Community Unit School District 300
and EBSCO
Data Privacy Addendum (Student Data)

This Data Privacy Addendum (the "Addendum") by and between Community Unit School District 300 (the "School District") and EBSCO Publishing, Inc., (the "**Company**") (collectively, the "Parties") is incorporated in, effective simultaneously with, and modifies the attached agreement between the Parties and all current and supplemental terms and conditions, order forms, policies, practices, procedures, and/or other documentation relating to the attached agreement (collectively, the "Agreement"). This Addendum supersedes the Agreement by adding to, deleting from, and modifying the Agreement. To the extent any provision in this Addendum results in any conflict or inconsistency between the Agreement and this Addendum, this Addendum shall govern and any term of the Agreement that conflicts with this Addendum or is inconsistent with this Addendum shall be of no force or effect.

1. Definition of School District Data

As used in this Addendum, "School District Data" includes:

- "Personally Identifiable Information" and "Education Records" of students as defined in regulations implementing the Family Educational Rights and Privacy Act ("FERPA"), 34 C.F.R. § 99.3;

- "School Student Records" as defined in the Illinois School Student Records Act ("ISSRA"), 105 ILCS 10/2(d);

- "Covered Information" as defined in the Illinois Student Online Personal Protection Act ("SOPPA"), 105 ILCS 85/5; and

- All other non-public information, including student data, metadata, and user content, of the School District's students.

For the avoidance of doubt, School District data does not include non-personally identifiable data (including data that has been aggregated and anonymized) that is collected, maintained, or generated to administer and improve the Company's products or services, perform diagnostics, collect content-specific usage statistics, and protect the Company's products or services and their content from inappropriate use ("Non-School District Data"). To the extent any data is created by "de-identifying" School District data, it can only be considered Non-School District Data if the Company (1) takes reasonable steps to ensure that data cannot reasonably be used to identify a specific individual by completely removing personal identifiers from the data; (2) contractually commits not to attempt to reidentify the data; and (3) contractually prohibits any third-party recipients from attempting to re-identify the data. The Company will only use such data as described in its privacy policy.

2.

2.1 *Nature of Products or Services Provided.* The Company has agreed to provide the following products and/or services to the School District: Outlined in attached order.

2.2 *School District Data Provided*. To allow the Company to provide the products and/or services described in *Section 2.2*, the School District will provide the following categories or types of School District Data to the Company: Username

2.3 *Minimum Data Necessary Shared.* The Company attests that the data requested by the Company from the School District for the School District to access the Company's products and/or services represents the minimum necessary data for the products and/or services as described in the Agreement and this Addendum.

3. Compliance with Law

3.1 The Company agrees that all sharing, use, and storage of School District Data will be performed in accordance with all applicable Federal and State laws. The Company agrees that it will comply with all applicable laws and refrain from using School District Data in any way prohibited by any law, whether or not such requirements are specifically set forth in this Addendum. Applicable laws may include, but are not limited to, FERPA; ISSRA; SOPPA; the Children's Online Privacy Protection Act ("COPPA"), 15 U.S.C. 6501-6502; and the Illinois Children's Privacy Protection and Parental Empowerment Act ("CPPPEA"), 325 ILCS 17/1 *et seq*.

4. Data Ownership and Use

4.1 *Data Ownership and Control.* The School District Data and any intellectual property rights thereto remain the property of and under the control of the School District. The Company does not obtain any right, title, or interest in any of the School District Data furnished by the School District.

4.2 *School District Access to Data.* Any School District Data in the possession or under the control of the Company shall be made available to the School District upon request by the School District. The Company shall be responsible to provide copies of or access to School District Data in the possession or under the control of the Company to the School District within a reasonable time frame and in all cases within time frames that will allow timely compliance by the School District with any statutorily or court ordered deadline. This includes requests under the Illinois Freedom of Information Act ("FOIA"), 5 ILCS 140/1 *et seq.*, requests regarding student records under FERPA or ISSRA, requests for records in discovery in state or federal court or administrative proceedings, and any other request.

