

XAP Online Application System Terms of Use

Effective: November 30, 2020

When you use the GAFutures site located at www.gafutures.org, you have the option of applying to one or more schools using the online application system made available through the site (hereafter, the “Application System”). If you choose to use the Application System, you will be automatically directed to a website located at www.gafutures.xap.com, which is owned and operated by XAP Corporation (“XAP”). XAP is a contractor of Georgia Higher Education Assistance Corporation, and XAP owns and operates the Application System.

1. Your Agreement to these Terms of Use; License for Use: When you use the Application System, you signify and affirm that you have read, understand, and agree to the following terms and conditions (“Terms of Use”); that you are competent and capable of understanding, agreeing to, and complying with these Terms of Use; and that these Terms of Use form a legally-binding agreement between you and XAP. You agree that these Terms of Use are supported by reasonable and valuable consideration (which includes your use of the Application System), and you acknowledge your receipt of and the sufficiency of such consideration. If you do not agree with all of the provisions of these Terms of Use, you may not use the Application System. As long as you abide by these Terms of Use, XAP grants you a personal, non-exclusive, non-transferable, limited, and revocable license and privilege to use the Application System solely for your own personal, non-commercial use.

2. Eligibility: To use the Application System, you must either be 18 or older or have parent or legal guardian consent and you must be competent and capable of understanding, agreeing to, and complying with these Terms of Use.

3. Amending these Terms of Use: We may update these Terms of Use in our discretion. Your continued use of the Application System following the posting of any change to the Terms of Use means that you accept and agree to abide by these Terms of Use as so changed. The revisions will apply to your use of the Application System on and after the date on which we post the revised Terms of Use. We will post any revised version of these Terms of Use here. If changes are significant, we may also notify you (i) by posting a message in the Application System; and/or (ii) by providing notice to you via your contact information or by requiring that you agree to the revised Terms of Use the next time you use the Application System.

4. Use of Application System: Should you use the Application System or any content provided therein for any purpose that is unlawful or prohibited by these Terms of Use, we reserve the right to suspend or terminate your right to use the Application System. You agree not to take any action that might compromise the security of the Application System, render the Application System inaccessible by others, or otherwise cause damage to the Application System or its content. You agree not to use the Application System to develop, operate, or otherwise make available any program, application, or service that enables or provides access to, use of, operation of, or interoperation with the Application System. You agree not to download, copy, or use the Application System or its content in order to compete with XAP in anyway. You agree not to modify, adapt, translate, reverse engineer, decompile, disassemble, or otherwise tamper

with the Application System or its content. You agree not to attempt to access data or materials not intended for you; not to create a database by downloading and saving any content on the Application System; not to transmit, disclose, collect, or store personal information about others; and not breach or circumvent or attempt to breach or circumvent our security in any way.

5. Ownership of Application System: All text, graphics, user interfaces, visual interfaces, trademarks, graphics, data compilations; the overall “look and feel,” design, and color combinations; the computer code comprising the Application System; and other content contained on or comprising the Application System (collectively referred to hereafter as “Content”) and the selection, arrangement, and presentation of the Content (and all intellectual property rights therein) are owned, controlled or licensed by or to XAP, and are protected by copyright, patent, and trademark laws, and various other intellectual property rights and unfair competition laws. No part of the Application System and no Content may be copied, reproduced, republished, uploaded, posted, publicly displayed, encoded, translated, transmitted, sold, or distributed in any way to, and you may not create derivative works based on or derived from the Application System or its Content, without XAP's express prior written consent.

Permission is granted to copy electronically and print in hard copy portions of the Application System for the sole purpose of applying to college. The Content shall not be modified in any way, and all copyright and other notices on any screen shall be retained.

XAP is a registered trademark of XAP Corporation in the United States. Other trademarks, product and service names, company names, and logos appearing on the Application System are registered and unregistered marks of XAP and/or third parties and are the property of their respective owners. Unauthorized use of such marks is strictly prohibited.

