# STANDARD STUDENT DATA PRIVACY AGREEMENT

**CA-NDPA Standard**
**Version 1.5**
**(01.28.25)**

**and**

This Student Data Privacy Agreement ("**DPA**") is entered into on the date of full execution (the "**Effective Date**") and is entered into by and between:

, located at

(the "**Local Education Agency**" or "**LEA**") and

, located at

(the "**Provider**").

**WHEREAS**, the Provider is providing educational or digital services to LEA.

**WHEREAS**, the Provider and LEA recognize the need to protect personally identifiable student information and other regulated data exchanged between them as required by applicable laws and regulations, such as the Family Educational Rights and Privacy Act ("**FERPA**") at 20 U.S.C. § 1232g (34 CFR Part 99);
the Children's Online Privacy Protection Act ("COPPA") at 15 U.S.C. § 6501-6506 (16 CFR Part 312), applicable state privacy laws and regulations

and

**WHEREAS**, the Provider and LEA desire to enter into this DPA for the purpose of establishing their respective obligations and duties in order to comply with applicable laws and regulations.

**NOW THEREFORE**, for good and valuable consideration, LEA and Provider agree as follows:

1. A description of the Services to be provided, the categories of Student Data that may be provided by LEA to Provider, and other information specific to this DPA are contained in the Standard Clauses hereto.

2. **Special Provisions.** ***Check if Required***

   If checked, the Supplemental State Terms and attached hereto as **Exhibit "G"** are hereby incorporated by reference into this DPA in their entirety.

   If Checked, the Provider, has signed **Exhibit "E"** to the Standard Clauses, otherwise known as General Offer of Privacy Terms

3. In the event of a conflict between the SDPC Standard Clauses, the State or Special Provisions will control. In the event there is conflict between the terms of the DPA and any other writing, including, but not limited to the Service Agreement and Provider Terms of Service or Privacy Policy the terms of this DPA shall control.

4. This DPA shall stay in effect for three years. Exhibit E will expire 3 years from the date the original DPA was signed.

5. The services to be provided by Provider to LEA pursuant to this DPA are detailed in **Exhibit "A"** (the "**Services**").

6. **Notices**. All notices or other communication required or permitted to be given hereunder may be given via e-mail transmission, or first-class mail, sent to the designated representatives below.

The designated representative for the LEA for this DPA is:

Name: _____Title: _____

Address: _____

Phone: _____Email: _____

The designated representative for the Provider for this DPA is:

Name: _____Title: _____

Address: _____

Phone: _____Email: _____

**IN WITNESS WHEREOF**, LEA and Provider execute this DPA as of the Effective Date.

**LEA:**

By: _____ Date: _____

Printed Name: _____ Title/Position: _____

**PROVIDER:**

By: _____ Date: _____

Printed Name: _____ Title/Position: _____

**STANDARD CLAUSES**
Version 3.0

## ARTICLE I: PURPOSE AND SCOPE

1. **Purpose of DPA**. The purpose of this DPA is to describe the duties and responsibilities to protect Student Data including compliance with all applicable federal, state, and local privacy laws, rules, and regulations, all as may be amended from time to time. In performing these services, the Provider shall be considered a School Official with a legitimate educational interest, and performing services otherwise provided by the LEA. Provider shall be under the direct control and supervision of the LEA, with respect to its use of Student Data

2. **Student Data to Be Provided**. In order to perform the Services described above, LEA shall provide Student Data as identified in the Schedule of Data, attached hereto as **Exhibit "B"**.

3. **DPA Definitions**. The definition of terms used in this DPA is found in **Exhibit "C".** In the event of a conflict, definitions used in this DPA shall prevail over terms used in any other writing, including, but not limited to the Service Agreement, Terms of Service, Privacy Policies etc.

## ARTICLE II: DATA OWNERSHIP AND AUTHORIZED ACCESS

1. **Student Data Property of LEA**. All Student Data transmitted to the Provider pursuant to the Service Agreement is and will continue to be the property of and under the control of the LEA. The Provider further acknowledges and agrees that all copies of such Student Data transmitted to the Provider, including any modifications or additions or any portion thereof from any source, are subject to the provisions of this DPA in the same manner as the original Student Data. The Parties agree that as between them, all rights, including all intellectual property rights in and to Student Data contemplated per the Service Agreement, shall remain the exclusive property of the LEA. For the purposes of FERPA, the Provider shall be considered a School Official, under the control and direction of the LEA as it pertains to the use of Student Data, notwithstanding the above.

2. **Parent Access**. To the extent required by law the LEA shall establish reasonable procedures by which a parent, legal guardian, or eligible student may review Education Records and/or Student Data correct erroneous information, and procedures for the transfer of student-generated content to a personal account, consistent with the functionality of services. Provider shall respond in a reasonably timely manner (and no later than forty five (45) days from the date of the request or pursuant to the time frame required under state law for an LEA to respond to a parent or student, whichever is sooner) to the LEA's request for Student Data in a student's records held by the Provider to view or correct as necessary. In the event that a parent of a student or other individual contacts the Provider to review any of the Student Data accessed pursuant to the Services, the Provider shall refer the parent or individual to the LEA, who will follow the necessary and proper procedures regarding the requested information.

3. **Separate Account**. If Student-Generated Content is stored or maintained by the Provider, Provider shall, at the request of the LEA, transfer, or provide a mechanism for the LEA to transfer, said Student-Generated Content to a separate account created by the student.

