

## **NO RED INK MASTER SERVICE TERMS** **(last updated March 23, 2020)**

The following terms and conditions, including those documents incorporated herein by reference (collectively, the “**Terms**”) are a legal contract between NoRedInk Corp. (“**NoRedInk**”) on the one hand, and you and your employer (collectively, “**Client**”) on the other. By approving an Order Form, having access to, receiving, and/or using the Services provided by NoRedInk you agree, on behalf of Client, without limitation or qualification, to be bound by and to comply with these Terms. Client may not use the Hosted Service or accept Professional Services unless it accepts these Terms and has the power and legal right to form a contract with NoRedInk under these Terms. Any individual using, accessing or procuring Services in the name of or as part of such individual’s responsibilities within an organization, or who submits to the Hosted Service data controlled by such organization, represents and warrants that such individual is authorized and intends by those actions to bind such organization to these Terms.

Each Order Form will be deemed to incorporate these Terms as published by NoRedInk on the effective date of such Order Form.

### **1. Definitions.**

“**Agreement**” means these Terms and each Order Form agreed by the parties.

“**Client Data**” means any electronic data, information or material, including content created by Users and personal information, provided or submitted to NoRedInk by Client or Users to or through the Hosted Service.

“**Hosted Service**” means, collectively, those hosted service(s) set forth in an Order Form(s) made available by NoRedInk, through the use of (and including) NoRedInk’s cloud platform, proprietary software and associated documentation.

“**Order Form**” means the an online or written order form or account setup form for the Service, a statement of work for Professional Services, or another written agreement, submitted by Client and accepted by NoRedInk from time to time, specifying, among other things, the number of licenses, services, fees, the Service Term and other charges as agreed to between the parties, but which does not contain any modifications of or amendments to these Terms.

“**Professional Services**” means the professional consulting service(s) as set forth in an Order Form(s) made available by NoRedInk, and collectively with the Hosted Service, the “**Services**”.

“**Service Term**” means the term during which NoRedInk will provide the Services to Client as specified in each Order Form.

“**Staff Users**” means Client’s employees and contractors who are authorized to use the Hosted Service as a teacher or administrator.

“**Student Users**” means students authorized by a Staff User to use the Hosted Service as a student, and collectively with the Staff Users, “**Users**”.

### **2. Services.**

2.1 **Hosted Service.** Subject to these Terms, NoRedInk grants Client and its Staff Users a non-exclusive, non-transferable, non-sublicenseable right during the Service Term to access and use the Hosted Service, and NoRedInk will make the Hosted Service available to for its intended pedagogical purpose in accordance with these Terms and the Order Form(s). Client's use of the Hosted Service is subject to the limitation on the number of Users specified in the relevant Order Form and payment of the fee specified in the relevant Order Form if Client exceeds the User limit. NoRedink may in its sole discretion change the Hosted Service without materially decreasing the functionality of the Hosted Service. Other than as expressly set forth in these Terms, no license or other rights are granted in the Services, NoRedInk expressly reserves all such rights and all title and interest in and to the Services and all intellectual property rights therein.

2.2 **Access.** NoRedInk will provide Client’s Users access to the Hosted Service pursuant to password protected user accounts. NoRedInk will send instructions to Staff Users, including Client-designated administrator Staff Users (each an “**Admin**”) regarding the administrative tools made available to Client, and will provide Admins with appropriate administrative credentials. The Admin tools and other Staff User tools allow a variety of actions, including, for example, the creation of additional Admins, approving or rejecting individuals as Staff Users and Student Users, viewing and allowing the viewing of the information of other users, particularly Student Users, and editing or deleting

from the Hosted Service information (including Client Data) submitted by other Users. All actions taken using the Admin and Staff User tools will be deemed approved by Client.

2.3 **Restrictions.** Client shall not itself or cause or permit others to: (a) disassemble, reverse engineer, or decompile the Hosted Service or otherwise attempt to access any of technology underlying the Hosted Service; (b) access the administrative interfaces of the Hosted Service for the purposes of competitive analysis, benchmarking, or designing, modifying, or otherwise creating any service or software program, or any portion thereof, that performs functions similar to the functions performed by the Hosted Service; or (c) copy, sublicense, or provide access or other dissemination of any element of the Hosted Service, in whole or in part, to any third party.

2.4 **Professional Services.** Client may request NoRedInk to provide certain Professional Services that are ancillary to the Service, such as teacher professional development services and training classes, and NoRedInk will use commercially reasonable efforts to provide such Professional Services as set forth on an Order Form from time to time.

