

WISCONSIN STUDENT DATA PRIVACY AGREEMENT

School District/Local Education Agency:

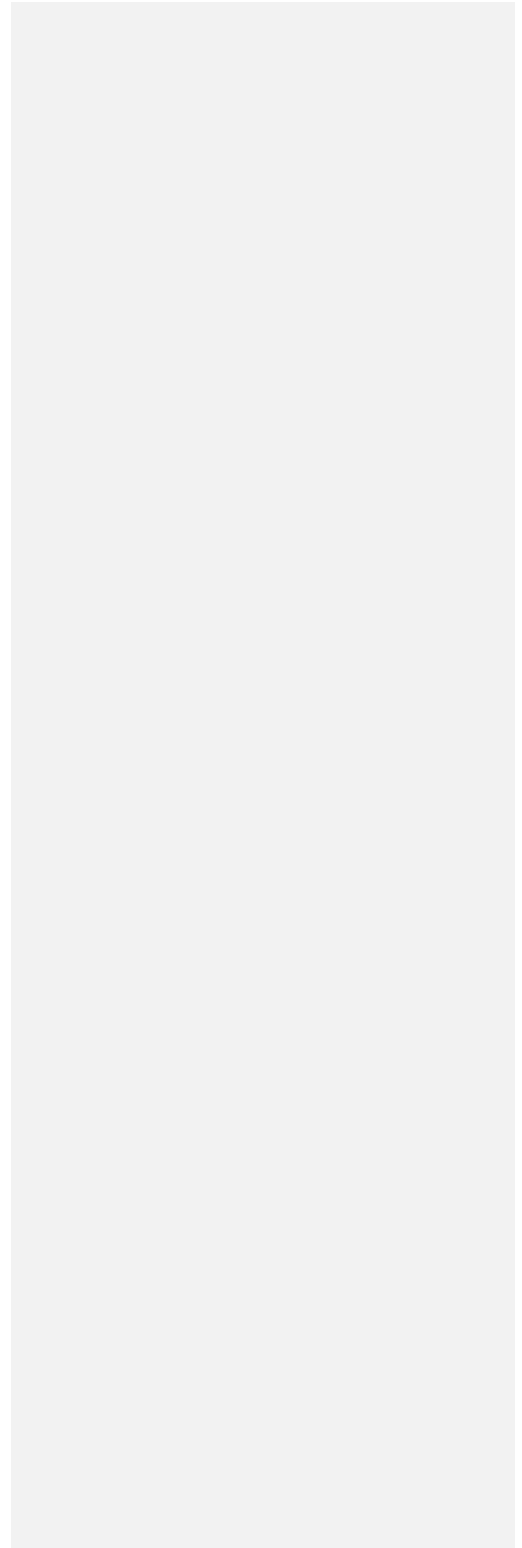
**School District of Fort Atkinson**

AND

Provider:

**Fotoloco LLC (DBA Homeroom, DBA Cluster)**

Date: **12/6/2021**



This Wisconsin Student Data Privacy Agreement (“DPA”) is entered into by and between the **School District of Fort Atkinson** (hereinafter referred to as “LEA”) and **Fotoloco LLC (DBA Homeroom, DBA Cluster)** (hereinafter referred to as “Provider”) on 12/6/2021. 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 [Insert Date] (“Service Agreement”); and

**WHEREAS**, in order to provide the Services described in the Service Agreement, the Provider may receive or create, and the LEA may provide documents or data that are covered by several federal statutes, among them, the Family Educational Rights and Privacy Act (“FERPA”) at 20 U.S.C. 1232g and 34 CFR Part 99, Children’s Online Privacy Protection Act (“COPPA”), 15 U.S.C. 6501-6506; Protection of Pupil Rights Amendment (“PPRA”) 20 U.S.C. 1232h; and

**WHEREAS**, the documents and data transferred from LEAs and created by the Provider’s Services are also subject to Wisconsin state student privacy laws, including pupil records law under Wis. Stat. § 118.125 and notice requirements for the unauthorized acquisition of personal information under Wis. Stat. § 134.98; and

**WHEREAS**, for the purposes of this DPA, Provider is a school district official with legitimate educational interests in accessing educational records pursuant to the Service Agreement; 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” (Exhibit “E”), agree to allow other LEAs in Wisconsin 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 LEA pursuant to the Service Agreement, including compliance with all applicable statutes, including the FERPA, PPRA, COPPA, and applicable Wisconsin law, all as may be amended from time to time. In performing these services, the Provider shall be considered a School District Official with a legitimate educational interest, and performing services otherwise provided by the LEA. With respect to the use and maintenance of Student Data, Provider shall be under the direct control and supervision of the LEA.

2. **Nature of Services Provided.** The Provider has agreed to provide the following digital educational products and services described below and as may be further outlined in Exhibit “A” hereto:

Photo sharing service so teachers can share classroom photos with parents and other educators.

3. **Student Data to Be Provided.** The Parties shall indicate the categories of student data to be provided in the Schedule of Data, attached hereto as Exhibit “B”.

[Insert Categories of Student Data to be provided to the Provider]

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 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 Agreement 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 District 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 Student Data in 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 timely manner (and no later than 30 days from the date of the request) to the LEA’s request for Student Data 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 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 pupil generated content is stored or maintained by the Provider as part of the Services described in Exhibit “A”, Provider shall, at the request of the LEA, transfer said pupil generated content to a separate student account upon termination of the Service Agreement; provided, however, such transfer shall only apply to pupil generated content that is severable from the Service.

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 as soon as possible in advance of a compelled disclosure to a Third Party.

5. **Subprocessors.** Provider shall enter into written agreements with all Subprocessors performing functions pursuant to the Service Agreement, whereby the Subprocessors agree to protect Student Data in manner consistent with the terms of this DPA, as well as state and federal law.

### ARTICLE III: DUTIES OF LEA

1. **Privacy Compliance.** LEA shall provide data for the purposes of the Service Agreement in compliance with FERPA, COPPA, PPRA, and applicable Wisconsin law.

2. **Annual Notification of Rights.** The LEA shall include a specification of criteria under FERPA 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 data.

4. **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.

### ARTICLE IV: DUTIES OF PROVIDER

1. **Privacy Compliance.** The Provider shall comply with all applicable state and federal laws and regulations pertaining to data privacy and security, including FERPA, COPPA, PPRA, and applicable Wisconsin law.