4. **Law Enforcement Requests**. Should law enforcement or other government entities ("Requesting Party(ies)") contact Provider with a request for Student Data held by the Provider pursuant to the Services, the Provider shall notify the LEA in advance of a compelled disclosure to the Requesting Party, unless lawfully directed by the Requesting Party not to inform the LEA of the request.

5. **Subprocessors**. Provider shall enter into written agreements with all Subprocessors performing functions for the Provider in order for the Provider to provide the Services pursuant to the Service Agreement, whereby the Subprocessors agree to protect Student Data in a manner no less stringent than the terms of this DPA.

## ARTICLE III: DUTIES OF LEA

1. **Provide Data in Compliance with Applicable Laws**. LEA shall provide Student Data for the purposes of obtaining the Services in compliance with all applicable federal, state, and local privacy laws, rules, and regulations, all as may be amended from time to time.

2. **Annual Notification of Rights**. If the LEA has a policy of disclosing Education Records and/or Student Data under FERPA (34 CFR § 99.31(a)(1)), LEA shall include a specification of criteria for determining who constitutes a school official and what constitutes a legitimate educational interest in its annual notification of rights.

3. **Reasonable Precautions**. LEA shall take reasonable precautions to secure usernames, passwords, and any other means of gaining access to the services and hosted Student Data.

4. **Unauthorized Access Notification**. LEA shall notify Provider promptly of any known unauthorized access. LEA will assist Provider in any efforts by Provider to investigate and respond to any unauthorized access.

## ARTICLE IV: DUTIES OF PROVIDER

1. **Privacy Compliance**. The Provider shall comply with all applicable federal, state, and local laws, rules, and regulations pertaining to Student Data privacy and security, all as may be amended from time to time.

2. **Authorized Use**. The Student Data shared pursuant to the Service Agreement, including persistent unique identifiers, shall be used for no purpose other than the Services outlined in Exhibit A or stated in the Service Agreement and/or otherwise authorized under the statutes referred to herein this DPA.

3. **Provider Employee Obligation**. Provider shall require all of Provider's employees and agents who have access to Student Data to comply with all applicable provisions of this DPA with respect to the Student Data shared under the Service Agreement. Provider agrees to require and maintain an appropriate confidentiality agreement from each employee or agent with access to Student Data pursuant to the Service Agreement.

4. **No Disclosure**. Provider acknowledges and agrees that it shall not make any re-disclosure of any Student Data or any portion thereof, including without limitation, user content or other non-public information and/or personally identifiable information contained in the Student Data other than as directed or

permitted by the LEA or this DPA. This prohibition against disclosure shall not apply to aggregate summaries of De-Identified information, Student Data disclosed pursuant to a lawfully issued subpoena or other legal process, or to subprocessors performing services on behalf of the Provider pursuant to this DPA. Provider will not Sell Student Data to any third party.

5. **De-Identified Data**: Provider agrees not to attempt to re-identify de-identified Student Data. De-Identified Data may be used by the Provider for those purposes allowed under FERPA and the following purposes: (1) assisting the LEA or other governmental agencies in conducting research and other studies; and (2) research and development of the Provider's educational sites, services, or applications, and to demonstrate the effectiveness of the Services; and (3) for adaptive learning purpose and for customized student learning. Provider's use of De-Identified Data shall survive termination of this DPA or any request by LEA to return or destroy Student Data. Except for Subprocessors, Provider agrees not to transfer de-identified Student Data to any party unless (a) that party agrees in writing not to attempt re-identification, and (b) prior written notice has been given to the LEA who has provided prior written consent for such transfer. Prior to publishing any document that names the LEA explicitly or indirectly, the Provider shall obtain the LEA's written approval of the manner in which de-identified data is presented.

6. **Disposition of Data**. Upon written request from the LEA, Provider shall dispose of or provide a mechanism for the LEA to transfer Student Data obtained under the Service Agreement, within sixty (60) days of the date of said request and according to a schedule and procedure as the Parties may reasonably agree. Upon termination of this DPA, if no written request from the LEA is received, Provider shall dispose of all Student Data after providing the LEA with reasonable prior notice. The duty to dispose of Student Data shall not extend to Student Data that had been De-Identified or placed in a separate student account pursuant to section II 3. The LEA may employ a "Directive for Disposition of Data" form, a copy of which is attached hereto as **Exhibit "D"**. If the LEA and Provider employ Exhibit "D," no further written request or notice is required on the part of either party prior to the disposition of Student Data described in Exhibit "D.

7. **Advertising Limitations.** Provider is prohibited from using, disclosing, or selling Student Data to (a) inform, influence, or enable Targeted Advertising; or (b) develop a profile of a student, family member/guardian or group, for any purpose other than providing the Service to LEA. This section does not prohibit Provider from using Student Data (i) for adaptive learning or customized student learning (including generating personalized learning recommendations); or (ii) to make product recommendations to teachers or LEA employees; or (iii) to notify account holders about new education product updates, features, or services or from otherwise using Student Data as permitted in this DPA and its accompanying exhibits

## ARTICLE V: DATA PROVISIONS

1. **Data Storage**. Where required by applicable law, Student Data shall be stored within the United States. Upon request of the LEA, Provider will provide a list of the locations where Student Data is stored.

