

Federal Procurement Checklist-Tangibles/Services/Public Works

This form to be completed by Purchasing for every federally funded purchase of tangible items or services and saved in Shared Drive with the executed PO/Contract and specified documents

Contract/PO# P1074445 Vendor Name Fresno County Office of Ed.

Product Selection:

Yes No Is this a technology or software purchase?

If yes, check approval list on Req to ensure that IT was on approval chain route to purchasing manager if they were not.

Competition: Which of the following applies? See Uniform Guidance Procurement Matrix for more details and *attach specified documents*. Piggyback contracts MUST have the document saved in the shared drive for audit reference.

<input checked="" type="checkbox"/> \$0-\$10,000 No competition required	Piggyback Contract-Contract#
<input type="checkbox"/> \$10,000-\$88,299-Attach minimum 2 quotes	Sole Source-Attach Justification and cite reason:
<input type="checkbox"/> \$88,300 or more-Attach minimum 2 bids	
<input type="checkbox"/> \$250,000 or more-Attach minimum 2 bids and independent cost estimate	

Supplier qualification:

Yes W-9 verified with IRS and uploaded to Galaxy vendor file

Yes www.sam.gov verification that vendor is not suspended or debarred from providing request-Attach SAM summary for Services and Public Works. For Tangibles, please verify that the current fiscal year summary is uploaded to the Galaxy vendor file.

Contract Provisions:

Yes No If a contract, are the federal provisions included in the contract document?

If no, route back to technician.

Completed by:

Print Name Rocio Montano Date 9/26/18

Signed [Signature]



CYBER HIGH USE LICENSE AND SERVICE AGREEMENT
("Agreement")

Legal Doc. No. of this Signed Agreement: _____

COVER

<p>CLIENT</p> <p>"Client": Riverside County Office of Education, Migrant Education Program Attn: Dr. Diana Walsh-Reuss, Associate Superintendent of Schools, or Authorized Designee 47-110 Calhoun Street, Indio CA 92201 Phone: (951) 826-6602 FAX: (760) 863-3393 Email: dwalshreuss@rcoe.us</p>	<p>FCSS/CYBER HIGH</p> <p>"FCSS" or "Cyber High": Fresno County Superintendent of Schools Attn: Jan Biggs, Senior Administrator, Support Services Fresno County Superintendent of Schools 2840 E. Floradora Ave., Fresno, CA 93703 Phone: (559) 265-4050 FAX: (559) 264-8326 Email: jbiggs@fcoe.org</p>
<p>CONTRACT TERM (see § 3.1)</p> <p>"Effective Date": July 1, 2018 "Termination Date": June 30, 2019</p> <p>CYBER HIGH PRODUCTS. FCSS shall provide to Client each "Cyber High Product" that is marked below, collectively "Cyber High Products" <i>(mark each applicable):</i></p>	
<ul style="list-style-type: none"> <input checked="checked" type="checkbox"/> "Cyber High Courses": Access by Client Users to all courses, curriculum, tools, and resources available on-line on Cyber High. Cyber High Courses do not include Supplementary Materials (see Section 1.2.7, General Terms and Conditions). <input checked="checked" type="checkbox"/> "Professional Development Training": Upon request by Client, FCSS will provide professional development training for Client Users at a maximum rate of one training per Contract term at Client's District Office or another mutually agreeable location. Training services for Clients within California, who exceed a one hundred mile radius of 1111 Van Ness Avenue, Fresno, CA 93721, or those that justify an overnight stay due to the timing of the training, will be separately invoiced for \$500. Any training taking place outside of California will be separately invoiced for \$1500. <input checked="checked" type="checkbox"/> "Grade Report": After a Client User student has completed a five unit course, FCSS will mail a Grade Report to the student's school of record within a reasonable time (typically 48 hours). It is incumbent upon each Client User to ensure that Cyber High courses have been added to the approved course list of each contracting school so that proper credit may be awarded to Client User student upon course completion. <input checked="checked" type="checkbox"/> "Client User Support": FCSS will provide support to Client Users via telephone and email Monday through Friday, except for holidays and periods of closure, during FCSS' normal business hours. <input type="checkbox"/> "Other Products"(specify): 	
<p>CONTRACT AMOUNT. Client shall pay each "Plan Payment" that is marked below (collectively "Contract Amount") to FCSS <i>(mark and complete as applicable, and attach exhibit if required):</i></p> <ul style="list-style-type: none"> <input checked="checked" type="checkbox"/> PLAN PAYMENT YEAR 1 – UNLIMITED USE PLAN: \$9945.00 	<p>PAYMENT SCHEDULE. Client shall pay the Contract Amount to FCSS according to the following "Payment Schedule" <i>(mark and complete as applicable):</i></p> <ul style="list-style-type: none"> <input checked="checked" type="checkbox"/> SCHEDULE 1/PLAN PAYMENT YEAR 1: Entire amount of Plan Payment Year 1 due within 30 days of the "Effective Date" of this contract.

In consideration of the covenants, conditions, and promises in and for good and valuable consideration and the mutual benefits to be derived from this Agreement, Client and FCSS, separately referred to as a "Party" and collectively as the "Parties," have reviewed and understand and hereby enter into this Agreement. Unless the context requires otherwise, any reference to a Party in this Agreement shall mean the Party and its governing body, officers, employees, and agents and, in the case of Client includes the Client Users. Each person executing this Agreement on behalf of a Party represents that he/she is authorized to execute on behalf of and to bind the Party to this Agreement.

CLIENT

By: 

Dr. Diana Walsh-Reuss, Associate Superintendent of Schools, or Authorized Designee

FCSS

By: 

Jim Yovino, Superintendent or Authorized Designee

GENERAL TERMS AND CONDITIONS

These General Terms and Conditions contain the following Articles:

- Article 1 Scope of Use License and Obligations
- Article 2 Payment
- Article 3 Term and Termination of Agreement; Suspension or Termination of Access to Client Users
- Article 4 Indemnity
- Article 5 Dispute Resolution
- Article 6 General Provisions

Terms with initial capital letter shall have the respective meanings set forth in this Agreement.