4.3   *Company Use of Data*. The Company may use and disclose the School District Data only for the purposes described in the Agreement and only in a manner that does not violate local, state, or federal privacy laws and regulations. These include, but are not limited to, the following requirements, as applicable:

   4.3.1   <u>School Officials Requirements.</u> The Company acknowledges that it is acting and designated as a "school official" or "official of the school" with a "legitimate educational interest" in the School District Data as those terms are used in FERPA, ISSRA, and SOPPA (a "School Official"). The Company agrees to abide by the limitations and requirements applicable to a School Official. The Company agrees it is performing an institutional service or function for which the school would otherwise use employees and is under the direct control of the school with respect to the use and maintenance of the School District Data. The Company agrees that it will use the School District Data only for authorized purposes and will comply with all limitations and requirements imposed on a School Official under FERPA, ISSRA, and SOPPA, including the requirements that the Company: (1) collect and use School District Data only for the purpose of fulfilling its duties under the Agreement and this Addendum and only for the benefit of the School District and its end users; (2) ~~will~~ not share, disclose, or re-disclose the School District Data to any third party or affiliate except as permitted by FERPA, ISSRA, and SOPPA, including, as provided for in this Addendum, to the subprocessors attached hereto as Exhibit B for the purpose of helping to provide the Company's products and services~~or~~ otherwise as authorized in writing by the School District, or pursuant to a court order; (3) will not use School District Data (including metadata) for advertising or marketing purposes unless such use is specifically authorized by this Addendum or otherwise authorized in writing by the School District.

   4.3.2   <u>COPPA Requirements.</u> To the extent applicable, the Company agrees that its use of the School District Data will be solely for the benefit of the School District's students and for the school system, and that the Company will not collect personal information from students for any purpose other than the School District's purpose, including any other commercial purpose.

4.4   *Internal Company Disclosure.* The Company attests that only individuals or classes of individuals who are essential to perform the work under the Agreement will have access to the School District Data ~~and~~ that those individuals and classes of individuals will be familiar with and bound by confidentiality obligations similar to those outlined in this Addendum and relevant law. The Company shall cause each officer, director, employee, subcontractor, and other representative who will have access to any School District Data during the term of the Agreement to comply with all legal requirements applicable to the School District Data, including but not limited to confidentiality obligations similar to those outlined in this Agreement and under relevant law.

5. Company Obligations Regarding Data

5.1 *Safeguards.* The Company agrees to take appropriate administrative, technical, and physical safeguards reasonably designed to protect the security, privacy, confidentiality, and integrity of School District Data. The Company shall ensure that School District Data are secured and encrypted to the greatest extent practicable during use, storage and/or transmission For the avoidance of doubt, Company's customers have the ability to manage encryption by disabling data in motion (https) through EBSCO Admin.

    5.1.1 *Security Procedures and Practices.* The Company agrees that at it will implement and maintain security procedures and practices that, at a minimum, are designed to protect covered information from unauthorized access, destruction, use, modification, or disclosure that based on the sensitivity of the data and the risk from unauthorized access: (i) use technologies and methodologies that are consistent with the U.S. Department of Commerce's National Institute of Standards and Technology's Framework for Improving Critical Infrastructure Cybersecurity Version 1.1. and any updates to it; or (ii) maintain technical safeguards as they relate to the possession of covered information in a manner consistent with the provisions of 45 C.F.R. 164.312.

    5.1.2 *Storage of Data.* The Company agrees to store and process the School District Data in a manner that is no less protective than those methods used to secure the Company's own data. The Company agrees that School District Data will be stored on equipment or systems located within the United States.

    5.1.3 *Reasonable Methods.* The Company agrees to use "reasonable methods" to ensure to the greatest extent practicable that the Company and all parties accessing School District Data are compliant with state and federal law.

5.2 *Privacy Policy.* The Company must publicly disclose material information about its collection, use, and disclosure of covered information, including, but not limited to, publishing a terms of service agreement, privacy policy, or similar document. Access by students or parents/guardians to the Company's programs or services governed by the Agreement and this Addendum or to any School District Data stored by the Company shall not be conditioned upon agreement by the parents/guardians to waive any of the student data confidentiality restrictions or a lessening of any of the confidentiality or privacy requirements contained in this Addendum. Company will use reasonable efforts to notify the School District of changes to its terms of use or privacy policy. Should the School District object to any such changes, it shall have the option to cancel the Agreement upon thirty (30) days' notice to Company.