2.5 **Support.** NoRedInk will provide email support for the Hosted Service during normal business hours (between the hours of 7:00 am and 5:00 pm PST on business days).

### 3. **Data Handling, Feedback.**

3.1 **Client Data.** As between NoRedInk and Client, all Client Data remains the sole property of Client (subject to any rights that Student Users may have in content they create within the Hosted Service). Client grants to NoRedInk a non-exclusive license during the Service Term to use and reproduce the Client Data to the extent necessary to provide, maintain, and improve the Services. NoRedInk will also have the right during and after the Service Term to (a) use and analyze data about the use of the Hosted Service by Client and Users in order to maintain and improve the Service, and (b) to disclose statistics aggregating Client and User usage data with NoRedInk's other clients' data for marketing and other purposes; provided that such data and statistics are not used except as de-identified or aggregated in a manner which renders identification of natural persons infeasible, and are never disclosed to any third party (except NoRedInk subcontractors in connection with the provision of the Services) other than in an aggregated format from which neither the identity of Client nor the identity of any natural person can reasonably be derived.

#### 3.2 **Data Compliance Basics.**

(a) NoRedInk has implemented commercially reasonable and appropriate technical and organizational measures intended to secure Client Data from accidental loss and from unauthorized access, use, alteration or disclosure.

(b) NoRedInk will not use or sell the personal information of Student Users to market or advertise to Student Users or their or families or guardians.

(c) Client Data may include personal information from education records that are subject to the Family Educational Rights and Privacy Act (20 U.S.C. 1232g) and the Family Educational Rights and Privacy Act Regulations (34 CFR Part 99), as amended or otherwise modified from time to time ("**FERPA**"). To the extent that Client Data includes such education records ("**Education Records**"), NoRedInk will comply with FERPA, and will not disclose or use Education Records received from or on behalf of Client (or its Users) except as permitted or required by this Agreement, as required by law, or as otherwise authorized in writing by Client. For the purposes of FERPA, NoRedInk shall be considered a "school official".

(d) To the extent that Client Data includes personal information concerning Student Users under 13, NoRedInk will comply with Children's Online Privacy Protection Act, 15 U.S.C. 6501-6506 ("**COPPA**") with respect to such information, expressly subject to Client: (i) fulfilling the COPPA consent requirement for the use of the Hosted Service by Student Users under 13, and (ii) if Client learns or believes that a student under 13 may be using the Hosted Service without adequate consent having been provided, Client will immediately suspend such student's access to the Hosted Service and notify NoRedInk..

(e) More detail concerning NoRedInk's security and privacy practices for personal information provided to NoRedInk under these Terms are set forth in the Data Protection Addendum located at <https://www.noredink.com/data-protection-addendum> (the "**DPA**"), which is hereby incorporated by reference.

3.3 Subject to these Terms and the DPA, the terms and conditions of the NoRedInk Privacy Policy (which may be viewed at <http://noredink.com/privacy>) is incorporated herein by reference, shall apply to individual Users' use of the Service, and Client hereby acknowledges and agrees to the terms thereof. The NoRedInk Privacy Policy may be

amended from time to time. Any changes shall be effective as to Users upon the earlier of Client's approval of such changes (an exchange of emails to suffice) or the beginning of the next Service Term after notice is provided.

3.4 **Suggestions, Ideas and Feedback; Client Data.** NoRedInk shall have the unrestricted right to use or act upon any suggestions, ideas, enhancement requests, feedback, recommendations, or other information provided by Client or any other party relating to the Service.

#### 4. **Client Responsibilities.**

4.1 **Responsibility.** Client shall: (a) have sole responsibility for all activities that occur under Client's User accounts and for all Client Data; (b) use commercially reasonable efforts to prevent unauthorized access to, or use of, the Hosted Service and notify NoRedInk promptly of any such activity; and (c) comply with all applicable local, state, federal, and foreign laws (including the Family Educational Rights and Privacy Act (20 U.S.C. 1232g) and the Family Educational Rights and Privacy Act Regulations (34 CFR Part 99), as amended or otherwise modified from time to time) in using the Hosted Service.

4.2 **Service Guidelines.** Client shall use the Hosted Service solely for its internal pedagogical purposes as contemplated by these Terms and shall not use, or allow Users to use, the Hosted Service in a manner inconsistent with such purpose, including without limitation: (i) attempting to gain unauthorized access to, interfere with or disrupt the integrity or performance of the Service, computer systems, or networks related to the Service or any data contained in any of those; or (ii) harassing or interfering with any user's use and enjoyment of the Hosted Service.