ARTICLE 1 SCOPE OF USE LICENSE AND OBLIGATIONS.

SECTION 1.1 RECITALS AND REPRESENTATIONS.

- 1.1.1 Cyber High is an on-line comprehensive electronic high school curriculum owned and maintained by FCSS (collectively "Cyber High").
- 1.1.2 FCSS maintains Cyber High and the Cyber High Products to serve schools and their teachers, administrators, staff, and students. Cyber High offers an additional education opportunity for students who wish to accelerate their education, including high-risk students, credit recovery, students in continuation schools, alternative education, home schooling, adult students, mobile student populations, and children of military personnel.
- 1.1.3 Cyber High is available to schools and other entities that purchased or for whom a purchase has been made of one or more Cyber High Products. All Cyber High Products are provided at reasonable fees intended to provide for the cost of developing and maintaining the Cyber High Products and related administration and support services.
- 1.1.4 Each Party represents and warrants to the other Party that: (A) it has the power and authority to enter into this Agreement and is permitted by applicable laws to enter into this Agreement; and (B) it has and will comply with all applicable laws in the access and use of the Cyber High Products and performance of its obligations under this Agreement, and in particular applicable federal and California laws and regulations, including the Family Educational Rights and Privacy Act, regarding student records, student privacy, and the use and disclosure of student records and information.
- 1.1.5 By this Agreement, the Parties desire to set forth the terms and conditions upon which FCSS shall provide to Client, and Client shall compensate FCSS for, one or more of the Cyber High Products as marked on the Cover, and to set forth the Parties' rights and obligations relating to the Cyber High Products and this Agreement

SECTION 1.2 SCOPE OF LICENSE TO AND OBLIGATION OF CLIENT.

- 1.2.1 CLIENT USERS. Each student, teacher, administrator, or staff of Client who has registered for access to and use of Cyber High, and to whom FCSS has issued a user login and password (individually "Client User" and collectively "Client Users") shall have access to the Cyber High Courses and other Cyber High Products as marked on the Cover.
- 1.2.2 USE LICENSE. FCSS owns all rights and interests in and relating to Cyber High and the Cyber High Products, including any copyright, right, and interest therein or thereto (collectively "FCSS Product") and such FCSS Product shall remain FCSS' property and FCSS shall have all rights thereto, including the right to allow other third parties to access and use the Cyber High Courses and other Cyber High Products at the same or different time as Client and Client Users. FCSS grants to Client and Client Users a limited license to use the FCSS Product in accordance with the terms and conditions of this Agreement.
- 1.2.3 TERMS OF USE/LICENSING AGREEMENT. Client and all Client Users who access and use the Cyber High Courses must comply with the Terms of Use/Licensing Agreement that is in effect and posted

on Cyber High at the time of such access and use. Client shall notify FCSS, through FCSS' contact person listed on the Cover, of any activity by its Client Users in violation of the Terms of Use/Licensing Agreement. If there is a conflict between any provision in this Agreement and any provision in the Terms of Use/Licensing Agreement, the provision in the Terms of Use/Licensing Agreement shall govern as between the Parties.

- 1.2.4 NO RESALE RIGHTS OR COMMERCIAL USE. Client shall not resell to any third party the right to access or use any Cyber High Products, or provide any third party who is not its Client User with access to, or the ability to use, any Cyber High Products. The right to use Cyber High and Cyber High Products are entered into in order to encourage and support the education youth, and is not intended to create a commercial license or enterprise. As such, any commercial use or application of Cyber High or Cyber High Products outside that specified in this Agreement is prohibited.
- 1.2.5 WARRANTY DISCLAIMER. Cyber High and the Cyber High Products are subject to ongoing development by FCSS and are being provided by FCSS AS IS to Client and Client Users. EXCEPT AS SET FORTH IN THIS AGREEMENT, FCSS DISCLAIMS ANY AND ALL WARRANTIES, CONDITIONS, AND DUTIES OF ANY KIND (IF ANY), EXPRESS OR IMPLIED, WITH RESPECT TO CYBER HIGH AND THE CYBER HIGH PRODUCTS, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.
- 1.2.6 HARDWARE/SOFTWARE. The Cyber High Courses are made available to Client Users over the Internet through a web-browser interface. To access the Cyber High Courses, Client Users must have a suitable Internet connection, access to an appropriately configured computer, and appropriately configured computer network, of which FCSS has no responsibility to provide to any Client User.
- 1.2.7 SUPPLEMENTARY MATERIALS. Client is solely responsible for providing or arranging for the provision of Supplementary Materials for Client Users. "Supplementary Materials" include but are not limited to, supplemental texts, textbooks, novels, atlases, calculators, graphing papers, protractors, rulers, compasses, and laboratory equipment.
- 1.2.8 PARENTAL CONSENT. Client will obtain any necessary parental consent for each Client User student to access and use the Cyber High Courses or other Cyber High Products.
- 1.2.9 CONTROLLING ACCESS. It is the responsibility of the Client to immediately deactivate access to Cyber High for Client staff who should no longer have access to Cyber High student records/data.

SECTION 1.3 OBLIGATIONS AND RIGHTS OF FCSS/CYBER HIGH.

- 1.3.1 CYBER HIGH PRODUCTS. FCSS shall provide to Client each Cyber High Product that is marked on the Cover.
- 1.3.1.1 PLAN PAYMENT 1 – If Plan Payment 1 – Unlimited Use is marked on the Cover, Client and Client Users shall have access to and use of the Cyber High Products during the contract term.
- 1.3.2 TERMS OF USE/LICENSING AGREEMENT. FCSS reserves and shall have the right to add or modify the Terms of Use/Licensing Agreement at any time.
- 1.3.3 MODIFICATIONS TO CYBER HIGH. FCSS reserves and shall have the right to make any modifications to the software and course work as may be necessary. Cyber High and Cyber High Products, and any modifications thereto remain FCSS' property and FCSS retain any and all rights and interests therein and thereto.

