

CALIFORNIA STUDENT DATA PRIVACY
AGREEMENT Version 2.0 (July 3, 2018)

School District/Local Education Agency:

Lodi Unified School District

AND

Houghton Mifflin Harcourt Publishing Company

Date: _____

This California Student Data Privacy Agreement ("DPA") is entered into by and between the **Lodi Unified School District** (hereinafter referred to as "LEA") and Houghton Mifflin Harcourt Publishing Company (hereinafter referred to as "Provider") on _____. The Parties agree to the terms as stated herein.

RECITALS

WHEREAS, the Provider has agreed to provide the Local Education Agency ("LEA") with certain digital educational services ("Services") pursuant to a contract dated _____ ("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 (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 California state student privacy laws, including AB 1584, found at California Education Code Section 49073.1 and the Student Online Personal Information Protection Act ("SOPIPA") found at California Business and Professions Code section 22584; and

WHEREAS, for the purposes of this DPA, Provider 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 the Service Agreement conforms to 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.** The purpose of this DPA is to describe the duties and responsibilities to protect student data transmitted to Provider from the LEA pursuant to the Service Agreement, including compliance with all applicable statutes, including the FERPA, PPRA, COPPA, SOPIPA, AB 1584, and other applicable California State laws, all as may be amended from time to time by written notice to Provider or via written amendment signed by both parties. In performing these services, the Provider shall be considered a School Official with a legitimate educational interest, and performing services otherwise provided by the LEA. 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: HMH CS Science Dimensions, Living Earth 2020, Chemistry in the Earths System 2020, Physics in the Universe 2020, and Earth Science 2018.

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".
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 Official, under the control and direction of the LEAs as it pertains to the use of Student Data notwithstanding the above. Notwithstanding the foregoing, Provider retains all right, title and interest in and to any and all of Provider's software, materials, tools, forms, documentation, training and implementation materials and intellectual property (collectively, "Provider Materials".) Provider grants to LEA a personal, nonexclusive license to use the Provider materials for its own non-commercial, incidental use as set forth in the end user license agreement accompanying such software and as contemplated herein.
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 and correct erroneous information. Provider shall respond in a timely manner (and no later than 45 days from the date of the request) to the LEA's written 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.** [Intentionally Deleted]
4. **Third Party Request.** Should a Third Party, including law enforcement and government entities, contact Provider with a request for data held by the Provider pursuant to the Services, the Provider shall redirect the Third Party to request the data directly from the LEA. Provider shall notify the LEA in advance of a compelled disclosure to a Third Party unless legally prohibited.
5. **Subprocessors.** Provider shall enter into written agreements with all Subprocessors performing functions pursuant to the Service Agreement, whereby the Subprocessors agree to implement and maintain a reasonably designed security program, as we as applicable state and federal law.

Commented [LJ1]: We do not create separate student accounts.

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, SOPIPA, AB 1584 and all other applicable California privacy statutes.

2. **Annual Notification of Rights.** The LEA shall include a specification of criteria under FERPA (4 CFR 99.31 (a) (1)), 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, and without undue delay, upon discovery of actual unauthorized access. LEA will reasonably assist Provider in any efforts by Provider to investigate and respond to any known actual 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, SOPIPA, AB 1584 and applicable California privacy statutes.
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 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 of all Student Data obtained under the Service Agreement when it is no longer needed for the purpose for which it was obtained according to a schedule and procedure as the parties may reasonably agree. Disposition shall include (1) the shredding of any hard copies of any Pupil Records; (2) Erasing; or (3) Otherwise modifying the personal information in those records to make it unreadable or indecipherable by reasonable 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 Disposal 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 promptly 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 of 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: (a) using Student Data for adaptive learning or customized student learning purposes, (b) using Student Data to develop or improve Provider's Internet web sites, online services or mobile applications owned by the Provider or (c) using Student Data to demonstrate the effectiveness of the Provider's Internet web site, online service or mobile application.