6. Privacy Notice: XAP will maintain the privacy of your information in the manner and to the extent set forth in our Privacy Notice, located [here](#). Your use of the Application System constitutes your agreement to our Privacy Notice, which is incorporated into and made a part of these Terms of Use.

7. Disclaimer: YOU MAY USE THE APPLICATION SYSTEM AND ITS CONTENT ONLY AT YOUR OWN AND SOLE RISK. YOU ACKNOWLEDGE AND AGREE THAT ANY INFORMATION YOU SEND OR RECEIVE DURING YOUR USE OF THE APPLICATION SYSTEM MAY NOT BE SECURE AND MAY BE INTERCEPTED BY UNAUTHORIZED PARTIES. XAP AND ITS SUBSIDIARIES, AFFILIATES, LICENSORS, SERVICE AND CONTENT PROVIDERS, SUBCONTRACTORS, AND SUPPLIERS, AND EACH OF THEIR RESPECTIVE OFFICERS, DIRECTORS, MEMBERS, SHAREHOLDERS, EMPLOYEES, AGENTS, AND REPRESENTATIVES (COLLECTIVELY, “XAP PARTIES”) ARE PROVIDING THE APPLICATION SYSTEM AND ITS CONTENT ON AN “AS IS” AND “AS AVAILABLE” BASIS AND MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, WITH RESPECT TO THE APPLICATION SYSTEM OR ITS CONTENT. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, XAP PARTIES DISCLAIM ALL REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, REGARDING THE APPLICATION SYSTEM AND ITS

CONTENT, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF TITLE, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, SATISFACTORY QUALITY, SUITABILITY, RELIABILITY, TIMELINESS, SECURITY, AND ANY OTHER IMPLIED WARRANTIES ARISING OUT OF COURSE OF PERFORMANCE, DEALING, OR TRADE USAGE. IN ADDITION, XAP PARTIES DO NOT REPRESENT OR WARRANT THAT THE CONTENT ACCESSIBLE VIA THE APPLICATION SYSTEM IS ACCURATE, COMPLETE, ERROR-FREE, OR CURRENT. THE CONTENT IS SUBJECT TO CHANGE WITHOUT NOTICE. FURTHER, XAP PARTIES DO NOT WARRANT THAT THE FUNCTIONS PRESENTED ON THE APPLICATION SYSTEM WILL BE UNINTERRUPTED OR ERROR FREE, THAT DEFECTS WILL BE CORRECTED, THAT THE APPLICATION SYSTEM OR THE SERVERS THAT MAKE IT AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL ELEMENTS, OR THAT ANY PARTICULAR SOFTWARE OR HARDWARE WILL BE COMPATIBLE WITH THE APPLICATION SYSTEM. YOU ASSUME THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR, OR CORRECTION OF YOUR COMPUTER, OPERATING DEVICE, AND ASSOCIATED EQUIPMENT. NO ADVICE OR INFORMATION, WHETHER WRITTEN OR OTHERWISE, OBTAINED BY YOU THROUGH THE APPLICATION SYSTEM, ANY OTHER WEBSITE OPERATED BY XAP OR ANY SERVICE ACCESSED THROUGH ANY SUCH WEBSITE, OR ANY XAP EMPLOYEE OR REPRESENTATIVE SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THESE TERMS OF USE. APPLICABLE LAW IN CERTAIN JURISDICTIONS MAY NOT ALLOW THE EXCLUSION OF CERTAIN IMPLIED WARRANTIES, SO SOME OF THE ABOVE DISCLAIMERS MAY NOT APPLY TO YOU.