5.3　*Data Return/Destruction.* Upon expiration of the term of the Agreement, upon the earlier termination of the Agreement for any reason, at a time when some or all of the School District Data is no longer needed for purposes of the Agreement, or upon the School District's request, the Company covenants and agrees that it promptly shall return to the School District all School District Data in the Company's possession and control. If return of the data is not feasible or if the School District agrees, then the Company shall destroy the data. Upon receiving a written request from the School District for such certificate, the Company agrees to send a written certificate that the data was properly destroyed or returned. Such certificate shall be delivered within 30 days of the date of the event triggering return/destruction (e.g., within 30 days of the termination of the Agreement, within 30 days of the School District's request or notification to the Company that the data is no longer needed for the purposes of the Agreement). The Company shall destroy School District Data in a secure manner and in such a manner that it is permanently irretrievable in the normal course of business. The only exception to the requirements of this *Section 4.3* is if the Company has express written consent from a student's parent or legal guardian consenting to the maintenance of the covered information. In such case, the Company agrees to send with or in lieu of the written certificate required by this *Section 4.3* written evidence of parental/guardian consent for any data maintained.

5.4　*Data Breach.* For purposes of this section, "data breach" means the unauthorized disclosure of data, unauthorized provision of physical or electronic means of gaining access to data that compromises the security, confidentiality, or integrity of School Student Data, or other unauthorized access, alteration, use or release of School District Data, as well as any other circumstances that could have resulted in such unauthorized disclosure, access, alteration, or use.

　　5.4.1 In the event of a data breach, the Company agrees to the following: (1) notify the School District by telephone and email within the most expedient time possible and without unreasonable delay, but no later than 72 hours after the determination that a breach has occurred; (2) *a*t the time notification of the breach is made, provide the School District with the name and contact information for an employee of the Company who shall serve as the Company's primary security contact; (3) assist the School District with any investigation, including interviews with knowledgeable Company employees and review of all relevant records of the School District, which include usernames; (4) provide the School District within the most expedient time possible and without unreasonable delay, and in no case later than fifteen (30) days after notification to the School District that a data breach occurred, the number of students whose covered information is involved in the breach; the date, estimated date, or estimated date range of the breach; a description of the covered information that was compromised or reasonably believed to have been compromised in the breach; and contact information for the person who parents/guardians may contact at the Company regarding the breach; and (4) assist the School District

with any notification the School District deems necessary related to the security breach. The Company agrees to comply with the terms of this *Section 5.5.1* regardless of whether the misuse or unauthorized release of School District Data is the result of or constitutes a material breach of the Agreement or this Addendum.

5.4.2 The Company shall not, unless required by law, provide any notices except to the School District without prior written permission from the School District.

5.4.3 The Company shall reimburse and indemnify the School District for all costs imposed on the School District or reasonably undertaken by the School District at its discretion associated with a data breach not caused by the School District, including but not limited to reimbursement of costs associated with notifying individuals whose information was compromised and notifying required regulatory agencies; fees paid to provide credit monitoring to impacted individuals; legal fees, audit costs, fines, and any other fees or damages reasonably undertaken by or imposed against the School District as a result of the security breach; and any other notifications, legally mandated responses, or responses reasonably undertaken by the School District in response to the breach, unless the Breach was caused by an act or omission of the District or its representatives.

6. Prohibited Uses

6.1 The Company shall not do any of the following:

6.1.1 Sell School District Data; use or share School District Data for purposes of targeted advertising, as defined in Section 85/5 of SOPPA; or use School District Data to create a personal profile of a student other than for accomplishing the purposes described in the Agreement and this Addendum and explicitly authorized in writing by the District;

6.1.2 Use information, including persistent unique identifiers, created or gathered by the operator's site, service, or application to amass a profile about a student, except in furtherance of "K through 12 school purposes," as defined by SOPPA. "Amass a profile" does not include the collection and retention of account information that remains under the control of the student, the student's parent or legal guardian, or the School District; or

6.1.3 Sell or rent a student's information, including covered information. This *Section 5.3* does not apply to the purchase, merger, or other type of acquisition of the Company by another entity if the Company or its successor entity complies with all relevant law and this Addendum regarding previously acquired School District Data.