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. Provider also acknowledges and agrees that it shall not make any re-disclosure of any Student Data or any portion thereof, including without limitation, meta data, user content or other non-public information and/or personally identifiable information contained in the Student Data, without the express written consent of the LEA.

3. **Employee Obligation.** Provider shall require all employees and agents who have access to Student Data to comply with all applicable provisions of this DPA with respect to the data shared under the Service Agreement.

4. **No Disclosure.** Provider shall not copy, reproduce or transmit any data obtained under the Service Agreement and/or any portion thereof, except as necessary to fulfill the Service Agreement.

**5. Disposition of Data.** Upon written request and in accordance with the applicable terms in subsection a or b, below, Provider shall dispose or delete all Student Data obtained under the Service Agreement when it is no longer needed for the purpose for which it was obtained. Disposition shall include (1) the shredding of any hard copies of any student data; (2) erasing; or (3) otherwise modifying the personal information in those records to make it unreadable or indecipherable by human or digital means. Nothing in the Service Agreement authorizes Provider to maintain Student Data obtained under the Service Agreement beyond the time period reasonably needed to complete the disposition. Provider shall provide written notification to LEA when the Student 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. The LEA may employ a "Request for Return or Deletion of Student Data" form, a copy of which is attached hereto as Exhibit "D". Upon receipt of a request from the LEA, the Provider will immediately provide the LEA with any specified portion of the Student Data within ten (10) calendar days of receipt of said request.

**a. Partial Disposal During Term of Service Agreement.** Throughout the Term of the Service Agreement, LEA may request partial disposal of Student Data obtained under the Service Agreement that is no longer needed. Partial disposal of data shall be subject to LEA's request to transfer data to a separate account, pursuant to Article II, section 3, above.

**b. Complete Disposal Upon Termination of Service Agreement.** Upon Termination of the Service Agreement Provider shall dispose or delete all Student Data obtained under the Service Agreement. Prior to disposition of the data, Provider shall notify LEA in writing of its option to transfer data to a separate account, pursuant to Article II, section 3, above. In no event shall Provider dispose of data pursuant to this provision unless and until Provider has received affirmative written confirmation from LEA that data will not be transferred to a separate account.

**6. Advertising Prohibition.** Provider is prohibited from using or selling Student Data to (a) market or advertise to students or families/guardians; (b) inform, influence, or enable marketing, advertising, or other commercial efforts by a 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) use the Student Data for the development of commercial products or services, other than as necessary to provide the Service to LEA. This section does not prohibit Provider from using Student Data for adaptive learning or customized student learning purposes.

#### ARTICLE V: DATA PROVISIONS

**1. Data Security.** The Provider agrees to abide by and maintain adequate data security measures, consistent with industry standards and technology best practices, 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 Exhibit "F" hereto. These measures shall include, but are not limited to:

**a. Passwords and Employee Access.** Provider shall secure usernames, passwords, and any

other means of gaining access to the Services or to Student Data, at a level suggested by the applicable standards, as set forth in 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. Employees with access to Student Data shall have signed confidentiality agreements regarding said Student Data. All employees with access to Student Records shall be subject to criminal background checks in compliance with state and local ordinances.

- b. Destruction of Data.** Provider shall destroy or delete all Student 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 the procedure identified in Article IV, section 5, above. Nothing in the Service Agreement authorizes Provider to maintain Student Data beyond the time period reasonably needed to complete the disposition.
- c. Security Protocols.** Both parties agree to maintain security protocols that meet industry standards 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 digital 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, Provider shall employ industry standard measures to protect data from unauthorized access. The service security measures shall include server authentication and data encryption. Provider shall host data pursuant to the Service Agreement in an environment using a firewall that is updated according to industry standards.
- f. Security Coordinator.** If different from the designated representative identified in Article VII, section 5, 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.
- h. Periodic Risk Assessment.** Provider further acknowledges and agrees to conduct digital and physical periodic (no less than semi-annual) risk assessments and remediate any

identified security and privacy vulnerabilities in a timely manner.

**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, and not exceeding forty-eight (48) hours. 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 because 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.** Provider agrees to adhere to all requirements in applicable state and federal law 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.
- e.** 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 copy of said written incident response plan.

**f** Provider is prohibited from directly contacting parent, legal guardian or eligible pupil unless expressly requested by LEA. If LEA requests Provider's assistance providing notice of unauthorized access, and such assistance is not unduly burdensome to Provider, 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. If requested by LEA, Provider shall reimburse LEA for costs incurred to notify parents/families of a breach not originating from LEA's use of the Service.

**g** 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 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 in 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.

**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. LEA shall have the right to terminate the DPA and Service Agreement in the event of a material breach of the terms of this DPA.

**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), and Article II, section 3, above.

**4. Priority of Agreements.** This DPA shall govern the treatment of student data in order to comply with privacy protections, including those found in FERPA and all applicable privacy statutes identified in this DPA. In the event there is conflict between the DPA and the Service Agreement, the 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, or e-mail transmission (if contact information is provided for the specific mode of delivery), or first-class mail, postage prepaid, sent to the designated representatives before:

##### **a. Designated Representatives**

The designated representative for the LEA for this Agreement is:

Name: **Daniel J Scullin**



Title: **Director of Technology**  
Contact Information:  
**201 Park Street**  
**Fort Atkinson, WI 53538**  
**(920) 563-7813**

The designated representative for the Provider for this Agreement is:

Name: Frank Barbieri  
Title: Partner  
Contact Information:  
support@cluster.co  
270 Divisadero St, #36  
San Francisco, CA 94117

- b. **Notification of Acceptance of General Offer of Privacy Terms.** Upon execution of Exhibit "E", General Offer of Privacy Terms, Subscribing LEA shall provide notice of such acceptance in writing and given by personal delivery, or e-mail transmission (if contact information is provided for the specific mode of delivery), or first-class mail, postage prepaid, to the designated representative below.

The designated representative for notice of acceptance of the General Offer of Privacy Terms is:

Name: same  
Title: \_\_\_\_\_  
Contact Information:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**6. 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.

**7. 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.

**8. Governing Law; Venue and Jurisdiction.** THIS DPA WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF WISCONSIN, 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 IN WHICH THIS AGREEMENT IS FORMED FOR ANY DISPUTE ARISING OUT OF OR RELATING TO THIS SERVICE AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

**9. Authority.** Provider represents that it is authorized to bind to the terms of this Agreement, 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, or may own, lease or control equipment or facilities of any kind where the Student Data and portion thereof stored, maintained or used in any way. Provider agrees that any purchaser of the Provider shall also be bound to the Agreement.