SECTION 1.4 CONFIDENTIAL RECORDS AND INFORMATION. If any document and/or information (e.g., employee or student records) that are subject to nondisclosure or protection under federal and/or California laws (collectively "Confidential Materials") are provided to or created by a Party or any Client User for or pursuant to this Agreement, each Party shall: (A) not release, disseminate, publish, or disclose the Confidential Materials except as required by law or a court order, as this Agreement may permit, or as the other Party or Client User may authorize in writing; (B) not use the Confidential Materials for any purpose not related to the performance of this Agreement unless such use is specifically authorized by applicable laws;

and (C) protect and secure the Confidential Materials, including those that are saved or stored in an electronic form, to ensure that they are safe from theft, loss, destruction, erasure, alteration, and unauthorized viewing, duplication, and use. The provisions of this Section shall survive the termination of this Agreement.

SECTION 1.5 COMPLIANCE WITH APPLICABLE LAWS. Each Party shall comply with all federal and California laws applicable to itself and its performance of this Agreement, and access to and use of Cyber High and the Cyber High Products. Each provision of law required to be inserted in or that applies to this Agreement is deemed inserted herein; however, if any conflict or inconsistency exists between a provision in this Agreement and a provision in an applicable law, the provision in this Agreement shall govern except where the provision in this Agreement is specifically prohibited or void by the applicable law(s) in which case the provision in the applicable law shall govern.

SECTION 1.6 STUDENT RECORDS. Student records include any information directly related to a student that is maintained by Client or acquired directly from the student through the use of Cyber High. Student records provided to FCSS under this Agreement are the property of and are under the control of Client. Students may retain possession and control of their own student-generated content by requesting such content in writing, and within the period of student accessibility. The parents or legal guardians of a student, or a student who is 18 years or older, may review personally identifiable information in the student's records and correct erroneous information as follows: by contacting, in writing or email, Cyber High staff and requesting to review and/or modify erroneous information. FCSS shall take actions to ensure the security and confidentiality of student records, including but not limited to designating and training responsible individuals on ensuring the security and confidentiality of student records as follows: requiring all staff members to sign confidentiality forms and limit those staff members given access to confidential student records. In the event of an unauthorized disclosure of a student's records, FCSS shall report such disclosure to the affected parent, legal guardian, or student as follows: immediately and in writing. FCSS shall not use any information in a student record for any purpose other than those required or specifically permitted by this Agreement. FCSS certifies that student records shall not be retained by or available to FCSS upon completion of the terms of this Agreement and that such certification will be enforced as follows: Upon permanent cessation of all contractual relationships, and upon written request by Client prior to cessation of contractual relationship, FCSS will provide digital reports to client and will remove all student work and data from the Cyber High system. Client agrees to work with FCSS to ensure compliance with the federal Family Educational Rights and Privacy Act, 20 U.S.C. Sec. 1232g ("FERPA") and the Parties will ensure compliance with FERPA as follows: by mandating compliance with all laws and regulations pertaining to student's rights of confidentiality. To the extent FCSS will have access to "education records" for Client's students as defined under FERPA, FCSS acknowledges that for the purposes of this Agreement it will be designated as a "school official" with "legitimate educational interests" in the education records, as those terms have been defined under FERPA and its implementing regulations, and FCSS agrees to abide by the FERPA limitations and requirements imposed on school officials.

ARTICLE 2 PAYMENT.

SECTION 2.1 GENERAL. As full consideration and compensation for FCSS' provision of the Cyber High Products to Client and Client Users, Client shall pay FCSS the Contract Amount in accordance with the Payment Schedule, both of which are marked as applicable on the Cover.

SECTION 2.2 TAXES. Amounts paid pursuant to Section 2.1 do not include any applicable sales, use, gross income, occupational, or similar taxes; import or export fees; duties, imports, or tariffs; or any other taxes, duties, charges, or fees of any kind that may be levied in connection with the transactions covered under this Agreement. Any such taxes (if any are due) are Client's responsibility and Client shall pay such taxes, and indemnify and hold FCSS from any liability with respect to such taxes.

ARTICLE 3 TERM AND TERMINATION OF AGREEMENT; SUSPENSION OR TERMINATION OF ACCESS TO CLIENT USERS.

SECTION 3.1 CONTRACT TERM. This Agreement is effective on the Effective Date and continues in full force and effect thereafter until and including the Termination Date and any extension thereto ("Contract Term") and, unless terminated during the Contract Term in accordance with Section 3.2 below, shall

terminate at 12:00 midnight on the last day of the Contract Term without any notice or action by either Party. Any extension of the Contract Term shall be set forth in an amendment executed by the Parties.

SECTION 3.2 TERMINATION OF A WRITTEN AGREEMENT DURING CONTRACT TERM.

- 3.2.1 **TERMINATION FOR CAUSE.** During the Contract Term and unless specifically permitted otherwise in this Section, a Party may terminate this Agreement only upon the other Party's material breach of one or more provisions of this Agreement and after the non-breaching Party has given the breaching Party written notice at least 30 days before the effective date of termination and an opportunity within the 30 days to cure the material breach and to notify the other Party in writing when such cure has been completed. If the material breach has not been cured upon expiration of the 30 days or any extension thereof agreed upon by the Parties, this Agreement shall terminate effective 12:00 midnight on the 30th day or the last day of the extension (if any) without any further notice or action by either Party.
- 3.2.2 **RIGHTS AND OBLIGATIONS UPON TERMINATION.** Upon termination of this Agreement, the following shall apply and survive the termination of this Agreement:
- 3.2.2.1 **MATERIAL BREACH BY CLIENT.** If Client materially breaches any provision of this Agreement, FCSS shall have the right to keep any portion of the Contract Amount that Client has paid to FCSS and Client shall pay any remaining portion of the Contract Amount to FCSS within 30 days of the effective date of termination of this Agreement. Upon termination of this Agreement due to Client's material breach, all access to and use of all Cyber High Products shall terminate, and Client and Client Users shall have no right to access or use any Cyber High Products.
- 3.2.2.2 **MATERIAL BREACH BY FCSS.** If FCSS materially breaches any provision of this Agreement, FCSS shall have the right to keep and to have Client pay, if Client has not already paid, the Contract Amount, prorated based on the number of days that have passed during the Contract Term compared to the number of days that remain in the Contract Term. Upon termination of this Agreement due to FCSS' material breach, Client User students may complete Cyber High Courses that they were taking as of the effective date of termination of this Agreement.