6

6.2 Notwithstanding the previous paragraphs and any other terms of this Addendum, the Company may use School District Data for maintaining, developing, supporting, improving, or diagnosing the operator's site, service, or application as long as such use is authorized by Federal or State law. The Company agrees to notify the School District if it believes release of School District Data is otherwise justified under law, including the reasons set forth in SOPPA Section 84/10(4); however, any such disclosure must be made by the School District and pursuant to valid ISSRA and FERPA exceptions.

7. Miscellaneous

7.1 *Service Levels.* The Company's products or services are provided according to the Service Level Agreement attached hereto as Exhibit A.

7.2 *Limited Warranty.* For the purposes of this Addendum, a "Defect" is defined as a failure of the Company's product or service to substantially conform to the then-current Company's User Guides materials. For as long as the Agreement is in place, the Company warrants that the Company's products or services will not contain Defects. If the products or services do not perform as warranted, the Company will use reasonable efforts, consistent with industry standards, to cure the Defect in accordance with the Company's then-current support call process. Should the Company be unable to cure the Defect or provide a replacement product within five business days, the School District shall be entitled to a refund of its fees paid for the products or services, as depreciated on a straight-line basis over a 12 month period commencing on the date the School District first has access to a the Company's products or services through the date of termination.

7.3 *Harmful Code.* Using a recent version of a reputable virus-checkingg product (to the extent commercially available), Company will check its software and other systems used by Company to deliver the products or services to the School District for any harmful code, including, without limitation, any viruses, worms, or similar harmful code, and will use commercially reasonable efforts to eliminate any such harmful code that the Company discovers.

7.4 *Indemnification and Insurance.* The Company agrees to indemnify, defend and hold harmless the School District and its officers, directors, employees, agents, attorneys and assigns, against any third-party claims, demands, actions, arbitrations, losses and liabilities resulting from damage caused by the Company employees, contractors, or subcontractors in performing its obligations under the Agreement, this Addendum, or federal or state law. The Company shall maintain evidence of workers compensation insurance as required by law and general liability insurance with a minimum limit of $2,000,000. All insurers shall be licensed by the State of Illinois and rated A+-VII or better by A.M. Best or comparable rating service. The comprehensive general liability shall name the School District, its Board, Board members, employees, agents, and successors as an additional insured with a waiver of subrogation in favor of the School District. The Company shall provide the

School District with certificates of insurance and/or copies of policies reasonably acceptable to the School District evidencing the existence of the coverage described above, including form and deductibles, during the duration of the Agreement. The failure to provide acceptable insurance shall be deemed a breach of the Agreement and shall allow the School District to immediately terminate the Agreement. Certificates of insurance shall indicate that should any of the above-described policies be cancelled before the expiration date thereof, notice will be delivered to the School District in accordance with the policy provisions.

7.5   *Infringement.* The Company warrants that no third party has any claim to any trademark, patent, or proprietary interest in any product or service the Company provides to the School District. The Company will defend, hold harmless, and indemnify the School District from any claims brought by a third party against the School District to the extent based on an allegation that the authorized use of any Company product or service infringes any U.S. patent, copyright, trademark, trade secret or other proprietary right of a third party. If the School District's authorized use of the Company's products is restricted as the result of a claim of infringement, the Company shall do one of the following: (i) substitute another equally suitable product or service; (ii) modify the allegedly infringing Company product or service to avoid the infringement; (iii) procure for the School District the right to continue to use the Company product or service free of the restrictions caused by the infringement; or (iv) take back such Company product or service and refund to the School District the fees previously paid for the Company's product or service and terminate the School District's license to use the Company's product.

7.6   *No Indemnification or Limitation of Liability by School District.* Any provision included in the Agreement that requires the School District to indemnify the Company or any other party is deleted and shall not apply to the School District. Any provision in the Agreement, except for Section 6.7 of this Addendum, that requires the School District to release the Company for claims the School District may have against the Company is deleted. Further, any provisions requiring the School District to release its class action rights is deleted.