#### 5. **Fees & Payment.**

5.1 **Fees.** Client shall pay the fees as specified in each Order Form or SOW (as applicable). Fees are non-refundable except as otherwise specifically set forth in these Terms.

5.2 **Payment Terms.** Amounts due shall be payable thirty (30) days from the invoice date. All quotes and payments made under these Terms shall be in United States dollars. Late payments shall bear interest at the lower of one and one-half percent (1.5%) per month or the maximum rate permitted by law. If Client's account is ten (10) days or more overdue, in addition to any of its other rights or remedies, NoRedInk reserves the right to suspend the Service provided to Client, without prior notice or liability to the Client, until such amounts are paid in full. Client shall pay all of NoRedInk's reasonable fees, costs and expenses (including reasonable attorney's fees) if legal action is required to collect outstanding undisputed balances.

5.3 **Taxes.** NoRedInk's fees are exclusive of all taxes, levies, or duties of any nature ("**Taxes**"), and Client is responsible for payment of all Taxes, excluding only taxes levied by NoRedInk's local taxing authority on NoRedInk's income. If NoRedInk has the legal obligation to pay or collect taxes for which Client is responsible pursuant to this Section 5.3, the appropriate amount shall be invoiced to and paid by Client, unless Client provides NoRedInk with a valid tax exemption certificate authorized by the appropriate taxing authority.

#### 6. **Confidentiality.**

6.1 **Definition of Confidential Information.** As used herein, "**Confidential Information**" means all information of a party ("**Disclosing Party**") which the Disclosing Party designates in writing as being confidential when it discloses such information to the other party ("**Receiving Party**"), including without limitation these Terms, the Hosted Service and any nonpublic information regarding the same, business and marketing plans, technology and technical information, product designs, and business processes (whether in tangible or intangible form, in written or in machine readable form, or disclosed orally or visually). Confidential Information shall not include any information that: (a) is or becomes generally known to the public without the Receiving Party's breach of any obligation owed to the Disclosing Party; (b) was independently developed by the Receiving Party without the Receiving Party's breach of any obligation owed to the Disclosing Party; or (c) is received from a third party who obtained such Confidential Information without any third party's breach of any obligation owed to the Disclosing Party.

6.2 **Protection.** Neither party will disclose the other party's Confidential Information, or use the other party's Confidential Information for any purpose other than to perform its obligations or exercise its rights under these Terms. Each party will protect the confidentiality of the Confidential Information of the other party in the same manner that it protects the confidentiality of its own proprietary and confidential information of like kind, but in no event shall either party exercise less than reasonable care in protecting such Confidential Information. Further, to the extent that Client is subject to a freedom of information act, open records law or similar legislative or regulatory obligations ("**Disclosure Laws**"), Client agrees that it will treat NoRedInk's Confidential Information as subject to exemption

from disclosure as “confidential commercial information” or any similar category of information subject to exemption from disclosure to the maximum extent possible under the relevant Disclosure Laws.

6.3 **Compelled Disclosure.** If the Receiving Party is compelled by law to disclose Confidential Information of the Disclosing Party, it shall provide the Disclosing Party with prior written notice of such compelled disclosure and reasonable assistance (at Disclosing Party’s cost) if the Disclosing Party wishes to contest the disclosure. Without limiting the generality of the foregoing, Client agrees that it will provide NoRedInk with the maximum notice period and right to object to disclosure of NoRedInk Confidential Information available under the applicable Disclosure Laws.

6.4 **Remedies.** If the Receiving Party discloses or uses (or threatens to disclose or use) any Confidential Information of the Disclosing Party in breach of this Section 6, the Disclosing Party shall have the right, in addition to any other remedies available to it, to seek injunctive relief to enjoin such acts, it being specifically acknowledged by the parties that any other available remedies are inadequate.

## 7. **Warranties & Disclaimers.**

7.1 **Warranties.** Each party represents and warrants that it has the legal power to enter into these Terms, and that it has the right and authority to grant to rights granted under this Agreement. NoRedInk represents and warrants that it will provide the Services in a manner consistent with reasonable standards applicable in NoRedInk’s industry.