**10. Waiver.** No delay or omission of the LEA to exercise any right hereunder shall be construed as a waiver of any such right and the LEA reserves the right to exercise any such right from time to time, as often as may be deemed expedient.

**11. 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.

*[Signature Page Follows]*

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

Provider:

BY: Frank Barbieri Date: 12/9/21

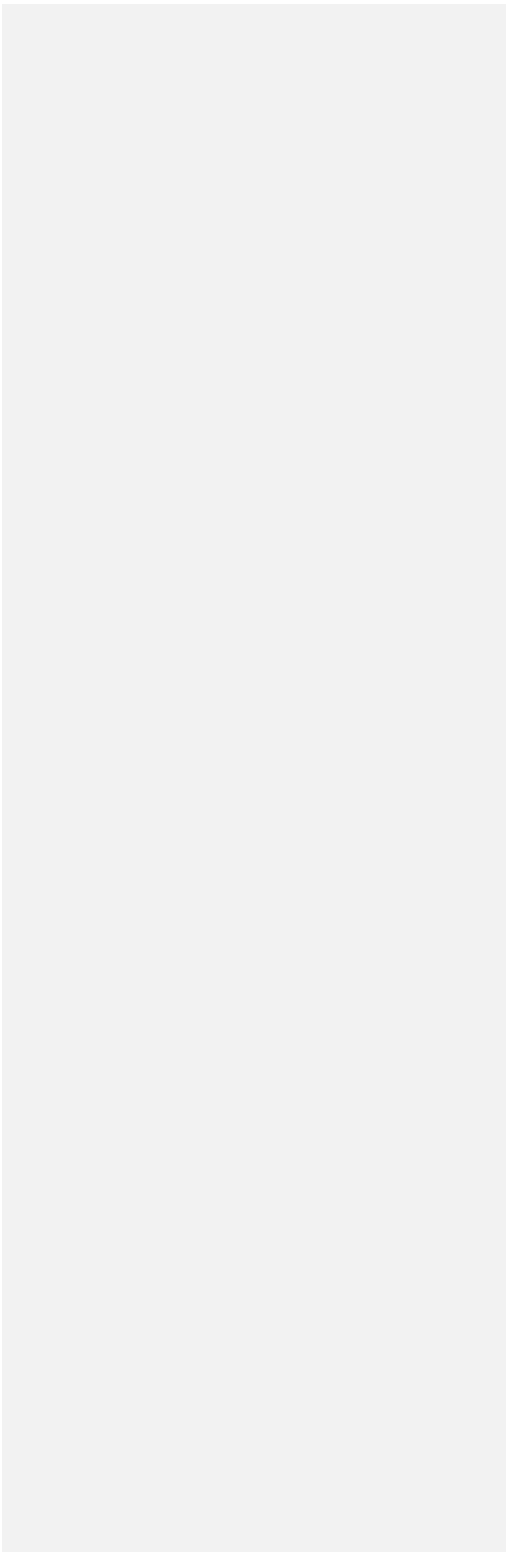
Printed Name: Frank Barbieri Title/Position: Partner

Local Education Agency:

BY: DJ Scullin Date: 12/6/2021

Printed Name: DJ Scullin Title/Position: Director of Technology

*Note: Electronic signature not permitted.*



## **EXHIBIT “A”**

### **DESCRIPTION OF SERVICES**

[INSERT DETAILED DESCRIPTION OF PRODUCTS AND SERVICES HERE. IF MORE THAN ONE PRODUCT OR SERVICE IS INCLUDED, LIST EACH PRODUCT HERE]

Service description for Homeroom and Cluster included below in their entirety. Not the named DBA is Cuslter but the same terms apply for Homeroom.

Welcome to Cluster. Please read on to learn the rules and restrictions that govern your use of our mobile application, website(s), products, and services (the “Services”). If you have any questions, comments, or concerns regarding these terms or the Services, please contact us at support@getcluster.com. 853 Divisadero Street, San Francisco, Calif. 94117.

These Terms of Use (the “Terms”) are a binding contract between you and CLUSTER LABS, INC.. (“Cluster,” “we” and “us”). You must agree to and accept all of the Terms, or you don’t have the right to use the Services. Your using the Services in any way means that you agree to all of these Terms, and these Terms will remain in effect while you use the Services. These Terms include the provisions in this document, as well as those in the Cluster [Privacy Policy](#), and [Copyright Dispute Policy](#).

#### **Will these Terms ever change?**

We are constantly trying to improve our Services, so these Terms may need to change along with the Services. We reserve the right to change the Terms at any time, but if we do, we will bring it to your attention by placing a notice on the cluster.co website, within the Cluster mobile application and/or by sending you an email and/or by some other means..

If you don’t agree with the new Terms, you are free to reject them; unfortunately, that means you will no longer be able to use the Services. If you use the Services in any way after a change to the Terms is effective, that means you agree to all of the changes..

Except for changes by us as described here, no other amendment or modification of these Terms will be effective unless in writing and signed by both you and us.

### **What about my privacy?**

Cluster takes the privacy of its users very seriously. For the current Cluster Privacy Policy, please [click here](#).

The Children's Online Privacy Protection Act ("COPPA") requires that online service providers obtain parental consent before they knowingly collect personally identifiable information online from children who are under 13. We do not knowingly collect or solicit personally identifiable information from children under 13; if you are a child under 13, please do not attempt to register for the Services or send any personal information about yourself to us. If we learn we have collected personal information from a child under 13, we will delete that information as quickly as possible. If you believe that a child under 13 may have provided us personal information, please contact us at [support@getcluster.com](mailto:support@getcluster.com).

We comply with the following relevant laws regarding use by students and minors: the Federal Educational and Privacy rights Act ("FERPA"), the Children's Online Privacy Protection Act ("COPPA"), the Protection of Pupil Rights Amendment ("PPRA"), the California Education Code Section 49073.1 and AB 1584 and the Student Online Personal Information Protection Act ("SOPIPA"). We have been certified by the California Student Privacy Alliance (CSPA) for use in California Public Schools.

### **What are the basics of using Cluster?**

You may be required to sign up for an account, and provide a password and email address, which will be used as your user name ("Cluster User ID"). You promise to provide us with accurate, complete, and updated registration information about yourself. You may not select as your Cluster User ID a name that you don't have the right to use, or another person's name with the intent to impersonate that person. You may not transfer your account to anyone else without our prior written permission.

