AGREEMENT BETWEEN THE SCHOOL BOARD OF BAY COUNTY, FLORIDA AND LEARNING CIRCLE SOFTWARE FOR ONLINE EDUCATION SERVICES

THIS AGREEMENT FOR ONLINE EDUCATION SERVICES (the "Service Agreement") is entered into by and between The School Board of Bay County, Florida, a political subdivision of the State of Florida and a body corporate pursuant to §1001.40, Florida Statutes, whose address is 1311 Balboa Avenue, Panama City, FL 32401, (the "LEA"), the University of Central Florida Board of Trustees ("UCF"), and Learning Circle Software, LLC, an Ohio limited liability company registered to do business in the State of Florida, whose principal address is 2775 Bexley Park Road, Bexley, OH 43209, ("Provider"). The LEA and Provider may be collectively referred to as the "Parties."

WHEREAS, LEA is interested in utilizing Provider's software license for digital educational services in connection with the Community School Grant Program; and

WHEREAS, Florida Administrative Code 6A-1.0102(14) authorizes district school boards to acquire information technology as defined in section 282.0041(14), Florida Statutes, by direct negotiation and contract with Provider as best fits the needs of the school district as determined by the LEA; and

WHEREAS, Provider desires to provide their software license for the LEA's use in their partnership with UCF and the Community School Grant Program.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. **Incorporation of Recitals.** The forgoing recitals (WHEREAS CLAUSES) are true and correct and are incorporated herein by reference.

2. **Term of Agreement.** This agreement shall remain in effect until terminated, commencing at the date of execution by both parties. Either party may terminate this agreement upon providing 30 days' notice.

3. **Statement of Work.** Provider shall provide software license, hosting, implementation, and training services ("Products" and "Services") as outlined in Attachment A, Exhibit A ("Description of Services"), which is incorporated in the Service Agreement by reference. Additional services and products may be offered through separate statements of work or proposals, all of which are subject to the terms and conditions of this Service Agreement and all attachments and exhibits. In the event of a conflict

of interest between the terms and conditions of this Service Agreement and any attachments and exhibits, the following order of precedence shall be observed:

3.1. Attachment A – Student Data Privacy Agreement (the "DPA") along with its attached exhibits.

3.2. This Service Agreement.

4. **Payment & Compensation.** All services described herein are provided to the LEA without compensation.

5. **LEA Administrator.** The LEA Administrator assigned to act on behalf of LEA in all matters pertaining to this Service Agreement and to authorize services, accept and approve all reports, drafts, or products is Dawn Capes.

6. **Background Screening**: In the event the requirements include the need for Provider to visit schools with students present or have digital communication with students, Provider agrees to comply with all requirements of Sections 1012.32 and 1012.465, Florida Statutes, and all of its personnel who (1) are to be permitted access to school grounds when students are present, (2) will have direct contact with students, or (3) have access or control of school funds, will successfully complete the background screening required by the referenced statutes and meet the standards established by the statutes. This background screening will be conducted by LEA in advance of Provider or its personnel providing any services under the conditions described in the previous sentence. Provider shall bear the cost of acquiring the background screening required by Section 1012.32, Florida Statutes, and any fee imposed by the Florida Department of Law Enforcement to maintain the fingerprints provided with respect to Provider and its personnel. The Parties agree that the failure of Provider to perform any of the duties described in this section shall constitute a material breach of this Service Agreement entitling LEA to terminate this Service Agreement immediately with no further responsibilities or duties to perform under this Service Agreement. Provider agrees to indemnify and hold harmless LEA, its officers and employees resulting from liability or claims made by any person who may suffer physical or mental injury, death or property damage resulting in the Provider's failure to comply with the requirements of this Section or with Sections 1012.32 and 1012.465, Florida Statutes.

7. **Child Neglect.** Provider and its employees shall be subject to the requirements of §39.201 Florida Statute that requires the reporting of child abuse or child neglect to the State of Florida, Department of Children and Families via the Florida Abuse Hotline 1-800-962-2873.

8. **Indemnification**. Provider agrees to indemnify, hold harmless and defend LEA, its officers, employees, agents and representatives from any and all claims, judgments, costs, and expenses including, but not limited to, reasonable attorney's fees,

reasonable investigative and discovery costs, court costs and all other sums which LEA, its officers, employees, agents and representatives may pay or become obligated to pay on account of any, all and every claim or demand, or assertion of liability, or any claim or action founded thereon, arising or alleged to have arisen out of the products, goods or services furnished by Provider, its agents, servants or employees; the equipment of Provider, its agents, servants or employees while such equipment is on premises owned or controlled by LEA; or the negligence of Provider or the negligence of Provider's agents when acting within the scope of their employment, whether such claims, judgments, costs and expenses be for damages, damage to property including LEA's property, and injury or death of any person whether employed by Provider, LEA or otherwise.

9. **Insurance.** Provider shall maintain, throughout the term of this Agreement and any renewals: General liability insurance in an amount of not less than $1,000,000.00 per occurrence, $3,000,000.00 aggregate covering its activities pursuant to this Agreement. The policy shall be obtained from a liability insurance carrier rated A or higher, under a policy approved for use in the State of Florida.

10. **No Waiver of Sovereign Immunity**. Notwithstanding any other term of this Agreement, the School Board intends to avail itself of the benefits of Section 768.28 and of other statutes and common law governing sovereign immunity. In no event will the School Board's liability exceed the sum of $200,000 per person or $300,000 per occurrence. Nothing in this Agreement is intended to inure to the benefit of any third party for the purpose of allowing any claim which would otherwise be barred under the doctrine of sovereign immunity or by operation of law. Nothing herein shall be construed as consent by an agency or political subdivision of the State of Florida to be sued by third parties in any manner arising out of any contract.

11. **No Third-Party Beneficiaries**. The Parties expressly acknowledge that it is not their intent to create or confer any rights to or obligations upon any third person or entity under this Service Agreement. None of the Parties intend to directly or substantially benefit a third party by this Service Agreement. The Parties agree that there are no third-party beneficiaries to this Service Agreement and that no third party shall be entitled to assert a claim against any of the Parties based upon this Service Agreement. Nothing herein shall be construed as consent by an agency or political subdivision of the State of Florida to be sued by third Parties for any matter arising out of this or any other contract.