2. **Audits.** No more than once a year, or following unauthorized access, upon receipt of a written request from the LEA with at least ten (10) business days' notice and upon the execution of an appropriate confidentiality agreement, the Provider will allow the LEA to audit the security and privacy measures that are in place to ensure protection of Student Data or any portion thereof as it pertains to the delivery of services to the LEA . The Provider will cooperate reasonably with the LEA and any local, state, or federal

agency with oversight authority or jurisdiction in connection with any audit or investigation of the Provider and/or delivery of Services to students and/or LEA, and shall provide reasonable access to the Provider's facilities, staff, agents and LEA's Student Data and all records pertaining to the Provider, LEA and delivery of Services to the LEA. Failure to reasonably cooperate shall be deemed a material breach of the DPA.

**3.** **Data Security**. The Provider agrees to utilize administrative, physical, and technical safeguards designed to protect Student Data from unauthorized access, disclosure, acquisition, destruction, use, or modification. The Provider shall adhere to any applicable law relating to data security. The provider shall implement an adequate Cybersecurity Framework based on one of the nationally recognized standards set forth set forth in **Exhibit "F"**. Exclusions, variations, or exemptions to the identified Cybersecurity Framework must be detailed in an attachment to **Exhibit "H"**. Additionally, Provider may choose to further detail its security programs and measures that augment or are in addition to the Cybersecurity Framework in **Exhibit "F"**. Provider shall provide, in the Standard Schedule to the DPA, contact information of an employee who LEA may contact if there are any data security concerns or questions.

**4.** **Data Breach**. In the event of an unauthorized release, disclosure or acquisition of Student Data that compromises the security, confidentiality or integrity of the Student Data maintained by the Provider the Provider shall provide notification to LEA within seventy-two (72) hours of confirmation of the incident, unless notification within this time limit would disrupt investigation of the incident by law enforcement. In such an event, notification shall be made within a reasonable time after the incident. Provider shall follow the following process:

(1) The security breach notification described above shall include, at a minimum, the following information to the extent known by the Provider and as it becomes available:

i. The name and contact information of the reporting LEA subject to this section.
ii. A list of the types of personal information that were or are reasonably believed to have been the subject of a breach.
iii. If the information is possible to determine at the time the notice is provided, then either (1) the date of the breach, (2) the estimated date of the breach, or (3) the date range within which the breach occurred. The notification shall also include the date of the notice.
iv. Whether the notification was delayed as a result of a law enforcement investigation, if that information is possible to determine at the time the notice is provided; and
v. A general description of the breach incident, if that information is possible to determine at the time the notice is provided.

(2) Provider agrees to adhere to all federal and state requirements with respect to a data breach related to the Student Data, including, when appropriate or required, the required responsibilities and procedures for notification and mitigation of any such data breach.

(3) Provider further acknowledges and agrees to have a written incident response plan that reflects best practices and is consistent with industry standards and federal and state law for responding to a data breach, breach of security, privacy incident or unauthorized acquisition or use of Student Data or any portion thereof, including personally identifiable information and agrees to provide LEA, upon request, with a summary of said written incident response plan.

(4) LEA shall provide notice and facts surrounding the breach to the affected students, parents or guardians.

(5) In the event of a breach originating from LEA's use of the Service, Provider shall cooperate with LEA to the extent necessary to expeditiously secure Student Data.

## ARTICLE VI: GENERAL OFFER OF TERMS

Provider may, by signing the attached form of "General Offer of Privacy Terms" (General Offer, attached hereto as **Exhibit "E"**), be bound by the terms of **Exhibit "E"** to any other LEA who signs the acceptance on said Exhibit. The form is limited by the terms and conditions described therein.

## ARTICLE VII: MISCELLANEOUS

1. **Termination**. In the event that either Party seeks to terminate this DPA, they may do so by mutual written consent so long as the Service Agreement has lapsed or has been terminated. Either party may terminate this DPA and any service agreement or contract if the other party breaches any terms of this DPA.

2. **Effect of Termination Survival**. If the Service Agreement is terminated, the Provider shall destroy all of LEA's Student Data pursuant to Article IV, section 6.

3. **Priority of Agreements**. This DPA shall govern the treatment of Student Data in order to comply with the privacy protections, including those found in FERPA and all applicable privacy statutes identified in this DPA. In the event there is conflict between the terms of the DPA and the Service Agreement, Terms of Service, Privacy Policies, or with any other bid/RFP, license agreement, or writing, the terms of this DPA shall apply and take precedence. In the event of a conflict between Exhibit H, the SDPC Standard Clauses, and/or the Supplemental State Terms, Exhibit H will control, followed by the Supplemental State Terms. Except as described in this paragraph herein, all other provisions of the Service Agreement shall remain in effect.

4. **Entire Agreement**. This DPA and the Service Agreement constitute the entire agreement of the Parties relating to the subject matter hereof and supersedes all prior communications, representations, or agreements, oral or written, by the Parties relating thereto. This DPA may be amended and the observance of any provision of this DPA may be waived (either generally or in any particular instance and either retroactively or prospectively) only with the signed written consent of both Parties. Neither failure nor delay on the part of any Party in exercising any right, power, or privilege hereunder shall operate as a waiver of such right, nor shall any single or partial exercise of any such right, power, or privilege preclude any further exercise thereof or the exercise of any other right, power, or privilege.

5. **Severability**. Any provision of this DPA that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this DPA, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Notwithstanding the foregoing, if such provision could be more narrowly drawn so as not to be prohibited or unenforceable in such jurisdiction while, at the same time, maintaining the intent of the Parties, it shall, as to such jurisdiction, be so narrowly drawn without invalidating the remaining provisions of this DPA or affecting the validity or enforceability of such provision in any other jurisdiction.

