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## QUILL TERMS OF SERVICE

### **Introduction and Eligibility**

Empirical Resolutions, Inc. d/b/a Quill owns and operates the Quill website (“Website”) and the Quill web and the Quill educational application programming interface (the “Services”). By accessing the Website or Platform, you agree to be bound by these Terms of Use (“Agreement”). In addition, you represent that you are 18 years of age or older, and are lawfully able to enter into this contract. If you have entered into this Agreement on behalf of your organization, you represent that you have the authority to bind that organization to these Terms of Use. You further represent that you have the right to upload all data provided to Quill through the Services on behalf of yourself and, where applicable, your students (collectively, “End Users”).

If you do not have the necessary authority, or if you do not agree with these Terms of Use, then you may not use the Website or Services.

Use of certain features of the Services requires that you (“Customer”) will have entered into a separate contract with us (the “Contract”). In the event of any discrepancy between these Terms of Use and the Contract, the Contract will prevail.

### **Services**

Subject to the terms and conditions of this Agreement, and where applicable, a separate contract with you and payment of any relevant fees, we will provide the Services [include brief description of the services].

The Services and Website, including the contents, are intended for your personal, noncommercial use.

We may, in our sole discretion and without prior notice, modify the Services or Website, remove or alter functionality, or cease provision of the Services or Website at any time.

### **Intellectual Property**

You acknowledge that all Services and Website, trademarks, service marks and logos are owned by or licensed to Quill and are protected by copyright and other intellectual property rights, and that you have no rights to transfer or reproduce the Services, Website or prepare any derivative works with respect to, or to disclose confidential information pertaining to, the Services or Website. Under no circumstances will you be deemed to receive title to any portion of any Services or Website, title to which at all times will vest exclusively in Quill.

You are responsible for using the Services and Website in accordance with this Agreement, and for all activity that occurs under your account. You shall (i) maintain the confidentiality of your user name and password; (ii) notify Quill if you know or suspect a security breach of our Services; and (iii) use the Services in compliance with all applicable laws. You are solely responsible for all activities conducted using your access credentials to the Services. You represent and warrant that information provided to establish your account is true and accurate and that you will promptly update that information in the event of any change.

You grant us a non-exclusive, world-wide license to use the documents, information, graphics, data, content, and other materials uploaded by you to the Services and Website (the "Content") solely for purposes of furnishing the Services and Website to you. You are solely responsible for obtaining all rights, permissions, and authorizations to provide the Content to us for use as contemplated under this Section. Except for the license granted in this Section, nothing contained in this Agreement will be construed as granting Quill any right, title, or interest in your Content.

You will not (and will not allow any third party to): (i) permit any third party to access and use the Services or Website; (ii) decompile, disassemble, or reverse engineer the Services or Website, except to the extent expressly authorized under the law; (iii) use the Services or Website or any of our confidential information to develop a competing product or service; (iv) impersonate another user of the Services or Website or provide false information to gain access to the Services or Website; (v) view or attempt to view records of another user; or (vi) use automated systems (e.g., robots, spiders, etc.) to access the Services or Website.

#### **Use of the Services and Website**

You may not use the Services or Website to:

- (a) Upload, post, e-mail or otherwise transmit any Content that is unlawful, harmful, threatening, intimidating, abusive, harassing, tortuous, defamatory, derogatory, vulgar, obscene, libelous, invasive of another's privacy, disrespectful, hateful, or racially, ethnically or otherwise objectionable;
- (b) Forge headers or otherwise manipulate identifiers in order to disguise the origin of any Content transmitted through the Website or Services;
- (c) Upload, post, e-mail or otherwise transmit any Content that you do not have the right to transmit under any law or under contractual or fiduciary relationships;
- (d) Upload, post, e-mail or otherwise transmit any Content that infringes any patent, trademark, trade secret, copyright or other proprietary rights of any party;
- (e) Upload, post, e-mail or otherwise transmit any material that contains software viruses or worms or any other computer code, files or programs designed to disable, interrupt, destroy, redirect, monitor another user's usage, limit or otherwise inhibit the functionality of any computer software or hardware or telecommunications equipment; account
- (f) Use racially or ethnically offensive language; discuss or incite illegal activity; use explicit/obscene language or solicit/post sexually explicit images;
- (g) Interfere with or disrupt the Website, Services or servers or networks connected to the Website or Services, or disobey any requirements, procedures, policies or regulations of networks connected to the Website or Services; or
- (h) Intentionally or unintentionally violate any applicable local, state, national or international law or regulation.

## **Privacy**

We are committed to maintaining your privacy, and maintaining a Privacy Policy, which may be viewed at <https://www.quill.org/privacy>. All data you provide to us is subject to the terms maintained in the Privacy Policy.

