

## BrightBytes, Inc. Service Agreement

This SERVICE AGREEMENT ("**Service agreement**") is effective as of May 25, 2016 ("**Effective Date**") between BrightBytes, Inc., a Delaware corporation ("**BrightBytes**"), and Oxnard Elementary School District ("**Customer**", and together with BrightBytes, the "**Parties**").

WHEREAS, BrightBytes owns and operates the Clarity Platform (as defined in the Terms).

WHEREAS, Customer wishes to access and use the applications and software listed below (such applications and software, the "**Application(s)**"). If, after the Effective Date of this Agreement, Customer wishes to access and use additional Applications, the Parties shall execute an addendum to that effect (each addendum an "**Addendum**"), which will be governed by the terms of the Agreement and this Service agreement.

WHEREAS, the Parties wish for BrightBytes to distribute the Applications via the Clarity Platform as further described in this Service agreement.

WHEREAS, the attached signed Proposal ("**Addendum**") outlines the Applications, Pricing, and Payment Terms by which the Customer agrees to fulfill its financial obligation pursuant to this agreement.

**1. Relationship to the BrightBytes Terms of Service and Privacy Policy.** The Parties acknowledge and agree that the BrightBytes Terms of Service available at [<http://brightbytes.net/terms/>] (the "**Terms**") and the BrightBytes Privacy Policy available at [<http://brightbytes.net/privacy-policy/>] form a part of the Agreement (as defined in the Terms), and are hereby incorporated by reference. By using the Applications as provided for in this Service agreement, Customer acknowledges and agrees that it has read and assented to all of the terms set forth in the Agreement.

**2. Parties' Duties.** The Parties may from time to time specify additional Applications to be distributed pursuant to this Service Agreement, and the payment and other terms applicable to such Applications, by executing an Addendum such as the blank form attached hereto. When the Parties mutually execute an Addendum, it shall form a part of this Service Agreement and the Applications described in it shall be subject to the terms and conditions of this Service Agreement.

- a) **BrightBytes' Duties.** BrightBytes will host and maintain the Clarity Platform and Applications on servers operated and maintained by or at the direction of BrightBytes. Subject to Customer's timely payment of the Fees, during the Term, BrightBytes will provide the Applications via the Clarity Platform consistent with the terms and conditions of this Agreement. To the extent BrightBytes provides any services to Customer, BrightBytes will provide the services in a professional and workmanlike manner, using means and methods as it shall reasonably determine, in compliance with all applicable laws.
- b) **Customer Duties.** Customer will cooperate with BrightBytes in setting up the Applications as reasonably requested by BrightBytes. Customer will be responsible for obtaining and maintaining, at its sole expense, all the necessary computer hardware, software, modems, Internet connections, and other items required to access the Applications via the Clarity Platform. Customer will remain fully responsible for any use of the Applications or Clarity Platform by its employees, agents, representatives, or independent contractors who are expressly authorized to access and use the Applications via the Clarity Platform ("**Authorized Users**"), including compliance with this Agreement and applicable law.
- c) **License to Customer.** Subject to the terms and conditions of the Agreement, BrightBytes hereby grants to Customer a limited, non-transferable, non-sublicensable, nonexclusive, license during the Term to: (i) access and use the Applications and content contained in the Clarity Platform or Applications except for the Customer Data (defined below) (such content, "**BrightBytes Content**") via the Clarity Platform in the manner contemplated by the Agreement; and (ii) use the data generated by the Applications (the "**BrightBytes Data**") solely in order to use the Applications.