6. **Governing Law; Venue and Jurisdiction**. THIS DPA WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF THE LEA, WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES. EACH PARTY CONSENTS AND SUBMITS TO THE SOLE AND EXCLUSIVE JURISDICTION TO THE STATE AND FEDERAL COURTS FOR THE COUNTY OF THE LEA FOR ANY DISPUTE ARISING OUT OF OR RELATING TO THIS DPA OR THE TRANSACTIONS CONTEMPLATED HEREBY.

7. **Successors Bound**: This DPA is and shall be binding upon the respective successors in interest to Provider in the event of a merger, acquisition, consolidation or other business reorganization or sale of all or substantially all of the assets of such business In the event that the Provider sells, merges, or otherwise disposes of its business to a successor during the term of this DPA, the Provider shall provide written notice to the LEA no later than sixty (60) days after the closing date of sale, merger, or disposal. Such notice shall include a written, signed assurance that the successor will assume the obligations of the DPA and any obligations with respect to Student Data within the Service Agreement. The LEA has the authority to terminate the DPA if it disapproves of the successor to whom the Provider is selling, merging, or otherwise disposing of its business.

8. **Authority.** Each party represents that it is authorized to bind to the terms of this DPA, including confidentiality and destruction of Student Data and any portion thereof contained therein, all related or associated institutions, individuals, employees or contractors who may have access to the Student Data and/or any portion thereof.

9. **Waiver**. No delay or omission by either party to exercise any right hereunder shall be construed as a waiver of any such right and both parties reserve the right to exercise any such right from time to time, as often as may be deemed expedient.

## EXHIBIT "A"
## DESCRIPTION OF SERVICES

Unless specified, and explicitly excluded below, this DPA covers access to and use of all Provider's Services, as well as any future Services that Provider may offer. This coverage extends, without limitation, to all subdomains, software, mobile applications, and products that are owned and operated by Provider, its subsidiaries, and/or affiliates, except for those explicitly excluded below.

If applicable, any **EXCLUDED** services will be listed below and are therefore not covered by this DPA:

I have completed **Exhibit "A"** and, if applicable, specified any excluded Services that are not covered under this DPA.

# EXHIBIT B: SCHEDULE OF STUDENT DATA

All Data Elements identified in this Exhibit are correct at time of signature.

Data Elements Collected by Product (required and optional):

| **Category of Data /** Data Elements | ALL DPA-COVERED APPS | | | | | | |
|---|---|---|---|---|---|---|---|
| **Application Technology MetaData** | | | | | | | |
| IP Addresses of users, use of cookies, etc. | | | | | | | |
| Other application technology metadata | | | | | | | |
| *If 'Other' checked, please specify below checked box:* | | | | | | | |
| **Application Use Statistics** | | | | | | | |
| Meta data on user interaction with application | | | | | | | |
| **Assessment** | | | | | | | |
| Standardized test scores | | | | | | | |
| Observation data | | | | | | | |
| Voice recordings | | | | | | | |
| Other assessment data | | | | | | | |
| *If 'Other' checked, please specify below checked box:* | | | | | | | |
| **Attendance** | | | | | | | |
| Student school (daily) attendance data | | | | | | | |

| **Category of Data /** Data Elements | **ALL DPA-COVERED APPS** | | | | | | |
|---|---|---|---|---|---|---|---|
| Student class attendance data | | | | | | | |
| **Communication** | | | | | | | |
| Online communication captured (emails, blog entries) | | | | | | | |
| **Conduct** | | | | | | | |
| Conduct or behavioral data | | | | | | | |
| **Demographics** | | | | | | | |
| Data of birth | | | | | | | |
| Place of birth | | | | | | | |
| Gender | | | | | | | |
| Ethnicity or race | | | | | | | |
| Language information (native, or primary language spoken by student) | | | | | | | |
| Other demographic information | | | | | | | |
| *If 'Other' checked, please specify below checked box:* | | | | | | | |
| **Enrollment** | | | | | | | |
| Student school enrollment | | | | | | | |
| Student grade level | | | | | | | |
| Homeroom | | | | | | | |
| Guidance counselor | | | | | | | |
| Specific curriculum programs | | | | | | | |
| Year of graduation | | | | | | | |

| **Category of Data /** Data Elements | **ALL DPA-COVERED APPS** | | | | | | |
|---|---|---|---|---|---|---|---|
| Other enrollment information | | | | | | | |
| *If 'Other' checked, please specify below checked box:* | | | | | | | |
| **Parent/Guardian Contact Information** | | | | | | | |
| Address | | | | | | | |
| Email | | | | | | | |
| Phone | | | | | | | |
| **Parent/Guardian ID** | | | | | | | |
| Parent ID number (created to link parents to students) | | | | | | | |
| **Parent/Guardian Name** | | | | | | | |
| First and/or last | | | | | | | |
| **Schedule** | | | | | | | |
| Student scheduled courses | | | | | | | |
| Teacher names | | | | | | | |
| **Special Indicator** | | | | | | | |
| English language learner information | | | | | | | |
| Low-income status | | | | | | | |
| Medical alerts/health data | | | | | | | |
| Student disability information | | | | | | | |
| Specialized education Services (IEP or 504) | | | | | | | |
| Living situations (homeless/foster care) | | | | | | | |
| Other indicator information | | | | | | | |