8. Indemnification: YOU AGREE TO INDEMNIFY AND HOLD HARMLESS, AND AT XAP'S REQUEST, DEFEND XAP PARTIES, FOR, FROM, AND AGAINST ANY AND ALL DEMANDS, SUITS, CLAIMS, LIABILITIES, LOSSES, DAMAGES, COSTS, AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES AND COSTS) MADE BY ANY THIRD PARTY DUE TO OR IN CONNECTION WITH YOUR USE OF THE APPLICATION SYSTEM OR ITS CONTENT (OR A THIRD PARTY'S USE OF THE APPLICATION SYSTEM OR ITS CONTENT UNDER YOUR ACCOUNT, WITH OR WITHOUT YOUR KNOWLEDGE); YOUR VIOLATION OF THESE TERMS OF USE; YOUR NEGLIGENT OR WILLFUL MISCONDUCT; OR YOUR VIOLATION OF ANY LAW, RULE, OR REGULATION. XAP PARTIES RESERVE THE RIGHT TO ASSUME THE EXCLUSIVE DEFENSE AND CONTROL OF ANY MATTER OTHERWISE SUBJECT TO INDEMNIFICATION BY YOU, AND, IN SUCH CASE, YOU AGREE TO COOPERATE WITH XAP PARTIES IN THE DEFENSE OF SUCH MATTER.

9. Limitation of Liability: TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, UNDER NO CIRCUMSTANCES AND IN NO EVENT SHALL XAP PARTIES BE LIABLE, REGARDLESS OF THE CAUSE, FOR ANY ERRORS, OMISSIONS, OR OTHER DEFECTS IN THE APPLICATION SYSTEM OR CONTENT, FOR ANY DELAY OR INTERRUPTION IN THE TRANSMISSION THEREOF TO YOU, FOR ANY MALFUNCTION OF THE APPLICATION SYSTEM, OR FOR ANY CLAIMS OR LOSSES ARISING THEREFROM OR OCCASIONED THEREBY. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, UNDER NO CIRCUMSTANCES AND IN NO

EVENT SHALL XAP PARTIES BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY, MULTIPLIED, OR OTHER DAMAGES ARISING OUT OF OR RELATING TO YOUR USE OF, OR INABILITY TO USE, THE APPLICATION SYSTEM AND/OR ITS CONTENT; OR FROM THE DELAY OR INABILITY TO USE THE APPLICATION SYSTEM OR ITS CONTENT, WHETHER BASED IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, EVEN IF XAP PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF DAMAGES.

IN NO EVENT SHALL YOU RECOVER ATTORNEYS' FEES OR LEGAL COSTS. YOU AND XAP PARTIES AGREE THAT ANY CAUSE OF ACTION ARISING OUT OF OR RELATED TO THE APPLICATION SYSTEM OR ITS CONTENT OR THESE TERMS OF USE MUST BE FILED WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES, OR THE CAUSE OF ACTION IS PERMANENTLY BARRED. YOU AGREE THAT ANY AND ALL DISPUTES, CLAIMS, OR CAUSES OF ACTION ARISING OUT OF OR RELATING TO YOUR USE OF APPLICATION SYSTEM OR ITS CONTENT SHALL BE RESOLVED INDIVIDUALLY, WITHOUT RESORT TO ANY FORM OF CLASS ACTION. THESE LIMITATIONS APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

THE DISCLAIMERS AND LIMITATIONS OF LIABILITY IN THESE TERMS OF USE ARE A MATERIAL PART OF OUR AGREEMENT. IT IS POSSIBLE THAT APPLICABLE LAW MAY NOT ALLOW FOR LIMITATIONS OF CERTAIN IMPLIED WARRANTIES OR EXCLUSIONS OR LIMITATIONS OF CERTAIN TYPES OF DAMAGES. SOLELY TO THE EXTENT THAT, AS A RESULT OF APPLICABLE LAW, ANY OF THE DISCLAIMERS OR LIMITATIONS OF LIABILITY DOES NOT APPLY TO YOU, YOU MAY HAVE ADDITIONAL RIGHTS. HOWEVER, IN ALL CIRCUMSTANCES, OUR MAXIMUM AGGREGATE LIABILITY FOR ALL DAMAGES AND LOSSES AND ALL CLAIMS AND LIABILITY SHALL BE USD 50.00. NOTWITHSTANDING THE FOREGOING SENTENCE, IF APPLICABLE LAW PROHIBITS THE LIMITATION OR EXCLUSION OF A PARTY'S LIABILITY WITH RESPECT TO DEATH OR PERSONAL INJURY CAUSED BY SUCH PARTY'S NEGLIGENCE, FRAUD, OR ANY OTHER MATTER, THEN SUCH PARTY'S LIABILITY WILL NOT BE LIMITED OR EXCLUDED TO THE EXTENT OF SUCH PROHIBITION UNDER SUCH APPLICABLE LAW.