SECTION 3.3 SUSPENSION OR TERMINATION OF ACCESS TO CLIENT USERS. Without terminating this Agreement, FCSS may suspend or terminate one, several, or all Client Users from accessing and using Cyber-High Courses at any time if Client or any Client Users violate the Terms of Use/Licensing Agreement or any provisions of this Agreement.

SECTION 3.4 FORCE MAJEURE. A Party is not liable for failing or delaying performance of its obligations under this Agreement due to events that are beyond the Party's reasonable control and occurring without its fault or negligence, for example, acts of God such as tornadoes, lightning, earthquakes, hurricanes, floods, or other natural disasters (collectively "**Force Majeure**") provided that the Party has promptly notified the other Party in writing of the occurrence of the Force Majeure, except that a Force Majeure shall not excuse Client's payment to FCSS of any portion of the Contract Amount that is due to FCSS.

ARTICLE 4 INDEMNITY.

Except as specifically stated otherwise in this Agreement in which case such provision shall apply to the extent provided therein, each Party's indemnity, defense, and hold harmless obligations to the other Party under this Agreement shall be as follows: (A) a Party ("**Indemnitor**") shall indemnify and hold harmless the other Party ("**Indemnitee**") to the full extent permitted by California laws for any Loss sustained by Indemnitee or a Third Party only in proportion to Indemnitor's liability based on a Final Determination; and (B) each Party shall defend and pay for all of its attorney's fees and litigation costs related to any Claim or Loss without any right against or from the other Party for indemnity and/or hold harmless of such costs and fees, or any right for defense. A Party who intends to seek or seeks indemnity and/or hold harmless for any Loss from the other Party: (1) shall notify the other Party in writing and within a reasonable time after the Party knows or becomes aware of any Claim that may or will result in a Loss, describing, if known or determinable, the pertinent circumstances, all entities and persons involved, and the amount being claimed; and (2) shall not settle or otherwise resolve the Claim until it has notified the other Party of the Claim in accordance with

the preceding provision (1) and given the other Party written notice and an opportunity to participate in and to consent to the settlement or resolution of the Claim, which consent the other Party shall not unreasonably withhold. A Party's obligations under this Article are not limited to or by any insurance that it maintains or the lack of insurance but apply to the full extent permitted by California laws, and shall survive the termination of this Agreement. "Claim" means any claim, demand, lawsuit, cause of action, action, cross-complaint, cross-action, and/or proceeding arising out of, resulting from, or relating to this Agreement where there has been no Final Determination. "Loss" means any bodily injury, property damage, personal injury, advertising injury, liability, loss, damage, judgment, expense and/or cost (excluding attorney's fees and litigation costs that Indemnitee or a Third Party incurred or paid related to a Loss or Claim) arising out of, resulting from, or relating to this Agreement and for which there has been a Final Determination that a Party is or both Parties are liable. "Third Party" means a person who or an entity that is not a Party to this Agreement and is not employed by, contracted with (whether directly or through a subcontract of any level), or otherwise retained by a Party to act for or on the Party's behalf. "Final Determination" means any judgment, order, or decision by a court of competent jurisdiction or a governmental entity with jurisdiction to render such judgment, order, or decision where the judgment, order, or decision is not subject to appeal or the period for an appeal has expired.

ARTICLE 5 DISPUTE RESOLUTION.

The Parties shall meet and confer in good faith to resolve any disputes between them arising out of, resulting from, or relating to this Agreement, including any Claim or Loss for which a Party seeks indemnity pursuant to Article 4 and any dispute relating to this Agreement that arises or occurs after the termination of this Agreement. During a dispute regarding payment under this Agreement, Client shall pay FCSS the portion of the Contract Amount that is undisputed and due to FCSS; if a disputed portion of the Contract Amount is determined in a Final Determination to be due to FCSS, Client shall pay such amount to FCSS within 30 days of the date of the Final Determination, unless a different date is stated in the Final Determination or in an agreement executed by the Parties, in which case, Client shall pay FCSS in accordance therewith. Except for an action to preserve the status quo and/or prevent irreparable harm, a Party shall not commence any cause of action, action, lawsuit, or proceeding arising out of, resulting from, or relating to this Agreement until after the Party has complied with the provisions of this Article. The provisions of this Article shall survive the termination of this Agreement.

ARTICLE 6 GENERAL PROVISIONS.

SECTION 6.1 ENTIRE AGREEMENT, CONFLICTS, EXECUTION, AMENDMENT, AND WAIVER. This Agreement is a complete and exclusive statement of the Parties' agreement under Code of Civil Procedure section 1856. This Agreement consists of and, unless specifically stated elsewhere in this Agreement or an amendment, any conflict or inconsistency in this Agreement shall be resolved by giving precedence as follows: the Cover, these General Terms and Conditions, any exhibit or attachment that is stated as being a part of this Agreement, and the Required Documents. The Parties may execute this Agreement and any amendment hereto in counterparts such that each Party's signature is on a separate page. A copy or an original of this Agreement or an amendment thereof with the Parties' signatures, whether original or transmitted by electronic means, shall be deemed a fully executed contract. The Parties may amend or waive any provision of this Agreement only by a writing executed by them.