12. **Access to and Retention of Documentation**. The LEA, the United States Department of Education, the Comptroller General of the United States, the Florida Department of Education or any of their duly authorized representatives shall have access to any books, documents, papers, and records of Provider which are directly

pertinent to work and services to be performed under this Service Agreement for the purpose of audit, examination, excerpting and transcribing. The Parties will retain all such required records, and records required under any state or federal rules, regulations or laws respecting audit, for a period of four years after the LEA has made final payment and all services have been performed under this Service Agreement.

13. **Provider's Public Records.** Public Records Act/Chapter 119 Requirements. Provider agrees to comply with the Florida Public Records Act (Chapter 119, Florida Statutes) to the fullest extent applicable, and shall, if this engagement is one for which services are provided, by doing the following:

13.1. Provider and its subcontractors shall keep and maintain public records required by the LEA to perform the service.

13.2. Provider and its subcontractors shall upon request from the LEA's custodian of public records, provide the LEA with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed that provided in chapter 119, Florida Statutes or as otherwise provided by law;

13.3. Provider and its subcontractors shall ensure that public records that are exempt or that are confidential and exempt from the public records disclosure requirements are not disclosed except as authorized by law for the duration of the Term and following completion of the Service Agreement if Provider does not transfer the records to the LEA;

13.4. Provider and its subcontractors upon completion of the contract shall transfer to the LEA, at no cost, all public records in possession of Provider and its subcontractors or keep and maintain the public records required by the LEA to perform the service. If Provider and its subcontractors transfer all public records to the LEA upon completion of the Service Agreement, Provider and its subcontractors shall destroy any duplicate public records that are exempt or that are confidential and exempt from the public records disclosure requirements. If Provider and its subcontractors keep and maintain public records, upon completion of the Service Agreement, Provider and its subcontractors shall meet all applicable requirements for retaining public records.   All records stored electronically must be provided to the LEA, upon request from the LEA's custodian of public records, in a format that is compatible with the information technology systems of the LEA.

13.5. The Parties agree that if Provider and its subcontractors fail to comply with a public records request, then the LEA must enforce the Service Agreement

provisions in accordance with the Service Agreement and as required by section 119.0701, Florida Statutes.

13.6. The failure of Provider to comply with the provisions set forth herein shall constitute a default and material breach of this Service Agreement, which may result in immediate termination, with no penalty to LEA.

13.7. **IF PROVIDER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO PROVIDER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS SERVICE AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS, THE PUBLIC INFORMATION OFFICE, AT bdscomm@bay.k12.fl.us, 850-767-5280, or 1311 BALBOA AVENUE, PANAMA CITY, FLORIDA 32401.**

Provider is required to comply with the Florida Public Records Law, Chapter 119, Florida Statutes, in the performance of its duties under this contract and will specifically:

     a.   Keep and maintain public records required by the School Board to perform the service.

     b.   Upon request from the School Board's custodian of public records, provide the School Board with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in the Chapter 119, Florida Statutes or as otherwise provided by law.

     c.   Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the Agreement if Provider does not transfer the records to the School Board.

     d.   Upon completion of the contract, transfer, at no cost, to the School Board all public records in possession of Provider or keep and maintain public records required by the School Board to perform the service. If Provider transfers all public records to the School Board upon completion of the contract, Provider shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Provider keeps and maintains public records upon completion of the contract, Provider shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the School Board, upon request of the School Board's custodian of public records, in a format that is compatible with the information technology systems of the School Board.

e.   The failure of Provider to comply with the provisions set forth herein shall constitute a default and material breach of this Agreement, which may result in immediate termination, with no penalty to the School Board.

14. **Non-Discrimination**. The Parties shall not discriminate against any employee or participant in the performance of the duties, responsibilities, and obligations under this Service Agreement because of race, age, religion, color, gender, national origin, marital status, disability or sexual orientation.

15. **Termination**. This Service Agreement may be canceled with or without cause by LEA during the Term hereof upon thirty (30) days written notice to the other party of its desire to terminate this Service Agreement.

16. **Records**. Each Party shall maintain its own respective records and documents associated with this Service Agreement in accordance with the records retention requirements applicable to public records.   Each party shall be responsible for compliance with any public documents request served upon it pursuant to Section 119.07, Florida Statutes, and any resultant award of attorney's fees for non-compliance with that law.

17. **Entire Agreement**. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained herein and the Parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Service Agreement that are not contained in this document.   Accordingly, the Parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

18. **Amendments**. No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Service Agreement and executed by each party hereto.

19. **Preparation of Agreement**. The Parties acknowledge that they have sought and obtained competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Service Agreement has been their joint effort.   The language agreed to herein express their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the Parties than the other.

20. **Waiver**. The Parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Service Agreement and, therefore,

is a material term herein. Any party's failure to enforce any provision of this Service Agreement shall not be deemed a waiver of such provision or modification of this Service Agreement. A waiver of any breach of a provision of this Service Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Service Agreement.

21. **Compliance with Laws**. Each party shall comply with all applicable federal and state laws, codes, rules and regulations in performing its duties, responsibilities and obligations pursuant to this Service Agreement.

22. **Governing Law & Venue**. This Service Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Service Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State courts of Bay County, Florida.

23. **Binding Effect**. This Service Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

24. **Assignment**. Neither this Service Agreement nor any interest herein may be assigned, transferred or encumbered by any party without the prior written consent of the other party. There shall be no partial assignments of this Service Agreement including, without limitation, the partial assignment of any right to receive payments from LEA. This Service Agreement may not be assigned by Provider in any fashion, whether by operation of law, or by conveyance of any type, including without limitation, transfer of stock in Provider, without the prior written consent of the LEA which consent the LEA may withhold in its sole discretion.

25. **Force Majeure**. Neither party shall be obligated to perform any duty, requirement or obligation under this Service Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, wars, sabotage, accident, flood, acts of God, strikes, or other labor disputes, riot or civil commotions, or by reason of any other matter or condition beyond the control of either party, and which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall a lack of funds on the part of either party be deemed Force Majeure.

