



**BAKER COUNTY FLORIDA
SCHOOL DISTRICT
DATA PRIVACY AGREEMENT**

and

Legends of Learning, Inc.

CONTRACTOR NAME

July 26, 2022

Date

This **Data Privacy Agreement** ("DPA") is entered into by and between the Baker County School District (hereinafter referred to as "BCSD") and Legends of Learning, Inc.

(hereinafter referred to as "Contractor") on 7/26/22 (date). The Parties agree to the terms as stated herein.

RECITALS

WHEREAS, the Contractor has agreed to provide ("BCSD") with certain digital educational services ("Services") pursuant to a Services Agreement dated 7/26/22 ("Service Agreement"); and

WHEREAS, in order to provide the Services described in the Service Agreement, the Contractor may receive and BCSD 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 (34 CFR Part 99), Children's Online Privacy Protection Act ("COPPA"), at 15 U.S.C. 6501-6506 (16 CFR Part 312), and Protection of Pupil Rights Amendment ("PPRA") at 20 U.S.C. 1232h (34 CFR Part 98); and

WHEREAS, the documents and data transferred from BCSD and/or accessed by the Contractor in the performance of the Service Agreement are also subject to Florida state privacy laws, including Florida Statutes ("F.S.") Sections 1002.22, 1002.221, 1002.222, 1002.223, 1003.25, 501.171 and 540.08; and

WHEREAS, this Agreement complies with Florida Statutes Sections 1001.41 and 1002.22 and Federal laws; and

WHEREAS, for the purposes of Florida law and this DPA, Contractor is a school 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 accessing and/or transferring of data resulting from the performance of the Service Agreement complies with the requirements of the privacy laws referred to above and to establish implementing procedures and duties; and

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

ARTICLE I: PURPOSE AND SCOPE

1. **Purpose of DPA.** For Contractor to provide services to BCSD it may become necessary for BCSD to share certain Data related to BCSD's students, employees, business practices, and/or intellectual property. This agreement describes responsibilities to protect Data between BCSD and Contractor.
2. **Nature of Services Provided.** The Contractor has agreed to provide the following digital educational services described below and as may be further outlined in the Service Agreement, attached hereto as Attachment "1":
Online Game-Based Learning

3. **Data to Be Provided.** In order to perform the Services described in the Service Agreement, BCSD shall provide the categories of data described below or as indicated in the Schedule of Data, attached hereto as Attachment "2".

4. **DPA Definitions.** The definitions of terms used in this DPA are found in Attachment "3".

ARTICLE II: DATA OWNERSHIP AND AUTHORIZED ACCESS

1. **Data Property of BCSD.** All Data transmitted to the Contractor pursuant to the Service Agreement is and will continue to be the property of and under the control of BCSD. The Contractor further acknowledges and agrees that all copies of such Data transmitted to the Contractor, 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 Data. The Parties agree that as between them all rights, including all intellectual property rights in and to Data contemplated per the Service Agreement shall remain the exclusive property of the BCSD. For the purposes of FERPA and Pursuant to 34 CFR §§ 99.31(a)(1) and 99.7(a)(3)(iii), the Contractor will provide to BCSD the specified services BCSD could otherwise use its employees to perform. Contractor agrees that for purposes of this Agreement, it will be designated a "School Official," under the control and direction of BCSD as it pertains to the use of data, with "legitimate educational interests" as those terms have been interpreted and defined under FERPA and Florida law. At BCSD's direction, Contractor may transfer student-generated content to a separate account along with student identifiers, according to the procedures set forth below. Contractor agrees to abide by all federal requirements, including FERPA, and all Florida laws, including F.S.1002.22 while performing all services for BCSD.
2. **Parent Access.** BCSD shall establish reasonable procedures by which a parent, legal guardian, or eligible student may review Data on the student's records. Contractor shall respond in a reasonably timely manner (and no less than 10 days from the date of request) to BCSD's request for Data in a student's records held by the Contractor to view or correct as necessary. In the event that a parent of a student or other individual contacts the Contractor to review any of the Data accessed pursuant to the Services, the Contractor shall refer the parent or individual to BCSD, who will follow the necessary and proper procedures regarding the requested information.
3. **Separate Account.** If Student-generated content is stored or maintained by the Contractor as part of the Services, Contractor shall, at the request of BCSD, transfer Student-Generated Content to a separate account, while the Services are being provided, or upon the termination of the Service Agreement.
4. **Third Party Request.** Should a Third Party, including law enforcement and government entities, contact Contractor with a request for data held by the Contractor pursuant to the Services, the Contractor shall redirect the Third Party to request the data directly from BCSD. Contractor shall notify BCSD in advance of a compelled disclosure to a Third Party. The Contractor will not use, disclose, compile, transfer, or sell the Data and/or any portion thereof to any third party or other entity or allow any other third party or other entity to use, disclose, compile, transfer or sell the Data and/or any portion thereof.
5. **No Unauthorized Use.** Contractor shall not use Data for any purpose other than as explicitly specified in the Service Agreement.
6. **Subprocessors.** Contractor shall enter into written agreements with all Subprocessors performing functions pursuant to the Service Agreement, whereby the Subprocessors agree to protect Data in a manner consistent with the terms of this DPA. Such Subprocessors shall be disclosed to BCSD, and are listed in Attachment 5 to this Agreement. Failure by Contractor to list a Subprocessor on Attachment 5 does not release such Subprocessor's obligations under this DPA.