7.2 **Disclaimer of Warranties.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, NOREDINK MAKES NO WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, AND HEREBY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

## 8. **Indemnification.**

8.1 **Indemnification by NoRedInk.** Subject to these Terms, NoRedInk will defend Client against any claims, demands, suits or proceedings made or brought by a third party (“**Claims**”) against Client to the extent based upon an allegation that the Hosted Services, as furnished by NoRedInk hereunder and used by Client within the scope of this Agreement, misappropriates any third party trade secret or infringes any third party’s copyright or U.S. patent or trademark rights. NoRedInk will indemnify and hold Client harmless against damages awarded by a court or settlements agreed by NoRedInk in connection with such Claims. NoRedInk shall have no obligations to Client under this Section 8.1 to the extent such Claims arise from Client’s or Users’ breach of these Terms. If any Claim is made under this Section, in NoRedInk’s sole judgment, is likely to be made, NoRedInk may, at its discretion, either: (a) procure for Client the right to continue to use the Hosted Service, as such use is specifically provided for in these Terms, (b) replace or modify the Hosted Service to avoid infringement, or (c) terminate these Terms upon written notice to Client, and refund any paid but unused fees to Client. The obligations in this Section are Client’s sole remedy for any claim that the Services infringe or misappropriate any third party intellectual property rights,

8.2 **Indemnification by Client.** Subject to these Terms and to the fullest extent permitted by any state laws limiting Client’s liability, Client will defend NoRedInk against any Claims against Client to the extent: (i) arising out of the Client Data, or the use thereof by either party solely in accordance with this Agreement, or (ii) arising from Client’s use of the Services in breach of this Agreement, including but not limited to failure to obtain parental consent for Student Users who are under 13. Client will indemnify and hold NoRedInk harmless against damages awarded by a court or settlements agreed by Client in connection with such Claims. Client shall have no obligations to NoRedInk under this Section 8.2 to the extent such Claims arise from NoRedInk’s breach of these Terms.

8.3 **Procedure.** Each party’s obligations under this Section 8 are conditioned on the party seeking indemnification: (a) promptly giving written notice of the Claim to the indemnifying party (provided that any delay in notification will excuse the indemnifying party only to the extent materially prejudices the indemnifying party’s ability to defend or settle the claim); (b) giving the indemnifying party sole control of the defense and settlement of the Claim (provided that the indemnifying may not settle or defend any Claim without the indemnified party’s consent unless such settlement unconditionally releases the indemnifying party of all liability); and (c) providing to the indemnifying party, at the indemnifying party’s cost, all reasonable assistance.

## 9. **Limitation of Liability and Action.**

9.1 **Limitation of Liability.**

(a) EXCEPT FOR DAMAGES PAYABLE TO THIRD PARTIES UNDER SECTION 8.1, IN NO EVENT SHALL NOREDINK HAVE ANY LIABILITY HEREUNDER FOR ANY LOST PROFITS, LOSS OF DATA, LOSS OF USE, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES HOWEVER CAUSED, UNDER ANY THEORY OF LIABILITY, WHETHER OR NOT NOREDINK HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

(b) IN NO EVENT SHALL NOREDINK'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THESE TERMS, UNDER ANY THEORY OF LIABILITY, EXCEED THE GREATER OF \$10,000 OR THE AMOUNTS ACTUALLY PAID BY CLIENT FOR THE SERVICE DURING THE ONE (1) YEAR PERIOD IMMEDIATELY PRECEDING THE DATE THE CAUSE OF ACTION AROSE.

9.2 **Insurance.** NoRedInk will during the Service Term maintain the following insurance coverage at its own cost and expense: (a) Workers' Compensation as required by applicable law in its jurisdiction; (b) Automotive Liability with a minimum limit of not less than \$1,000,000 combined single limit for property damage and bodily injury per accident, covering all vehicles operated by NoRedink; (c) Commercial General Liability, on an occurrence basis, with a minimum combined single limit of \$1,000,000 per occurrence; and (d) Cyber Liability covering the liability for technology errors and omissions, network security breaches and privacy, in an amount of at least \$1,000,000 per occurrence.

9.3 **Limitation of Action.** No action (regardless of form) arising out of the Agreement may be commenced by either party more than two (2) years after the expiration of the Service Term for the Service(s) to which such action pertains.

## 10. Term & Termination.

10.1 **Term.** These Terms commence on the date an Order Form is executed by both parties and, unless sooner terminated in accordance with these Terms, shall continue until the expiration of the last Service Term to expire. In the event of an inadvertent gap of fewer than ninety (90) days between the expiration of a Service Term and the execution of a new Order Form intended to extend or renew the use of the Services, these Terms shall be deemed to not to have expired and to have continued in force through such inadvertent gap.

10.2 **Termination for Cause.** A party may terminate the Agreement for cause: (a) upon thirty (30) days written notice of a material breach to the other party, provided such breach remains uncured at the expiration of the notice period; or (b) if the other party becomes the subject of a petition in bankruptcy or any proceeding relating to insolvency, receivership, liquidation, or assignment for the benefit of creditors.