26. **Severability**. In case any one or more of the provisions contained in this Service Agreement shall for any reason be held to be invalid, illegal, unlawful, unenforceable or void in any respect, the invalidity, illegality, unenforceability or unlawful or void nature of that provision shall not affect any other provision and this Service Agreement shall be considered as if such invalid, illegal, unlawful, unenforceable or void provision had never been included herein.

27. **Notice**. When any of the Parties desire to give notice to the other, such notice must be in writing, sent by U.S. Mail, postage prepaid, addressed to the party for whom it is intended at the place last specified; the place for giving notice shall remain such until it is changed by written notice in compliance with the provisions of this paragraph. For the present, the Parties designate the following as the respective places for giving notice:

To LEA:	Superintendent of Schools The School Board of Bay County, Florida 1311 Balboa Avenue Panama City, FL 32401
With a Copy to:	Franklin R. Harrison, Esq. School Board Attorney Hand Arendall Harrison Sale LLC 304 Magnolia Avenue Panama City, Florida 32401
To: Provider	Tisha Lewis, Director Learning Circle Software, LLC 2775 Bexley Park Road Bexley, OH 43209
With a Copy to:	_____ _____ _____ _____

28. **Captions**. The captions, section numbers, article numbers, title and headings appearing in this Service Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such articles or sections of this Service Agreement, nor in any way effect this Service Agreement and shall not be construed to create a conflict with the provisions of this Service Agreement.

29. **Authority**. Each person signing this Service Agreement on behalf of either party individually warrants that he or she has full legal authority to execute this Service Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Service Agreement.

30. **Independent Contractor**. Provider certifies that it is an independent contractor and shall not employ, contract with, or otherwise use the services of any officer or

employee of LEA. Provider certifies that its owner(s), officers, directors or agents, or members of their immediate family, do not have an employee relationship or other material interest with the LEA.

31. **Copyrights**. Provider is hereby notified that the federal awarding agency reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for federal government purposes: the copyright in any work developed under a grant, subgrant, or contract under a grant or subgrant; and, any rights of copyright to which a grantee, subgrantee or a Provider purchases ownership with grant support. Furthermore, the Parties agree that the LEA has the right to make copies of any materials, whether in tangible or electronic means or media, that are delivered under the provisions of this Service Agreement for use within the School District for purposes related to LEA business, operations, the delivery of the educational program or to comply with the requirements of law, rule, policy or regulation. Any material not designated as reproducible by Provider may not be copied by the LEA provided that such material was copyrighted by Provider before performance under this Service Agreement and was not developed specifically for LEA under this Service Agreement.

32. **Debarment**. By signing this Service Agreement, Provider certifies, to the best of its knowledge and belief, that it and its principals:

    32.1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by a federal department or agency.

    32.2. Have not, within the preceding five-year period, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property.

    32.3. Are not presently indicted or otherwise criminally charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in the preceding paragraph (b).

    32.4. Have not within the preceding five-year period had one or more public transactions (federal, state or local) terminated for cause or default.

    32.5. Provider agrees to notify LEA within 30 days after the occurrence of any of the events, actions, debarments, proposals, declarations, exclusions, convictions,

judgments, indictments, informations, or terminations as described in paragraphs (a) – (d) above, with respect to Provider or its principals.

33. **Confidential Student Information**. Notwithstanding any provision to the contrary contained in this Service Agreement between Provider and LEA; Provider and its officers, employees, agents, representatives, Providers, and subcontractors shall fully comply with the requirements of section 1002.22 and section 1002.221, Florida Statutes, or any other law or regulation, either federal or State of Florida, regarding confidentiality of student information and records, Further, Provider for itself and its officers, employees, agents, representatives, contractors, or subcontractors, shall fully indemnify and hold the LEA and its officers and employees harmless for any violation of this covenant, including but not limited to defending the LEA and its officers and employees against any complaint, administrative or judicial proceeding, payment of any penalty imposed upon the LEA or payment of any and all costs, damages, judgments, or losses incurred by or imposed upon the LEA arising out of the breach of this covenant by Provider, or an officer, employee, agent, representative, contractor, or subcontractor of Provider to the extent and only to the extent that Provider or an officer, employee, agent, representative, contractor, or subcontractors of Provider shall either intentionally or negligently violate the provisions of this covenant, or sections 1002.22 or 1002.221, Florida Statutes. This provision shall survive the termination of or completion of all performance or obligations under this Service Agreement and shall be fully binding upon Provider until such time as any proceeding brought on account of this covenant is barred by any applicable statute of limitations.

34. **Confidentiality of Data/Information Provided.** LEA will allow Provider access to limited data/information as identified in the Description of Services as necessary to perform the Services and pursuant to the terms of this Service Agreement in compliance with FERPA, COPPA, PPRA, 34 CFR 99.31(b) and sections 1001.41 and 1002.22, Florida Statutes, as well as all other privacy statutes as it relates to data privacy and security. Provider shall only use the data and information provided by LEA for the purpose specified in the Description of Services, and shall not disclose, copy, reproduce or transmit such data/information obtained under this Service Agreement and/or any portion thereof, except as necessary to fulfill the Service Agreement or as may be required by law.

35. **Protection and Handling of Data.**

   35.1. **Data Confidentiality and Security -** Provider shall implement appropriate measures designed to ensure the confidentiality and security of Protected Information as required in the Data Sharing and Privacy Agreement attached hereto as <u>Attachment A.</u>

35.2.Compliance – Provider will not knowingly permit any Provider's personnel to have access to any LEA facility or any records or data of LEA if the person has been convicted of a crime in connection with (i) a dishonest act, breach of trust, or money laundering, or has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such offense, as described in Section 19 of the Federal Deposit Insurance Act, 12 U.S.C. §1829(a); or (ii) a felony. Provider shall assure that all contracts with subcontractors impose these obligations on the subcontractors and shall monitor the subcontractors' compliance with such obligations. No subcontractors may be used without prior written consent of LEA.

