide the rights and liabilities, if any, of you and Respondus. The dispute will not be consolidated with any other matters or joined with any other cases or parties. The arbitrator will have the authority to grant motions dispositive of all or part of any claim or dispute. The arbitrator will have the authority to award monetary damages and to grant any non-monetary remedy or relief available to an individual under applicable law, the arbitral forum’s rules, and these Terms. The arbitrator will issue a written award and statement of decision describing the essential findings and conclusions on which the award is based, including the calculation of any damages awarded. The arbitrator has the same authority to award relief on an individual basis that a judge in a court of law would have. The award of the arbitrator is final and binding on you and Respondus.

**Waiver of Jury Trial.** YOU AND RESPONDUS EACH KNOWINGLY AND VOLUNTARILY WAIVE ANY CONSTITUTIONAL AND STATUTORY RIGHTS TO SUE IN COURT AND RECEIVE A JUDGE OR JURY TRIAL. You and Respondus are instead electing to have claims and disputes resolved by arbitration. An arbitrator can award on an individual basis the same damages and relief as a court and must follow these Terms as a court would. However, there is no judge or jury in arbitration, and court review of an arbitration award is limited. In any litigation between you and Respondus over whether to vacate or enforce an arbitration award, you and Respondus waive all rights to a jury trial, and elect instead to have a judge resolve the dispute.

**Waiver of Class or Consolidated Actions.** ALL CLAIMS AND DISPUTES WITHIN THE SCOPE OF THIS ARBITRATION AGREEMENT MUST BE ARBITRATED ON AN INDIVIDUAL BASIS AND NOT ON A CLASS, COLLECTIVE, REPRESENTATIVE, OR AGGREGATE BASIS. CLAIMS OF MORE THAN ONE CUSTOMER OR USER CANNOT BE ARBITRATED OR LITIGATED JOINTLY OR CONSOLIDATED WITH THOSE OF ANY OTHER CUSTOMER OR USER. THE ARBITRATOR MAY NOT CONSOLIDATE PROCEEDINGS ON MORE THAN ONE PERSON’S OR ENTITY’S CLAIMS, AND MAY NOT OTHERWISE AUTHORIZE OR PRESIDE OVER ANY FORM OF A CLASS, COLLECTIVE, REPRESENTATIVE OR AGGREGATE PROCEEDING. Claims of two or more persons or entities may not be joined or consolidated in the same arbitration because the arbitrator may only hear your individual claims and does not have the authority to hear claims on a class, collective,

representative, or aggregate basis, or to award relief to anyone other than you and/or Respondus in a single arbitration. If any provision of this paragraph is determined to be unenforceable with respect to any claim or any particular remedy for a claim, then that claim or particular remedy (and only that claim or remedy) must remain in court and be severed from any arbitration.

**Exclusive Venue.** To the extent the parties are permitted under these Terms to initiate litigation in a court, both you and Respondus agree that all claims and disputes arising out of or relating to the Agreement will be litigated exclusively in the state or federal court system for Redmond, Washington USA.

**YOU SHOULD READ THE PROVISIONS OF THIS AGREEMENT CAREFULLY, AS IT PROVIDES THAT VIRTUALLY ANY DISPUTE RELATED TO RESPONDUS MAY BE RESOLVED ONLY THROUGH BINDING ARBITRATION. ARBITRATION REPLACES THE RIGHT TO GO TO COURT, INCLUDING THE RIGHT TO A JURY TRIAL AND THE RIGHT TO PARTICIPATE IN A CLASS, COLLECTIVE, REPRESENTATIVE, OR AGGREGATE ACTION OR SIMILAR PROCEEDING.**

**YOU ACKNOWLEDGE THAT YOU HAVE RECEIVED AND READ OR HAVE HAD THE OPPORTUNITY TO READ THIS ARBITRATION AGREEMENT. YOU UNDERSTAND THAT THIS ARBITRATION AGREEMENT REQUIRES THAT DISPUTES THAT INVOLVE THE MATTERS SUBJECT TO THE AGREEMENT BE SUBMITTED TO ARBITRATION PURSUANT TO THE ARBITRATION AGREEMENT RATHER THAN TO A JUDGE AND JURY IN COURT.**

**YOU AGREE THAT YOU INTEND TO BE BOUND BY THE AGREEMENT AND SPECIFICALLY THE ARBITRATION PROVISIONS SET FORTH ABOVE.**

## **5. RESPONDUS HELP CENTER TERMS OF USE (“HELP CENTER TERMS”)**

### **Accepting the Terms**

In order to use the Help Services, you must first agree to the terms (“Help Center Terms”) as outlined herein. You may not use the Help Services if you do not accept the Help Center Terms. You can accept the Help Center Terms by: (A) clicking to accept or agree to the Help Center Terms, where this option is made available to you by Respondus in the user interface of the Help Services or other Respondus services; or (B) by otherwise using the Help Services. In any case, you understand and agree that Respondus will treat your use of the Help Services as acceptance of the Help Center Terms.