SECTION 6.2 INTERPRETATION; APPLICABLE LAWS AND TIME ZONE; VENUE; SEVERABILITY; AND SURVIVAL OF TERMINATION. The Parties agree that in cases of uncertainty of any language in this Agreement, the provisions of Civil Code section 1654 shall not apply to interpret the uncertainty. The language of this Agreement shall be interpreted according to its fair meaning and not strictly for or against any Party and under California laws without giving effect to California's choice of law provisions that may result in the application of the laws of another jurisdiction. All dates and times stated in this Agreement shall be according to Pacific Time. All causes of action, actions, lawsuits, and proceedings arising out of, resulting from, or relating to this Agreement shall be adjudicated in state or federal court in Fresno County, California, provided that FCSS does not hereby waive any immunity to suit. If a court of competent jurisdiction holds any provision of this Agreement void, illegal, or unenforceable, this Agreement shall remain in full force and effect and shall be interpreted as though such invalidated provision is not a part of this Agreement and the remaining provisions shall be construed to preserve the Parties' intent in this Agreement. Any provision in this Agreement that by its nature applies after, or is specifically stated to survive, the termination of this Agreement shall survive the termination of this Agreement.

SECTION 6.3 INDEPENDENT CONTRACTOR; ASSIGNMENT AND TRANSFER. Each Party is an independent contractor, and it and its officers, employees, and agents are not, and shall not represent themselves as, officers, employees, or agents of the other Party. This Agreement does not and shall not be construed to create an employment or agency relationship, partnership, or joint venture between the Parties. Each Party shall not assign or transfer any or all of its obligations and/or rights under this Agreement, including by operation of law or change of control or merger, without the other Party's prior written consent; however, this provision shall not prohibit FCSS from subcontracting with one or more third parties to perform any portion of the Services.

SECTION 6.4 NOTICES. Except as may be stated otherwise in this Agreement in which case such provision shall govern to the extent provided therein, each Party shall give any notices, demands, and all other communications required or permitted under this Agreement in writing and by one of the following methods to the other Party at the address, FAX number, and/or email stated on the Cover, delivery to be effective upon receipt thereof by the other Party: (A) hand delivery; (B) sent by a reputable overnight courier service that tracks the delivery; (C) sent by certified mail, return receipt requested, first class postage prepaid; or (D) sent by regular mail and transmitted by facsimile or e-mail; and, **if to FCSS, a copy of any notice and demand by facsimile to:** General Counsel at (559) 265-3054. A Party may change its contact person and/or contact information stated on the Cover by notifying the other Party of the particular change and the effective date thereof in accordance with this Section. The provisions of this Section shall survive the termination of this Agreement.

SECTION 6.5 ISSUANCE OF CREDITS. Client must adopt all Cyber High courses as part of Client's approved course list. Upon Client User course completion, FCSS will issue and mail the official course and/or unit completion grade report to the registrar of the Client User's permanent school of record. It is incumbent upon the Client to record the grade(s) and issue credit in accordance to Client's school and/or prevailing district policy.

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CALIFORNIA STUDENT DATA PRIVACY AGREEMENT
Version 1.0

Lodi Unified School District

and

Fresno County Superintendent of Schools

October 16, 2017

This California Student Data Privacy Agreement ("DPA") is entered into by and between the Lodi Unified School District (hereinafter referred to as "LEA") and Fresno County Superintendent of Schools (hereinafter referred to as "Provider") on The Parties agree to the terms as stated herein.

RECITALS

WHEREAS, the Provider has agreed to provide the Local Education Agency ("LEA") with certain digital educational services ("Services") pursuant to a contract dated October 16, 2017 ("Service Agreement"); and

WHEREAS, in order to provide the Services described in the Service Agreement, the Provider may receive and the LEA may provide documents or data that are covered by several federal and statutes, among them, the Family Educational Rights and Privacy Act ("FERPA") at 20 U.S.C. 1232g, Children's Online Privacy Protection Act ("COPPA"), 15 U.S.C. 6501-6502; Protection of Pupil Rights Amendment ("PPRA") 20 U.S.C. 1232 h; and

WHEREAS, the documents and data transferred from California LEAs are also subject to several California student privacy laws, including AB 1584, found at California Education Code Section 49073.1 and the Student Online Personal Information Protection Act (sometimes referred to as either "SB 1177" or "SOPIPA") found at California Business and Professions Code section 22584; and

WHEREAS, the Parties wish to enter into this DPA to ensure that the Service Agreement conforms to the requirements of the privacy laws referred to above and to establish implementing procedures and duties; and

WHEREAS, the Provider may, by signing the "General Offer of Privacy Terms", agrees to allow other LEAs in California the opportunity to accept and enjoy the benefits of this DPA for the Services described herein, without the need to negotiate terms in a separate DPA.

NOW THEREFORE, for good and valuable consideration, the parties agree as follows:

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 transmitted to Provider from the LEA pursuant to the Service Agreement, including compliance with all applicable privacy statutes, including the FERPA, PPRA, COPPA, SB 1177 (SOPIPA), and AB 1584. In performing these services, the Provider shall be considered a School Official with a legitimate educational interest, and performing services otherwise provided by the LEA. Provider shall be under the direct control and supervision of the LEA. Control duties are set forth below.
2. **Nature of Services Provided.** The Provider has agreed to provide the following digital educational services described below and as may be further outlined in Exhibit "A" hereto:

See attached Exhibit A.

3. **Student Data to Be Provided.** In order to perform the Services described in the Service Agreement, LEA shall provide the categories of data described below or as indicated in the Schedule of Data, attached hereto as Exhibit "B":

4. **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 term used in the Service Agreement.

ARTICLE II: DATA OWNERSHIP AND AUTHORIZED ACCESS

1. **Student Data Property of LEA.** All Student Data or any other Pupil Records 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 Parties agree that as between them all rights, including all intellectual property rights in and to Student Data or any other Pupil Records 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 LEAs as it pertains to the use of student data notwithstanding the above. Provider may transfer pupil-generated content to a separate account, according to the procedures set forth below.

