



OPERATING SERVICES SUBSCRIPTION AGREEMENT

633 This Subscription Agreement ("Agreement") is entered into as of the 10 day of December, ("Effective Date") by and between LEARN21: A Flexible Learning Collaborative, an Ohio non-profit corporation, ("LEARN21") and West Carroll CUSD 314 ("Subscriber"), a Public School whose principal place of business address is 642 S East St, Mount Carroll, IL 61053, for access to and use of certain Operating Services made available by Learn21, subject to and bound by the terms and conditions of this Agreement, as set forth herein:

1.0 Definitions.

- 1.1 "Subscriber" shall mean West Carroll CUSD 314 and, as to all obligations and limitations contained herein, shall include its employees, managers, directors, officers, employees and agents, acting under Subscriber's direction and control or on behalf of Subscriber, for whom Subscriber takes responsibility.
- 1.2 "Subscription" shall mean the Subscription granted by this Agreement, to access and use the specified software and servers to obtain the Operating Services.
- 1.3 "Agreement" shall mean this Agreement and all Schedules and Exhibits attached hereto or attached by reference, now or in the future, that contain the terms and conditions applicable to the parties hereto.
- 1.4 "Confidential information" shall mean any information related to LEARN21, its personnel, its subscriptions, its suppliers, its plans, the Operating Services, or the education industry, including, but not limited to trade secrets, but nonetheless information that is not generally known, that may be of benefit to LEARN21 or the release of which could cause harm to LEARN21 or benefit LEARN21 competitors or potential competitors.
- 1.5 "Operating Services" shall mean those services obtained through the accessing and use of the specified LEARN21 software and servers, making such services available to Subscriber and Subscribers authorized users, under the terms and conditions set forth in this Agreement.
- 1.6 "Integration Services" shall mean those acts performed by LEARN21, including, but not limited to the services set forth in Schedule A attached hereto and made part hereof, which services will permit Subscriber and others authorized herein, to access and use the specified software, as provided herein.
- 1.7 "Trade Secret" shall mean trade secret as defined in the Ohio version of the Uniform Trade Secrets Act.
- 1.8 "SBITA" - Subscription-Based IT Agreement

2.0 Subscription. LEARN21 grants to Subscriber and Subscriber accepts, in

accordance with the terms and conditions set forth hereafter, a non-transferable, non-exclusive Subscription to access and use the LEARN21 servers and software to obtain and use the Operating Services. This Agreement also includes setup, hosting, and Integration Services by LEARN21.

2.1 Contractual Restrictions. Subscriber agrees that it has no contractual restrictions on entering into this Agreement; that it is legally permitted to enter into this Agreement; and that it will and can comply with all of the terms and conditions set forth herein. Subscriber also agrees that there are no local, state or federal statutes, rules, or regulations that interfere with Subscribers ability to fulfill all of its obligations herein or enforcement of this Agreement by LEARN21.

2.2 Term. The first term of this Agreement shall commence from the Effective Date to the next occurring June 30. Subsequent renewal terms shall run for a period of one (1) year, starting on July 1st and ending on the next occurring June 30. This Agreement may be renewed by Subscriber for additional one (1) year terms, which would include any modifications to the Agreement. A copy of the modified Agreement, if any, will be sent to Subscriber no less than thirty (30) days before the end of a term.

2.3 At the end of any regular one (1) year term, should Subscriber wish to continue to use and access the specified software and continue to obtain the Operating Services, Subscriber must submit a purchase order ("PO") to LEARN21. The PO must be submitted to LEARN21 no less than fourteen (14) days prior to the end of the regular one (1) year term, in order to assure sufficient time to review, discuss and try to reach an agreement on the terms of the PO. If a PO is not issued to LEARN21 in a timely manner or an agreement on the PO is not reached, LEARN21 may be unable to assure continuous access to and usage of the specified software at the end of the Term or other regular term. Should the Term or any subsequent term expire, with no agreement on the terms of a PO for a subsequent term, LEARN21 may suspend use of and access to LERAN21 servers, specified software and Operating Services, without further notice. LEARN21's failure to suspend such access and services, when it has a right to do so, shall not prejudice LEARN21's right to subsequently suspend such access and services at time during which there is no agreed PO in place for the continuation of such access and services.