35.3.FERPA – To the extent services provided hereunder pertain to the access to student information, Provider shall adhere to all standards included in the Family Educational Rights and Privacy Act (FERPA) and Sections 1001.41 and 1002.22, Florida Statutes (the Protection of Pupil Privacy Acts), and other applicable laws and regulations as they relate to the release of student information. Notwithstanding the above, it is understood and agreed that LEA shall obtain any necessary consents from parents or students prior to providing student information to Provider, and LEA is wholly responsible for providing annual notice to students and parents of their rights with respect to Florida Statutes.

35.4.HIPAA, CIPA, and GLBA – Provider also agrees to comply with all applicable state and federal laws and regulations, including Health Information Privacy and Accountability Act (HIPAA), Children Internet Protection Act (CIPA), and the Gramm-Leach Bliley Act (GLBA).

35.5.Data De-Identification – Provider may use aggregate data only for product development, research, or other purposes. Provider must have approval of the LEA to publish or market LEA data.

35.6.Data Security – Provider agrees to protect and maintain the security of data with protection security measures that include maintaining secure environments that are patched with all appropriate security updates as designated by a relevant authority (e.g. Microsoft notifications, etc.) Likewise, LEA agrees to conform to the following measures to protect and secure data:

35.6.1.Data Transmission. Provider agrees that any and all transmission or exchange of system application data with LEA and/or any other Parties shall take place via secure means, e.g. HTTPS, FTPS, SFTP, or equivalent.

35.6.2.Data Storage and Backup. Provider agrees that any and all LEA data will be stored, processed, and maintained solely on designated servers and that no LEA data at any time will be processed on or transferred to any portable

or laptop computing device or any portable storage medium, unless that storage medium is in use as part of Provider's designated backup and recovery processes. All servers, storage, backups, and network paths utilized in the delivery of the service shall be contained within the states, districts, and territories of the United States unless specifically agreed to in writing by an LEA officer with designated data, security, or signature authority. An appropriate officer with the necessary authority can be identified by the LEA Director of Technology for any general or specific case.

Provider agrees to store all LEA backup data stored as part of its backup and recovery processes in encrypted form, using no less than 128 bit key.

35.6.3. **Data Re-Use**. Provider agrees that any and all data exchanged shall be used expressly and solely for the purposes enumerated in this Service Agreement. Data shall not be distributed, repurposed, or shared across other applications, environments, or business units of Provider. As required by Federal law, Provider further agrees that no LEA data of any kind shall be revealed, transmitted, exchanged, or otherwise passed to other Providers or interested Parties except as necessary in order to perform the Services. Any other transmission or exchange of LEA data is only permitted on a case-by-case basis as specifically agreed to in writing by an LEA officer with designated data, security, or signature authority.

35.6.4. **End of Agreement Data Handling** Provider will ensure that District Data is encrypted and that all device/medium will be scanned at the completion of this Service Agreement to ensure that no District Data, PII, personal information and/or student record information is stored on such electronic devices/medium. Furthermore, Provider will have in place a service that will allow Provider to wipe the hard drive on any stolen laptop or mobile electronic device remotely and have a protocol in place to ensure compliant use by employees.

35.6.5. Provider agrees that upon termination of this Service Agreement and requested by LEA in writing it shall erase, destroy, and render unreadable all LEA data, and certify in writing that these actions have been completed within thirty (30) days of the termination of this Service Agreement or within seven (7) days of the request of an agent of LEA, whichever shall come first.

35.6.6. If LEA receives a subpoena, warrant, or other legal order, demand (including an application for public information filed pursuant to Florida public records laws, or request seeking Data maintained by Provider, the LEA will promptly provide a copy of the application to Provider. Provider

will promptly supply LEA with copies of records or information required in order for the LEA to respond, and will cooperate with the LEA's reasonable requests in connection with its response.

35.6.7. Upon receipt of a litigation hold request, Provider will preserve all documents and LEA data as identified in such request, and suspend any operations that involve overwriting, or potential destruction of documentation arising from such litigation hold.

35.7. Data Breach – Provider agrees to comply with the State of Florida Database Breach Notification process and all applicable laws that require the notification of individuals in the event of unauthorized release of personally identifiable information or other event requiring notification. In the event of a breach of any of Provider's security obligations or other event requiring notification under applicable law ("Notification Event"), Provider agrees to notify LEA immediately and assume responsibility for informing all such individuals in accordance with applicable law and to indemnify, hold harmless, and defend LEA and its trustees, officers, and employees from and against any claims, damages, or other harm related to such Notification Event.

35.7.1. Mandatory Disclosure of Protected Information – If Provider becomes compelled by law or regulation (including securities laws) to disclose any Protected Information, Provider will provide LEA with written notice within 72 hours, so that LEA may seek an appropriate protective order or other remedy. If a remedy acceptable to LEA is not obtained by the date that Provider must comply with the request, Provider will furnish only that portion of the Protected Information that it is legally required to furnish, and Provider shall require any recipient of the Protected Information to exercise commercially reasonable efforts to keep the Protected Information confidential. As soon as practicable, upon LEA request, provide LEA with a copy of its response.

35.7.2. Remedies for Disclosure of Confidential Information – Provider and LEA acknowledge that unauthorized disclosure or use of the Protected Information may irreparably damage LEA in such a way that adequate compensation could not be obtained from damages in an action at law. Accordingly, the actual or threatened unauthorized disclosure or use of any Protected Information shall give LEA the right to seek injunctive relief restraining such unauthorized disclosure or use, in addition to any other remedy otherwise available (including reasonable attorneys' fees). Provider hereby waives the posting of a bond with respect to any action for injunctive relief. Provider further grants LEA the right, but not the obligation, to enforce these provisions in Provider's name against any of Provider's

employees, officers, board members, owners, representatives, agents, Providers, and subcontractors violating the above provisions.

35.7.3. **Safekeeping and Security -** As part of the Services, Provider will be responsible for safekeeping all keys, access codes, combinations, access cards, personal identification numbers, and similar security codes and identifiers issued to Provider's employees, agents, or subcontractors. Provider agrees to require its employees to promptly report a lost or stolen access device or information.

35.7.4. **Non-Disclosure –** Provider is permitted to disclose Confidential Information to its employees, authorized subcontractors, agents, consultants, and auditors on a need to know basis only, provided that all such subcontractors, agents, consultants, and auditors have written confidentiality obligations to Provider and LEA.