10.3 **Effect of Termination.** Upon the effective date of termination of this Agreement: (a) all then-active Order Forms will terminate; (b) Client's use of the Services is terminated, and Client shall immediately cease accessing the Hosted Service except that for thirty (30) days after termination, Client may access the Hosted Service solely to downloading its Client Data; (c) any and all payment obligations of Client incurred prior to the date of termination will immediately become due; (d) within thirty (30) days of such termination each party will return or, if return is not feasible, destroy all copies of Confidential Information of the other party in its possession except as required to comply with any applicable legal or accounting record keeping requirement; and (e) within thirty (30) days of termination NoRedInk will provide Client with the opportunity to download the Client Data or if Client is unable to do so, a copy of the Client Data, and will then destroy all Client Data. The following provisions shall survive the termination or expiration of these Terms for any reason and shall remain in effect after any such termination or expiration: Sections 1, 2.3, 3, 5 (as to outstanding payment obligations) and 6 through 11.

## 11. General Provisions.

11.1 **Governing Law; Disputes.** This Agreement and all disputes relating hereto shall be governed exclusively by, and construed exclusively in accordance with, the laws of the State of California, without regard to its conflict of laws provisions. The federal and state courts located in the Northern District of California shall have exclusive jurisdiction to adjudicate any dispute arising out of or relating to this Agreement, and each party hereby submits to the personal jurisdiction and venue of such courts. The parties acknowledge and agree that any unauthorized disclosure or use of a party's confidential information or intellectual property would cause such party irreparable harm for which monetary damages would be inadequate. Accordingly, in the event of such a disclosure or use, the aggrieved party may seek injunctive or other equitable relief to enforce this Agreement in addition to any available legal remedies.

Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

11.2 **Relationship of the Parties.** This Agreement may not be construed to create or imply any partnership, agency or joint venture between the parties. NoRedInk may utilize subcontractors to fulfill any of its obligations or exercise any of its rights hereunder, provided that NoRedInk will remain responsible for such subcontractors' actions and omissions in connection with the Agreement as if NoRedInk had itself acted or failed to act. There are no third party beneficiaries to this Agreement.

11.3 **Force Majeure.** Except for a failure to make payments when due, party is not liable under any Agreement for non-performance caused by events or conditions beyond that party's reasonable control, if the party makes reasonable efforts to perform.

11.4 **Notices.** To the extent notices can be delivered by the use of a designated feature of the user interface of the Hosted Service (e.g., Client termination notices or address changes), notice will be effective when delivered through such user interfaces. All other notices under this Agreement shall be in writing and sent by email, or personally delivered or sent by guaranteed overnight courier, by registered or certified mail, return receipt requested to NoRedInk's address for notice set forth on the Order Form and to Client at the address provided by Client in its Hosted Service account, means evidenced by a delivery receipt or by email. Notice shall be deemed to have been given upon actual delivery (evidenced as to email by a non-automated reply) or refusal of delivery. Notices to NoRedInk shall be addressed to the attention of its CEO, with a copy to its Head of Operations.

11.5 **Waiver and Severability.** Any express waiver or failure to exercise promptly any right under this Agreement will not create a continuing waiver or any expectation of non-enforcement. If any provision of this Agreement is held to be contrary to law or unenforceable, the provision shall be changed and interpreted so as accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect, unless the modification or severance of any provision has a material adverse effect on a party, in which case such party may terminate this Agreement.

11.6 **Assignment.** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior express written consent of the other party, not to be unreasonably withheld. Notwithstanding the foregoing, NoRedInk may assign this Agreement without Client's consent in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Any purported assignment in breach of this Section shall be void and of no effect. This Agreement shall bind and inure to the benefit of the parties' respective permitted successors and permitted assigns.

11.7 **Counterparts.** Order Forms may be executed in counterparts (including by telefacsimile or exchange of PDF or similar documents), which taken together shall form one legal instrument.

11.8 **Entire Agreement and Construction.** These Terms, the DPA, and the Order Form constitute the entire agreement between the parties as to its subject matter. No modification or waiver of these Terms shall be effective unless in writing and signed by the party against whom the modification or waiver is to be asserted. Notwithstanding any language to the contrary therein, no terms or conditions stated in any Client order documentation (even if used as an Order Form) shall be incorporated into or form any part of these Terms.

This DPA was last revised on March 21, 2020.

### **Data Protection Addendum for NoRedInk Hosted Service**

This Data Protection Addendum (“DPA”) forms part of the Master Service Terms located at <https://www.noredink.com/master-services-terms> and the Order Form (together, the “**Agreement**”), entered into by and between the Client and NoRedInk Corp. (“NoRedInk”), pursuant to which Client accesses, uses and has accessed and used NoRedInk’s Hosted Service (as defined in the Agreement).