| **Category of Data /** Data Elements | **ALL DPA-COVERED APPS** | | | | | | |
|---|---|---|---|---|---|---|---|
| *If 'Other' checked, please specify below checked box:* | | | | | | | |
| **Student Contact Information** | | | | | | | |
| Address | | | | | | | |
| Email | | | | | | | |
| Phone | | | | | | | |
| **Student Identifiers** | | | | | | | |
| Local (school district) ID number | | | | | | | |
| State ID number | | | | | | | |
| Provider/app assigned student ID number | | | | | | | |
| Student app username | | | | | | | |
| Student app passwords | | | | | | | |
| **Student Name** | | | | | | | |
| First and/or last | | | | | | | |
| **Student In App Performance** | | | | | | | |
| Program/application performance (e.g. typing program – student types 60 wpm, reading program – student reads below grade level) | | | | | | | |
| **Student Program Membership** | | | | | | | |
| Academic or extracurricular activities a student may belong to or participate in | | | | | | | |

| **Category of Data /** Data Elements | **ALL DPA-COVERED APPS** | | | | | | |
|---|---|---|---|---|---|---|---|
| **Student Survey Responses** | | | | | | | |
| Student responses to surveys or questionnaires | | | | | | | |
| **Student Work** | | | | | | | |
| Student generated content; writing, pictures, etc. | | | | | | | |
| Other student work data | | | | | | | |
| *If 'Other' checked, please specify below checked box:* | | | | | | | |
| **Transcript** | | | | | | | |
| Student course grades | | | | | | | |
| Student course data | | | | | | | |
| Student course grades/performance scores | | | | | | | |
| Other transcript data | | | | | | | |
| *If 'Other' checked, please specify below checked box:* | | | | | | | |
| **Transportation** | | | | | | | |
| Student bus assignment | | | | | | | |
| Student pick up and/or drop off location | | | | | | | |
| Student bus card ID number | | | | | | | |
| Other transportation data | | | | | | | |

| **Category of Data /** Data Elements | **ALL DPA-COVERED APPS** | | | | | | |
|---|---|---|---|---|---|---|---|
| *If 'Other' checked, please specify below checked box:* | | | | | | | |
| **Other** | | | | | | | |
| Other data collected | | | | | | | |
| *If 'Other' checked, please list each additional data element used, stored, or collected by your application below checked box:* | | | | | | | |
| **None** | | | | | | | |
| No student data collected at this time. Provider will immediately notify LEA if this designation is no longer applicable. | | | | | | | |

## EXHIBIT "C"
## DEFINITIONS

**De-Identified Data and De-Identification**: Records and information are considered to be de-identified when all personally identifiable information has been removed or obscured, such that the remaining information does not reasonably identify a specific individual, including, but not limited to, any information that, alone or in combination is linkable to a specific student and provided that the educational agency, or other party, has made a reasonable determination that a student's identity is not personally identifiable, taking into account reasonable available information.

**Educational Records**: Educational Records are records, files, documents, and other materials directly related to a student and maintained by the school or local education agency, or by a person acting for such school or local education agency, including but not limited to, records encompassing all the material kept in the student's cumulative folder, such as general identifying data, records of attendance and of academic work completed, records of achievement, and results of evaluative tests, health data, disciplinary status, test protocols and individualized education programs.

**Metadata**: means information that provides meaning and context to other data being collected; including, but not limited to: date and time records and purpose of creation Metadata that have been stripped of all direct and indirect identifiers are not considered Personally Identifiable Information.

**Operator**: means the operator of an internet website, online service, online application, or mobile application with actual knowledge that the site, service, or application is used for K–12 school purposes. Any entity that operates an internet website, online service, online application, or mobile application that has entered into a signed, written agreement with an LEA to provide a service to that LEA shall be considered an "operator" for the purposes of this section.

**Originating** LEA: An LEA who originally executes the DPA in its entirety with the Provider.

**Provider**: For purposes of the DPA, the term "Provider" means provider of digital educational software or services, including cloud-based services, for the digital storage, management, and retrieval of Student Data. Within the DPA the term "Provider" includes the term "Third Party" and the term "Operator" as used in applicable state statutes.

**Student Generated Content**: The term "student-generated content" means materials or content created by a student in the services including, but not limited to, essays, research reports, portfolios, creative writing, music or other audio files, photographs, videos, and account information that enables ongoing ownership of student content.

**School Official**: For the purposes of this DPA and pursuant to 34 CFR § 99.31(b), a School Official is a contractor that: (1) Performs an institutional service or function for which the agency or institution would otherwise use employees; (2) Is under the direct control of the agency or institution with respect to the use and maintenance of Student Data including Education Records; and (3) Is subject to 34 CFR § 99.33(a) governing the use and re-disclosure of personally identifiable information from Education Records.

**Service Agreement**: Refers to the Contract, Purchase Order or Terms of Service or Terms of Use.

**Student Data**: Student Data includes any data, whether gathered by Provider or provided by LEA or its users, students, or students' parents/guardians, that is descriptive of the student including, but not limited to

information in the student's educational record or email, first and last name, birthdate, home or other physical address, telephone number, email address, or other information allowing physical or online contact, discipline records, videos, test results, special education data, juvenile dependency records, grades, evaluations, criminal records, medical records, health records, social security numbers, biometric information, disabilities, socioeconomic information, individual purchasing behavior or preferences, food purchases, political affiliations, religious information, text messages, documents, student identifiers, search activity, photos, voice recordings, geolocation information, parents' names, or any other information or identification number that would provide information about a specific student. Student Data includes Meta Data. Student Data further includes "personally identifiable information (PII)," as defined in 34 C.F.R. § 99.3 and as defined under any applicable state law. Student Data shall constitute Education Records for the purposes of this DPA, and for the purposes of federal, state, and local laws and regulations. Student Data as specified in **Exhibit "B"** is confirmed to be collected or processed by the Provider pursuant to the Services. Student Data shall not constitute that information that has been anonymized or de-identified, or anonymous usage data regarding a student's use of Provider's services.