35.7.5. **Request for Additional Protection -** From time to time, LEA may reasonably request that Provider protect the confidentiality of certain Protected Information in particular ways to ensure that confidentiality is maintained. Provider has the right to reasonably decline LEA's request.

35.7.6. **Data Ownership-** Unless expressly agreed to the contrary in writing, all LEA Data or PII prepared by Provider (or its subcontractors) for the LEA will not be disclosed to any other person or entity.

35.7.7. Provider warrants to the LEA that the LEA will own all rights, title and interest in any and all intellectual property created in the performance of this Service Agreement and will have full ownership and beneficial use thereof, free and clear of claims of any nature by any third party including, without limitation, copyright or patent infringement claims. Provider agrees to assign and hereby assigns all rights, title, and interest in any and all LEA created intellectual property created in the performance of the Service Agreement to the LEA, and will execute any future assignments or other documents needed for the LEA to document, register, or otherwise perfect such rights. Notwithstanding the foregoing, Provider retains all right, title and interest in and to its software, documentation, training and implementation materials and other materials provided in connection with Provider's services (collectively, "Provider IP"). Provider grants to the LEA a personal, nonexclusive license to use the Provider IP for its own non-commercial, incidental use as set forth in the end user license agreement accompanying such software and as contemplated herein. All data of the LEA remains the property of the LEA.

35.7.8. It is understood and agreed that the LEA is the exclusive Owner of the LEA data and that at no point in time does or will the Provider become the Owner of any LEA Data, PII or LEA files, and that should the Provider be subject to dissolution or insolvency, LEA data, PII, or files will not be considered an asset or property of the Provider. The LEA reserves the right to demand the prompt return of any and all LEA data and PII at any time and for any reason whatsoever.

36. **E-Verify.** The Parties shall each comply with all federal and state laws, including but not limited to section 448.095, Florida Statues, prohibiting the hiring and continued employment of aliens not authorized to work in the United States. The Parties must not knowingly employ unauthorized aliens working under this Service Agreement and should such violation occur shall be cause for termination of the Service Agreement. The Parties will utilize the E-verify system established by the U.S. Department of Homeland Security to verify the employment eligibility of its new employees working under this Service Agreement hired during the Term, and will further include in all subcontracts for subcontractors performing work or providing services pursuant to this Service Agreement an express written requirement that the subcontractor utilize the E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor to work under this Service Agreement during the Term. The Provider shall receive and retain an affidavit from the subcontractor stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien to work under this Service Agreement. Provider's knowing failure to comply with this subsection may result in termination of the Service Agreement and debarment of the Provider from all public contracts for a period of no less than one (1) year.

37. **Federal Grants Terms and Conditions.** For any agreement that involves, receives or utilizes Federal Grants funding, the following terms and conditions shall be considered a part of the Service Agreement and the Provider accepts and acknowledges that it is and will continue to be in compliance with said terms and conditions for the Term of the Service Agreement:

37.1. **Recovered Materials (2 CFR §200.322) applies to all contracts greater than $10,000.** Provider must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource

recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

37.2. **Federal Drug Free Workplace.** Provider agrees to comply with the drug-free workplace requirements for federal contractors pursuant to 41 U.S.C.A. § 8102.

37.3. **Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) applies if contract is greater than or equal to $100,000.** Provider certifies that it has filed the required certification and that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of an agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Provider must disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award.

37.4. **Energy Efficiency / Conservation (42 U.S.C. 6201).** Provider agrees to comply with the mandatory standards and policies relating to energy efficiency contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).

37.5. **Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended applies to contracts and subgrants in excess of $150,000.** Provider agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Provider shall report any and all violations to the Federal awarding agency and the Regional Office of the EPA, and notify LEA concurrently within 30 days of notice of the violation.

37.6. **Remedies For Violation or Breach of Contract.** Failure of the vendor to provide products within the time specified in the ITB shall result in the following: The Buyer shall notify vendor in writing within five (5) calendar days via the Vendor Performance Form and provide five (5) calendar days to cure. If awarded vendor cannot provide product, LEA reserves the right to purchase product from the next lowest responsive and responsible bidder. The defaulting vendor may be responsible for reimbursing LEA for the price differences.

37.7. **Debarment and Suspension.** Provider certifies that it complies fully with the Federal Debarment Certification regarding debarment suspension, ineligibility and voluntary exclusion. In accordance with 2 CFR part 180 that implement Executive Orders 12549 and 12689. Furthermore, Provider certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment,

declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

37.8. **Equal Employment Opportunity.** During the performance of this Service Agreement, Provider agrees as follows:

37.8.1. Provider will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. Provider will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Provider agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

37.8.2. Provider will, in all solicitations or advancements for employees placed by or on behalf of the Provider, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

37.8.3. Provider will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Provider's legal duty to furnish information.

37.8.4. Provider will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a Record Retention and access requirements to all records. Provider will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice,

to be provided by the agency contracting officer, advising the labor union or workers' representative of the Provider's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

37.8.5. Provider will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

37.8.6. Provider will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

37.8.7. In the event of the Provider's noncompliance with the nondiscrimination clauses of this Service Agreement or with any of such rules, regulations, or orders, this Service Agreement may be cancelled, terminated, or suspended in whole or in part and the Provider may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

37.8.8. Provider will include the provisions of paragraphs 39.8 in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. Provider will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the Provider becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Provider may request the United States to enter into such litigation to protect the interests of the United States.

37.9. **Copeland "Anti-Kickback" Act (18 U.S.C. 874 And 40 U.S.C. 276c).** Provider certifies that it is, and will continue to be, for the Term of this Service Agreement in for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors

and subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each Contractor or sub recipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

37.10. **Davis-Bacon Act,** a**s Amended (40 U.S.C. 276A TO A-7).** Provider certifies that it is, and will continue for the Term of this Service Agreement, to be in compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, Provider is herein required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, Provider agrees to pay wages not less than once a week. Provider must provide a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. Provider acknowledges that the decision to award this Service Agreement or subcontract is conditioned upon the acceptance of the wage determination which the Provider accepts. Provider agrees to report all suspected or reported violations to the Federal awarding agency and to notify LEA concurrently. Provider certifies that it is, and will continue to be, for the Term of this Service Agreement in full compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and SubContractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each Contractor or sub recipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

37.11. **Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333).** Provider certifies that it is, and will continue for the Term of this Service Agreement, to be in compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each Contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic

rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

37.12. Health And Safety Standards in Building Trades and Construction Industry (40 U.S.C. 3704). No laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous.