This Addendum applies to and takes precedence over the Agreement and any associated contractual document between the parties, such as an order form, statement of work or data protection addendum thereunder, to the extent of any conflict.

#### **1. Definitions**

1.1 “**Applicable Data Protection Laws**” means 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, AB 1584 (codified at California Education Code § 49073.1), and the Student Online Personal Information Protection Act (codified at California Business and Professions Code § 22584 *et seq.*), any specific state Covered Information protection laws set forth in the table set forth as Exhibit A hereto as of the date set forth in such table as applicable to NoRedInk, and such other state Covered Information protection laws as NoRedInk and Client may agree in writing shall apply.

1.2 “**CCPA**” means the California Consumer Privacy Act, codified at California Civil Code §1798.100 *et seq.*

1.3 “**Covered Information**” means (a) Educational Records and Student-Generated Content provided by Client or generated by the use of the Hosted Service by Client or Users; (b) all elements of Client Data which either identify or can reasonably be used to identify a natural living person; and (c) those elements of Client Data indexed to those elements identified in clause (a). Covered Information excludes any De-Identified Information.

1.4 “**De-Identified Information**” means any information which has been de-identified or aggregated in a manner which renders identification of natural persons infeasible.

1.5 “**Educational Records**” means 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.

1.6 “**student**” shall be interchangeable with “pupil” for the purposes of any Applicable Data Protection Laws.

1.7 “**Student-Generated Content**” means materials or content created by a student during and for the purpose of education including, but not limited to, essays, research reports, portfolios, creative writing, music or other audio files, photographs, videos, and account information that enables ongoing ownership of student content.

1.8 Any capitalized but undefined terms herein shall have the meaning set forth in the Agreement.

#### **2. Client Obligations**

2.1 Compliance. Client will comply with all Applicable Data Protection Laws in connection with the Agreement.

2.2 Unauthorized Access Notification. Client shall notify NoRedInk promptly of any known or suspected unauthorized access to Client Data, whether or not such access was made with User credentials. Client will reasonably assist NoRedInk in any efforts by NoRedInk to investigate and respond to any unauthorized access.

#### **3. NoRedInk Obligations**

3.1 Data Protection Laws: Use Generally. NoRedInk will comply with its obligations under the Applicable Data Protection Laws, provided that as to COPPA or any state law which requires consent or authorization from a parent or guardian for the collection or use of Covered Information, Client is responsible for fulfilling any applicable consent requirement. Without limiting the generality of the foregoing, NoRedInk shall not use or disclose Covered Information received from or on behalf of Client (or its Users) except as permitted or required by the Agreement and this Addendum, as required or expressly permitted by law, or as otherwise authorized in writing by Client. For the purposes of FERPA, NoRedInk shall be considered a School Official, under the control and direction of the Clients as it pertains to the use of Covered Information notwithstanding the above.

3.2 Parent Access. Client shall establish reasonable procedures by which a parent, legal guardian, or eligible student may review Covered Information in the student's records, correct erroneous information, and procedures for the transfer of student-generated content to a personal account, consistent with the functionality of services. NoRedInk shall respond in a timely manner (and no later than 45 days from the date of the request) to the Client's request for Covered Information in a student's records held by NoRedInk to view or correct as necessary. Subject to NoRedInk's obligations under the CCPA, in the event that a parent of a student or other individual contacts NoRedInk to review any of the Covered Information accessed pursuant to the Hosted Service, NoRedInk shall refer the parent or individual to the Client, who will follow the necessary and proper procedures regarding the requested information.

3.3 Student-Generated Content. If Student-Generated Content is stored or maintained by NoRedInk as part of the provision of the Hosted Service, NoRedInk shall, at the request of the Client or the relevant student, provide a copy thereof to the relevant student or the Client, as applicable, and if such a facility is available, transfer said Student-Generated Content to a separate student account upon termination of the Agreement; provided, however, such transfer shall only apply to Student-Generated Content that is severable from the Hosted Service.

3.4 Third Party Requests. Should a third party, including law enforcement and government entities, contact NoRedInk with a request for data held by NoRedInk in connection with the Hosted Service, NoRedInk shall, if permitted by the law or instrument under which such request is made, redirect the Third Party to request the data directly from the Client. If permitted by the law or instrument under which such request is made, NoRedInk shall notify the Client in advance of a compelled disclosure to a Third Party.