2. **Parent Access.** LEA shall establish reasonable procedures by which a parent, legal guardian, or eligible student may review personally identifiable information on the pupil's records, correct erroneous information, and procedures for the transfer of pupil-generated content to a personal account, consistent with the functionality of services. Provider shall respond in a reasonably timely manner to the LEA's request for personally identifiable information in a pupil's records held by the Provider to view or correct as necessary. In the event that a parent of a pupil or other individual contacts the Provider to review any of the Pupil Records of 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.** Provider shall, at the request of the LEA, transfer Student generated content to a separate student account.

4. **Third Party Request.** Should a Third Party, including law enforcement and government entities, contact Provider with a request for data held by the Provider pursuant to the Services, the Provider shall redirect the Third Party to request the data directly from the LEA. Provider shall notify the LEA in advance of a compelled disclosure to a Third Party unless legally prohibited.

5. **No Unauthorized Use.** Provider shall not use Student Data or information in a Pupil Record for any purpose other than as explicitly specified in the Service Agreement.
6. **Subprocessors.** Provider shall enter into written agreements with all Subprocessors performing functions pursuant to the Service Agreement, whereby the Subprocessors agree protect Student Data in manner consistent with the terms of this DPA

ARTICLE III: DUTIES OF LEA

1. **Provide Data In Compliance With FERPA.** LEA shall provide data for the purposes of the Service Agreement in compliance with the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. section 1232 g, AB 1584 and the other privacy statutes quoted in this DPA.
2. **Reasonable Precautions.** LEA shall take reasonable precautions to secure usernames, passwords, and any other means of gaining access to the services and hosted data.
3. **Unauthorized Access Notification.** LEA shall notify Provider promptly of any known or suspected unauthorized access. LEA will assist Provider in any efforts by Provider to investigate and respond to any unauthorized access.
4. **District Representative.** At request of Provider, LEA shall designate an employee or agent of the District as the District representative for the coordination and fulfillment of the duties of this DPA.

ARTICLE IV: DUTIES OF PROVIDER

1. **Privacy Compliance.** The Provider shall comply with all California and Federal laws and regulations pertaining to data privacy and security, including FERPA, COPPA, PPRA, AB 1584, and SOPIPA.
2. **Authorized Use.** The data shared pursuant to the Service Agreement, including persistent unique identifiers, shall be used for no purpose other than the Services stated in the Service Agreement and/or otherwise authorized under the statutes referred to in subsection (1), above.
3. **Employee Obligation.** Provider shall require all employees and agents who have access to Student Data to comply with all applicable provisions of FERPA laws with respect to the data shared under the Service Agreement. Provider agrees to require and maintain an appropriate confidentiality agreement from each employee or agent with access to Student Data pursuant to the Service Agreement.

4. **No Disclosure.** Provider shall not disclose any data obtained under the Service Agreement in a manner that could identify an individual student to any other entity in published results of studies as authorized by the Service Agreement. Deidentified information may be used by the vendor for the purposes of development and improvement of educational sites, services, or applications.

5. **Disposition of Data.** Provider shall dispose of all personally identifiable data obtained under the Service Agreement when it is no longer needed for the purpose for which it was obtained and transfer said data to LEA or LEA's designee within 60 days of the date of termination and according to a schedule and procedure as the Parties may reasonably agree. Nothing in the Service Agreement authorizes Provider to maintain personally identifiable data obtained under the Service Agreement beyond the time period reasonably needed to complete the disposition. Disposition shall include (1) the shredding of any hard copies of any Pupil Records; (2) Erasing; or (3) Otherwise modifying the personal information in those records to make it unreadable or indecipherable. Provider shall provide written notification to LEA when the Data has been disposed. The duty to dispose of Student Data shall not extend to data that has been de-identified or placed in a separate Student account, pursuant to the other terms of the DPA. Nothing in the Service Agreement authorizes Provider to maintain personally identifiable data beyond the time period reasonably needed to complete the disposition.

6. **Advertising Prohibition.** Provider is prohibited from using Student Data to conduct or assist targeted advertising directed at students or their families/guardians. This prohibition includes the development of a profile of a student, or their families/guardians or group, for any commercial purpose other than providing the service to client. This shall not prohibit Providers from using data to make product or service recommendations to LEA.

ARTICLE V: DATA PROVISIONS

1. **Data Security.** The Provider agrees to abide by and maintain adequate data security measures to protect Student Data from unauthorized disclosure or acquisition by an unauthorized person. The general security duties of Provider are set forth below. Provider may further detail its security programs and measures in in Exhibit "D" hereto. These measures shall include, but are not limited to:
 - a. **Passwords and Employee Access.** Provider shall make best efforts practices to secure usernames, passwords, and any other means of gaining access to the Services or to Student Data, at a level suggested by Article 4.3 of NIST 800-63-3. Provider shall only provide access to Student Data to employees or contractors that are performing the Services. As stated elsewhere in this DPA, employees with access to Student Data shall have signed confidentiality agreements regarding said Student Data. All employees with access to Student Records shall pass criminal background checks.
 - b. **Destruction of Data.** Provider shall destroy all personally identifiable data obtained under the Service Agreement when it is no longer needed for the purpose for which it was

obtained or transfer said data to LEA or LEA's designee, according to a schedule and procedure as the parties may reasonable agree. Nothing in the Service Agreement authorizes Provider to maintain personally identifiable data beyond the time period reasonably needed to complete the disposition.