**Subprocessor:** For the purposes of this DPA, the term "Subprocessor" (sometimes referred to as the "Subcontractor") means a party other than LEA or Provider, who Provider uses for data collection, analytics, storage, or other service to operate and/or improve its service, and who has access to Student Data.

**Subscribing LEA**: An LEA that was not party to the original Service Agreement and who accepts the Provider's General Offer of Privacy Terms.

**Targeted Advertising:** means presenting an advertisement to a student where the selection of the advertisement is based on Student Data or inferred over time from the usage of the operator's Internet web site, online service or mobile application by such student or the retention of such student's online activities or requests over time for the purpose of targeting subsequent advertisements. "Targeted advertising" does not include any advertising to a student on an Internet web site based on the content of the web page or in response to a student's response or request for information or feedback.

**Third Party**: The term "Third Party" means a provider of digital educational software or services, including cloud-based services, for the digital storage, management, and retrieval of Education Records and/or Student Data, as that term is used in some state statutes. However, for the purpose of this DPA, the term "Third Party" when used to indicate the provider of digital educational software or services is replaced by the term "Provider."

# EXHIBIT "D"

## DIRECTIVE FOR DISPOSITION OF DATA

Provider to dispose of data obtained by Provider pursuant to the terms of the Service Agreement between LEA and Provider. The terms of the Disposition are set forth below:

1. Extent of Disposition

_____ Disposition is partial. The categories of data to be disposed of are set forth below or are found in an attachment to this Directive:

_____ Disposition is complete. Disposition extends to all categories of data.

2. Nature of Disposition

_____ Disposition shall be by destruction or deletion of data.

_____ Disposition shall be by a transfer of data. The data shall be transferred to the following site as follows:

3. Schedule of Disposition

Data shall be disposed of by the following date:

_____ As soon as commercially practicable.

_____ By _____

4. Signature

_____ _____

Authorized Representative of LEA Date

5. Verification of Disposition of Data

_____ _____

Authorized Representative of Company Date

## EXHIBIT "E"

### GENERAL OFFER OF PRIVACY TERMS

**1**. **Offer of Terms**

Provider offers the same privacy protections found in this DPA between it and

("Originating LEA") which is dated , to any other LEA ("Subscribing LEA") who accepts this General Offer of Privacy Terms ("General Offer") through its signature below. This General Offer shall extend only to privacy protections, and Provider's signature shall not necessarily bind Provider to other terms, such as price, term, or schedule of services, or to any other provision not addressed in this DPA. The Provider and the Subscribing LEA may also agree to change the data provided by Subscribing LEA to the Provider to suit the unique needs of the Subscribing LEA. The Provider may withdraw the General Offer in the event of: (1) a material change in the applicable privacy statues; (2) a material change in the services and products listed in the originating Service Agreement; or three (3) years after the date of Provider's signature to this Form. Subscribing LEAs should send the signed **Exhibit "E"** to Provider at the following email address:

_____.

**PROVIDER:_____**

BY: _____Date: _____

Printed Name: _____Title/Position: _____

**2**. **Subscribing LEA**

A Subscribing LEA, by signing a separate Service Agreement with Provider, and by its signature below, accepts the General Offer of Privacy Terms. The Subscribing LEA and the Provider shall therefore be bound by the same terms of this DPA for the term of the DPA between the

and the Provider. **PRIOR TO ITS EFFECTIVENESS, SUBSCRIBING LEA MUST DELIVER NOTICE OF ACCEPTANCE TO PROVIDER PURSUANT TO ARTICLE VII, SECTION 5. **

**LEA:_____**

BY:

_____Date:_____

Printed Name: _____ Title/Position: _____

SCHOOL DISTRICT NAME: _____

DESIGNATED REPRESENTATIVE OF LEA:

Name: _____

Title: _____

Address: _____

Telephone Number: _____

Email: _____

## EXHIBIT "F"
## DATA SECURITY REQUIREMENTS

**Adequate Cybersecurity Frameworks**
**2/24/2020**

Below is a list of known and credible cybersecurity frameworks which can protect digital learning ecosystems chosen based on a set of guiding cybersecurity principles ("Cybersecurity Frameworks") that may be utilized by Provider.

Cybersecurity Frameworks

| | **MAINTAINING ORGANIZATION/GROUP** | **FRAMEWORK(S)** |
|---|---|---|
| | National Institute of Standards and Technology | NIST Cybersecurity Framework Version 1.1 |
| | National Institute of Standards and Technology | NIST SP 800-53, Cybersecurity Framework for Improving Critical Infrastructure Cybersecurity (CSF), Special Publication 800-171 |
| | International Standards Organization | Information technology — Security techniques<br>— Information security management systems (ISO 27000 series) |
| | Secure Controls Framework Council, LLC | Security Controls Framework (SCF) |
| | Center for Internet Security | CIS Critical Security Controls (CSC, CIS Top 20) |
| | Office of the Under Secretary of Defense for Acquisition and Sustainment (OUSD(A&S)) | Cybersecurity Maturity Model Certification (CMMC, ~FAR/DFAR) |

# EXHIBIT G: Supplemental State Terms for California & AI Addendum

This Amendment for State Terms for California ("**Amendment**") is entered into on the date of full execution (the "**Effective Date**") and is incorporated into and made a part of the Student Data Privacy Agreement ("**DPA**") by and between:
, located at
(the "**Local Education Agency**" or "**LEA**") and
, located at
(the "**Provide**r").

