



eObserve Terms of Service

1. DEFINITIONS

- a. "We" refers to EASTCONN (EASTERN CONNECTICUT EDUCATION SERVICES CENTER).
- b. "You," "End Users," and "Subscriber" refer to the organization subscribing to the eObserve services and to individuals employed therein.
- c. "Portal", "Product," "Site," "Software," and "Online Services" refer to CT DOTS ONLINE, or other framework service hosted on the eObserve System.
- d. "SLA" means "Service Level Agreements," the commitments we make regarding delivery and/or performance of this service.
- e. For the purposes of this Agreement, "directory information," "de-identified student information," "school purposes," "student information," "student records," "student-generated content," and "targeted advertising" shall be as defined by Connecticut Gen. Stat. § 10-234aa.

2. USE of ONLINE SERVICES

- a. **Right to use.** We grant you the right to access and use the Online Services to use the Software included with your subscription, as further described in this agreement. We reserve all other rights.
- b. **Acceptable use.** You may use the Product only in accordance with this agreement. You may not reverse engineer, decompile, disassemble, or work around technical limitations in the Product, except to the extent applicable law permits it despite these limitations. You may not disable, tamper with, or otherwise attempt to circumvent any billing mechanism that meters your use of the Online Services. You may not rent, lease, lend, resell, transfer, or host the Product, or any portion thereof, to or for third parties.
- c. **End Users.** You control access by End Users, and you are responsible for their use of the Product in accordance with this agreement. For example, you will ensure End Users comply with intellectual property and privacy regulations related to student images.
- d. **Student Data.** You are solely responsible for the content of all Student Data. You will secure and maintain all rights in Student Data necessary for us to provide the Online Services to you without violating the rights of any third party or otherwise obligating EASTCONN to you or to any third party. EASTCONN does not and will not assume any obligations with respect to Student or End User Data or to your use of the Product other than as expressly set forth in this agreement or as required by applicable law.
- e. **Responsibility for your accounts.** You are responsible for maintaining the confidentiality of any non-public authentication credentials associated with your use of this Service. You must promptly notify our customer support team about any possible misuse of your accounts or authentication credentials or any security incident related to the Online Services.
- f. **Administrator Assumption of Control.** If you use an email address provided by an organization you are affiliated with (e.g. an employer or school) to order an Online Service individually, you represent that you have authority to use that organization's domain to sign up for a Subscription in your capacity

as a member of that organization. The organization, as the owner of the domain associated with your email address, may assume control over and manage your use of the Online Services. In such a case, your organization's designated administrator (your "admin") may (i) control and administer your account, including modifying and terminating your access and (ii) access and process your data, including the contents of your communications and files. EASTCONN may inform you that your organization has assumed control of the Online Services covered by your Subscription, but EASTCONN is under no obligation to provide such notice. Your organization takes full responsibility for administering your use of the Online Services.

3. PURCHASING SERVICES

- a. **Subscriptions.** EASTCONN can and will provide available subscription offers and costs. You commit in advance to purchase a specific quantity of student seats for use during a school year and to pay upfront in advance of use. Purchased seats are non-refundable.
- b. **Subscriptions may entail hard limits and soft limits on resource utilization.** Hard limits on seat counts cannot be exceeded without modification of your service agreement. Exceeding soft limits, such as those for storage or bandwidth, will result in an additional charge invoiced at the beginning of the next month, as described in your SLA.
- c. **Renewal.** At the end of the generally accepted education fiscal year, June, your service will be automatically renewed into the next year and you will be invoiced for the same student seat count.
- d. **Pricing and payment.** Payments are due and must be made according to the price quote for your Subscription.
- e. **Eligibility for purchase.** You agree that if you are purchasing this service for real use, you are a bona fide educational or childcare entity providing early childhood programs.