ARTICLE III: DUTIES OF BCSD

1. **Provide Data In Compliance With State and Federal Law.** BCSD will allow Contractor access to data necessary to perform the services pursuant to the Service Agreement and pursuant to the terms of this DPA and in compliance with FERPA, COPPA, PPRA, and all other privacy statutes cited in this DPA.
2. **Annual Notification of Rights.** BCSD will annually notify Parents, Guardians and Adult Students of their rights under the provisions of FERPA (34 CFR Sec. 99.31(a)(1)).
3. **Reasonable Precautions.** BCSD shall take reasonable precautions to secure user names, passwords, and any other means of gaining access to the services and hosted data.
4. **Unauthorized Access Notification.** BCSD shall notify Contractor promptly of any known or suspected unauthorized access. BCSD will assist Contractor in any efforts by Contractor to investigate and respond to any unauthorized access.

ARTICLE IV: DUTIES OF CONTRACTOR

1. **Privacy Compliance.** The Parties expect and anticipate that Contractor may receive personally identifiable information in education records from the District only as an incident of service or training that Contractor provides to BCSD pursuant to this Agreement. The Contractor shall comply with all applicable State and Federal laws and regulations pertaining to data privacy and security, including FERPA, COPPA, PPRA, Florida Statutes Sections 1001.41 and 1002.22, and other privacy statutes cited in this DPA. The Parties agree that Contractor is a “school official” under FERPA and has a legitimate educational interest in personally identifiable information from education records because, for purposes of the contract, Contractor: (1) provides a service or function for which BCSD would otherwise use employees; (2) is under the direct control of BCSD with respect to the use and maintenance of education records; and (3) is subject to the requirements of FERPA governing the use and redisclosure of personally identifiable information from education records
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. Contractor also acknowledges and agrees that it shall not make any re-disclosure of any 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 Data, without the express written consent of BCSD.
3. **Employee Obligation.** Contractor shall require all employees and agents who have access to Data to comply with all applicable provisions of this DPA with respect to the data shared under the Service Agreement. Contractor agrees to require and maintain an appropriate confidentiality agreement from each employee or agent with access to Data pursuant to the Service Agreement.
4. **No Disclosure.** Contractor may use aggregate data only for the purposes of development, research, and improvement of educational sites, services, or applications, as any other member of the public or party would be able to use de-identified data pursuant to 34 CFR 99.31(b). Contractor agrees not to attempt to re-identify de-identified Data and not to transfer de-identified Data to any party unless (a) that party agrees in writing not to attempt re-identification, and (b) prior written notice has been given to BCSD who has provided prior written consent for such transfer. Contractor 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.** Contractor shall dispose of or delete all 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 BCSD or BCSD’s designee within sixty (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 Contractor to maintain Data obtained under the Service Agreement beyond the time-period reasonably needed to complete the disposition. Disposition shall include:
 - a. (1) the shredding of any hard copies of any Data; (2) Data Destruction; or (3) Otherwise modifying the personal information in those records to make it unreadable or indecipherable. Contractor shall provide written notification to BCSD when the Data has been disposed of. The duty to dispose of Data shall not extend to data that has been de-identified nor Data that BCSD has requested to be transferred or returned, pursuant to the other terms of the DPA. BCSD may employ a “Directive For Disposition of Data”, a copy of which is attached hereto as Attachment “4”.
 - b. Pursuant to Article II, Section 3 above, a portion or all of the Data may be placed in a separate account. Upon receipt of a request from BCSD, the Contractor will immediately provide BCSD with any specified portion of the Data within five (5) calendar days of receipt of said request.
6. **Advertising Prohibition.** Contractor is prohibited from using or selling Data to (a) market or advertise to students or families/guardians; (b) inform, influence, or enable marketing, targeted advertising, or other commercial efforts by Contractor; (c) develop a profile of a student, family member/guardian or group, for any commercial purpose other than providing the Service to BCSD; or (d) use the Data for the development of commercial products or services, other than as necessary to provide the Service to BCSD. This section does not prohibit Contractor from generating legitimate personalized learning recommendations, if such is included in the Services.
7. **Access to Data.** Contractor shall make Data in the possession of the Contractor available to BCSD within five (5) business days of a request by BCSD.