37.13. All website or software terms contained in click-through agreements in connection with Providers services are disclaimed by LEA to the extent the terms are in addition to, conflict or are inconsistent with the terms of this Service Agreement.

IN WITNESS WHEREOF, the Parties hereto have made and executed this Service Agreement on the date first above written.

School Board:

DocuSigned by:

Dan Fuller ,

Dan Fuller

GM, Procurement, Contracting and Mtls Mgmt

Date: 9/25/2023

Provider:

DocuSigned by:

Tisha Lewis

B8D7C2FF58E9C41B...

Learning Circle Software, LLC

By: Tisha Lewis

Title: Director

Date: 9/25/2023

Attachments: (list all attachments with the exact title of the document)

Attachment A – Standard Student Data Privacy Agreement with Exhibits

Provider Contact Name: Tisha Lewis

Phone Number: 614.600.9614

Email Address: tisha.lewis@learningcirclesoftware.com

**AGREEMENT BETWEEN THE SCHOOL BOARD OF BAY COUNTY, FLORIDA AND
LEARNING CIRCLE SOFTWARE FOR ONLINE EDUCATION SERVICES**

ATTACHMENT A
STANDARD STUDENT DATA PRIVACY AGREEMENT

This Student Data Privacy Agreement ("**DPA**"), as developed by the Student Data Privacy Consortium ("SDPC") and as modified by The School Board of Bay County, Florida is entered into on this _____25_____ day of _____September_____, 2023 (the "**Effective Date**") by and between:

> The School Board of Bay County, Florida, located at 1311 Balboa Avenue, Panama City, Florida 32401 (the "**LEA**")

and

> Learning Circle Software, LLC, located at ==2275 Bexley Park Road, Bexley, OH 43209== ("**Provider**").

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

WHEREAS, 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), and applicable state privacy laws and regulations and

WHEREAS, 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, LEA and Provider agree to the additional terms or modifications set forth in Exhibit "H".

If Checked, 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 (3) years. **Exhibit "E"** will expire three (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: Dan Fuller

Title: GM, Procurement, Contracting and Mtls Mgmt

Address: 1311 Balboa Ave, Panama City FL 32401

Phone: 850-767-4209

Email: fulled@bay.k12.fl.us

The designated representative for Provider for this DPA is:

Name: Tisha Lewis

Title: Director

Address: 2775 Bexley Park Road, Bexley OH 43209

Phone: 614.600.9614

Email: tisha.lewis@learningcirclesoftware.com

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

LEA: The School Board of Bay County, Florida

By: _Dan Fuller_

Date: 9/25/2023

Printed Name: Dan Fuller   Title/Position: GM, Procurement, Contracting and Mtls Mgmt

Provider: Learning Circle Software, LLC.

By: _Tisha Lewis_

Date: 9/25/2023

Printed Name: Tisha Lewis

Title/Position: Director

STANDARD CLAUSES

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 the 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.   <u>DUTIES OF PROVIDER</u>

1. **<u>Privacy Compliance</u>**. 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. **<u>Authorized Use</u>**. 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 **<u>Exhibit "A"</u>** or stated in the Service Agreement and/or otherwise authorized under the statutes referred to herein this DPA.

3. **<u>Provider Employee Obligation</u>**. 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. **<u>No Disclosure</u>**. 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. **<u>De-Identified Data</u>**: 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 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. 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
       iv. 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 the Service Agreement 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. **<u>Authority</u>.** 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. <u>**Waiver**</u>. 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.

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<u>**EXHIBIT "A"**</u>
DESCRIPTION OF SERVICES

The UCF Center for Community Schools has contracted with Learning Circle to implement a statewide data management system. Learning Circle is based out of Ohio and provides critical information on both student and school performance and programs and interventions students receive from out-of-school providers. With a full implemented platform that includes a data sharing agreement, community organizations will be able to understand the needs of the students they serve to provide coordinated and quality services to promote improved student outcomes.

As a contracted party by UCF, Learning Circle provisions for the safeguarding and storage of all data in a secure platform. Through identifying key stakeholders and users with associated privilege levels, the school district will be able to manage user permissions. Learning Circle's platform ensures that all FERPA and HIPPA regulations are strictly adhered to and followed.

What is Learning Circle Software?

Learning Circle is a collaborative online tool that provides student performance information to connect communities and classrooms. Through Learning Circle's easy-to-use dashboards, schools and community organizations can view trends in attendance, behavior, and core academics (ABCs). We all know that using data to make informed decisions about student growth is essential. Community counselors and coordinators can analyze ABC data as it relates to the students involved in their programs. School staff can quickly see student involvement in both in-school and out-of-school programs.

Then, users can create interventions and supports to help students where they need it the most. These components could include using a student behavior plan, having a student join an after-school program, or having someone periodically check in on a student. Data pre and post of actions will help show if there has been any improvement.

What are some key features of Learning Circle Software?

• Using filters and watch lists, Learning Circle users can follow individual students or groups of students to ensure all student populations are being served. Disaggregate data by race, ethnicity, and gender help to identify any academic gaps. A watch list can help to ensure that at-risk students are receiving the right strategies in school and community support.

• Use programs screens to keep track of enrolled students. Program management allows community partners (with parental consent) to enroll their students for dashboard visibility. Program screen features allow for ease-of-use in managing student lists. Build a custom list of students you wish to monitor and use this list as a filter when needed.

• Create interventions and collaborate with other school and community team members. Schools and community organizations have a common view of student data so they can communicate and collaborate on intervention strategies. Individual student dashboards mark intervention start/end date on performance trend graphs. Easily see how attendance, behavior and core academics are being impacted by interventions.