4. TERM, TERMINATION, and SUSPENSION

- a. **Agreement term and termination.** This agreement will remain in effect until the expiration, termination, or renewal of your Subscription, whichever is earliest.
- b. **Subscription termination.** You may terminate a Subscription at any time during its Term; however, you must pay all amounts due. Terms costs will not be pro-rated.
- c. **Suspension.** We may suspend your use of the Online Services if: (1) it is reasonably needed to prevent unauthorized access to Student Data; (2) you fail to respond to a security concern; (3) you do not pay amounts due under this agreement; (4) you do not abide by the Acceptable Use Policy or you violate other terms of this agreement.
 - i. For Limited Offerings, we may suspend your use of the Online Services, your Subscription and your account immediately without notice.
 - ii. For all other Subscriptions, a suspension will apply to the minimum necessary part of the Online Services and will be in effect only while the condition or need exists. We will give notice before we suspend, except where we reasonably believe we need to suspend immediately. We will give at least 30 days notice before suspending for non-payment. If you do not fully address the reasons for the suspension within 60 days after we suspend, we may terminate your Subscription and delete your Student Data without any retention period. We

may also terminate your Subscription if your use of the Online Services is suspended more than twice in any 12-month period.

5. WARRANTIES

a. Limited warranty

- i. **Online Services.** We warrant that the Online Services will meet the terms of the SLA during the Term. Your only remedies for breach of this warranty are those in the SLA.
- ii. **Software.** We warrant for one year from the date you first use the Software that it will perform substantially as described in the applicable user documentation. If Software fails to meet this warranty, we will, at our option and as your exclusive remedy, either (1) return a prorated amount of the subscription fee paid for the Software or (2) repair the Software.

b. Limited warranty exclusions.

This limited warranty is subject to the following limitations:

- i. any implied warranties, guarantees or conditions not able to be disclaimed as a matter of law will last one year from the start of the limited warranty;
- ii. this limited warranty does not cover problems caused by accident, abuse or use of the Products in a manner inconsistent with this agreement or our published documentation or guidance, or resulting from events beyond our reasonable control;
- iii. this limited warranty does not apply to problems caused by a failure of internet service providers, failure of cloud services providers, or failure of any intermediary communications technology necessary to deliver this service.

5. **DISCLAIMER.** Other than this warranty, we provide no warranties, whether express, implied, statutory, or otherwise, including warranties of merchantability or fitness for a particular purpose. These disclaimers will apply except to the extent applicable law does not permit them.

6. LIMITATION OF LIABILITY

- a. **Limitation.** The aggregate liability of each party for all claims under this agreement is limited to direct damages up to the amount paid under this agreement for the Online Service during the 12 months before the cause of action arose; provided, that in no event will a party's aggregate liability for any Online Service exceed the amount paid for that Online Service during the Subscription.
- b. **Exclusion.** Neither party will be liable for loss of revenue or indirect, special, incidental, consequential, punitive, or exemplary damages, or damages for lost profits, revenues, business interruption, or loss of business information, even if the party knew they were possible or reasonably foreseeable.
- c. **Exceptions to limitations.** The limits of liability in this Section apply to the fullest extent permitted by applicable law, but do not apply to violation of the EASTCONN's intellectual property rights.