ARTICLE V: DATA PROVISIONS

1. **Data Security.** The Contractor agrees to abide by and maintain adequate data security measures, consistent with industry standards and technology best practices, to protect Data from unauthorized disclosure or acquisition by an unauthorized person. The general security duties of Contractor are set forth below. Contractor may further detail its security programs and measures in Attachment 5 hereto. These measures shall include, but are not limited to:
 - a. **Passwords and Employee Access.** Contractor shall secure usernames, passwords, and any other means of gaining access to the Services or to Data by using a form of multi-factor authentication (MFA) at a minimum level equivalent to the level delineated in Article 4.3 of NIST 800-63-3. Contractor shall only provide access to Data to employees or contractors that are performing the Services.
 - b. **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. Contractor 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 BCSD.
 - c. **Employee Training.** The Contractor shall provide periodic security training to those of its employees who operate or have access to the system where the Data resides. Further, Contractor shall provide BCSD with contact information of an employee whom BCSD may contact if there are any security concerns or questions.
 - d. **Security Coordinator.** Both parties shall provide the name and contact information of their Security Coordinator(s), for the Data received pursuant to the Service Agreement, on Attachment "5".
 - e. **Security Technology.** When the service is accessed using a supported web browser, Secure Socket Layer ("SSL") or equivalent technology shall be employed to protect data from unauthorized access. The service security measures shall include server authentication and data encryption. Contractor shall host data pursuant to the Service Agreement in an environment using a firewall that is periodically updated according to industry standards.
 - f. **Subprocessors Bound.** Contractor may enter into written agreements whereby Subprocessors, listed in Attachment "5" agree to secure and protect Data in a manner consistent with the terms of this Article V. Contractor shall periodically conduct or review compliance monitoring and assessments of Subprocessors to determine their compliance with this Article.
 - g. **Periodic Risk Assessment.** Contractor further agrees to conduct periodic risk assessments and remediate any identified security and privacy vulnerabilities in a timely manner. Upon request, Contractor will provide BCSD with the results of the above risk assessments and will promptly modify its security measures as needed based on those results in order to meet its obligations under this DPA.
 - h. **Backups.** Contractor agrees to maintain backup copies, backed up at least daily, of Data in case of Contractor's system failure or any other unforeseen event resulting in loss of Data or any portion thereof.
 - i. **Audits.** Upon receipt of a request from BCSD, the Contractor will allow BCSD to audit the security and privacy measures that are in place to ensure protection of the Data. The Contractor will cooperate fully with BCSD and any local, state, or federal agency with oversight authority/jurisdiction in connection with any audit or investigation of the Contractor and/or delivery of Services to students and/or BCSD, and shall provide full access to the Contractor's facilities, staff, agents and BCSD's Data and all records pertaining to the Contractor, BCSD and delivery of Services to the Contractor. Failure to cooperate shall be deemed a material breach of the DPA.
2. **Data Breach.** Contractor certifies that it has implemented policies and procedures addressing a potential Security Breach and that it possesses an up to date Security Breach response plan. Such plan shall be made available, upon request, to the District.

Contractor shall comply with the State of Florida Database Breach Notification process, all applicable federal and state laws that require notification to individuals, entities, state agencies, or federal agencies, in the event of a Security Breach, which may or may not include unauthorized disclosure of personally identifiable information (PII), or other event requiring notification.

In the event of a breach of any of Contractor's security obligations or other event requiring notification under applicable law ("Notification Event"), Contractor agrees to notify BCSD immediately and to indemnify, hold harmless, and defend BCSD and its officers, and employees from and against any claims, damages, or other harm related to such Notification Event.