- d) License to BrightBytes. Subject to the terms and conditions of the Agreement, Customer hereby grants to BrightBytes a limited, worldwide, nonexclusive, royalty-free license during the Term to use, reproduce, transmit, have transmitted, display, store, archive, and make derivative works of any materials uploaded to, transmitted to, collected by, or otherwise made available to BrightBytes through the Applications ("**Customer Data**") in order to provide the Applications and the Clarity Platform. BrightBytes shall have no right to sublicense or resell Customer Data, except however, that you agree that BrightBytes may collect, analyze, and use data derived from Customer Data, which may include information collected from or about a student but which does not identify the student personally, as well as data about your, and other users' access and use of the Applications and the Clarity Platform, for purposes of operating, analyzing, improving, or marketing the Applications, the Clarity Platform, and any related services. If BrightBytes shares or publicly discloses information (e.g., in marketing materials, or in application development) that is derived from Customer Data, such data will be aggregated or anonymized to reasonably avoid identification of a specific school, educational entity, or individual. By way of example, BrightBytes may: (i) track the number of school administrators on an anonymized aggregate basis as part of BrightBytes's marketing efforts to publicize the total number of users of the Applications and the Clarity Platform, (ii) analyze aggregated usage patterns for product development efforts, or (iii) use anonymous data derived from anonymous data collected from or about students in a form which may not reasonably identify either a particular individual or school, to develop further analytic frameworks and application tools. You further agree that BrightBytes will have the right, both during and after the Term of this Agreement, to use, store, transmit, distribute, modify, copy, display, sublicense, and create derivative works of the anonymized, aggregated data.
- e) License Restrictions. Customer shall not, and shall not permit any third party to: (i) use the Applications, Clarity Platform, BrightBytes Content, or BrightBytes Data except to the extent permitted in Section 2(C); (ii) modify or create any derivative work of any part of the Applications, Clarity Platform, BrightBytes Content, or BrightBytes Data; (iii) market, sublicense, publish, distribute, reproduce, assign, transfer, rent, lease, or loan the Applications, Clarity Platform, BrightBytes Content, or BrightBytes Data; (iv) use the Applications, Clarity Platform, BrightBytes Content, or BrightBytes Data for commercial time-sharing or service-bureau use; or (v) access the Applications or Clarity Platform in order to build a competitive product or service, build a product using similar ideas, features, functions, or graphics, or copy any ideas, features, functions, or graphics
- f) Proprietary Rights. Subject only to the limited license expressly granted under the Agreement, as between BrightBytes and Customer, BrightBytes shall retain all right, title, and interest in and to the Applications, Clarity Platform, BrightBytes Content, and BrightBytes Data, and all intellectual property rights therein. To the extent Customer has or obtains any right, title, or interest in the Applications, Clarity Platform, BrightBytes Content, or BrightBytes Data (or any improvements, enhancements, or modifications thereto, including any related suggestions, comments, or other feedback), Customer hereby assigns, and agrees to assign, without further consideration, to BrightBytes all such right, title, and interest it may have or obtain. Subject only to the limited license expressly granted hereunder, as between BrightBytes and Customer, Customer shall retain all right, title, and interest in and to Customer Data, and all intellectual property rights therein.

### **3. Payments**

- a) Invoicing and Fees. BrightBytes will issue an invoice Customer for the fees for accessing and using the Applications and the Clarity Platform or for any services in accordance with the amounts set forth below ("**Fees**"), and Customer will pay BrightBytes the Fees according to the terms set forth below. The Customer will send payment to the following:

BrightBytes Inc.  
Attn: Accounts Receivable Department  
490 2nd St, Suite 302  
San Francisco, CA 94107  
Email: barry@brightbytes.net

The Customer may also send payment via wire or ACH to the following:

**ACH Transfers**

Silicon Valley Bank  
Routing No.: 121140399  
For the Credit of: BrightBytes, Inc.  
Account No. 3301406421

**Incoming Domestic Wire**

Silicon Valley Bank  
Routing No.: 121140399  
For the Credit of: BrightBytes, Inc.  
Account No.: 3301406421