• Use comparison reports to measure performance outcomes of two distinct groups that you establish using filters.

• Create comparison, intervention, program, and usage reports. Easily compare outcomes by EWI type: Overall, attendance, behavior or core academics. Drill even deeper into core academics by analyzing English, math, science and social studies outcomes.

Who gets to access the data?

Ideally, the lead nonprofit and UCF would be able to access the data gathered in Learning Circle. The school district holds the ultimate decision on the provision and level of access of various stakeholders and user privileges.

EXHIBIT "B"
SCHEDULE OF DATA

Category of Data	Elements	Check if Used by Your System
Application Technology Meta Data	IP Addresses of users, Use of cookies, etc.	X
	Other application technology meta data-Please specify:	
Application Use Statistics	Meta data on user interaction with application	Yes- Google Analytics
Assessment	Standardized test scores	X
	Observation data	optional
	Other assessment data-Please specify: • Social-emotional learning assessments • Any student surveys/assessments deemed appropriate by the district	optional
Attendance	Student school (daily) attendance data	X
	Student class attendance data	
Communications	Online communications captured (emails, blog entries)	
Conduct	Conduct or behavioral data	X
Demographics	Date of Birth	X
	Place of Birth	optional
	Gender	X
	Ethnicity or race	X
	Language information (native, or primary language spoken by student)	optional

Category of Data	Elements	Check if Used by Your System
	Other demographic information-Please specify:	
Enrollment	Student school enrollment	X
	Student grade level	X
	Homeroom	optional
	Guidance counselor	
	Specific curriculum programs	
	Year of graduation	X
	Other enrollment information-Please specify: • Enrollment start/end dates • Dual enrollment	X
Parent/Guardian Contact Information	Address	X
	Email	X
	Phone	X
Parent/Guardian ID	Parent ID number (created to link parents to students)	X
Parent/Guardian Name	First and/or Last	X
Schedule	Student scheduled courses	X
	Teacher names	X
Special Indicator	English language learner information	X
	Low income status	X
	Medical alerts/ health data	

Category of Data	Elements	Check if Used by Your System
	Student disability information	
	Specialized education services (IEP or 504)	X
	Living situations (homeless/foster care)	X
	Other indicator information-Please specify:	
Student Contact Information	Address	X
	Email	X
	Phone	X
Student Identifiers	Local (School district) ID number	X
	State ID number	X
	Provider/App assigned student ID number	X
	Student app username	
	Student app passwords	
Student Name	First and/or Last	X
Student In App Performance	Program/application performance (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	
Student Survey Responses	Student responses to surveys or questionnaires	
Student work	Student generated content; writing, pictures, etc.	

Category of Data	Elements	Check if Used by Your System
	Other student work data -Please specify:	
Transcript	Student course grades	X
	Student course data	X
	Student course grades/ performance scores	X
	Other transcript data - Please specify: • GPA (if applicable) • Credits earned (if applicable)	X
Transportation	Student bus assignment	
	Student pick up and/or drop off location	
	Student bus card ID number	
	Other data – Please specify:	
Other	Please list each additional data element used, stored, or collected by your application: • Intervention Library • Supports Library • Out of School Time (OST) Program Enrollment • OST Program Attendance • User first and last name • User email address	X
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 is 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:

[Insert categories of data here]

X_____Disposition is Complete. Disposition extends to all categories of data.

2. Nature of Disposition

X_____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:

[Insert or attach special instructions]

3. Schedule of Disposition

Data shall be disposed of by the following date:

X_____As soon as commercially practicable.

_____By [**Insert Date**]

4. Signature

_____   _____
Authorized Representative of LEA   Date

5. Verification of Disposition of Data

_____   _____
Authorized Representative of Provider   Date

EXHIBIT "E"

[RESERVED]

EXHIBIT "F"

DATA SECURITY REQUIREMENTS

Adequate Cybersecurity Frameworks 2/24/2020

The Education Security and Privacy Exchange ("Edspex") works in partnership with the Student Data Privacy Consortium and industry leaders to maintain 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)
X	National Institute of Standards and Technology (NIST)	NIST Cybersecurity Framework Version 1.1
	National Institute of Standards and Technology (NIST)	NIST SP 800-53, Cybersecurity Framework for Improving Critical Infrastructure Cybersecurity (CSF), Special Publication 800-171
X (cloud provider)	International Standards Organization (ISO)	Information technology — Security techniques — Information security management systems (ISO 27000 series)
	Secure Controls Framework Council, LLC	Security Controls Framework (SCF)
	Center for Internet Security (CIS)	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)

Please visit http://www.edspex.org for further details about the noted frameworks.

*Cybersecurity Principles used to choose the Cybersecurity Frameworks are located here

EXHIBIT "G"

Supplemental SDPC State Terms for Florida

[RESERVED]

EXHIBIT "H"

Additional Terms or Modifications

THIS EXHIBIT "H" effective simultaneously with attached Student Date Privacy Agreement ("DPA") between The School Board of Bay County, Florida, (the "Local Education Agency" or "LEA") and Learning Circle Software, LLC, (the "Provider") is incorporated in the attached DPA and amends the DPA (and all supplemental terms and conditions and policies applicable to the DPA) as follows:

1. The second WHEREAS CLAUSE is amended to add "the Protection of Pupil Rights Amendment ("PPRA") at 20 U.S.C. 1232h (34 CFR Part 98), section 1002.22, Florida Statutes, and Fla. Admin. Code R. 6A-1.0955" after "15 U.S.C. § 6501-6506 (16 CFR Part 312)".

2. Paragraph 3 of the DPA is deleted in its entirety and replaced with the following: "In the event of a conflict between the DPA Standard Clauses, the Special Provisions included under Paragraph 2 will control. In the event there is conflict between the terms of the DPA and any other writing, including the Service Agreement, and then this DPA, including all Exhibits thereto, shall control."