3. When Contractor reasonably suspects and/or becomes aware of a disclosure or security breach concerning any Data covered by this Agreement, Contractor shall notify BCSD immediately and mitigate the damage of such security breach to the greatest extent possible.
 - a. Subject to the following requirements, the Contractor shall provide a security breach notification to BCSD.
 - i. 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.
 - ii. The security breach notification described above in section 2(a)(i) shall include, at a minimum, the following information:
 - 1) The name and contact information of the reporting individual subject to this section.
 - 2) A list of the types of personal information that were or are reasonably believed to have been the subject of a breach.
 - 3) 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.
 - 4) 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.
 - 5) A general description of the breach incident, if that information is possible to determine at the time the notice is provided.
 - 6) A list of the individuals whose PII or other Data may have been breached
 - iii. The security breach notification must include at least:
 - 1) Information about what the Contractor has done to protect individuals whose information has been breached.
 - 2) Advice on steps that the person whose information has been breached may take to protect himself or herself.
 - 3) Information about the steps the Contractor has taken to cure the breach and the estimated timeframe for such cure.
 - b. Contractor agrees to adhere to all requirements in applicable state and federal law with respect to a data breach related to the Data, including, when appropriate or required, the required responsibilities and procedures for notification and mitigation of any such data breach.
 - c. Contractor further 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 Data or any portion thereof, including personally identifiable information and agrees to provide BCSD, upon request, with a copy of said written incident response plan.
 - d. Contractor further agrees that it will provide the notification directly to BCSD and will fully cooperate, and assist as specifically requested by BCSD, with all efforts by BCSD to notify the affected parent, legal guardian or eligible student of the unauthorized access, which shall include the information listed in subsection (a) above.

- e. In the event of a Breach, both parties shall cooperate to the extent reasonably necessary to expeditiously secure the Data.
- f. The Parties agree that any breach of the privacy and/or confidentiality obligation set forth in the DPA may, at BCSD’s discretion, result in BCSD immediately terminating the Service Agreement and any other agreement for goods and services with Contractor. Termination does not absolve the Contractor’s responsibility to comply with the disposition procedures of Data.

ARTICLE VI: MISCELLANEOUS

1. **Term.** The Contractor shall be bound by this DPA for the duration of the Service Agreement or so long as the Contractor maintains any Data. Notwithstanding the foregoing, Contractor 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 Contractor shall dispose of all of BCSD’s Data pursuant to Article IV, section 5.
4. **Priority of Agreements.** This DPA shall govern the treatment of Data in order to comply with the privacy protections, including those found in FERPA and all applicable privacy statutes cited in this DPA.
5. **Notices.** 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 designated representatives before:

The designated representative for the Contractor for this Agreement is:

Name: Sandy Roskes
 Title: Chief Operating Officer
 Contact Information: 202-641-3177
sandy@legendsoflearning.com

The designated representative for BCSD for this Agreement is:

Name: Tyler S. Brim
 Title: Systems Support Specialist
 Contact Information: 904-259-1675
tyler.brim@bakerk12.org

6. **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.

7. **Authority.** Contractor represents that it is authorized to bind to the terms of this DPA, including confidentiality and destruction of Data and any portion thereof contained therein, all related or associated institutions, individuals, employees or contractors who may have access to the Data and/or any portion thereof, or may own, lease or control equipment or facilities of any kind where the Data and portion thereof is stored, maintained or used in any way.
8. **Governing Law: Venue and Jurisdiction.** THIS DPA WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF FLORIDA, 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. **Waiver.** Waiver by any party to this DPA of any breach of any provision of this DPA or warranty of representation set forth herein shall not be construed as a waiver of any subsequent breach of the same or any other provision. The failure to exercise any right under this DPA shall not operate as a waiver of such right. All rights and remedies provided for in this DPA are cumulative. Nothing in this DPA shall be construed as a waiver or relinquishment of any governmental immunities or defenses on behalf of BCSD, its officers, employees, and agents as a result of the execution of this DPA or performance of the functions or obligations described herein.
10. **Assignment.** None of the parties to this DPA may assign their rights, duties, or obligations under this DPA, either in whole or in part, without the prior written consent of the other party to this DPA. This DPA is and shall be binding upon the respective successors in interest to Contractor in the event of a merger, acquisition, consolidation or other business reorganization

[Signature Page Follows]

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

CONTRACTOR: Legends of Learning, Inc.