3.5 Employees; Subprocessors. NoRedInk shall require all employees and individual consultants who have access to Covered Information to comply with all applicable provisions of this DPA with respect to the Covered Information. NoRedInk shall be responsible for the actions or omissions of all employees, consultants and subcontractors receiving, accessing or processing Covered Information in connection with the Agreement as if NoRedInk had itself acted or failed to act.

3.6 Use of De-Identified Information. De-identified Information may be used by NoRedInk for the purposes of development, research, and improvement of educational sites, services, or applications, as set forth in the Agreement. NoRedInk will not attempt to re-identify De-identified Information and will not transfer De-identified Information to any party (other than a NoRedInk subcontractor in connection with the provision of the Services or as part of an assignment of the Agreement) unless: (a) the De-Identified Information is either aggregated with other similar data so that neither the identity of Client nor the identity of any natural person can reasonably be derived; or (b) that party agrees in writing not to attempt re-identification.

3.7 Data Availability. NoRedInk will provide the Client with any specified portion of the Covered Information within ten (10) calendar days of receipt of a written request for such Covered Information.

#### **4. Advertising Prohibition.**

NoRedInk will not use or sell Covered information to (a) market or advertise to students or families/guardians; (b) inform, influence, or enable marketing or advertising to students or families/guardians; (c) develop a profile of a User or a Student User's family member/guardian, for any commercial purpose other than providing the Service to Client. This section does not prohibit NoRedInk from using Covered Information as set forth in the Agreement and elsewhere in this DPA.

#### **5. Data Security**



5.1 Data Security Generally. NoRedInk agrees to abide by and maintain adequate data security measures, consistent with industry standards and good technology practices, to protect Covered Information from unauthorized disclosure or acquisition by an unauthorized person.

5.2 Passwords and Employee Access. NoRedInk shall secure usernames, passwords, and any other means of gaining access to the Hosted Service or to Covered Information, using security standards no less secure than industry standard. NoRedInk shall only provide access to Covered Information to employees, individual consultants or subcontractors that are performing Professional Services or supporting the Hosted Service. Employees and individual consultants with access to Covered Information shall have signed confidentiality agreements regarding said Covered Information. All employees with access to Covered Information shall be subject to criminal background checks in compliance with state and local ordinances.

5.3 Security Protocols. Both parties agree to maintain security protocols that meet industry standards in the transfer, transmission and storage of any data, including ensuring that data may only be viewed or accessed by parties legally allowed to do so.

5.4 Employee Training. NoRedInk shall provide periodic security training to those of its employees and individual consultants who operate or have access to the system. Further, NoRedInk shall provide Client with contact information of an employee who Client may contact if there are any security concerns or questions.

5.5 Security Technology. NoRedInk shall employ industry standard measures to protect data from unauthorized access, including server authentication and data encryption. NoRedInk shall host Client Data pursuant to the Agreement in an environment using a firewall that is updated according to industry standards.

5.6 Periodic Risk Assessment. NoRedInk will conduct digital and physical periodic (no less than semi-annual) risk assessments and remediate any identified security and privacy vulnerabilities in a timely manner.

5.7 Disposition of Data. NoRedInk shall destroy, delete or de-identify all Covered Information obtained under the Agreement when it is no longer needed for the purpose for which it was obtained, and/or transfer said Covered Information to Client or Client's designee in an industry standard format. During the Term of the Agreement, Client may request partial disposal of Covered Information obtained under the Agreement that is no longer needed. Upon termination of the Agreement, NoRedInk shall destroy, delete, or de-identify all Covered Information obtained under the Agreement by (a) shredding any hard copies of any Covered Information; or (b) secure deletion of electronic copies of Covered Information; or (c) modifying the Covered Information to make it De-Identified Information. The duty to destroy or delete Covered Information shall not extend to Covered Information that has been previously converted to De-Identified Information or placed in a separate account pursuant to the other terms of this DPA.

## **6. Data Breach.**

6.1 Breach Notification. In the event that Covered Information is accessed or obtained by an unauthorized person, NoRedInk shall provide notification to Client within a reasonable amount of time of the incident, and not exceeding forty-eight (48) hours. NoRedInk shall follow the process set forth in this Section 6.

6.2 Notification Structure. The security breach notification shall be written in plain language, shall be titled "Notice of Data Breach," and shall present the information described herein under the following headings: "What Happened," "What Information Was Involved," "What We Are Doing," "What You Can Do," and "For More Information." Additional information may be provided as a supplement to the notice.

6.3 Minimum Contents. The security breach notification shall include, at a minimum, the following information:

(a) The name and contact information of the Client to which the report is made.

(b) A list of the types of personal information that were or are reasonably believed to have been the subject of a breach.