7.7   *Mutual Limitation of Liability.* Neither party will be liable for breach-of-contract damages that the breaching party could not reasonably have foreseen on entry into this agreement.

7.8   *Taxes.* The School District is a tax-exempt organization. Federal excise tax does not apply to the School District and State of Illinois Sales Tax does not apply. The amounts to be paid to the Company hereunder are inclusive of all other taxes that may be levied, including sales, use, nonresident, value-added, excise, and similar taxes levied or imposed upon the work. The Company shall be responsible for any taxes levied or imposed upon the income or business privileges of the Company.

7.9 *Payments*. The School District shall make payments to the Company in accordance with the Illinois Local Government Prompt Payment Act, 50 ILCS 505/1. If the School District is late in making a payment it shall make interest payments at the maximum amount permitted under the Illinois Local Government Prompt Payment Act, 50 ILCS 505/4.

7.10 *Force Majeure.* Neither party will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including acts of war, acts of God, acts of terrorism, earthquake, flood, embargo, riot, sabotage, labor shortage or dispute, governmental act or failure of the Internet (not resulting from the actions or inactions of the delayed party), provided that the delayed party: (i) gives the other party prompt notice of such cause, and (ii) uses its reasonable commercial efforts to promptly correct such failure or delay in performance.

7.11 *Freedom of Information Act.* The Company acknowledges that School District is subject to the Illinois FOIA, and that the School District shall not be in breach of any confidentiality provisions contained in the Agreement if the School District releases a record in compliance with the FOIA.

7.12 *Publication of Agreement.* Under SOPPA, the School District must publish the Company's name and business address, a copy of the Agreement and this Addendum, and a list of any subcontractors to whom School District Data may be disclosed. The Company agrees to provide to the School District prior to execution of the Agreement and this Addendum the name, business address, and list of subcontractors to be published. The Company acknowledges that if there are provisions of the Agreement other than those required to be included in the Agreement and this Addendum by SOPPA that the Company would like redacted before publication, the Company must submit a request in writing to the School District prior to execution of the Agreement and this Addendum. Only if the School District agrees to such redaction prior to the execution of the Agreement and this Addendum shall the redaction be made prior to publication.

7.13 *Governing Law.* The Agreement and this Addendum shall be governed by, construed, and enforced in accordance with the laws of the State of Illinois without regard to conflict of law principles. Jurisdiction and venue for all disputes hereunder shall be the Circuit Court located in Kane County, Illinois, or the federal district court for the Northern District of Illinois. Any references to required notices of claims, arbitration, or mediation in the Agreement are not applicable to the Parties.

7.14 *Renewal of Agreement.* The parties may renew the Agreement and this Addendum in writing. Any provision in the Agreement that provides for an automatic renewal of the Agreement is deleted.

7.15 *Termination.* The School District may immediately terminate the Agreement if the School District makes the determination that the Company has breached a material term of the Agreement or this Addendum. In addition, the School

9

District may terminate this Agreement at any time without cause after providing the Company with 90 days written notice and shall be entitled to reimbursement of all fees previously paid but not yet incurred.

7.16 *Amendment.* No amendment or modification to the Agreement and this Addendum shall be effective unless and until the amendment or modification is in writing and signed by all parties to the Agreement and this Addendum.

7.17 *Effective Date.* The Addendum shall be deemed dated and become effective on the date the last of the parties signs as set forth below the signature of their duly authorized representatives.

EBSCO Publishing, Inc.   Community Unit School District 300

Alex Saltzman   _Susan Harkin_
                                                             A3BB358670FE4AD718B86C5B0A2FAD86   contract**works**.
Signature   Signature

Alex Saltzman   Susan Harkin
Name   Name

Senior VP, Inside Sales   Chief Operating Officer
Title   Title

5/15/2020   **05/19/2020**
Date   Date

Exhibit A

Service Level Agreement

Exhibit B

EBSCO Subprocessors

Name
Amazon Web Services (AWS)
Auth0
CyberSource
Google-Auth
Google-Classroom
Marketo
NES
NetSuite
OpenAthens
SalesForce
Shibboleth
Stripe
Tufts Continuing Medical Education
Baylor

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Exhibit C

EBSCO Service Level Agreement

Definitions

The Service – The Service (*EBSCO Discovery Service* or EBSCO*host*) is defined as the application that provides research services to the customer's end users/patrons. Administrative and ancillary applications, such as EBSCO*admin*, are not considered a core part of the service and are therefore not subject to this Service Level Agreement.