BY:  Date: 7/26/22

Printed Name: Sandy Roskes Title/Position: Chief Operating Officer

Address for Notice Purposes: 500 North Capitol St NW, Suite 230, Washington, DC 20001

BCSD:  Date: 7/26/22

Printed Name: Tyler S. Brim Title/Position: Systems Support Specialist

Address for Notice Purposes: 392 South Blvd East, Macclenny Florida, 32063

Attachment "1"

DESCRIPTION OF SERVICES

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

Online Game-Based Learning platform, content, and related services.

Attachment "2"

SCHEDULE OF DATA

Category of Data	Elements	Initial if used by your system
Application Technology Meta Data	IP Addresses of users, Use of cookies etc.	
	Other application technology meta data - please specify * _____ * _____ * _____	
Application Use Statistics	Meta data on user interaction with application	X
Assessment	Standardized test scores	
	Observation data	
	Other assessment data - Please specify: * _____ * _____ * _____	
Attendance	Student school (daily) attendance data	
	Student class attendance data	
Communications	Online communications that are captured (e.g. email, chat, blog entries)	
Conduct	Conduct or behavioral data	
Demographics	Date of Birth	
	Place of Birth	
	Ethnicity or Race	
	Language information (native or primary language spoken by student) (See also Special Indicators)	
	Other demographic information - Please specify * _____ * _____ * _____	

Enrollment	Student school enrollment	
	Student grade level	
	Homeroom	
	Guidance counselor	
	Specific curriculum programs	
	Year of graduation	
	Other enrollment information - Please specify * _____ * _____ * _____	
Parent/Guardian Contact Information	Address	
	Email	
	Phone	
Parent/Guardian ID	Parent ID number (created to link parents to students)	
Parent/Guardian Name	First and/or Last	
Student Schedule	Students' scheduled courses	
	Teacher names	
Special Indicator	English Language learner information	
	Low income status	
	Medical alerts/health data	
	Student disability information	
	Specialized education services (IEP or 504)	
	Living situations (homeless/foster care)	
	Other indicator information - Please specify * _____ * _____ * _____	
Student Contact Information	Address	
	Email	
	Phone	

Student Identifiers	Local (school district) ID number	X
	State ID number	
	Contractor/App assigned student ID number	
	Student App user name	X
	Student App user passwords	X
Student Name	First and/or Last	X
Student In-App Performance	Program/application performance (e.g. 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: e.g. notes, pictures, essays, etc.	
	Other student work data - Please specify * _____ * _____ * _____	
Transcript	Student Course grades	
	Student course data	
	Student assessment 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	<p>Please list each additional data element used, stored, or collected by the Services:</p> <ul style="list-style-type: none">* _____* _____* _____* _____* _____* _____* _____* _____* _____* _____* _____* _____* _____* _____* _____* _____* _____* _____* _____* _____* _____	

OR: NO STUDENT DATA COLLECTED AT THIS TIME*: _____ **(Initial if true)**

***Contractor shall immediately notify LEA if this designation is no longer applicable**

Attachment "3"

DEFINITIONS

Contractor: For purposes of this DPA, the term "Contractor" means the Contractor of digital educational software or services, including cloud-based services, for the digital storage, management, and retrieval of student records. The term "Contractor" includes such 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. Within the DPA the term "Contractor" includes the term "Third Party" and the term "Operator" as it is found in applicable federal and state statutes and regulations.

Data: Data shall include, but is not limited to, the following: student data, employee data, metadata, user content, course content, materials, and any and all data and information that the District (or any authorized end user(s)) uploads or enters through their use of the Services. Data also specifically includes all personally identifiable information in education records, directory data, and other non-public information for the purposes of Florida and Federal laws and regulations. Data as specified in Attachment "1" is confirmed to be collected or processed by the Contractor pursuant to the Services.

Data Destruction: Contractor shall certify to the District in writing that all copies of the Data stored in any manner by Contractor have been returned to the District and permanently erased or destroyed using industry best practices to assure complete and permanent erasure or destruction. These industry best practices include, but are not limited to, ensuring that all files are completely overwritten and are unrecoverable. Industry best practices do not include simple file deletions or media high level formatting operations.