7. STUDENT DATA PRIVACY

- a. **Data Ownership.** All student records, student information, and student-generated content (collectively, “student data”) provided or accessed pursuant are the property of, and under the control of, the subscriber.
- b. **Data Access, Export, and Deletion.** The subscriber shall have access to and the ability to delete student data in the possession of EASTCONN except in instances where such data is (A) otherwise prohibited from deletion or required to be retained under state or federal law, or (B) stored as a copy as part of a disaster recovery storage system and that is (i) inaccessible to the public, and (ii) unable to be used in the normal course of business by EASTCONN.. The subscriber may request the deletion of any such student information, student records or student-generated content if such copy has been used by the operator to repopulate accessible data following a disaster recovery. A governing board of education or, in the case of a private entity, a management agent, may request the deletion of student data by contacting EASTCONN.
 - i. **Data Download and Export.** EASTCONN reserves the right to charge a fee for subscriber requests for custom bulk data download and/or data export services not supported by the subscriber’s administrator account functions.
- c. **Data Utilization.** EASTCONN shall not use student data for any purposes other than those authorized pursuant to this agreement.
- d. **PII Review and Correction.** A student, parent or legal guardian of a student may review personally identifiable information contained in student data and correct any erroneous information, if any, in such student data. He or she may do so by contacting the subscriber.
- e. **Security and Confidentiality.** EASTCONN shall take actions designed to ensure the security and confidentiality of student data.
- f. **Notification of Breach.** EASTCONN will notify the subscriber, in accordance with CT Gen. Stat. § 10- 234dd, when there has been an unauthorized release, disclosure or acquisition of student data.
- g. **Non-retention.** Student data shall not be retained or available to EASTCONN upon expiration of the contract between the EASTCONN and the subscriber.
- h. **FERPA.** EASTCONN and subscriber shall each ensure their own compliance with the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g, as amended from time to time.
- i. **Acknowledgement of Applicable CT Statute.** EASTCONN acknowledges and agrees to comply with the above and all other applicable aspects of Connecticut’s Student Data Privacy law according to Connecticut General Statutes §§ 10-234aa through 10-234dd.

8. MISCELLANEOUS.

- a. **Notices.** Notices must be in writing and will be treated as delivered on the date received at the address, date shown on the return receipt, email transmission date, or date on the courier or fax confirmation of delivery. Notices to EASTCONN must be sent to the following address:

EASTCONN
Technology Solutions
376 Hartford Turnpike
Hampton, CT 06247
USA

- i. Notices to you will be sent to the address that you identify on your account as your contact for notices. EASTCONN may send notices and other information to you by email or other electronic form.
- b. **License Transfers and Assignment.** You may not assign this agreement either in whole or in part or transfer licenses without EASTCONN's consent.
- c. **Severability.** If any part of this agreement is held unenforceable, the rest remains in full force and effect.
- d. **Waiver.** Failure to enforce any provision of this agreement will not constitute a waiver.
- e. **No agency.** This agreement does not create an agency, partnership, or joint venture.
- f. **No third-party beneficiaries.** There are no third-party beneficiaries to this agreement.
- g. **Applicable law and venue.** This agreement is governed by Connecticut law, without regard to its conflict of laws principles, except that (i) if you are a U.S. Government entity, this agreement is governed by the laws of the United States, and (ii) if you are a state or local government entity in the United States, this agreement is governed by the laws of that state. Any action to enforce this agreement must be brought in the State of Connecticut. This choice of jurisdiction does not prevent either party from seeking injunctive relief in any appropriate jurisdiction with respect to a violation of intellectual property rights.
- h. **Entire agreement.** This agreement is the entire agreement concerning its subject matter and supersedes any prior or concurrent communications. In the case of a conflict between any documents in this agreement that is not expressly resolved in those documents, their terms will be resolved by EASTCONN.
- i. **Force majeure.** Neither party will be liable for any failure in performance due to causes beyond that party's reasonable control (such as fire, explosion, power blackout, earthquake, flood, severe storms, strike, embargo, labor disputes, acts of civil or military authority, war, terrorism (including cyber terrorism), acts of God, acts or omissions of Internet traffic carriers, actions or omissions of regulatory or governmental bodies (including the passage of laws or regulations or other acts of government that impact the delivery of Online Services)). This Section will not, however, apply to your payment obligations under this agreement.
- j. **Contracting authority.** If you are an individual accepting these terms on behalf of an entity, you represent that you have the legal authority to enter into this agreement on that entity's behalf. If you specify an entity, or you use an email address provided by an entity you are affiliated with (such as an employer) in connection with a Subscription purchase or renewal, that entity will be treated as the owner of the Subscription for purposes of this agreement.
- k. **Government customers.** Government customers should consult with EASTCONN prior to acceptance. By accepting this agreement, you represent that you have complied and will continue to comply with all applicable laws and governmental procurement requirements.