Cluster and its affiliated services are only licensed for use within the United States of America and its territories. If you are using the Service outside of the United States you are in breach of our terms of service and solely responsible. By using this serve you represent and warrant that you are

using it under applicable US-based law and are solely using it within the United States and its territories.

You represent and warrant that you are of legal age to form a binding contract (or if not, you've received your parent's or guardian's permission to use the Services and gotten your parent or guardian to agree to these Terms on your behalf). If you're agreeing to these Terms on behalf of an organization or entity, you represent and warrant that you are authorized to agree to these Terms on that organization or entity's behalf and bind them to these Terms (in which case, the references to "you" and "your" in these Terms, except for in this sentence, refer to that organization or entity).

You will only use the Services for your own internal, personal, non-commercial use, and not on behalf of or for the benefit of any third party, and only in a manner that complies with all laws that apply to you. If your use of the Services is prohibited by applicable laws, then you aren't authorized to use the Services. We can't and won't be responsible for your using the Services in a way that breaks the law.

You will not share your account or password with anyone, and you must protect the security of your account and your password. You're responsible for any activity associated with your account.

You may not post violent, nude, partially nude, discriminatory, unlawful, infringing, hateful, pornographic or sexually suggestive photos or other content via the Service.

Do not upload or share content that exploits or abuses children. This includes all child sexual abuse imagery (even cartoon images) and all content that presents children in a sexual manner. We will remove such content and take appropriate action, which may include disabling accounts and reporting to the National Center for Missing & Exploited Children (NCMEC) and law enforcement.

If you find any content that you think exploits children in this manner, do not, reshare or comment on such content, even if your intent is to bring it to our attention. Instead, alert us by sending an email to [support@getcluster.com](mailto:support@getcluster.com).

Your use of the Services is subject to the following additional restrictions:

You represent, warrant, and agree that you will not contribute any Content or User Submission (each of those terms is defined below) or otherwise use the Services or interact with the Services in a manner that:

- (a) Infringes or violates the intellectual property rights or any other rights of anyone else (including Cluster);
- (b) Violates any law or regulation;
- (c) Is harmful, fraudulent, deceptive, threatening, harassing, defamatory, obscene, or otherwise objectionable;
- (d) Jeopardizes the security of your Cluster account or anyone else's (such as allowing someone else to log on as you on the Services);
- (e) Attempts, in any manner, to obtain the password, account, or other security information from any other user;
- (f) Violates the security of any computer network, or cracks any passwords or security encryption codes;
- (g) Runs Maillist, Listserv, any form of auto-responder or "spam" on the Services, or any processes that run or are activated while you are not logged into the Services, or that otherwise interfere with the proper working of the Services (including by placing an unreasonable load on the Services' infrastructure);
- (h) "Crawls," "scrapes," or "spiders" any page, data or portion of or relating to the Services or Content (through use of manual or automated means);
- (i) Copies or stores any significant portion of the Content, provided that you may download store individual photo albums through the Services;
- (j) Decompiles, reverse engineers, or otherwise attempts to obtain the source code or underlying ideas or information of or relating to the Services.

A violation of any of the foregoing is grounds for termination of your right to use or access the Services. While we're not required to do so, we may access, review, screen, and delete your Content at any time and for any reason, including if we think, at our sole discretion, your content violates these Terms. You alone, though, remain responsible for the Content you create, upload, post, send, or store through the Service.

Also we reserve the right to remove any Content from the Service for any reason, without prior notice. Content removed from the Service may continue to be stored by Cluster, including, without limitation, in order to comply with

certain legal obligations, but may not be retrievable without a valid court order. Consequently, Cluster encourages you to maintain your own backup of your Content. In other words, Cluster is not a backup service and you agree that you will not rely on the Service for the purposes of Content backup or storage. Cluster will not be liable to you for any modification, suspension, or discontinuation of the Services, or the loss of any Content.

### **What are my rights in Cluster?**

The materials displayed or performed or available on or through the Services, including, but not limited to, text, graphics, data, articles, photos, images, illustrations, User Submissions, and so forth (all of the foregoing, the “Content”) are protected by copyright and/or other intellectual property laws. You promise to abide by all copyright notices, trademark rules, information, and restrictions contained in any Content you access through the Services, and you won’t use, copy, reproduce, modify, translate, publish, broadcast, transmit, distribute, perform, upload, display, license, sell or otherwise exploit for any purpose any Content not owned by you, (i) without the prior consent of the owner of that Content or (ii) in a way that violates someone else’s (including Cluster’s) rights..

You understand that Cluster owns the Services. You won’t modify, publish, transmit, participate in the transfer or sale of, reproduce (except as expressly provided in this Section), creative derivative works based on, or otherwise exploit any of the Services.

The Services may allow you to copy or download certain Content; please remember that just because this functionality exists, doesn’t mean that all the restrictions above don’t apply—they do!.

### **Do I have to grant any licenses to Cluster or to other users?**

Anything you post, upload, share, store, or otherwise provide through the Services is your “User Submission.” Some User Submissions are viewable by other users. In order to display your User Submissions on the Services, and to allow other users to enjoy them (where applicable), you grant us certain rights in those User Submissions. Please note that all of the following licenses are subject to our [Privacy Policy](#) to the extent they relate to User Submissions that are also your personally-identifiable information..

For all User Submissions, you hereby grant Cluster a license to translate,



modify (for technical purposes, for example, making sure your content is viewable on an iPhone as well as a computer) and reproduce and otherwise act with respect to such User Submissions, in each case to enable us to operate the Services and/or produce any product you request, as described in more detail below. This is a license only – your ownership in User Submissions is not affected.

If you store a User Submission in your own personal Cluster account, in a manner that is not viewable by any other user except you (a “Personal User Submission”), you grant Cluster the license above, as well as a license to display, perform, reproduce and distribute your Personal User Submission for the sole purpose of making that Personal User Submission accessible to you and providing the Services necessary to do so and/or produce any product containing such Personal User Submission you request.

If you share a User Submission only in a manner that only certain specified users can view (for example, a private message to one or more other users) (a “Limited Audience User Submission”), then you grant Cluster the licenses above, as well as a license to display, perform, reproduce and distribute your Limited Audience User Submission for the sole purpose of making that Limited Audience User Submission accessible to such other specified users, and providing the Services necessary to do so and/or produce any product containing such Limited Audience User Submission such other specified users request. Also, you grant such other specified users a license to access that Limited Audience User Submission, and to use and exercise all rights in it, as permitted by the functionality of the Services and/or produce any product containing such Limited Audience User Submission such other specified users request.