De-Identifiable Information (DII): De-Identification refers to the process by which the Contractor removes or obscures any Personally Identifiable Information ("PII") from student records in a way that removes 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 Data.

NIST 800-63-3: National Institute of Standards and Technology ("NIST") Special Publication 800-63-3 Digital Identity Guidelines.

Personally Identifiable Information (PII): includes but is not limited to: personal identifiers such as name, address, phone number, dates of birth, Social Security number, and student or personnel identification number; "personal information student records", personally identifiable information contained in student education records as that term is defined in the Family Educational Rights and Privacy Act ("FERPA"), 20 UCS §1232g; "protected health information" as the term is defined in the Health Insurance Portability and Accountability Act, 45 CFR Part 160.103; "nonpublic personal information" as the term is defined in the Gramm-Leach-Bliley Financial Modernization Act of 1999, 15 USC §6809; credit and debit card numbers and/or access codes and other cardholder data and sensitive authentication data as those terms are defined in the Payment Card Industry Data Security Standards; other financial account numbers, access codes, driver's license numbers; and state-or federal identification numbers such as passport, visa or state identify card numbers; and "covered information". In addition, Personally Identifiable Information" or PII" shall include, but are not limited to, Data, metadata, and user or student-generated content obtained by reason of the use of Contractor's software, website, serve, or app, including mobile apps, whether gathered by Contractor or provided by BCSD or its users, students, or students' parents/guardians, includes Indirect Identifiers, which is any information that, either alone or in aggregate, would allow reasonable persons 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 Data.

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

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

Services: Such digital educational services as are described in the Attachment “1” or the Service Agreement.

Student Data: Student Data includes any data, whether gathered by Contractor or provided by BCSD 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 identifiers, search activity, photos, voice recordings or geolocation information. Student Data shall be included in “Data” for the purposes of this DPR. Student Data shall not constitute that information that has been anonymized or de-identified, or anonymous usage data regarding a student’s use of Contractor’s services.

Student-Generated Content: The term “student-generated content” means materials or content created by a student 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 student content.

Student Records: Means both of the following: (1) Any information that directly relates to a student that is maintained by BCSD and (2) any information acquired directly from the student through the use of instructional software or applications assigned to the student by a teacher or other BCSD employee. For the purposes of this DPR, Student Records shall be the same as Educational Records, and shall include the term “Pupil Records” for the purposes of state and federal laws and regulations.

Subprocessor: For the purposes of this Agreement, the term “Subprocessor” (sometimes referred to as the “Subcontractor”) means a party other than BCSD or Contractor, who Contractor 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 or parent/guardian of 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 Contractor’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 Contractor of digital educational software or services, including cloud-based services, for the digital storage, management, and retrieval of student records. However, for the purpose of this Agreement, the term “Third Party” when used to indicate the Contractor of digital educational software or services is replaced by the term “Contractor.”

Attachment "4"

SAMPLE DIRECTIVE FOR DISPOSITION OF DATA
During or at the end of Service Agreement with Contractor

The Baker County School District (BCSD) directs _____
Name of Contractor

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

Extent of Disposition

Disposition shall be (choose one):

_____ Partial. The categories of data to be disposed of are as follows or are found in an attachment to this directive:

_____ Complete. Disposition extends to all categories of data.

Nature of Disposition

Disposition shall be by (choose one):

_____ Data Destruction (see Definitions).

_____ Transfer of data. The data shall be transferred as set forth in an attachment to this Directive. Following confirmation from BCSD that data was successfully transferred, Provider shall destroy or delete all applicable data.

Timing of Disposition

Data shall be disposed of by the following date (choose one):

_____ As soon as commercially practicable

_____ By _____ (Specify Date)

Authorized Representative of BCSD

_____ Date

Verification of Disposition of Data
by Authorized Representative of Contractor

_____ Date

Attachment "5"

DATA SECURITY

1. Security Coordinator Information:

CONTRACTOR:

Sandy Roskes

Print Name of Security Coordinator

sandy@legendsoflearning.com

Email of Security Coordinator

202-641-3177

Phone Number of Security Coordinator

BCSD:

Tyler S. Brim

Print Name of Security Coordinator

tyler.brim@bakerk12.org

Email of Security Coordinator

904-259-1675

Phone Number of Security Coordinator

2. Subprocessor List (Provide Company Names and Contact Information for each):

NA

3. Additional Data Security Requirements:

https://www.legendsoflearning.com/terms-and-conditions/privacy-policy/