ARTICLE V: DATA PROVISIONS

1. **Data Security.** The Provider agrees to abide by and maintain commercially reasonable data security measures, consistent with applicable industry standard, to protect Student Data from unauthorized disclosure or acquisition by an unauthorized person. The general security duties of Provider are set forth below. These measures shall include, but are not limited to:

- a. **Passwords and Employee Access.** Provider shall exercise commercially reasonable practices to secure usernames, passwords, and any other means of gaining access to the Services or to Student Data. 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 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 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 a commercially reasonable security programs consistent with applicable industry standards in the transfer or transmission of any data, including restricting the viewing or access of data to the parties legally allowed to do so. Provider shall maintain all data obtained or generated pursuant to the Service Agreement in a reasonably secure digital environment and not copy, reproduce, or transmit data obtained

pursuant to the Service Agreement, except as necessary to provide the services and 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 commercially reasonable applicable 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 commercially reasonable applicable 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 a commercially reasonable security program. Provider shall periodically conduct or review assessments of Subprocessors to determine the adequacy of their security program.
 - h. **Periodic Risk Assessment.** Provider further acknowledges and agrees to conduct ongoing risk assessments and remediate any identified security and privacy vulnerabilities in a reasonably timely manner.
2. **Data Breach.** In the event that Provider receives confirmation that unencrypted Student Data is accessed or obtained by an unauthorized individual, Provider shall provide notification to LEA promptly and without undue delay upon discovery. 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 where technically feasible under the following headings: "What Happened," "What Information Was Involved," "What We Are Doing," 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, and where feasible, 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 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 and not restricted by the lawful order.
 - v. A general description of the breach incident, if that information is possible to determine at the time the notice is provided.
- c. The security breach notification may also include any of the following where technically feasible:
- i. Information about what the agency has done to protect individuals whose information has been breached.
 - d. Provider agrees to adhere to all requirements in applicable State and in 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 commercially reasonable applicable industry standard practices and is consistent with 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 summary of said written incident response plan containing non-proprietary information.
 - f. Provider is prohibited from directly contacting parent, legal guardian or eligible pupil unless expressly requested by LEA. If requested by LEA, and upon conclusion of the investigation, Provider shall reimburse LEA for a reasonable apportionment of costs incurred to notify parents/families of a breach directly caused by the Provider and 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.

[Intentionally Deleted] 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 provided that Provider has been provided notice of such material breach, in writing, and has had a reasonable period of time to remedy such breach prior to such termination.
3. **Effect of Termination Survival.** If the Service Agreement is terminated, then upon written request by LEA, the Provider shall dispose of all of LEA's data pursuant to Article V, section I (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: Leonard Kahn
Title: Chief Business Officer

Contact Information: lkahn@lodiussd.net

The designated representative for the Provider for this Agreement is:

Name: Lisa Jacobson
Title: Director, Bids and Contracts

Contact Information:
Houghton Mifflin Harcourt Publishing Company

125 High Street

Boston, MA 02110

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 CALIFORNIA IN WHICH THIS AGREEMENT IS EXECUTED, 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 disposal 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 California Student Data Privacy Agreement as of the last day noted below.

Provider:

Houghton Mifflin Harcourt Publishing Company

Printed Name: Lisa Jacobson

Date

Title: Director, Bids and Contracts

Local Education Agency: Lodi Unified School District

BY:



Date: 10/11/2019

Printed Name: Title/Position: Leonard Kahn/ CBO

Note: Electronic signature not permitted.

EXHIBIT "A"

DESCRIPTION OF SERVICES

HMH CS Science Dimensions, Living Earth 2020, Chemistry in the Earths System 2020, Physics in the Universe 2020, and Earth Science 2018.