(c) If the information is possible to determine at the time the notice is provided, then either (i) the date of the breach, (ii) the estimated date of the breach, or (iii) the date range within which the breach occurred. The notification shall also include the date of the notice.

(d) Whether the notification was delayed as a result of a law enforcement investigation, if that information is possible to determine at the time the notice is provided.

(e) A general description of the breach incident, if that information is possible to determine at the time the notice is provided.

6.4 Optional Contents. If feasible, then upon Client’s request, the security breach notification may also include any of the following:

(a) Information about what NoRedInk has done to protect individuals whose information has been breached.

(b) Advice on steps that the person whose information has been breached may take to protect himself or herself.

6.5 Legal Requirements. NoRedInk agrees to adhere to all requirements in applicable state and federal law with respect to a data breach related to the Covered Information, including, when appropriate or required, the required responsibilities and procedures for notification and mitigation of any such data breach.

6.6 Response Planning. NoRedInk further agrees to have a written incident response plan that reflects good practices and is consistent with industry standards for responding to a data breach, breach of security, privacy incident or unauthorized acquisition or use of Covered Information.

6.7 Other Interactions Regarding Breach. NoRedInk is prohibited from directly contacting parent, legal guardian or students unless expressly requested by Client or required by applicable law (including the CCPA). If Client requests NoRedInk’s assistance providing notice of unauthorized access, and such assistance is not unduly burdensome to NoRedInk, NoRedInk shall notify the affected parent, legal guardian or eligible student of the unauthorized access, which shall include the information required in this Section 6.

**Exhibit A**  
**Additional State Covered Information Protection Laws**

<i>Statute</i>	<i>As of Date</i>
Connecticut General Statutes 10-234aa – 10-234dd	2/21/2020
Illinois Student Online Personal Protection Act, 105 ILCS 85/1; Illinois School Student Records Act (ISSRA), 105 ILCS 10/1 et seq. & 23 IAC 375	2/21/2020
Montana Pupil Online Personal Information Protection Act (Montana House Bill 745)	2/21/2020
New York State Education Law Section 2-D	2/21/2020
Texas Education Code Chapter 32, Subchapter D	2/21/2020
Code of Virginia § 22.1-287.02	2/21/2020

**Customer name:** Ferris Junior High School

**Primary Contact Name:**  
CJ Lowery

**Primary contact email:**  
clowery@ferrisisd.org

**Billing address:**  
PO Box 459  
Ferris, Texas 75125  
United States

**Will a PO be required?**

Y

**Vendor Approval Required?**

Y

**Vendor Approved?**

Y

**Billing Email**

clowery@ferrisisd.org

**Billing Contact Name:**

CJ Lowery

**Service start date:**

06-10-2020

**Service end date:**

06-30-2021

**Payment Terms:**

On Invoice Start Date

**Billing Terms:**

Net 120

## SUMMARY

PRODUCT	DESCRIPTION	SALES PRICE	QTY	DISCOUNT	TOTAL PRICE
<b>NoRedInk Premium Site License - C</b>	NoRedInk Premium access for all students; includes virtual training for all participating teachers	\$8,000.00	1	10%	\$7,200.00
<b>TOTAL:</b>					\$7,200.00

-If applicable, all unused Premium training services will expire annually on the service end date.

-Training dates can only be confirmed after order forms are signed by both parties.

-NoRedInk Premium is unavailable during July in all years unless otherwise stated.

Please sign and return to: [rachel@noredink.com](mailto:rachel@noredink.com)

**Contract terms:**

This Order Form incorporates and is subject to the Master Services Terms — collectively the “Agreement” — and constitutes a binding contract entered into by and between NoRedInk Corp. (“NoRedInk”), a Delaware corporation with its principal place of business at 118 2nd Street, San Francisco, CA 94105, and the entity listed below as client (“Client”). The Master Services Terms are available at: [NoRedInk Master Services Agreement](#)  
The Data Protection Addendum is available at: [NoRedInk Data Protection Addendum](#)

NcRe/Ink Corp. Signature	Ferris Junior High School Signature
<p><b>Signature:</b> <u>Caleb Lush</u></p> <p><b>Name:</b> Caleb Lush</p> <p><b>Title:</b> Sr. Partnerships Manager</p> <p><b>Date:</b> 6/11/2020</p>	<p><b>Signature:</b> <u>CJ Lowery</u></p> <p><b>Name:</b> CJ Lowery</p> <p><b>Title:</b> Principal</p> <p><b>Email:</b> clowery@ferrisisd.org</p> <p><b>Date:</b> 6/11/2020</p>