### **Data Collection**

Respondus collects data to operate effectively and to strive to provide you with the best experience with LockDown Browser and Respondus Monitor. You provide some of this data directly, such as when you contact us for support. Some data is obtained by recording how you interact with LockDown Browser and Respondus Monitor by, for example, receiving error reports or usage data from software running on your device. The data we collect depends on the features you use within the Help Services, and includes the following:

**Webcam & Microphone Check.** The webcam and microphone check streams video and audio from your webcam to the Respondus servers. The video and audio can then be played back by you to ensure the webcam and microphone are working properly. The video and audio recorded during the webcam and microphone check is stored in temporary cache on the Respondus server and is automatically deleted in

about an hour. Persistent storage is not used for these recordings, and Respondus does not provide a way to electronically identify the recordings as being transmitted from a specific user.

**System Check.** The System Check gathers certain information from your computing device, the networking environment, the instructor's Learning System, and the Respondus Monitor server itself.

All data gathered during the System Check is presented to you on your screen, including a unique System Check ID. The System Check does NOT contain username, user ID, or the password used to access the instructor's Learning System.

You have the option to send System Check results by email, and if so, you must enter an email address for the recipient of the email message. If the System Check results are sent by email, log files from software of LockDown Browser are additionally transmitted to a Respondus server. Log files contain details of the interaction between the LockDown Browser and/or Respondus Monitor and the Learning System, from the time you log into the Learning System using LockDown Browser and Respondus Monitor until the session is exited or terminated. Log files are stored locally on your computer in an encrypted format and, if transmitted to Respondus, are sent in encrypted format over HTTPS. Log files do NOT contain user name, user ID, or the password used to access the Learning System.

System Check data and log files may be sent to a Respondus web server or a third-party cloud server for storage and further processing by Respondus. Respondus may use System Check data and log files to assist you with a technical issue. Respondus may also aggregate and analyze the System Check data to, for example, improve the Software or its technical support services. System Check data and log files aren't sold, distributed, or made available to affiliate or third-party businesses. Report An Issue. The Report An Issue feature enables you to provide feedback to Respondus about LockDown Browser and Respondus Monitor. System Check data and log files, as described above, are collected by Respondus during this process. You are informed of this transfer of data each time the Report An Issue feature is used. You may choose, but you are not required, to provide an email address and contact information when using this feature. System Check data, log files, contact information, and feedback you provide may be sent to a Respondus web server or third-party cloud server for storage and further processing by Respondus. No data transmitted to Respondus from the Report An Issue feature will be sold, distributed, or made available to affiliate or third-party businesses.

**Knowledge Base.** A link to a knowledge base is included with the Help Services. No individual data is collected by Respondus during the use of the knowledge base, although Respondus may analyze aggregated usage data of the knowledge base to improve the service.

**Technical Support.** Various Technical Support options are available to you to assist with your use of Respondus Monitor. The Help Services contains a link that enables users to open a support ticket with Respondus. The System Check ID for the most recent System Check is automatically populated in the form used to create a support ticket. Users may also access LiveChat while taking an exam. To use LiveChat or create a support ticket, you must additionally enter your first name and a valid email address through which communication with the Respondus support team will occur. Throughout the support process, information may be gathered about your computer and its functionality in order to better assist you. Additionally, you may, at your own discretion, provide personally identifiable information that will be used by the Respondus support team to analyze the issue and communicate with you. All communication between you and the Respondus team that handles support tickets is stored on a Respondus web server. LiveChat is a third party service that is not owned or operated by Respondus, and any information you provide to LiveChat may be accessible to them and stored on a LiveChat server. Information collected during the support process may be used by Respondus to improve LockDown Browser and/or Respondus Monitor.

**Express Incorporation.** All conditions set forth in these Respondus Monitor Terms, including the RESPONDUS PRIVACY POLICY at [www.respondus.com/privacy](http://www.respondus.com/privacy), and the sections PRIVACY & SECURITY POLICY, USER CONDUCT, RESPONDUS USERNAME/ID AND PASSWORD POLICY, ACTIVITY GENERAL, CHANGES, WARRANTIES YOU PROVIDE, OPT-OUT, DISCLAIMERS, INTELLECTUAL PROPERTY, and MISCELLANEOUS are expressly included in these Help Center Terms to the extent applicable. Respondus will not use data collected via the Help Services in any way that conflicts with the Respondus Monitor Terms of Use. You also expressly agree not to use the Help Services in any way that conflicts with any of the Respondus Monitor Terms of Use, including, for example, the prohibitions set forth in the USER CONDUCT section. Respondus cannot make representations regarding the security of information you transmit through a third party email service provider while using the Help Services; however, to the extent Respondus stores any such information, the storage of such information by Respondus will be compliant with the PRIVACY & SECURITY POLICY and the RESPONDUS PRIVACY POLICY at [www.respondus.com/privacy](http://www.respondus.com/privacy).