If you share a User Submission publicly on the Services and/or in a manner that more than just you or certain specified users can view (a “Public User Submission”), then you grant Cluster the licenses above, as well as a license to display, perform, and distribute your Public User Submission for the purpose of making that Public User Submission accessible to all Cluster users and providing the Services necessary to do so, as well as all other rights necessary to use and exercise all rights in that Public User Submission in connection with the Services and/or otherwise, including producing any product containing such Public User Submission such other users request. Also, you grant all other users of the Services a license to access that Public User Submission, and to use and exercise all rights in it, as permitted by the functionality of the Services and/or produce any product containing such

Public User Submission such other users request.

Certain functionality of Services allows users, including you, to purchase goods containing User Submissions. If you share a User Submission as a Limited Audience User Submission or a Public User Submission, you understand that the foregoing license grants include the right to reproduce and distribute such User Submissions by and for the specified users.

You agree that the licenses you grant are royalty-free, perpetual, sublicensable, irrevocable, and worldwide; provided that when you delete your Cluster account, we will stop displaying your User Submissions (other than Public User Submissions which may remain fully available) to other users (if applicable), but you understand and agree that it may not be possible to completely delete that content from Cluster's records, and that your User Submissions may remain viewable elsewhere to the extent that they were copied or stored by other users.

You understand and agree that Cluster, in performing the required technical steps to provide the Services to our users (including you), may need to make changes to your User Submissions to conform and adapt those User Submissions to the technical requirements of connection networks, devices, services, or media, and any of the foregoing licenses include the rights to do so.

Finally Cluster employees and contractors may view User Submissions, including, Personal User Submissions, Limited Audience User Submissions, and Public User Submissions.

#### **What if I see something on the Services that infringes my copyright?**

You may have heard of the Digital Millennium Copyright Act (the "DMCA"), as it relates to online service providers, like Cluster, being asked to remove material that allegedly violates someone's copyright. We respect others' intellectual property rights, and we reserve the right to delete or disable Content alleged to be infringing, and to terminate the accounts of repeat alleged infringers; to review our complete Copyright Dispute Policy and learn how to report potentially infringing content, [click here](#). To learn more about the DMCA, [click here](#).

#### **Who is responsible for what I see and do on the Services?**

Any information or content publicly posted or privately transmitted through the Services is the sole responsibility of the person from whom such content

originated, and you access all such information and content at your own risk, and we aren't liable for any errors or omissions in that information or content or for any damages or loss you might suffer in connection with it. We cannot control and have no duty to take any action regarding how you may interpret and use the Content or what actions you may take as a result of having been exposed to the Content, and you hereby release us from all liability for you having acquired or not acquired Content through the Services. We can't guarantee the identity of any users with whom you interact in using the Services and are not responsible for which users gain access to the Services.

You are responsible for all Content you contribute, in any manner, to the Services, and you represent and warrant you have all rights necessary to do so, in the manner in which you contribute it. You will keep all your registration information accurate and current. You are responsible for all your activity in connection with the Services.

The Services may contain links or connections to third party websites or services that are not owned or controlled by Cluster. When you access third party websites or use third party services, you accept that there are risks in doing so, and that Cluster is not responsible for such risks. We encourage you to be aware when you leave the Services and to read the terms and conditions and privacy policy of each third party website or service that you visit or utilize..

Cluster has no control over, and assumes no responsibility for, the content, accuracy, privacy policies, or practices of or opinions expressed in any third party websites or by any third party that you interact with through the Services. In addition, Cluster will not and cannot monitor, verify, censor or edit the content of any third party site or service. By using the Services, you release and hold us harmless from any and all liability arising from your use of any third party website or service..

Your interactions with organizations and/or individuals found on or through the Services, including payment and delivery of goods or services, and any other terms, conditions, warranties or representations associated with such dealings, are solely between you and such organizations and/or individuals. You should make whatever investigation you feel necessary or appropriate before proceeding with any online or offline transaction with any of these third parties. You agree that Cluster shall not be responsible or liable for any loss or damage of any sort incurred as the result of any such dealings..

If there is a dispute between participants on this site, or between users and

any third party, you agree that Cluster is under no obligation to become involved. In the event that you have a dispute with one or more other users, you release Cluster, its officers, employees, agents, and successors from claims, demands, and damages of every kind or nature, known or unknown, suspected or unsuspected, disclosed or undisclosed, arising out of or in any way related to such disputes and/or our Services. If you are a California resident, you shall and hereby do waive California Civil Code Section 1542, which says: "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which, if known by him must have materially affected his settlement with the debtor."

### **Will Cluster ever change the Services?**

We're always trying to improve the Services, so they may change over time. We may suspend or discontinue any part of the Services, or we may introduce new features or impose limits on certain features or restrict access to parts or all of the Services. We'll try to give you notice when we make a material change to the Services that would adversely affect you, but this isn't always practical. Similarly, we reserve the right to remove any Content from the Services at any time, for any reason (including, but not limited to, if someone alleges you contributed that Content in violation of these Terms), in our sole discretion, and without notice..

### **Does Cluster cost anything?**

The Cluster Services are currently free, but we reserve the right to charge for certain or all Services in the future. In exchange for these free service you consent to marketing communication from Cluster alone. While we will not share your information with third parties we will contact you directly via email and other means with promotions for merchandise we offer to support the service. You understand and consent to this use and you understand that the intent of using this service is to create outstanding photo merchandise for sale. You may purchase certain products from Cluster and you agree to pay all charges provided on the applicable order screen. If you wish to purchase any products, we will ask you to supply certain information applicable to your purchase, such as payment information. All such information will be treated as described in our [Privacy Policy](#). We will notify you before any Services you are currently using begin carrying a fee, and if you wish to continue using such Services, you must pay all applicable fees for such Services.

### **What if I want to stop using Cluster?**

You're free to do that at any time, by contacting us at [support@getcluster.com](mailto:support@getcluster.com); please refer to our [Privacy Policy](#), as well as the licenses above, to understand how we treat information you provide to us after you have stopped using our Services.

Cluster is also free to terminate (or suspend access to) your use of the Services or your account, for any reason in our discretion, including your breach of these Terms. Cluster has the sole right to decide whether you are in violation of any of the restrictions set forth in these Terms.

Account termination may result in destruction of any Content associated with your account, so keep that in mind before you decide to terminate your account.