By Order of: Oxnard Elementary School District Accounts Payable Department

- b) Timing of Payments. Payments shall be made within thirty (30) days of the date of the invoice issued provided by BrightBytes. Without waiving or prejudicing any other rights or remedies, if Customer does not make payment in a timely manner, BrightBytes may suspend Customer's access to the Applications and the Clarity Platform or the provision of services until such time as payments of the Fees are made current. BrightBytes will not be responsible for delays, costs incurred, or problems experienced by Customer due to the suspension of BrightBytes's performance under this Section.
- c) Taxes. Customer will, in addition to the other amounts payable under this Agreement, pay all federal, state, and local sales, use, VAT, or other taxes imposed by reason of transactions under this Agreement (other than taxes based on BrightBytes's net income). If BrightBytes is required to pay any such taxes for which Customer is responsible, then the taxes will be billed to and paid by Customer. If Customer is required by law to withhold from any amount owed to BrightBytes, then the amount payable to BrightBytes will be increased to the extent necessary to ensure that, after such withholding, BrightBytes receives the net amount that it otherwise would have received in the absence of such withholding.

**4. Indemnification**

- a) Customer Indemnification. Customer will indemnify and hold BrightBytes and its affiliates and each of their officers, directors, employees, attorneys, and agents harmless from and against any and all claims costs, damages, losses, liabilities, and expenses (including attorneys' fees and costs) arising out of or in connection with claims made by a third-party ("**Claims**") that: (i) use of the Customer Data infringes the rights of, or has caused harm to, a third party; and (ii) Customer or its Authorized Users have breached any terms of the Agreement.
- b) BrightBytes Indemnification. BrightBytes will indemnify and hold Customer and its affiliates and each of their officers, directors, employees, attorneys, and agents harmless from and against any and all Claims that the Applications or the Clarity Platform directly infringes the registered U.S. copyright or patent of a third-party.
- c) Notice and Control. The indemnified party: (i) must promptly notify the indemnifying party in writing of any Claim; provided that the failure to provide such notice shall not relieve the indemnifying party of its indemnifying party of its indemnification obligations hereunder except to the extent of any material prejudice directly resulting from such failure; (ii) must provide the indemnifying party the right to solely control the defense (including settlement) of any Claim; provided that the indemnifying party shall keep the indemnified party informed of the progress of such litigation or settlement, and the indemnifying party shall not settle any such Claim in a manner that does not unconditionally release the indemnified party without the indemnified party's prior written consent (not to be unreasonably withheld or delayed); and (iii) the indemnified party providing the indemnifying party all necessary information and assistance.
- d) BrightBytes's Options. In the event any portion of the Applications, Clarity Platform, BrightBytes Content, or BrightBytes Data is held or believed by BrightBytes to be infringing, BrightBytes may, at its sole expense and option: (i) obtain from a third-party the right for Customer to continue using the affected Applications, Clarity Platform, BrightBytes Content, or BrightBytes Data; (ii) replace or modify the affected Applications, Clarity Platform, BrightBytes Content, or BrightBytes Data with a non-infringing substitute with substantially similar functionality; or (iii) if none of the foregoing remedies is commercially feasible as determined solely by BrightBytes, terminate the Agreement.

- e) Sole Remedy for Intellectual Property Claims. This Section 4 sets forth each party's entire liability and obligation, and each party's sole remedy for any claim of infringement or misappropriation of any intellectual property rights.