2.4 If Subscriber chooses to renew, the length of Subscribers obligation will be for an additional one (1) year term. Due to LEARN21's pricing structure and financial projections, Subscriber may not terminate this Agreement in mid-term, absent either (1) written agreement with LEARN21 permitting termination or (2) substantial breach of this Agreement by LEARN21.

2.5 Use of Name and Trademarks. All trademarks, service marks and trade names identifying LEARN21 or LEARN21 products or services (the "Marks") are the exclusive property of LEARN21. Subscriber shall take no action which Subscriber knows or should reasonably know is or will be likely to result in financial harm to LEARN21 or harm to its reputation or the goodwill in the Marks. Subscriber acknowledges that use of the software may

require that LEARN21 include Subscribers name in registrations and administrative filings which are available to the public. Subscriber agrees that LEARN21 may include Subscriber in LEARN21 marketing brochures and materials.

3.0 **Ownership.** Subscriber acknowledges that no ownership rights nor any other rights of any kind are transferred by this Subscription, other than the right to use the Operating Services only as provided herein. Subscriber, its employees, agents, or others permitted access to the Operating Services, whether or not authorized by this Agreement, are prohibited from accessing the Operating Services code, reverse engineering, downloading, copying, selling, distributing, providing a copy of the Operating Services, in any format, or providing use of the Operating Services or otherwise transferring the Operating Services or any copy thereof or the user's manual or any copy thereof to any third party, including any parent, subsidiary or affiliate of Subscriber. Any download or copy of the Operating Services, including the media upon which any such copy is placed, shall become the property of LEARN21 immediately upon the creation of such copy.

3.1 Subscriber may not use the results from improperly accessing, reverse engineering or decompiling of the Operating Services or assist others in using such reverse engineering or decompiling, to create Operating Services, which are substantially similar to the Operating Services or which produce services that are competitive with the Operating Services.

3.2 This Subscription is restricted to use by Subscriber for Subscribers own business and operating purposes. It does not extend to any parent, subsidiary or other affiliated entities or political subdivisions of Subscriber, as may now or in the future exist.

4.0 **Subscription Fee.** The Subscription Fee and the terms of payment are as shown via reseller in reseller quote, attached hereto and made part hereof.

5.0 **Taxes.** Subscription fees paid for use of the Operating Services are exclusive of all federal, state and local taxes. If any tax is due as a result of this transaction, except for taxes based upon LEARN21's income, the Subscriber agrees to pay such amount.

6.0. **Proprietary Rights in the Specified Software and Operating Services.** Subscriber acknowledges and agrees that the Operating Services, the specified software and Operating Services documentation and manuals, if any, and all copies (hereinafter all collectively referred to as the "Operating Services") provided under this Subscription, belong to LEARN21 and are subject to the LEARN21's proprietary rights. The nature of the Operating Services are to be considered both a trade secret and confidential information belonging to LEARN21, for which disclosure is prohibited, except to the extent specifically authorized by this Agreement. LEARN21 holds all rights, title and interest to the software and the Operating Services, including, but not limited to the file structures, codes, graphics and functionality. Such rights include rights in copyright, trade secret, and trademark.

6.1 Providing access to the specified software and Operating Services or other components of the specified software or Operating Services to any unauthorized third parties or

permitting use by any such third parties, without the specific written consent of LEARN21, is absolutely prohibited.

6.2 Subscriber agrees that it will immediately disclose to LEARN21 any violation of this Agreement, which comes to its attention, and will assist LEARN21 in halting or limiting damage from such violation and in pursuing whomever has caused such violation to occur, including providing assistance, documents and witnesses in seeking any injunctive relief. This section is in addition to, not in substitution of, any rights which LEARN21 may have at law or otherwise and is not limited as to duration by the term of this Agreement.

6.3 Subscription-Based Information Technology Arrangement (SBITA). Licensor

7.0 **No Transfer of this Subscription.** This Agreement provides for no transfer of any rights, title or interest in the software or Operating Services. Subscriber may not transfer, by assignment, sale, gift, or otherwise the specified software or Operating Services nor permit any form of lien or claim upon the specified software or Operating Services or any components of the specified software or Operating Services, or copies thereof, or any Subscription rights granted herein, without the prior written consent of Subscriber.