- c. **Security Protocols.** Both parties agree to maintain security protocols that meet industry best practices in the transfer or transmission of any data, including ensuring that data may only be viewed or accessed by parties legally allowed to do so. Provider shall maintain all data obtained or generated pursuant to the Service Agreement in a secure computer environment and not copy, reproduce, or transmit data obtained pursuant to the Service Agreement, except as necessary to fulfill the purpose of data requests by LEA.
 - d. **Employee Training.** The Provider shall provide periodic security training to those of its employees who operate or have access to the system. Further, Provider shall provide LEA with contact information of an employee who LEA may contact if there are any security concerns or questions.
 - e. **Security Technology.** When the service is accessed using a supported web browser, Secure Socket Layer ("SSL"), or equivalent technology protects information, using both server authentication and data encryption to help ensure that data are safe secure only to authorized users. Provider shall host data pursuant to the Service Agreement in an environment using a firewall that is periodically updated according to industry standards.
 - f. **Security Coordinator.** Provider shall provide the name and contact information of Provider's Security Coordinator for the Student Data received pursuant to the Service Agreement
 - g. **Subprocessors Bound.** Provider shall enter into written agreements whereby Subprocessors agree to secure and protect Student Data in a manner consistent with the terms of this Article V. Provider shall periodically conduct or review compliance monitoring and assessments of Subprocessors to determine their compliance with this Article.
2. **Data Breach.** In the event that Student Data is accessed or obtained by an unauthorized individual, Provider shall provide notification to LEA within a reasonable amount of time of the incident. Provider shall follow the following process:
- a. The security breach notification shall be written in plain language, shall be titled "Notice of Data Breach," and shall present the information described herein under the following headings: "What Happened," "What Information Was Involved," "What We Are Doing," "What You Can Do," and "For More Information." Additional information may be provided as a supplement to the notice.
 - b. The security breach notification described above in section 2(a) shall include, at a minimum, the following information:
 - i. The name and contact information of the reporting LEA subject to this section.
 - ii. A list of the types of personal information that were or are reasonably believed to have been the subject of a breach.

- iii. If the information is possible to determine at the time the notice is provided, then either (1) the date of the breach, (2) the estimated date of the breach, or (3) the date range within which the breach occurred. The notification shall also include the date of the notice.
 - iv. Whether the notification was delayed as a result of a law enforcement investigation, if that information is possible to determine at the time the notice is provided.
 - v. A general description of the breach incident, if that information is possible to determine at the time the notice is provided.
- c. At LEA's discretion, the security breach notification may also include any of the following:
- i. Information about what the agency has done to protect individuals whose information has been breached.
 - ii. Advice on steps that the person whose information has been breached may take to protect himself or herself.
- d. Any agency that is required to issue a security breach notification pursuant to this section to more than 500 California residents as a result of a single breach of the security system shall electronically submit a single sample copy of that security breach notification, excluding any personally identifiable information, to the Attorney General. Provider shall assist LEA in these efforts.
- e. At the request and with the assistance of the District, Provider shall notify the affected parent, legal guardian or eligible pupil of the unauthorized access, which shall include the information listed in subsections (b) and (c), above.

ARTICLE VI: GENERAL OFFER OF PRIVACY 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 this DPA 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. **Term.** The Provider shall be bound by this DPA for the duration of the Service Agreement or so long as the Provider maintains any Student Data. Notwithstanding the foregoing, Provider agrees to be bound by the terms and obligations of this DPA for no less than three (3) years.
2. **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.
3. **Effect of Termination Survival.** If the Service Agreement is terminated, the Provider shall

destroy all of LEA's data pursuant to Article V, section 1(b).

4. **Priority of Agreements.** This DPA shall govern the treatment of student records in order to comply with the privacy protections, including those found in FERPA and AB 1584. In the event there is conflict between the terms of the DPA and the Service Agreement, or with any other bid/RFP, license agreement, or writing, the terms of this DPA shall apply and take precedence. Except as described in this paragraph herein, all other provisions of the Service Agreement shall remain in effect.
5. **Notice.** All notices or other communication required or permitted to be given hereunder must be in writing and given by personal delivery, facsimile or e-mail transmission (if contact information is provided for the specific mode of delivery), or first class mail, postage prepaid, sent to the addresses set forth herein.
6. **Application of Agreement to Other Agencies.** Provider may agree by signing the General Offer of Privacy Terms be bound by the terms of this DPA for the services described therein for any Successor Agency who signs a Joinder to this DPA.
7. **Entire Agreement.** This DPA constitutes 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.
8. **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.
9. **Governing Law; Venue and Jurisdiction.** THIS DPA WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA,

WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES. EACH PARTY CONSENTS AND SUBMITS TO THE SOLE AND EXCLUSIVE JURISDICTION TO THE STATE AND FEDERAL COURTS LOCATED IN FRESNO COUNTY, CALIFORNIA FOR ANY DISPUTE ARISING OUT OF OR RELATING TO THIS SERVICE AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed this California Student Data Privacy Agreement as of the last day noted below.

Lodi Unified School District

EAH
4/5/2018


Signature:  _____

Date: 3/14/2018

Printed Name: Leonard Kahn

Title/Position: Chief Business Officer

Fresno County Superintendent of Schools

Signature:  _____

Date: 2/21/18

Printed Name: Jim A. Yovino

Title/Position: Superintendent

Note: Electronic signature not permitted.

EXHIBIT "A"
DESCRIPTION OF SERVICES

"Cyber High Courses": Access by Client Users to all courses, curriculum, tools, and resources available on-line on Cyber High. Cyber High Courses do not include Supplementary Materials.

"Professional Development Training": Upon request by Client, FCSS will provide professional development training for Client Users at a maximum rate of one training per Contract term at Client's District Office or another mutually agreeable location. Training services for Clients within California, who exceed a one hundred mile radius of 1111 Van Ness Avenue, Fresno, CA 93721, or those that justify an overnight stay due to the timing of the training, will be separately invoiced for \$500.

"Grade Report": After a Client User student has completed a five unit course, FCSS will mail a Grade Report to the student's school of record within a reasonable time (typically 48 hours). It is incumbent upon each Client User to ensure that Cyber High courses have been added to the approved course list of each contracting school so that proper credit may be awarded to Client User student upon course completion.

"Client User Support": FCSS will provide support to Client Users via telephone and email Monday through Friday, except for holidays and periods of closure, during FCSS' normal business hours.