## **5. Term, Renewal, and Termination**

- a) Termination for Breach. Either Party may terminate this Service Agreement (including all Addenda hereto) upon thirty (30) days' written notice if the other Party materially breaches any of the terms of this Service Agreement; provided, however, that this Service Agreement will not terminate if the non-terminating Party has cured the breach within the thirty (30) day period.
- b) Termination for Bankruptcy and Similar Events. Either Party may terminate this Service Agreement (including all Addenda hereto), effective immediately upon written notice, if: (i) all or a substantial portion of the assets of the other Party are transferred to an assignee of the benefit of creditors, to a receiver or trustee in bankruptcy; (ii) a proceeding is commenced by or against the other Party for relief under bankruptcy or similar laws and such proceeding is not dismissed within thirty (30) days; or (iii) the other Party is adjudged bankrupt or insolvent.
- c) Term and Renewal. This Service Agreement shall commence on the Effective Date, and shall continue for one year (the "**Initial Term**"). At the conclusion of the Initial Term (or any subsequent Renewal Term), the Service Agreement may renew for additional renewal terms of one year (each a "**Renewal Term**"), upon written consent of both parties. The Initial Term and any Renewal Terms are collectively referred to herein as the "**Term**".
- d) Survival. Upon expiration or termination of this Service Agreement, the provisions of Sections 1, 2(D), and 3-6 (inclusive) of this Service Agreement, as well as all Sections of the Terms, and any unsatisfied payment obligations, shall survive.
- e) Data Retention and Deletion. Upon expiration or termination of this Service Agreement, you may request that BrightBytes delete, anonymize, and/or retrieve your Customer Data in BrightBytes's possession at any time by providing such a request in writing, which request BrightBytes shall then comply with in a commercially reasonable time not to exceed two (2) weeks. If you request your Customer Data be retrieved, BrightBytes will provide a CSV file of data that was processed during the Service Term. The file will be sent via encrypted email that is designated in writing for the retrieval agent. For clarity, BrightBytes will continue to maintain Customer Data after a retrieval request unless you also submit a request that such data be deleted or anonymized. BrightBytes is not required to delete or provide to you any data that has been de-identified, anonymized, or aggregated, or data that has been derived from Customer Data, so long as the data is maintained in a form, which could not reasonably identify any particular individual, educational entity or school.
- f) Change of Control. By submitting Customer Data to BrightBytes, you consent to allow BrightBytes to transfer Customer Data to a new provider in the event that BrightBytes sells, divests or transfers the business or a portion of the business, provided that the new provider has agreed to data privacy standards no less stringent than those set forth in this Agreement. We may also transfer personal information – under the same conditions – in the course of mergers, acquisitions, bankruptcies, dissolutions, reorganizations, liquidations, similar transactions or proceedings involving all or a portion of our business.

**6. Non-Solicitation**. During the Term and for one (1) year thereafter, Customer shall not solicit, or otherwise attempt to retain the services of, any person who is an employee or subcontractor of BrightBytes, or who was an employee or subcontractor of BrightBytes at any time during the three (3) months prior to such solicitation in each case who provided services to Customer hereunder, provided that individuals hired as a result of the use of an independent employment agency (so long as the agency was not directed to solicit a particular individual) or as a result of the use of a general solicitation (such as a **newspaper** advertisement or on radio or television) not specifically directed to employees or subcontractors of BrightBytes shall not violate this Section 6.

**7. Additional Terms**. Depending on the Application(s) licensed to Customer under the Agreement as indicated by the attached Addendum and if also listed below, the additional terms set forth in Section 8 below may apply.







## ADDENDUM TO TECHNOLOGY & LEARNING SERVICE AGREEMENT

### For California Assembly Bill 1584 Compliance

THIS ADDENDUM ("**Addendum**") is entered into between Oxnard Elementary School District ("**LEA**") and BrightBytes Inc., a Delaware corporation ("**Service Provider**") on March 31, 2016 ("**Effective Date**").

WHEREAS, the LEA and the Service Provider entered into an agreement for technology services titled Service Agreement ("**Service Agreement**") dated as of March 31, 2016;

WHEREAS, the LEA is a California public entity subject to all state and federal laws governing education, including but not limited to California Assembly Bill 1584 ("**AB 1584**"), the California Education Code, the Children's Online Privacy and Protection Act ("**COPPA**"), and the Family Educational Rights and Privacy Act ("**FERPA**");

WHEREAS, AB 1584 requires, in part, that any agreement entered into, renewed or amended after January 1, 2015, between a local education agency and a third-party service provider that pertains to pupil records must include certain terms; and

WHEREAS, the LEA and the Service Provider desire to ensure that the Technology Services Agreement and the services provided comply with AB 1584.