8.0 **Enhancements.** Subscriber has no rights to create modifications or enhancements to the specified software or Operating Services, without written permission from LEARN21. Should Subscriber, despite such prohibitions, create copies, modifications or enhancements, whether by permission or in violation thereof, in addition to all other rights available to Subscriber at law, all ownership rights, title and interest to such copies, enhancements or modifications, shall belong solely to LEARN21. If created with the permission of LEARN21, Subscriber is hereby granted a Subscription to use such enhancements for so long as this Agreement and a current PO to access and use the Operating Services continues in force. However, this Subscription is not generally for the purpose of creating enhancements. ANY ALTERATION OF THE SPECIFIED SOFTWARE OR OPERATING SERVICES, WHICH MAY HAVE UNDESIRABLE CONSEQUENCES, WILL VOID ALL WARRANTIES SET FORTH IN THIS AGREEMENT AND POTENTIALLY SUBJECT SUBSCRIBER OR USERS TO LIABILITY THEREFORE.

9.0 **Data Privacy and Sharing** The Parties acknowledge that the Subscriber is subject to the Family Educational Rights and Privacy Act (FERPA), which law and supporting regulations generally address certain obligations of an educational agency or institution that receives federal funds regarding disclosure of personally identifiable information in education records. As set forth in more detail below, the Parties agree that LEARN21 is a "school official" under FERPA and has a legitimate educational interest in personally identifiable information from education records because LEARN21: (1) provides a service or function for which the Subscriber would otherwise use employees; (2) is under the direct control of the Subscriber 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. Learn21 may use de-identified product and usage data for product development, research, or other purposes. De-identified data will have all direct and indirect personal identifiers removed. This includes, but is not limited to, name, identification numbers, dates of

birth, demographic information, location information, and school identification. Further, LEARN21 agrees not to attempt to re-identify de-identified data and not to transfer de-identified data to any party not authorized to receive such data pursuant to this provision unless that party agrees not to attempt re-identification.

9.1 LEARN21 May Not Use any Personally Identifiable Information (“PII”).

Under no circumstances will LEARN21 sell, provide, or offer any PII to any 3rd party for any reason, other than as may be needed for the purpose of improving the operating software or by order of any governmental authority. Under no circumstances will LEARN21 access, copy or use any PII for any reason, other than as may be needed for the purpose of improving the operating software. In such a circumstance, all PII, so used, will be deleted in its entirety, so as to be unrecoverable, as soon as use for improving the software is completed. Further, upon the termination of this Agreement with LEARN21 or any renewals hereof, all PII in LEARN21's possession, along with any copies, summaries or outlines of such PII, will be deleted from all electronic systems, so as to be unrecoverable, and all hard copy will be destroyed, within no more than thirty (30) days after termination. Subscriber shall be notified of such deletion and destruction.

10.0 Data Storage and Access. LEARN21 uses significant security measures to protect the privacy of our users' data. These security protections include but are not limited to, de-identification of certain personally identifiable information, encryption of all data at rest, and encryption of all data in transit. Subscribers data will be in a fully hosted, managed virtual data center service that provides a comprehensive and private secure cloud computing site. Subscribers will receive a comprehensive file backup solution daily that protects users against data loss. LEARN21 considers and acknowledges all data that LEARN21 may gather from Subscriber or devices it owns and manages is the property of the Subscriber. LEARN21's Subscribers have complete and unequivocal rights to their data and how they wish their data to be utilized. Subscriber can request access, removal, purging of Subscriber data at any time by sending an email to support@learn21.org.

11.0 Security. LEARN21 uses industry best practice security technology, including next generation firewalls, network access controls, and DDoS mitigation, to protect against access, loss, misuse, or alteration of user information. All data resides in SOC 2-compliant data centers in the United States. Accessing LEARN21 services from another jurisdiction, you hereby consent to the transfer and processing of your information in the United States. LEARN21's Privacy Policy does not extend to any limitations inherent in the Internet or World Wide Web that are beyond LEARN21's control. LEARN21 implements password security requirements based on current available best practices; however, it is the Subscribers responsibility to not disclose their passwords. Each user is obligated to maintain the secrecy of the user's password. LEARN21 also takes steps to protect Subscribers personal information offline by limiting the number of people who have access to Subscribers servers and to personal information. In the event of a breach of security affecting personal information, we will take such notification and other steps as may be required under applicable law. We ask that you do not ever send us or provide us highly sensitive information, such as social security numbers, personal health information, Driver's License numbers, etc.. We will not be liable for use or disclosure of any

such information if provided to us without our consent.