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:	X
Application Use Statistics	Meta data on user interaction with application	
Assessment	Standardized test scores	
	Observation data	
	Other assessment data-Please specify:	CH Assessments
Attendance	Student school (daily) attendance data	
	Student class attendance data	
Communications	Online communications that are captured (emails, blog entries)	X
Conduct	Conduct or behavioral data	
Demographics	Date of Birth	X
	Place of Birth	
	Gender	
	Ethnicity or race	X
	Language information (native, preferred or primary language spoken by student)	
Other demographic information-Please specify:		
Enrollment	Student school enrollment	X
	Student grade level	X
	Homeroom	
	Guidance counselor	
	Specific curriculum programs	
	Year of graduation	
Other enrollment information-Please specify:		
Parent/Guardian Contact Information	Address	Optional
	Email	Optional
	Phone	Optional
Parent/Guardian ID	Parent ID number (created to link parents to students)	
Parent/Guardian Name	First and/or Last	Optional

Category of Data	Elements	Check if used by your system
Schedule	Student scheduled courses	X
	Teacher names	
Special Indicator	English language learner information	
	Low income status	
	Medical alerts	
	Student disability information	
	Specialized education services (IEP or 504)	X
	Living situations (homeless/foster care)	
Other indicator information-Please specify:		
Category of Data	Elements	Check if used by your system
Student Contact Information	Address	
	Email	X
	Phone	
Student Identifiers	Local (School district) ID number	X
	State ID number	
	Vendor/App assigned student ID number	
	Student app username	X
	Student app passwords	X
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)	X
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.	X

Category of Data	Elements	Check if used by your system
Other	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:	

Category of Data	Elements	Check if used by your system
Transportation	Student bus assignment	
	Student pick up and/or drop off location	
	Student bus card ID number	
	Other transportation data - Please specify:	
Other	Please list each additional data element used, stored or collected by your application	

EXHIBIT "C"

DEFINITIONS

AB 1584, Buchanan: The statutory designation for what is now California Education Code § 49073.1, relating to pupil records.

De-Identifiable Information (DI): De-Identification refers to the process by which the Vendor removes or obscures any Personally Identifiable Information ("PII") from student records in a way that removes or minimizes the risk of disclosure of the identity of the individual and information about them.

NIST 800-63-3: Draft National Institute of Standards and Technology ("NIST") Special Publication 800-63-3 Digital Authentication Guideline.

Operator: For the purposes of SB 1177, SOPIPA, the term "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 primarily for K-12 school purposes and was designed and marketed for K-12 school purposes. For the purpose of the Service Agreement, the term "Operator" is replaced by the term "Provider." This term shall encompass the term "Third Party," as it is found in AB 1584.

Personally Identifiable Information (PII): The terms "Personally Identifiable Information" or "PII" shall include, but are not limited to, student data, metadata, and user or pupil-generated content obtained by reason of the use of Provider's software, website, service, or app, including mobile apps, whether gathered by Provider or provided by LEA or its users, students, or students' parents/guardians. PII includes, without limitation, at least the following:

First and Last Name	Home Address
Telephone Number	Email Address
Discipline Records	Test Results
Special Education Data	Juvenile Dependency Records
Grades	Evaluations
Criminal Records	Medical Records
Health Records	Social Security Number
Biometric Information	Disabilities
Socioeconomic Information	Food Purchases
Political Affiliations	Religious Information
Text Messages	Documents
Student Identifiers	Search Activity
Photos	Voice Recordings
Videos	

General Categories:

Indirect Identifiers: Any information that, either alone or in aggregate, would allow a reasonable person to be able to identify a student to a reasonable certainty

Information in the Student's Educational Record

Information in the Student's Email

Provider: For purposes of the Service Agreement, the term "Provider" means provider of digital educational software or services, including cloud-based services, for the digital storage, management, and retrieval of pupil records. Within the Service Agreement the term "Provider" replaces the term "Third Party as defined in California Education Code § 49073.1 (AB 1584, Buchanan), and replaces the term as "Operator" as defined in SB 1177, SOPIPA.

Pupil Generated Content: The term "pupil-generated content" means materials or content created by a pupil during and for the purpose of education 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 pupil content.

Pupil Records: Means both of the following: (1) Any information that directly relates to a pupil that is maintained by LEA and (2) any information acquired directly from the pupil through the use of instructional software or applications assigned to the pupil by a teacher or other local educational LEA employee.

SB 1177, SOPIPA: Once passed, the requirements of SB 1177, SOPIPA were added to Chapter 22.2 (commencing with Section 22584) to Division 8 of the Business and Professions Code relating to privacy.

Service Agreement: Refers to the Contract or Purchase Order to which this DPA supplements and modifies.

School Official: For the purposes of this Agreement and pursuant to 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 education records; and (3) Is subject to CFR 99.33(a) governing the use and re-disclosure of personally identifiable information from student records.

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, home address, telephone number, email address, or other information allowing 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, food purchases, political affiliations, religious information text messages, documents, student identifies, search activity, photos, voice recordings or geolocation information. Student Data shall constitute Pupil Records for the purposes of this Agreement, and for the purposes of California and Federal 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.

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

Subprocessor: For the purposes of this Agreement, 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 software, and who has access to PII. This term shall also include in it meaning the term "Service Provider," as it is found in SOPIPA.

Targeted Advertising: Targeted advertising means presenting an advertisement to a student where the selection of the advertisement is based on student information, student records or student generated content or inferred over time from the usage of the Provider's website, online service or mobile application by such student or the retention of such student's online activities or requests over time.

Third Party: The term "Third Party" as appears in California Education Code § 49073.1 (AB 1584, Buchanan) means a provider of digital educational software or services, including cloud-based services, for the digital storage, management, and retrieval of pupil records. However, for the purpose of this Agreement, the term "Third Party" when used to indicate the provider of digital educational software or services is replaced by the term "Provider."

EXHIBIT "D"
DATA SECURITY REQUIREMENTS

Insert Additional Data Security Requirements