Downtime – Downtime is any period of time greater than 10 minutes in duration, in which end users cannot use the service for its intended purposes, including searching, viewing results, following links to resources, and viewing full text. Downtime may manifest itself as the inability to complete actions due to application errors, or may result from slow performance. EBSCO will be the sole party responsible for measuring and reporting Downtime.

Availability – Availability is the numeric inverse of downtime. For any given period of time that users can use the service for its intended purposes, the application is Available. Downtime plus Availability shall equal 100% of the time in a given year. EBSCO will be the sole party responsible for measuring and reporting Availability.

Performance – Performance is defined as the amount of time for pages to be delivered to the end user's browser from the instant their request was submitted. This is referred to as End-To-End Performance. The Service will consist of several pages that will contribute to the site's overall Performance. EBSCO will be the sole party responsible for measuring and reporting site Performance.

Service Availability
EBSCO's commitment is to ensure that the service is available 99.9% of the time per year, excluding any planned maintenance. This equates to no more than 8.76 hours per year of unplanned Downtime. In the event that the Service exceeds 8.76 hours of unavailability, any subsequent incident of unplanned downtime per day would result in EBSCO extending the customer's subscription by one day per incident. No more than one day of subscription extension would be granted for any amount of Downtime incurred in a 24-hour period.

Service Performance
The Service is designed to have all pages be delivered in an average of 5 seconds or less. If the average page response time is greater than 5 seconds for more than 12 consecutive hours, EBSCO will extend the customer's subscription by one day.

Planned Maintenance
While EBSCO operates the Service in a manner that is designed to be available 24 hours per day, 365 days per year, it reserves the right to plan maintenance that would cause Downtime. It shall limit Downtime due to Planned Maintenance to less than 8 hours per year.

Technical Support Services

Availability:
EBSCO offers Technical Support free of charge to customers. EBSCO's Technical Support representatives are trained to fully resolve any questions or issues related to EBSCO products. EBSCO offers this support 24 hours a day via the following methods:

Toll-Free Telephone (U.S. and Canada): 800-758-5995
International Toll-Free Telephone: (International Access Code)-800-3272-6000
Email: support@ebsco.com
Online: http://support.ebsco.com/contact/

Technical Support based in the United States observes the following holidays: New Year's Day (January 1), Easter (April 21, 2019), Memorial Day (last Monday in May), Fourth of July, Labor Day (first Monday of September), Thanksgiving (fourth Thursday of November) and Christmas (December 25). EBSCO's international Technical Support services observe local holidays.

In addition, the EBSCO Support Site is available 24/7 and offers user guides, tutorials, FAQs, trainer guides, and other self-service support resources at no additional charge for customers.

EBSCO Support Site: http://help.ebsco.com

Technical Service Response Times:
Over 70% of cases reported to EBSCO's Technical Services Department are opened and resolved within the same business day. On average, callers into the Technical Support queue wait no more than 20 seconds. Email support requests receive an auto-generated response email with a case tracking number, with a further response provided by a Technical Service representative. EBSCO will generally respond to all technical service requests within 24-48 hours and will resolve 85% of all support cases within 5 business days.

Case Tracking and Resolution:
All Technical Service requests are assigned case numbers in the EBSCO Case Tracking system. When a problem is reported, it is generally responded to within 24-48 hours. If it can be resolved immediately, it will be, and the customer will be notified. If it requires further investigation, Technical Support will escalate the matter to EBSCO's Expert Services Team who will assist in troubleshooting the issue and, if required, track the problem through resolution with the appropriate technical, editorial and product teams within EBSCO. During the resolution process, customers will be kept informed of the progress, and all communications will be tracked to maintain a complete history. Once the issue is resolved, the customer will be notified and the case will be closed.

Technical Communications
EBSCO uses telephone, email and the web (EBSCO Support Site) to announce and communicate important technical updates and general release information to customers. Last modified: 05/17/18