### **Family Educational Rights and Privacy Act (FERPA)**

In the event that you are a school or district subject to the Family Educational Rights and Privacy Act ("FERPA"), you agree to appoint Quill as a "school official" as that term is defined in FERPA and as interpreted by the Family Policy Compliance Office, and determine that Quill has a "legitimate educational interest" for the purpose of delivering the Services under this Agreement and any Contract, where applicable. Quill agrees that it will be bound by all relevant provisions of FERPA, including operating under your direct control with respect to handling of "personally identifiable information" from "education records," as those terms are defined under FERPA. Quill further agrees that personal information from students will not be disclosed to third parties except as required to provide Services to you under this Agreement and any applicable Contract.

### **Children's Online Privacy Protection Act (COPPA)**

Children under the age of 13 are not permitted to access the Services without prior verifiable permission from their education institution for school accounts or from the parent or legal guardian. Teachers in the United States agree to act as the parent's agent, and provide consent on their behalf to use Quill.org solely in the educational context as provided by the FTC.

## **Feedback**

You may choose to provide us with suggestions, comments or other feedback (collectively, "Feedback") regarding our products and services, including the Services and Website. We may use Feedback for any purpose without obligation of any kind in connection with our business, including the enhancement of the Services and Website.

## **Links**

The Website may contain links allowing you to leave the Website for other sites that are not under our control. Any such links are provided for your convenience, and inclusion of links on the Website does not suggest an endorsement. We are not responsible for the contents or transmission of any linked site or for ensuring that the linked sites are error and virus free. Linked sites are subject to their own terms of use and privacy policies, and we encourage you to read them.

## **Fees**

If you elect Services for which a charge is imposed ("Premium Features", you are obligated to pay those fees. If you order such Premium Features, you agree to pay the then-current applicable fee listed on the Website or otherwise agreed to in writing. We will automatically charge your payment method submitted when you order the Premium Features. All payments are non-refundable. You authorize Quill to bill your payment method as describe above. Fees are exclusive of all taxes, levies, or duties imposed by taxing authorities, and you are responsible for payment of all such taxes, levies, or duties. If any fee cannot be charged to the payment method for any reason, we may provide you, via email, notice of such non-payment and provide you with a link to update your payment information. If such non-payment is not remedied within seven (7) days after receiving such notice of non-payment, we may suspend the applicable Premium Features.

## **Indemnification**

You will defend and indemnify Quill and hold it and its affiliates, officers, directors, employees, agents, vendors, and licensors harmless from any and all claims, actions, proceedings, losses, deficiencies, damages, liabilities, costs, and expenses (including but not limited to reasonable attorneys' fees and all related costs and expenses) incurred by them as a result of any claim, judgment, or adjudication related to or arising from any or all of the following: (i) your use of the Services or Website; or (ii) breach of any of your obligations, representations, or warranties in this Agreement.

## **Suspension of Services and Removal of Content**

We may, in our sole discretion, suspend your access to the Services or remove any Content from the Services or Website for any of the following reasons: (i) to prevent damages to, or degradation of, the Services; (ii) to comply with any law, regulation, court order, or other governmental request; and (iii) to otherwise protect us from potential legal liability. We will restore access to the Services as soon as the event giving rise to suspension has been resolved. This Section will not be construed as imposing any obligation or duty on us to monitor use of the Services or Website.

## **Liability**

### **DISCLAIMER OF WARRANTIES**

THIS DISCLAIMER OF WARRANTY SECTION DOES NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

THE SERVICES AND WEBSITE ARE PROVIDED "AS IS" AND "AS-AVAILABLE," WITH ALL FAULTS, AND WITHOUT WARRANTY OF ANY KIND. QUILL IS NOT OFFERING THE SERVICES OR WEBSITE, IN WHOLE OR IN PART, FOR SALE TO YOU. THESE TERMS ARE NOT A CONTRACT FOR SALE, AND THIS WEBSITE IS NOT A "GOOD" WITHIN THE MEANING OF THE UNIFORM COMMERCIAL CODE. INSTEAD, THIS WEBSITE IS PROVIDED FOR FREE. QUILL AND ITS VENDORS AND LICENSORS DISCLAIM ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT, QUALITY OF INFORMATION, OR TITLE/NON-INFRINGEMENT, AND ALL SUCH WARRANTIES ARE HEREBY SPECIFICALLY DISCLAIMED. YOU EXPRESSLY AGREE AND ACKNOWLEDGE THAT USE OF THE SERVICES AND WEBSITE ARE AT YOUR SOLE RISK. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY QUILL OR ITS AUTHORIZED REPRESENTATIVES WILL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF QUILL'S OBLIGATIONS HEREUNDER. THE SERVICES MAY BE USED TO ACCESS AND TRANSFER INFORMATION OVER THE INTERNET. YOU ACKNOWLEDGE AND AGREE THAT QUILL AND ITS VENDORS AND LICENSORS DO NOT OPERATE OR CONTROL THE INTERNET AND THAT: (I) VIRUSES, WORMS, TROJAN HORSES, OR OTHER UNDESIRABLE DATA OR SOFTWARE; OR (II) UNAUTHORIZED USERS (E.G., HACKERS) MAY ATTEMPT TO OBTAIN ACCESS TO AND DAMAGE THE CONTENT, WEB SITES, COMPUTERS, OR NETWORKS. WE WILL NOT BE RESPONSIBLE FOR THOSE ACTIVITIES.