If you have deleted your account by mistake, contact us immediately at [support@getcluster.com](mailto:support@getcluster.com) – we will try to help, but unfortunately, we can't promise that we can recover or restore anything.

Provisions that, by their nature, should survive termination of these Terms shall survive termination. By way of example, all of the following will survive termination: any obligation you have to pay us or indemnify us, any limitations on our liability, any terms regarding ownership or intellectual property rights, and terms regarding disputes between us.

### **I use the Cluster App available via the Apple App Store – should I know anything about that?**

These Terms apply to your use of all the Services, including applications available via the Apple, Inc. ("Apple") App Store (the "Application"), but the following additional terms also apply to the Application:

- (a) Both you and Cluster acknowledge that the Terms are concluded between you and Cluster only, and not with Apple, and that Apple is not responsible for the Application or the Content;
- (b) The Application is licensed to you on a limited, non-exclusive, non-transferrable, non-sublicensable basis, solely to be used in connection with the Services for your private, personal, non-commercial use, subject to all the terms and conditions of this Agreement as they are applicable to the Services;

- (c) You will only use the Application in connection with an Apple device that you own or control;
- (d) You acknowledge and agree that Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the Application;
- (e) In the event of any failure of the Application to conform to any applicable warranty, including those implied by law, you may notify Apple of such failure; upon notification, Apple's sole warranty obligation to you will be to refund to you the purchase price, if any, of the Application;
- (f) You acknowledge and agree that Cluster, and not Apple, is responsible for addressing any claims you or any third party may have in relation to the Application;
- (g) You acknowledge and agree that, in the event of any third party claim that the Application or your possession and use of the Application infringes that third party's intellectual property rights, Cluster, and not Apple, will be responsible for the investigation, defense, settlement and discharge of any such infringement claim;
- (h) You represent and warrant that you are not located in a country subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country, and that you are not listed on any U.S. Government list of prohibited or restricted parties;
- (i) Both you and Cluster acknowledge and agree that, in your use of the Application, you will comply with any applicable third party terms of agreement which may affect or be affected by such use; and
- (j) Both you and Cluster acknowledge and agree that Apple and Apple's subsidiaries are third party beneficiaries of this Agreement, and that upon your acceptance of this Agreement, Apple will have the right (and will be deemed to have accepted the right) to enforce this Agreement against you as the third party beneficiary hereof.

**What else do I need to know?**

*Warranty Disclaimer.* Cluster does not make any representations or warranties concerning any content contained in or accessed through the Services, and we will not be responsible or liable for the accuracy, copyright

compliance, legality, or decency of material contained in or accessed through the Services. We make no representations or warranties regarding suggestions or recommendations of services or products offered or purchased through the Services. Products and services purchased or offered (whether or not following such recommendations and suggestions) through the Services are provided “AS IS” and without any warranty of any kind from Cluster or others (unless, with respect to such others only, provided expressly and unambiguously in writing by a designated third party for a specific product). THE SERVICES AND CONTENT ARE PROVIDED ON AN “AS-IS” BASIS, WITHOUT WARRANTIES OR ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR THAT USE OF THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE. SOME STATES DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU..

*Limitation of Liability.* TO THE FULLEST EXTENT ALLOWED BY APPLICABLE LAW, UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY (INCLUDING, WITHOUT LIMITATION, TORT, CONTRACT, STRICT LIABILITY, OR OTHERWISE) SHALL CLUSTER BE LIABLE TO YOU OR TO ANY OTHER PERSON FOR (A) ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING DAMAGES FOR LOST PROFITS, LOSS OF GOODWILL, WORK STOPPAGE, ACCURACY OF RESULTS, OR COMPUTER FAILURE OR MALFUNCTION, OR (B) ANY AMOUNT, IN THE AGGREGATE, IN EXCESS OF THE GREATER OF (I) \$100 OR (II) THE AMOUNTS PAID BY YOU TO CLUSTER IN CONNECTION WITH THE SERVICES IN THE TWELVE (12) MONTH PERIOD PRECEDING THIS APPLICABLE CLAIM, OR (III) ANY MATTER BEYOND OUR REASONABLE CONTROL. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES, SO THE ABOVE LIMITATION AND EXCLUSIONS MAY NOT APPLY TO YOU..

*Indemnity.* You agree to indemnify and hold Cluster, its affiliates, officers, agents, employees, and partners harmless for and against any and all claims, liabilities, damages (actual and consequential), losses and expenses (including attorneys’ fees) arising from or in any way related to any third party claims relating to (a) your use of the Services (including any actions taken by a third party using your account), and (b) your violation of these Terms. In the event of such a claim, suit, or action (“Claim”), if you have an account, we will attempt to provide notice of the Claim to the contact information we have for

your account (provided that failure to deliver such notice shall not eliminate or reduce your indemnification obligations hereunder).

*Assignment.* You may not assign, delegate or transfer these Terms or your rights or obligations hereunder, or your Services account, in any way (by operation of law or otherwise) without Cluster’s prior written consent. We may transfer, assign, or delegate these Terms and our rights and obligations without consent.