IN AGREEING TO THE LIMITATIONS OF LIABILITY IN THESE TERMS OF USE, YOU EXPRESSLY WAIVE ANY PROTECTIONS (WHETHER STATUTORY OR OTHERWISE AND INCLUDING WITHOUT LIMITATION CAL. CIVIL CODE § 1542) THAT WOULD LIMIT THE COVERAGE OF THE LIMITATIONS OF LIABILITY TO INCLUDE ONLY THOSE CLAIMS THAT YOU KNOW OR SUSPECT TO EXIST IN YOUR FAVOR AT THE TIME OF AGREEING TO THE LIMITATIONS OF LIABILITY.

10. Audit Rights and Enforcement: XAP has the right, but not the obligation, at any time to audit your use of the Application System to determine your compliance with these Terms of Use. If XAP terminates your access to the Application System, regardless of the cause or basis for such termination, you agree that XAP shall not be liable for any such termination, and you are not entitled to compensation or damages of any kind as a result of the termination. Accessing the

Application System after such termination will constitute an act of trespass, among other potential claims. XAP may cooperate with any legal process relating to your use of the Application System and/or any third party claim that your use of the Application System is unlawful or violates any third party's rights.

11. Electronic Communications: You consent to receive communications from us electronically. XAP may provide notices to you by email. Any notice sent to you by email will be deemed received when sent. We may also communicate with you by posting notices on the Application System, and any such notice shall be deemed received when you visit the Application System after we post such a notice. You agree that all agreements and notices that we provide to you electronically satisfy any legal requirement that such communications be in writing.

12. Feedback: Any feedback you provide through the Application System or otherwise to XAP shall be non-confidential and shall not constitute proprietary information of any third party. XAP shall be free to use such feedback on an unrestricted basis. XAP is under no obligation to use any feedback or to pay to use any feedback. You acknowledge and agree that XAP may have something similar already under consideration or development, and XAP will own all right, title, and interest in and to what it creates or develops without use of your feedback.

13. Governing Law and Jurisdiction: The Application System is controlled and operated from the United States. You agree to comply with all applicable local, state, and federal laws, rules, and regulations in connection with your use of the Application System.

These Terms of Use will be governed by and construed in accordance with the laws of the State of California, notwithstanding your actual state or country of residence, and without regard to any conflict-of-law provisions. By using the Application System, you hereby consent to the exclusive personal jurisdiction and venue of the local, state, and federal courts located in Los Angeles County, California, and you waive any objection to such jurisdiction or venue. THE PARTIES HERETO EXPRESSLY AND IRREVOCABLY WAIVE THEIR RIGHT TO TRIAL BY JURY.

13. General: These Terms of Use (and the Privacy Notice incorporated herein) constitute the entire agreement between you and XAP regarding your use of the Application System. If any provision of these Terms of Use is determined to be illegal or unenforceable under applicable law, then the illegal or unenforceable provision will be deemed to be superseded by a legal and enforceable provision that most closely matches the intent of the original provision, and the remainder of these Terms of Use will continue in full force and effect. XAP's failure to insist upon or enforce strict performance of any provision of these Terms of Use shall not be construed as a waiver of any provision or right. Neither the course of conduct between the parties nor trade practices shall act to modify any of these Terms of Use. We will not be responsible for failure to fulfill any obligation due to causes beyond our control. Nothing in these Terms of Use is in derogation of our right to comply with governmental, court, and law enforcement requests or requirements relating to your use of the Application System or information provided to or gathered by us with respect to such use. We reserve all rights not granted expressly in these Terms of Use.

You may direct any questions or concerns regarding the Application System to us at XAP Corporation, 600 Corporate Pointe, Suite 220, Culver City, CA 90230; email: support@xap.com; phone: 1-800-GO-TO-XAP or 1-800-468-6927.