

Contract No. C20-448

BOARD APPROVED
DATE 9/21/2020

**DATA PRIVACY AMENDMENT TO AGREEMENT
THE PLEASANTON UNIFIED SCHOOL DISTRICT**

AND

Nessey Learning, LLC

WHEREAS, the Pleasanton Unified School District ("District") and [Nessey Learning], (hereinafter referred to as Provider"), have entered into an Agreement whereby Provider has agreed to provide [Online digital web based programs]; (hereinafter referred to as "Service") and

WHEREAS, in order to provide the Services described above, Provider may receive documents defined as student records under FERPA and California AB 1584, among other statutes, which are therefore subject to statutory protection; and

WHEREAS, the Agreement, either having been executed prior to or after the enactment of AB 1584, (currently found in Education Code section 49073.1), and may not contain all of the provisions required by that Statute;

WHEREAS, the parties wish to execute this Amendment to bring the underlying Agreement in full compliance with AB 1584.

NOW THEREFORE, for good and valuable consideration, the Parties agrees as follows:

PURPOSE

1. The purpose of this Amendment is to bind the parties to uphold their responsibilities under all applicable privacy statutes, including the Family Education Rights Privacy Act (FERPA), the Protection of Pupil Rights Amendment (PPRA), the Children's Online Privacy Protection Act (COPPA), and AB 1584, found in Education Code including Section 49073.1). Specific duties are set forth below.

DATA OWNERSHIP AND AUTHORIZED ACCESS

2. Data Property of District: All information, data, and other content transmitted by the District to the Provider, or entered or uploaded under District's user accounts, remain the sole property of the District. The District retains exclusive control over student and staff data, including determining who may access data and how it may be used for legitimate authorized purposes. Provider and the District shall establish reasonable procedures by which a parent, legal guardian or eligible student may review personally identifiable information on the pupil's records, correct erroneous information, and procedures for the transfer of pupil-generated content to a personal account. [Define this procedure]
The Data shall be provided by PUSD to Nessey. The format will vary depending on integration method and requirements. Any data received by Nessey pursuant to this DPA shall be destroyed when it is no longer needed for the designated purpose.

3. Data Access: Provider may access District data solely to fulfill its obligations under this Amendment.

4. Third Party Access: Provider may not distribute District data or content to a third party without District's express written consent, unless required by law. Use of subcontractors and subcontractor access

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to data must be approved in writing by the District. Provider will ensure that approved subcontractors adhere to all provisions of the Agreement and this Amendment.

5. **Third Party Request:** Should a third party contact Provider with a request for District data, including law enforcement and government entities, the Provider shall redirect the third party to request the data directly from the District. Provider shall notify the District in advance of a compelled disclosure to a third party unless legally prohibited.

6. **Applicability of COPPA:** Provider warrants to District that all data collected directly from children and/or data resulting from tracking children's use of the service is subject to parental consent and will occur in strict conformity to the requirements of the Children's Online Privacy Protection Act (COPPA). Provider shall obtain such parental consent, unless expressly agreed to otherwise by the parties. Provider may not sell or market student data, or use student data for sale or marketing purposes without express parental consent.

DUTIES

7. **District:** The District will perform the following duties:

(a) **Provide Data:** Provide data for the purposes of the Agreement in compliance with the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. section 1232 g.

(b) **Precautions:** Take reasonable precautions to secure usernames, passwords, and any other means of gaining access to the services and hosted data.

(c) **Notification:** Notify Provider promptly of any known or suspected unauthorized access.

8. **Provider:** Provider will perform the following duties:

(a) **Privacy Compliance:** Comply with all FERPA, COPPA, PPRA and AB 1584 (Education Code section 49073.1), among others. These duties shall include the following:

(b) **Authorized Use:** The data shared under the Agreement shall be used for no purpose other than the work stated in this Amendment and or otherwise authorized under the statutes referred to in subsection (a), above.

(c) **Employees Bound:** Require all employees of Provider and agents of any kind to comply with all applicable provisions of FERPA laws with respect to the data shared under this Amendment. Provider agrees to require and maintain an appropriate confidentiality agreement from each employee or agent with access to data pursuant to this Amendment.

(d) **Secure Environment:** Maintain all data obtained pursuant to this Amendment in a secure computer environment and not copy, reproduce or transmit data obtained pursuant to this Amendment except as necessary to fulfill the purpose of the original request. Provider has security measures in place to help protect against loss, misuse and alteration of the data under Provider's control. When the Service is accessed using a supported web browser, Secure Socket Layer ("SSL") or equivalent technology protects information, using both server authentication and data encryption to help ensure that data are safe, secure and available to only authorized users. Provider shall host the service in a secure server environment that uses a firewall and other advance technology in an effort to prevent interference or access from outside intruders. The

service will require unique account identifiers, usernames and passwords that must be entered each time a client or user signs on.

(e) No Disclosure: Not disclose any data obtained under this Amendment in a manner that could identify an individual student to any other entity in published results of studies as authorized by this Amendment. Deidentified information may be used by the vendor for the purposes of development and improvement of educational sites, services or applications.

(f) Disposition of Data: Destroy all personally identifiable data obtained under this Amendment when it is no longer needed for the purpose for which it was obtained, or transfer said data to the District or District's designee, according to a schedule and procedure as the Parties may reasonably agree. Nothing in this Amendment authorizes Provider to maintain personally identifiable data beyond the time period reasonably needed to complete the disposition.

(g) Data Breach Notification: Upon becoming aware of any unlawful or unauthorized access to District data stored on equipment used by Provider or in facilities used by Provider, Provider will promptly notify the District of the suspected or actual incident; promptly investigate the incident and provide District with detailed information regarding the incident, including the identity of affected users; support the District in its efforts to notify affected users; pay for usual and reasonable costs; and use reasonable steps to mitigate the effects and to minimize any damage resulting from the incident.

DATA REQUEST

9. Data Requested: [Describe the data that will be shared with the Provider and/or entered directly by PUSD staff or student.]

The scope of the project addressed in this DPA is limited to the use of teacher and student data solely to create student (child) accounts within the Nessy suite of programs. Data entered, student first and last names, will create a student profile that assigns initial learning levels relative to student's age/grade and then assessed against their individual ability level based on outcomes of assessments. Teacher information will be used to create groups and assign students to those groups.

10. School Year: Provider is requesting data for the following school year(s): July 1, 2019 through June 30, 2020.

AUDIT

11. The District reserves the right to audit and inspect the Provider's compliance with this Amendment and applicable law.

AGREEMENT

12. Priority of Agreements: This Amendment shall govern the treatment of student records in order to comply with the privacy protections, including those found in FERPA and AB 1584. In the event there is conflict between the terms of this Amendment and the Agreement or any other bid/RFP, license agreement, or contract document(s) in existence, the terms of this Amendment shall apply.

13. Other Provisions Unaffected: Except as described in paragraph 12 above, all other provisions of the

Agreement shall remain unaffected.

14. Modification of Agreement: No modification or waiver of any term of this Amendment is effective unless both parties sign it.

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

PLEASANTON UNIFIED SCHOOL DISTRICT

By: *Janet Wolfmeyer*

Date: 3/29/2020

Printed Name: Janet Wolfmeyer

Title/Position: Coordinator, Purchasing, Warehouse, & Graphics

Provider Legal Name

By: *Christy Muehlbrad*

Date: 3/27/2020

Printed Name: Christy Muehlbrad

Title/Position: Finance Manager

Note: Electronic signature not permitted.