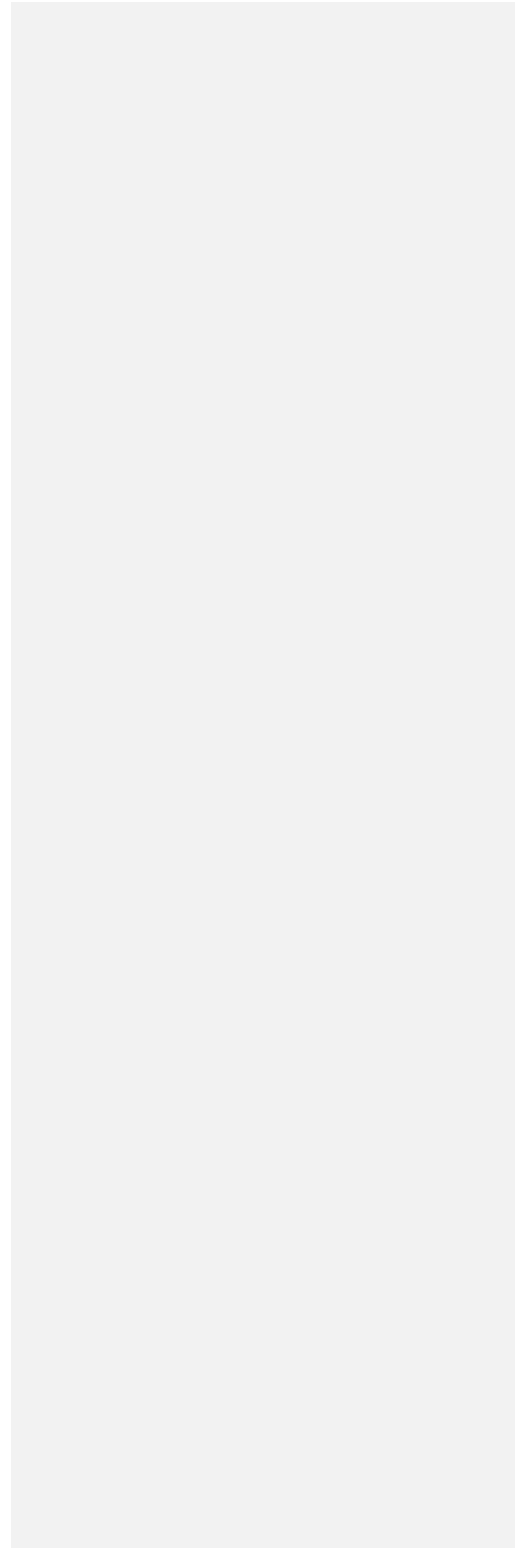
*Choice of Law; Arbitration.* These Terms are governed by and will be construed under the laws of the State of California, without regard to the conflicts of laws provisions thereof. Any dispute arising from or relating to the subject matter of these Terms shall be finally settled in San Francisco County, California, in English, in accordance with the Streamlined Arbitration Rules and Procedures of Judicial Arbitration and Mediation Services, Inc. (“JAMS”) then in effect, by one commercial arbitrator with substantial experience in resolving intellectual property and commercial contract disputes, who shall be selected from the appropriate list of JAMS arbitrators in accordance with the Arbitration Rules and Procedures of JAMS. Judgment upon the award rendered by such arbitrator may be entered in any court of competent jurisdiction. Notwithstanding the foregoing obligation to arbitrate disputes, each party shall have the right to pursue injunctive or other equitable relief at any time, from any court of competent jurisdiction. For all purposes of this Agreement, the parties consent to exclusive jurisdiction and venue in the state or federal courts located in, respectively, San Francisco County, California, or the Northern District of California.

*Miscellaneous.* You will be responsible for paying withholding, filing, and reporting all taxes, duties, and other governmental assessments associated with your activity in connection with the Services, provided that Cluster may, in its sole discretion do any of the foregoing on your behalf or for itself as it sees fit. The failure of either you or us to exercise, in any way, any right herein shall not be deemed a waiver of any further rights hereunder. If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated, to the minimum extent necessary, so that these Terms shall otherwise remain in full force and effect and enforceable. You and Cluster agree that these Terms are the complete and exclusive statement of the mutual understanding between you and Cluster, and that it supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of these Terms, and that all modifications to these Terms must be in a writing

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signed by both parties (except as otherwise provided herein). No agency, partnership, joint venture, or employment is created as a result of these Terms and you do not have any authority of any kind to bind Cluster in any respect whatsoever. Except as expressly set forth in the section above regarding the Apple Application, you and Cluster agree there are no third party beneficiaries intended under this Agreement.



**EXHIBIT "B"**

SCHEDULE OF DATA

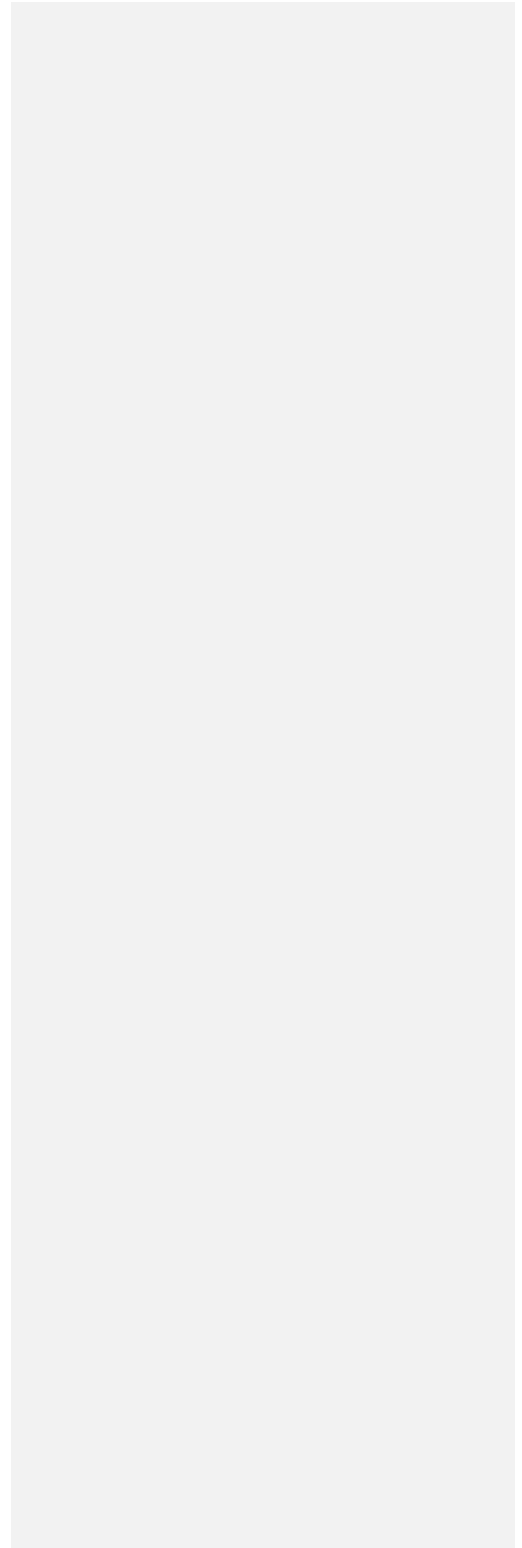
Category of Data	Elements	Check if used by your system	Category of Data	Elements	Check if used by your system
Application Technology Meta Data	IP Addresses of users, Use of cookies etc.	X		Gender	
	Other application technology meta data-Please specify:			Ethnicity or race	
Application Use Statistics	Meta data on user interaction with application	X		Language information (native, preferred or primary language spoken by student)	
				Other demographic information-Please specify:	
Assessment	Standardized test scores		Enrollment	Student school enrollment	
	Observation data			Student grade level	
	Other assessment data-Please specify:			Homeroom	
Attendance	Student school (daily) attendance data			Guidance counselor	
	Student class attendance data			Specific curriculum programs	
Communications	Online communications that are captured (emails, blog entries)	X		Year of graduation	
				Other enrollment information-Please specify:	
Conduct	Conduct or behavioral data		Parent/Guardian Contact Information	Address	
				Email	
Demographics	Date of Birth		Parent/Guardian ID	Phone	
	Place of Birth			Parent ID number (created to link parents to students)	