12.0 **Limited Warranty.** The parties agree that this is an agreement for licensing of Operating Services, for the remote use of specified LEARN21 software, not for the sale of goods, and that the Uniform Commercial Code does not apply. LEARN21 grants a limited warranty that the Operating Services will be provided as specified and that it will use reasonable efforts, under the circumstances, to maintain the Operating Services and that, should the Operating Services become unavailable for reasons involving the specified LEARN21 software or LEARN21 host servers, LEARN21's sole limited warranty and remedy available to Subscriber is for LEARN21 to use its reasonable efforts to re-establish such Operating Services in a commercially reasonable time.

12.1 Except for the express Limited Warranty set forth above and in the separate Infringement section below, **THERE ARE NO OTHER WARRANTIES, WRITTEN OR ORAL, OR PROMISES, EITHER EXPRESS OR IMPLIED, WITH REGARD TO THE SPECIFIED SOFTWARE OR OPERATING SERVICES, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

12.2 **LEARN21 SHALL NOT BE LIABLE FOR DAMAGES, OTHER THAN AS SET FORTH ABOVE, INCLUDING BUT NOT LIMITED TO SPECIAL, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES, WHETHER DIRECT OR INDIRECT, ARISING OUT OF OR IN CONNECTION WITH THE USE OR PERFORMANCE OF THE SOFTWARE AND OPERATING SERVICES, OTHER THAN THAT LEARN21 MAY BE LIABLE UP TO THE AMOUNT PAID BY SUBSCRIBER FOR THIS SUBSCRIPTION, WHERE A SUBSTANTIAL ERROR CANNOT BE SATISFACTORILY CORRECTED. SHOULD DAMAGES BE AWARDED AGAINST LEARN21, FOR ANY REASON WHATSOEVER, SUCH DAMAGES, IN THE AGGREGATE, SHALL NOT EXCEED THE TOTAL PAID TO LEARN21 FOR THE MOST RECENT ONE (1) YEAR SUBSCRIPTION GRANTED BY THIS AGREEMENT.**

13.0 **Infringement.** LEARN21 shall defend, at its cost, any claim against Subscriber alleging copyright infringement. Subscriber shall promptly and in sufficient time to permit LEARN21 to defend, negotiate or settle any such claim, notify LEARN21 of the claim in writing. Such notice to LEARN21 should attach a copy of any Summons and Complaint, Cease and Desist letter or other notice from the party claiming infringement. LEARN21 shall have sole and exclusive control of the handling and disposition of such all claims, including whether and for how much to settle any claims.

13.1 Should an injunction be issued preventing further use of the Operating Services, or should LEARN21 deem itself to be in jeopardy of such, LEARN21 shall, at its sole cost and in its absolute discretion, may either (1) negotiate a Subscription for Subscriber to continue use of the Operating Services; (2) replace the Operating Services with other Operating Services which will be substantially similar; or (3) grant Subscriber a refund of a pro rata portion of the Subscription fee, with two (2) years being considered the useful life of this version of the

Operating Services. **THIS PARAGRAPH CONTAINS THE SOLE REMEDIES AND DAMAGES AVAILABLE TO SUBSCRIBER FOR A CLAIM OF COPYRIGHT INFRINGEMENT. ALL OTHER DAMAGES ARE EXCLUDED, INCLUDING ALL DAMAGES EXCLUDED BY SECTION 8 OF THIS AGREEMENT.**

14.0 **Hold Harmless.** Both LEARN21 and Subscriber shall indemnify, defend and hold each other, as well as their officers, directors, agents, elected officials, and employees harmless from and against any third party claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from the alleged negligence of either party in connection with performance of this Agreement.

15.0 **Force Majeure.** LEARN21 shall not be liable for any disruption of Operating Services not caused by LEARN21 software or hardware. LEARN21 shall not be liable for any disruptions beyond LEARN21's control; due to any local, state or federal statutes, laws, regulations, rules or court orders; due to any strike, labor dispute, civil disorder, political disorder, war, physical attack, electronic attack, or due to failure on the part of Subscriber or those operating with Subscriber's authority, to maintain the systems over which the specified software is delivered.