3. Paragraph 4 is deleted in its entirety and replaced with the following: "This DPA shall stay in effect for the same Term laid out in the Service Agreement, and all terms and conditions, including those contained in this DPA and the attached Exhibits, shall remain in force and effect during such Term. Any provision requiring the Provider to indemnify the LEA or requiring the protection or destruction of Student Data following the termination of the Service Agreement, including this DPA, shall survive the Term to the extent necessary to provide all protection required under law. Similarly, any other provisions that, in order to give proper effect to the intent of this DPA, should survive the expiration or termination of the Service Agreement, will survive the expiration or termination of the Service Agreement."

4. The second and third sentences of Article I, Paragraph 1 of the Standard Clauses are deleted in their entirety and replaced with the following: "In performing the Services, the Provider shall be given limited access to Student Data only to the extent that the parent or legal guardian of the student has consented to the release of such data by signing a FERPA-compliant consent for release of education records form for that student."

5. Article I, Paragraph 2 of the Standard Clauses is amended to add the following language: "Exhibit B constitutes the Student Data maintained by the LEA but in no way represents the Student Data that will be released to the Provider unless the

student to which the Student Data relates has a FERPA release form on file. Student Data to be provided to Provider is limited to the students in which the parent or legal guardian has signed a FERPA release. Provider shall have no access to Student Data pertaining to students for which a FERPA release has not been obtained by the LEA."

6. The last sentence of Article II, Paragraph 1 of the Standard Clauses is amended as follows: "Provider agrees that for purposes of this DPA, Provider may transfer Student-Generated Content to a separate account, according to the procedures set forth below. Provider agrees to abide by FERPA and Section 1002.22, Florida Statutes, while performing its service for the LEA.

7. Article II, Paragraph 5 is deleted in its entirety and replaced with the following: Provider shall enter into written agreements ("Subprocessor 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 consistent with the terms of this DPA. Provider agrees to share the Subprocessors names and Subprocessor Agreements with LEA upon LEA's request.

8. Article IV is amended to add Paragraph 8: **Indemnification**. Provider shall indemnify, hold harmless, and defend the LEA and all of LEA's current, past, and future officers, agents, and employees (collectively, "Indemnified Party") from and against any and all causes of action, demands, claims, losses, liabilities, and expenditures of any kind, including attorneys' fees, court costs, and expenses, including through the conclusion of any appellate proceedings, raised or asserted by any person or entity not a party to the Service Agreement or DPA, and caused or alleged to be caused, in whole or in part, by any breach of the Service Agreement or DPA by Provider, Third Parties, or Subprocessors related to Exhibit B of the DPA (Schedule of Data), including but not limited to, the unauthorized use or disclosure of Student Data or the failure to notify the LEA of any additional students' PII collected and, which is not listed in Exhibit B**.**

9. Article III, Paragraph 1 is amended to add the following sentence: LEA will allow Provider access to Student Data only if the parent or legal guardian of the student to which the Student Data relates has executed a FERPA release form and agreed to the release of such Student Data.

10. Article IV, Paragraph 1 is amended to add the following sentence: The Parties expect and anticipate that Provider may receive personally identifiable information in education records from the LEA pursuant to this DPA. The Provider shall comply with all applicable state and federal laws and regulations pertaining to Student Data privacy

and security, including FERPA, COPPA, PPRA, Sections 1001.41 and 1002.22, Fla. Admin. Code R. 6A-1.0955, and all other privacy rules, laws, and statutes cited in this DPA.

11. Article IV, Paragraph 7 is deleted in its entirety and replaced with the following: Provider is prohibited from using, sharing, or selling Student Data or PII to (a) market or advertise to students or families/guardians; (b) inform, influence, or enable marketing, Targeted Advertising, or other commercial efforts by Provider; (c) develop a profile of a student, family member/guardian or group, for any commercial purpose other than providing the Service to LEA; or (d) for the development of commercial products or services, or for any other purpose other than as necessary to provide the Service to LEA. This section does not prohibit Provider from generating legitimate personalized learning recommendations.

12. Article V, Paragraph 1 is deleted in its entirety and replaced with the following: 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. Provider shall not, without the express prior written consent of the LEA, transmit Student Data or PII to any Providers or Subprocessors located outside of the United States, or distribute, repurpose, or share Student Data or PII with any Subprocessor or Third Party not used for providing services to the LEA.

13. Article VII, Paragraph 1 is deleted in its entirety and replaced with the following: **Termination**. This Agreement shall terminate upon the termination of the Service Agreement by either party as laid out in the Service Agreement; provided, however, that any provisions in this DPA that should survive termination, including but not limited to indemnification by Provider under Article II, Paragraph 6, or the duties of Provider to protect Student Data under Articles IV and V, will survive the termination of this DPA and the Service Agreement.

14. Article VII, is hereby amended to add Paragraph 10 as follows: **Assignment**. None of the Parties to this DPA may assign their rights, duties, or obligations under this DPA, either in whole or in part, without the prior written consent of the other party to this DPA.

15. Article VII, is hereby amended to add Paragraph 11 as follows: **Click through**. Any "click through" terms and conditions or terms of use are superseded by the Service Agreement and this DPA, and acceptance of the terms and conditions or terms of use through the "click through" do not indicate acceptance by the LEA.

16. Article VII, is hereby amended to add Paragraph 12 as follows: **Security Controls**. Provider represents and warrants that any software licensed hereunder shall not

contain any virus, worm, Trojan Horse, tracking software or be capable of identifying non-approved users or tracking any approved user, or any undocumented software locks or drop dead devices that would render inaccessible or impair in any way the operation of the software or any other hardware, software or data with which the software is designed to work.

THE PARTIES REPRESENT THAT THEY HAVE THOROUGHLY DISCUSSED ALL ASPECTS OF THE DPA AND EXHIBITS WITH THEIR RESPECTIVE ATTORNEY(S), THAT THEY FULLY UNDERSTAND ALL OF ITS PROVISIONS, AND THAT THEY ARE VOLUNTARILY ENTERING INTO THE DPA AND EXHIBITS WITH THE FULL KNOWLEDGE OF ITS LEGAL SIGNIFICANCE AND WITH THE INTENT TO BE LEGALLY BOUND BY ITS TERMS.

Local Education Agency:

_____,

Provider:

<u>Learning Circle Software, LLC.</u>
By: Tisha Lewis

Title: Director

Date:_____

Date:_____