All capitalized terms not otherwise defined herein shall have the meaning as defined in the attached DPA.

**WHEREAS**, the Provider is providing educational or digital Services to LEA. ,

**WHEREAS**, the Provider and LEA recognize the need to protect personally identifiable student information and other regulated data exchanged between them as required by applicable laws and regulations, such as the Family Educational Rights and Privacy Act ("FERPA") at 20 U.S.C. §1232g (34 C.F.R. Part 99); and the Children's Online Privacy Protection Act ("COPPA") at 15 U.S.C. §6501-6506 (16 C.F.R. Part 312), applicable laws, and

**WHEREAS**, the Provider and LEA agree that additional and modified sections are required to address the use of Artificial Intelligence ("AI") as part of the services or product provided; and

**WHEREAS**, the Provider and LEA desire to enter into this DPA for the purpose of establishing their respective obligations and duties in order to comply with applicable laws and regulations.

**NOW THEREFORE**, for good and valuable consideration, LEA and Provider agree to the following:

1. **Term**. Unless otherwise terminated by the Parties, this Amendment shall remain effective for the duration of the attached DPA.

2. **Amendment to ARTICLE II, § 2**. of the DPA (Parent, Legal Guardian and Student Access) is amended as follows:

   In accordance with California Education Code § 49073.1(b)(2), should the Provider store or maintain Student-Generated Content, the Provider shall, upon request from the LEA, provide a mechanism for students to retain ownership of the content they create, which shall include text or images generated by Artificial Intelligence, to be defined below. Furthermore, this NDPA does not impede the ability of students to download, export, or otherwise save or maintain their own Student Generated Content directly from Provider or for Provider to provide a mechanism for such download, export, transfer or saving to students, or the student's parent or legal guardian. Nor does it impede the ability of Providers to offer LEAs features to allow such ability.

3. **Amendment to ARTICLE I, to include the addition(s) of § 4 & 4.1 & 4.2:**

   4. **Use of Artificial Intelligence.** If the Services described in Exhibit "A" require Provider to use AI, ownership of Student Data shall remain with the District or Student. The Provider is prohibited from using or reproducing Student Data for AI training or content generation without prior written consent from the District. Furthermore, sub-licensing Student Data for these purposes is strictly prohibited without explicit written permission from the parents or eligible pupils. Access to District-provided Student Data is limited to authorized users unless granted in writing by the LEA or otherwise permitted under this DPA.
   4.1 **Hallucinations.** Provider will provide notice in the event that any feature of the services it provides is modified to include AI functions. Provider further represents that it will monitor the Hallucination rate of the service and take industry standard methods to reduce Hallucination rates.
   4.2 **Collection of Student Data and AI Use.** The Provider must complete the attached AI Schedule of Data.

4. **Amendment to Article IV, to add a new Section 8**

    8. **Algorithmic Biases**. The Provider certifies that any AI technologies used in facilitating the Services are regularly audited for biases and fairness and, if necessary, Provider shall implement strategies to identify and mitigate any discriminatory effects or biases in AI decision-making. Upon request by the LEA, the Provider shall provide the LEA an abstract or summary of findings of that portion of the audit pertaining to algorithmic bias.
    Furthermore, Student Data, as defined elsewhere in the DPA, shall not be used for training purposes or to develop synthetic and/or inferred data. All other provisions of the DPA shall remain in effect.

5. **Amendment to Exhibit C: Definitions shall be amended to include the following terms:**

    **Algorithmic Bias**: Where an algorithm produces systematically prejudiced outcomes favoring certain groups or disadvantaging others based on characteristics like gender, race, age, ethnicity or other protected attributes.

    **Artificial Intelligence (AI)**: Refers to systems that display intelligent behavior by analyzing their environment and taking action, with some degree of autonomy, to achieve specific goals.

    **Hallucination**: A response by an artificial intelligence to a user request or query that is incorrect, nonsensical or misleading that may appear to be factually correct.

Describe how Student Data is Used:

Any other information related to Provider's use of AI:

The Provider certifies that any AI technologies used in facilitating the Services are regularly audited for biases and fairness and, if necessary, Provider shall implement strategies to identify and mitigate any discriminatory effects or biases in AI decision-making. Furthermore, Student Data, as defined elsewhere in the DPA, shall not be used for training purposes or to develop synthetic and/or inferred data. All other provisions of the DPA shall remain in effect.

IN WITNESS WHEREOF, LEA and Provider execute this DPA as of the Effective Date.

**LEA:** _____

BY: _____ DATE: _____

Printed Name _____ Title/Position _____

**Provider:** _____

BY: _____ DATE: _____

Printed Name _____ Title/Position _____

## AI Addendum

**(METHODS EMPLOYED BY THE AI)**

The following information correlates to how the Provider will use AI in the delivery services to LEA.