NOW, THEREFORE, the Parties agree as follows:

1. The terms and conditions of the Technology Services Agreement and any addenda are incorporated herein by reference.
2. The term of this Addendum shall expire on the termination date stated in the Technology Services Agreement or in any addenda to such Technology Services Agreement, whichever controls.
3. Pupil records obtained by Service Provider from LEA, if any, continue to be the property of and under the control of the LEA. "**Pupil records**" means any information directly related to a pupil that is maintained by the LEA or acquired directly from the pupil through the use of instructional software or applications assigned to the pupil by a teacher or other LEA employees. Pupil records does not include de-identified information (information that cannot be used to identify an individual pupil) used by the third party (1) to improve educational products for adaptive learning purposes and for customized pupil learning, or (2) to demonstrate the effectiveness of the operator's products in the marketing of those products; or (3) for the development and improvement of educational sites, services, or applications.
4. The procedures by which pupils may retain possession and control of their own pupil-generated content are outlined as follows: *Service Provider ensures that pupils retain possession and control of their own pupil-generated content as follows: Service Provider's services provided pursuant to the Technology Services Agreement do not include any collection, storage or maintenance by Service Provider of any pupil-generated content.*
5. The options by which a pupil may transfer pupil-generated content to a personal account include: *Service Provider ensures that pupils may transfer their own pupil-generated content to a personal account as follows: Service Provider's services provided pursuant to the Technology Services Agreement do not include any collection, storage or maintenance by Service Provider of pupil-generated content.*
6. Parents, legal guardians, or eligible pupils may review personally identifiable information in the pupil's records and correct erroneous information by the following protocol: *Service Provider ensures that parents, legal guardians, or eligible pupils may review personally identifiable information in the pupil's records and correct erroneous information as follows: Service Provider's services provided pursuant to the Technology Services Agreement do not include any collection, storage or maintenance by Service Provider of pupil records.*
7. Service Provider shall take actions to ensure the security and confidentiality of pupil records, including but not limited to designating and training responsible individuals on ensuring the security and confidentiality of pupil records, by the following measures: *Service Provider shall ensure the security and confidentiality of pupil records as follows: Service Provider's services provided pursuant to the Technology Services Agreement do not include any collection, storage or*



*maintenance of pupil records.*

8. In the event of an unauthorized disclosure of a pupil's records, Service Provider shall report to an affected parent, legal guardian, or eligible pupil pursuant to the following procedure: *Service Provider shall ensure that no an unauthorized disclosure of a pupil's records will occur as follows: Service Provider's services provided pursuant to the Technology Services Agreement do not include any collection, storage or maintenance of pupil records.*

9. Service Provider shall not use any information in a pupil record, if any is accessed by Service Provider, for any purpose other than those required or specifically permitted by the Technology Services Agreement.

10. Service Provider certifies that a pupil's records shall not be retained or available to the Service Provider upon completion of the terms of the Technology Services Agreement, except for a case where a pupil chooses to establish or maintain an account with Service Provider for the purpose of storing pupil-generated content, either by retaining possession and control of their own pupil-generated content, or by transferring pupil-generated content to a personal account. Such certification will be enforced through the following procedure: *Service Provider shall ensure that a pupil's records shall not be retained or available to the Service Provider upon completion of the terms of the Technology Services Agreement as follows: Service Provider's services provided pursuant to the Technology Services Agreement do not include any collection, storage or maintenance of pupil records.*

11. LEA agrees to work with Service Provider to ensure compliance with FERPA and the parties will ensure compliance through the following procedure: *LEA and Service Provider shall ensure compliance with FERPA throughout the term of the Technology Services Agreement as follows: Service Provider's services provided pursuant to the Technology Services Agreement will not include any collection, storage or maintenance of pupil personally identifiable information or pupil records.*

IN WITNESS WHEREOF, parties execute this Addendum on the dates set forth below.

**BRIGHTBYTES INC.**

**OXNARD ELEMENTARY SCHOOL DISTRICT**

*Michael Zippiroli*  
Michael Zippiroli (May 26, 2016)

*Robin I. Freeman*

Name: Michael Zippiroli  
Title: Chief Customer Off  
Date: May 25, 2016

Name: *Robin I. Freeman*  
Title: *Assistant Superintendent, Ed. Services*  
Date: *8/25/16*