EXHIBIT “B”
SCHEDULE OF DATA

Houghton Mifflin Harcourt™ (HMH®): *Ed: Your Friend in Learning* Student Data Usage

<i>Ed: Your Friend in Learning</i> Student Data Usage Specifications		
Category of Data	Elements	Check if used by your system
Application Technology Metadata	IP Addresses of users; Use of cookies; etc.	X
	Other application technology metadata	
Application Use Statistics	Metadata on user interaction with application	X
Assessment	Standardized test scores	X
	Observation data	On Roadmap
	Other assessment data – Please specify:	
Attendance	Student school (daily) attendance data	
	Student class attendance	
Communications	Online communications that are captured (emails, blog entries)	
Conduct	Conduct or behavioral data	

Ed: Your Friend in Learning Student Data Usage Specifications		
Category of Data	Elements	Check if used by your system
Demographics	Date of Birth	Coming Soon
	Place of Birth	
	Gender	Coming Soon
	Ethnicity or race	Coming Soon
	Language Information (native, preferred, or primary language spoken by student)	Coming Soon
	Other demographics – Please specify:	
Enrollment	Student school enrollment	X
	Student grade level	X
	Homeroom	
	Guidance counselor	
	Specific curriculum	
	Year of graduation	
	Other enrollment information – Please specify:	Class Enrollment
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	
Schedule	Student scheduled courses	X
	Teacher names	X
Special Indicator	English language learner information	Coming Soon
	Low income status	Coming Soon
	Medical alerts	
	Student disability information	Coming Soon
	Specialized education services (IEP or 504)	Coming Soon
	Living situations (homeless/foster care)	

<i>Ed: Your Friend in Learning Student Data Usage Specifications</i>		
Category of Data	Elements	Check if used by your system
	Other indicator – Please specify:	
Student Contact Information	Address	
	Email	X
	Phone	
Student Identifiers	Local (School district) ID number	X
	State ID number	X
	Vendor/App assigned student ID number	X
	Student app username	X
	Student app passwords	X
Student Name	First and/or Last	X
Student in App Performance	Program/application performance (typing program-student types 60 wpm; reading program-student reads below grade-level)	Coming Soon
Student Program Membership	Academic or extracurricular activities a student may belong to or participate in	
Student Survey Responses	Student responses to surveys or questionnaires	
Student Work	Student generated content; writing, pictures; etc.	
	Other student work data – Please specify:	
Transcript	Student course grades	
	Student course data	Coming Soon
	Student course grades/performance scores	
	Other transcript data – Please specify:	
Transportation	Student bus assignment	
	Student pick-up and/or drop-off location	

<i>Ed: Your Friend in Learning</i> Student Data Usage Specifications		
Category of Data	Elements	Check if used by your system
	Student bus card ID number	
	Other transportation data – Please specify:	
Other	Please list each additional data element used, stored, or collected by your application.	

EXHIBIT “C”

DEFINITIONS

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

De-Identifiable Information (DII): De-Identification refers to the process by which the Provider removes or obscures any Personally Identifiable Information ("PII") from Student Data 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 but specifically excluding DII.

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

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

Student Data: Student Data includes any data, whether gathered by Provider or provided by LEA or its users, students, or students' parents/guardians, that is descriptive of the student including, but not limited to, information in the student's educational record or email, first and last name, home address, telephone number, email address, or other information allowing online contact, discipline records, videos, test results, special education data, juvenile dependency records, grades, evaluations, criminal records, medical records, health records, social security numbers, biometric information, disabilities, socioeconomic information, food purchases, political affiliations, religious information text messages, documents, student identifies, search activity, photos, voice recordings or geolocation information. Student Data shall constitute Pupil Records for the purposes of this Agreement, and for the purposes of California and federal laws and regulations. Student Data as specified in Exhibit "B" is confirmed to be collected or processed by the Provider pursuant to the Services. Student Data shall not constitute that information that has been anonymized or de-identified, or anonymous usage data regarding a student's use of Provider's services.

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.

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

Lodi Unified School District directs Houghton Mifflin Harcourt Publishing Company 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:

<u>Extent of Disposition</u> Disposition shall be:	<input type="checkbox"/> Partial. The categories of data to be disposed of are as follows: <input checked="" type="checkbox"/> Complete. Disposition extends to all categories of data.
<u>Nature of Disposition</u> Disposition shall be by:	<input checked="" type="checkbox"/> Destruction or deletion of data. (After transfer of data) <input checked="" 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.