| Type of AI Used | Description/Common Uses | Optional | Required |
|---|---|---|---|
| Intelligent Tutoring Systems/agents (ITS) | *Personalized instruction based on students' individual learning needs and progress* | ☐ | ☐ |
| Adaptive Learning/Assessment Platforms | *Adjusts the difficulty level and content of learning materials based on the student's performance and learning pace* | ☐ | ☐ |
| Natural Language Processing (NLP) | *Analyze and understand students' written or spoken responses, providing feedback or assistance in language learning tasks.* | ☐ | ☐ |
| Machine Learning-based Recommended Systems | *Recommend educational resources, such as books, videos, or exercises, based on students' preferences, learning styles, and performance history.* | ☐ | ☐ |
| Virtual Assistants (i.e. Alexa, Siri, Merlyn Mind) | *Provide automated and personalized support by handling tasks, answering questions, and managing workflows.* | ☐ | ☐ |
| Chatbots/LLMs (i.e. ChatGPT) | *Facilitate automated and interactive communication; provides instant responses to questions and assists with various tasks through natural language processing.* | ☐ | ☐ |
| Data Analytics and Predictive Modeling | *Analyze historical data and identify patterns to forecast future trends and inform strategic decision-making.* | ☐ | ☐ |
| Gamification and/or Personalized Learning Paths | *Enhance engagement and optimize individual learning experiences by incorporating game-like elements and/or tailoring educational content to each learner's unique needs and progress.* | ☐ | ☐ |
| Computer Vision (i.e. CNNs, GANs) | *Interpret, analyze, and generate visual data, mimicking human visual perception for applications such as image recognition, object detection, and image synthesis.* | ☐ | ☐ |
| Recommender Systems/Filtering (i.e. KNN, TF-IDF) | *Analyze user preferences and behavior to suggest personalized content, products, or services* | ☐ | ☐ |
| Translation (i.e. Transformer, DeepL) | *Translate text from one language to another, leveraging advanced machine-learning techniques to understand and generate human-like language translations.* | ☐ | ☐ |
| Neural Machine Translation (NMT) | *Algorithms used to provide accurate and fluent translations by understanding and processing entire sentences as opposed to individual words or phrases.* | ☐ | ☐ |
| Speech Recognition (i.e. DNNs, Wav2Vec) | *Convert spoken language into text by accurately identifying and processing the acoustic signals of human speech.* | ☐ | ☐ |

| **Type of AI Used** | **Description/Common Uses** | **Optional** | **Required** |
|---|---|---|---|
| Time Series Analysis (i.e. ARIMA, LSTMs) | *Analyze and interpret temporal data points to identify patterns, trends, and seasonal variations, aiding in forecasting and decision-making.* | ☐ | ☐ |
| Reinforcement Learning (i.e. Q-Learning, DQNs) | *Teaches optimal behaviors and decision-making policies by interacting with an environment and receiving feedback through rewards and penalties.* | ☐ | ☐ |
| Dimensionality Reduction i.e. (PCA, t-SNE) | *Reduces the number of variables in a dataset while preserving as much variability and information as possible to simplify analysis and visualization.* | ☐ | ☐ |
| Other Types of AI Used | *Specify other types of AI here:* | ☐ | ☐ |
| **Purpose of AI Use** | **Description** | **Optional** | **Required** |
| Personalized learning | *Customized learning to match a students' strengths, weaknesses, and learning styles.* | ☐ | ☐ |
| Enhanced Teaching and Learning | *Assist teachers in delivering more effective instruction and help students grasp difficult concepts more easily.* | ☐ | ☐ |
| Automated Grading and Feedback | *Automate the grading for assignments, quizzes, and exams; provides immediate feedback to students.* | ☐ | ☐ |
| Identifying Learning Gaps | *Analyze student performance data to identify areas where students are struggling and provide targeted interventions to address learning gaps.* | ☐ | ☐ |
| Supporting Special Education | *Additional support and accommodations for students with special needs, including personalized learning plans and assistive technologies* | ☐ | ☐ |
| Promoting Engagement and Motivation | *Gamification elements and interactive learning experiences; increase student engagement and motivation* | ☐ | ☐ |
| Administrative Support | *Assist with administrative tasks such as scheduling, grading, and managing educational resources* | ☐ | ☐ |
| Parental Engagement | *Provide parents with insights into their student's academic progress, for communication and collaboration between parents, students, and teachers* | ☐ | ☐ |
| Other Purpose(s) for AI Use | *Specify other purpose(s) for AI here:* | ☐ | ☐ |

| ***Student Data Collected With Use of AI*** | **Description** | Optional | Required |
|---|---|---|---|
| Student Name | *First and/or Last* | ☐ | ☐ |
| Date of Birth | *Student's date of birth* | ☐ | ☐ |
| Student ID Numbers | *Unique identification numbers to students for record-keeping purposes.* | ☐ | ☐ |
| Demographic Information | *Gender, race, ethnicity, nationality, language spoken at home, etc.* | ☐ | ☐ |
| Academic Records | *academic performance, grades, attendance, disciplinary history, etc.* | ☐ | ☐ |
| Special Education Information | *Individualized education plans (IEPs), accommodations, special needs, etc.* | ☐ | ☐ |
| Health Information | *Physical or mental health conditions, medications, allergies, medical history, etc.* | ☐ | ☐ |
| Biometric Data | *Fingerprints, facial recognition, or voiceprints for authentication or identification* | ☐ | ☐ |
| Behavioral Data | *Behavior, interactions with educational materials, engagement levels, learning preferences, etc.* | ☐ | ☐ |
| Location Information | *Track locations, GPS-enabled devices, attendance tracking systems, etc.* | ☐ | ☐ |
| Input Data | *Information fed into an AI model or algorithm, which is used to train, validate, and test the model to make predictions or perform specific tasks.* | ☐ | ☐ |
| Other Student Data | *Specify other Student Data here:* | ☐ | ☐ |
| No AI used at this time | *Provider will immediately notify LEA if this designation is no longer applicable.* | ☐ | ☐ |

☐ All requested AI Elements have been identified in this Exhibit and are correct at time of signature.