With respect to the Website, you agree that our sole obligation to you is to provide the Website as-is.

### **LIMITATION OF LIABILITY AND DAMAGES**

THIS LIMITATION ON LIABILITY SECTION DOES NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

NEITHER QUILL NOR ITS VENDORS AND LICENSORS WILL HAVE ANY LIABILITY TO YOU OR ANY THIRD PARTY FOR ANY LOSS OF PROFITS, BUSINESS, DATA, OR OTHER INCIDENTAL, CONSEQUENTIAL, OR SPECIAL LOSS OR DAMAGE, INCLUDING EXEMPLARY AND PUNITIVE, OF ANY KIND OR NATURE

RESULTING FROM OR ARISING OUT OF THIS AGREEMENT, INCLUDING USE OF THE SERVICES AND WEBSITE, EVEN IF QUILL HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE TOTAL LIABILITY OF QUILL AND ITS VENDORS AND LICENSORS TO YOU OR ANY THIRD PARTY ARISING OUT OF THIS AGREEMENT OR USE OF THE SERVICES OR WEBSITE IN CONNECTION WITH ANY CLAIM OR TYPE OF DAMAGE (WHETHER IN CONTRACT OR TORT) WILL NOT EXCEED THE TOTAL FEES YOU PAID, IF ANY, DURING THE ONE (1) MONTH IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE LIABILITY. THIS LIMITATION OF LIABILITY WILL APPLY EVEN IF THE EXPRESS WARRANTIES PROVIDED ABOVE FAIL IN THEIR ESSENTIAL PURPOSE.

#### **Governing Law, Venue, and Limitation of Actions**

Quill is controlled and operated by Quill, Inc. from its offices in New York, United States of America. Quill makes no representation that materials on its Website or Services are appropriate for or available for use in other locations. Those who choose to access the Website or Services from other locations are responsible for compliance with local laws, if and to the extent local laws are applicable.

This Agreement will be construed according to, and the rights of the parties will be governed by, the law of the State of New York, without reference to its conflict of laws rules. Any action at law or in equity arising out of or directly or indirectly relating to this Agreement may be instituted only in the Federal or state courts located in New York, NY. You consent and submit to the personal jurisdiction of those courts for the purposes of any action related to this Agreement, and to extra-territorial service of process. You covenant not to sue Quill in any other forum. No action, regardless of form, arising out of this Agreement, may be brought by either party more than one (1) year after the cause of action has arisen.

#### **Assignment**

You may not assign this Agreement without the prior written consent of Quill.

#### **Severability**

If any of the provisions of this Agreement are found or deemed by a court to be invalid or unenforceable, they will be severable from the remainder of this Agreement and will not cause the invalidity or unenforceability of the remainder of this Agreement.

#### **Entire Agreement**

This Agreement, as may be amended from time-to-time by us, constitutes our entire agreement with regard to the Services and Website.

#### **Waiver**

Neither party will by mere lapse of time without giving notice or taking other action will be deemed to have waived any breach by the other party of any of the provisions of this Agreement. Further, the waiver by either party of a particular breach of this Agreement by the other party will not be construed as, or constitute, a continuing waiver of such breach, or of other breaches of the same or other provisions of this Agreement.

#### **Digital Millennium Copyright Act**

Quill reserves the right to remove any material on the Services or Website which allegedly infringes another person's copyright. If you believe that materials hosted by Quill infringe your copyright, you (or your agent) may send notice requesting that the materials be removed. Notice must be provided in writing and must include the following information:

- a. electronic or physical signature of the person authorized to act on behalf of the owner of the copyright interest;
- b. description of the copyrighted work that you claim has been infringed
- c. a copy or the location of the work you claim is infringing (e.g., URL) or enough detail that we may find it;
- d. your name, address, telephone number, and e-mail address;
- e. a statement by you that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law; and
- f. a statement by you, made under penalty of perjury, that the above information in your notice is accurate and that you are the copyright owner or authorized to act on the copyright owner's behalf.

Notices should be sent to: [support@quill.org](mailto:support@quill.org).

A handwritten signature in black ink that reads "Jeremy Hertz". The signature is written in a cursive, flowing style with a large initial 'J'.

Jeremy Hertz  
Director of School Sales