Category of Data	Elements	Check if used by your system	Category of Data	Elements	Check if used by your system
Parent/Guardian Name	First and/or Last			Vendor/App assigned student ID number	
				Student app username	
Schedule	Student scheduled courses			Student app passwords	
	Teacher names				
			Student Name	First and/or Last	
	English language learner information				
	Low income status		Student In App Performance	Program/application performance (typing program-student types 60 wpm, reading program-student reads below grade level)	
	Medical alerts /health data				
	Student disability information		Student Program Membership	Academic or extracurricular activities a student may belong to or participate in	
Special Indicator	Specialized education services (IEP or 504)				
	Living situations (homeless/foster care)		Student Survey Responses	Student responses to surveys or questionnaires	
	Other indicator information- Please specify:				
Student Contact Information	Address			Student generated content; writing, pictures etc.	
	Email		Student work	Other student work data - Please specify:	
	Phone				
Student Identifiers	Local (School district) ID number				
	State ID number				

Category of Data	Elements	Check if used by your system
Transcript	Student course grades	
	Student course data	
	Student course grades/performance scores	
	Other transcript data -Please specify:	
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	

No Student Data Collected at this time \_\_\_\_\_.  
 \*Provider shall immediately notify LEA if this designation is no longer applicable.

OTHER: Use this box, if more space needed



## **EXHIBIT “C”**

### DEFINITIONS

**De-Identifiable Information (DII):** De-Identification refers to the process by which the Provider 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.

**Educational Records:** Educational Records are official records, files and data directly related to a student and maintained by the 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. For purposes of this DPA, Educational Records are referred to as Student Data.

**NIST:** Draft National Institute of Standards and Technology (“NIST”) Special Publication Digital Authentication Guideline.

**Operator:** 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 applicable state statutes.

**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 Indirect Identifiers, which is any information that, either alone or in aggregate, would allow a reasonable person to be able to identify a student to a reasonable certainty. For purposes of this DPA, Personally Identifiable Information shall include the categories of information listed in the definition of Student Data.

**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 DPA the term “Provider” includes the term “Third Party” and the term “Operator” as used in applicable state statutes.

**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 all of the following: (1) Any information that directly relates to a pupil that

is maintained by LEA;(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 LEA employee; and any information that meets the definition of a “pupil record” under Wis. Stat. § 118.125(1)(d). For the purposes of this Agreement, Pupil Records shall be the same as Educational Records, Student Personal Information and Covered Information, all of which are deemed Student Data for the purposes of this Agreement.

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

**School District Official:** For the purposes of this Agreement and pursuant to 34 CFR 99.31 (B) and Wis. Stat. § 118.125(2)(d), a School District 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 34 CFR 99.33(a) and Wis. Stat. § 118.125(2) 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 Wisconsin 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.

**SDPC (The Student Data Privacy Consortium):** Refers to the national collaborative of schools, districts, regional, territories and state agencies, policy makers, trade organizations and marketplace providers addressing real-world, adaptable, and implementable solutions to growing data privacy concerns.

**Student Personal Information:** “Student Personal Information” means information collected through a school service that personally identifies an individual student or other information collected and maintained about an individual student that is linked to information that identifies an individual student, as identified by Washington Compact Provision 28A.604.010. For purposes of this DPA, Student Personal Information is referred to as Student Data.

**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.

**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” 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"**

DIRECTIVE FOR DISPOSITION OF DATA

[Name or District or LEA] directs [Name of Provider] to dispose of data obtained by Provider pursuant to the terms of the Service Agreement between LEA and Provider. The terms of the Disposition are set forth below:

<b><u>Extent of Disposition</u></b>	
Disposition shall be:	<input type="checkbox"/> Partial. The categories of data to be disposed of are as follows:  <input type="checkbox"/> Complete. Disposition extends to all categories of data.
<b><u>Nature of Disposition</u></b>	
Disposition shall be by:	<input type="checkbox"/> Destruction or deletion of data.  <input type="checkbox"/> Transfer of data. The data shall be transferred as set forth in an attachment to this Directive. Following confirmation from LEA that data was successfully transferred, Provider shall destroy or delete all applicable data.
<b><u>Timing of Disposition</u></b>	
Data shall be disposed of by the following date:	<input type="checkbox"/> As soon as commercially practicable <input type="checkbox"/> By (Insert Date) _____ [Insert or attach special instructions]

\_\_\_\_\_  
Authorized Representative of LEA

\_\_\_\_\_  
Date

\_\_\_\_\_  
Verification of Disposition of Data  
by Authorized Representative of Provider

\_\_\_\_\_  
Date



**EXHIBIT "E"**

GENERAL OFFER OF PRIVACY TERMS  
School District of Fort Atkinson

**1. Offer of Terms**

Provider offers the same privacy protections found in this DPA between it and [Name of LEA] and which is dated to any other LEA ("Subscribing LEA") who accepts this General Offer through its signature below. This General Offer shall extend only to privacy protections and Provider's signature shall not necessarily bind Provider to other terms, such as price, term, or schedule of services, or to any other provision not addressed in this DPA. The Provider and the other LEA may also agree to change the data provided by LEA to the Provider in Exhibit "B" to suit the unique needs of the LEA. The Provider may withdraw the General Offer in the event of: (1) a material change in the applicable privacy statutes; (2) a material change in the services and products subject listed in the Originating Service Agreement; or three (3) years after the date of Provider's signature to this Form.

Provider:

BY: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_ Title/Position: \_\_\_\_\_

**2. Subscribing LEA**

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

Subscribing LEA:

BY: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_ Title/Position: \_\_\_\_\_

**TO ACCEPT THE GENERAL OFFER, THE SUBSCRIBING LEA MUST DELIVER THIS SIGNED EXHIBIT TO THE PERSON AND EMAIL ADDRESS LISTED BELOW**

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Email Address: \_\_\_\_\_

**EXHIBIT "F"**

DATA SECURITY REQUIREMENTS

[INSERT ADDITIONAL DATA SECURITY REQUIREMENTS HERE]