15.1 Force Majeure shall not include a party's financial distress; inability to avoid a financial loss, changes in market prices or conditions, or changes in budget or a party's financial inability to perform its obligations hereunder.

16.0 **Termination.** This Subscription shall terminate upon the happening of the following:

(a) Written notice by one party claiming substantial breach of this Agreement by the other party. The notified party will then have twenty (20) days to cure the claimed breach. Failure to cure will cause the Agreement to terminate.

(b) Written notice by either party, to the other party, that the Agreement will not be renewed at the end of the current term:

(c) Written notice within 60 days of the expiration of the term, by either party, upon the failure to reach an agreement on the terms of a new PO for a one (1) year term extension or continuation of a preexisting multi-year contract (e.g. May 1st for a June 30th termination).

(d) Either party voluntarily or involuntarily enters into bankruptcy, has a receiver appointed or transfers assets for the benefit of creditors, or is otherwise be disbanded or consolidated with another entity. Should a court prevent termination of this agreement, said agreement may be terminated immediately upon termination of that court's authority.

16.1 Upon termination, Subscriber, its employees, directors, officers, managers and those who were authorized to use the Operating Services, shall no longer use or attempt to use the LEARN21 Operating Services.

17.0 This Agreement shall be governed by the laws of the State of Ohio. This Agreement was entered into in Cincinnati, Hamilton County, Ohio, and, without regard to conflict of law issues, all parties to this Agreement hereby specifically submit to jurisdiction of either the Common Pleas Court of Hamilton County, Ohio or the U.S. District Court for the Southern District of Ohio, Western Division, over any action concerning this validity, interpretation or enforcement of this Agreement.

18.0 **Validity.** If any provisions of this Agreement shall be held invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be impaired or effected thereby.

19.0 **Time for Bringing An Action.** No action of any kind arising out of this Agreement may be brought by either party more than one (1) year after the cause of action has arisen, nor, in the case of non-payment, more than one (1) year from the date LEARN21 knew of an unpaid invoice.

20.0 **Arbitration.** Any controversy or claim arising out of or relating to this contract, or the breach thereof, including issues of equity, shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association (AAA), and any judgment on the award rendered by the arbitrator, including injunctive relief, may be entered in any court having jurisdiction thereof. Arbitration shall be filed and conducted at the AAA office in Cincinnati, Ohio or, if such office no longer exists, the next closest office. The discovery rules of The Federal Rules of Civil Procedure shall apply to proceedings held hereunder, as modified as appropriate for arbitration, by the arbitrator. Questions regarding the extent and propriety of discovery shall be determined solely by the arbitrator, absent agreement of the parties.

21.0 **Complete Agreement and Signatures.** This Agreement is the complete and exclusive statement of the agreement between the parties and supersedes all prior agreements, oral or written, and all other communications, promises or discussions between the parties relating to the subject matter of this Agreement.

22.0 **Language.** Without regard to any languages into which this Agreement may be translated, the sole reference, should there be a disagreement between different language versions of this Agreement, shall be the English language version.

23.0 **Department of Commerce Rules.** Subscriber specifically agrees, as an essential part of this Agreement, that it will submit to all rules and regulations of the United States Department of Commerce, including the United States Department of Commerce Export Control.

IN WITNESS WHEREOF, the parties having read this Agreement and agreeing to be bound by same, have hereunto set their signatures this 17 day of December, 2024

SUBSCRIPTION PROVIDER:

LEARN21: A Flexible Learning Collaborative,
an Ohio non-profit corporation

BY: Kevin Ghantous

TITLE: CEO

Signature: Kevin Ghantous

Date: December 10, 2024

SUBSCRIBER:

BY: Joe Michels

TITLE: Technology Director

Signature: Joe Michels

Date: 12/17/24

SCHEDULE "A"

Integration Services:

- (1) Integration Services includes LEARN21 coordinating with Subscriber to integrate with Subscriber Student Information System (SIS) and Mobile Device Management System (MDM) to transfer data to Tech Director Toolbox Suite or edWise Dashboard
 - a. Student Information System (SIS) – LEARN21 will extract specified data as agreed upon from Subscriber SIS at an agreed upon interval for the purpose of use with LEARN21 software.
 - b. Mobile Device Management System (MDM) - LEARN21 will provide Subscriber the ability to extract the following data from Subscriber MDM for the purpose of use with LEARN21 software.