

**NEW HAMPSHIRE STUDENT DATA PRIVACY AGREEMENT  
VERSION (2019)**

**Derry Cooperative School District**

**and**

IXL Learning, Inc.

**March 10, 2020**

This New Hampshire Student Data Privacy Agreement (“DPA”) is entered into by and between the school district, Derry Cooperative School District (hereinafter referred to as “LEA”) and IXL Learning, Inc. (hereinafter referred to as “Provider”) on March 10, 2020. The Parties agree to the terms as stated herein.

## RECITALS

**WHEREAS**, the Provider has agreed or will agree to provide the Local Education Agency (“LEA”) with certain digital educational services (“Services”) as described in Article I and Exhibit “A”; and

**WHEREAS**, in order to provide the Services described in Article 1 and Appendix A, 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 and 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; the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. §§ 1400 et. seq., 34 C.F.R. Part 300; and

**WHEREAS**, the documents and data transferred from New Hampshire LEAs and created by the Provider’s Services may be subject to several New Hampshire student privacy laws, including RSA 189:1-e and 189:65-69; RSA 186; NH Admin. Code Ed. 300 and NH Admin. Code Ed. 1100; and

**WHEREAS**, the Parties wish to enter into this DPA to ensure that the Services provided conform to the requirements of the privacy laws referred to above and to establish implementing procedures and duties.

**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 (as defined in Exhibit “C”) transmitted to Provider from the LEA pursuant to Exhibit “A”, including compliance with all applicable privacy statutes, which may include FERPA, PPRA, COPPA, IDEA, SOPIPA, RSA 189:1-e and 189:65 through 69; RSA 186-C; NH Admin. Code Ed. 300; NH Admin. Code Ed. 1100; and other applicable New Hampshire state laws, all as may be amended from time to time. In performing these services, to the extent Personally Identifiable Information (as defined in Exhibit “C”) from Pupil Records (as defined in Exhibit “C”) are transmitted to Provider from LEA, the Provider shall be considered a School Official with a legitimate educational interest, and performing services otherwise provided by the LEA. Provider shall be under the direct control and supervision of the LEA. Control duties are set forth below.
- 2. Nature of Services Provided.** The Provider has agreed to provide the following digital educational services described in Exhibit “A”.
- 3. Student Data to Be Provided.** In order to perform the Services described in this Article and Exhibit “A”, LEA shall provide the categories of data described 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 terms used in all other writings, including, but not limited to, a service agreement, privacy policies or any terms of service, to the extent such terms are used in this DPA.

## **ARTICLE II: DATA OWNERSHIP AND AUTHORIZED ACCESS**

1. **Student Data Property of LEA.** As between the parties, all Student Data or any other Pupil Records transmitted to the Provider pursuant to this Agreement is and will continue to be the property of and under the control of the LEA , or to the party who provided such data (such as the student or parent.). The Provider further acknowledges and agrees that all copies of such Student Data or any other Pupil Records transmitted to the Provider, including any modifications or additions or any portion thereof from any source, are also subject to the provisions of this Agreement in the same manner as the original Student Data or Pupil Records. The Parties agree that as between them, all rights, including all intellectual property rights in and to Student Data or any other Pupil Records contemplated per this Agreement shall remain the exclusive property of the LEA. For the purposes of FERPA and state law, 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. The Provider will cooperate and provide Student Data within ten (10) days at the LEA’s request. Provider may transfer pupil-generated content to a separate account, at the written direction of LEA.
2. **Parent Access.** LEA shall establish reasonable procedures by which a parent, legal guardian, or eligible student may review personally identifiable information on the pupil’s records, correct erroneous information, and procedures for the transfer of pupil-generated content to a personal account, consistent with the functionality of services. Provider shall cooperate and respond within ten (10) days to the LEA’s request for personally identifiable information 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 Pupil Records of 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.** Provider shall, at the request of the LEA, transfer Student Generated Content to a separate student account.
4. **Third Party Request.** Should a Third Party, including, but not limited to law enforcement, former employees of the LEA, current employees of the LEA, 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 and shall cooperate with the LEA to collect the required information. Provider shall notify the LEA in advance of a compelled disclosure to a Third Party, unless legally prohibited. The Provider will not use, disclose, compile, transfer, sell the Student Data and/or any portion thereof to any third party or other entity or allow any other third party or other entity to use, disclose, compile, transfer or sell

the Student Data and/or any portion thereof, without the express written consent of the LEA or without a court order or lawfully issued subpoena. 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.

5. **No Unauthorized Use.** Provider shall not use Student Data or information in a Pupil Record for any purpose other than as explicitly specified in this DPA.
6. **Subprocessors.** Provider shall enter into written agreements with all Subprocessors performing functions pursuant to this DPA, whereby the Subprocessors agree to protect Student Data in manner consistent with the terms of this DPA.

### **ARTICLE III: DUTIES OF LEA**

1. **Provide Data In Compliance With Laws.** LEA shall provide data for the purposes of the DPA in compliance with the FERPA, PPRA, IDEA, RSA 189:1-e and 189:65 through 69; RSA 186-C; NH Admin. Code Ed. 300; NH Admin. Code Ed. 1100 and the other privacy statutes quoted in this DPA. LEA shall ensure that its annual notice under FERPA includes vendors, such as the Provider, as "School Officials."
2. **Reasonable Precautions.** LEA shall take reasonable precautions to secure usernames, passwords, and any other means of gaining access to the services and hosted data.
3. **Unauthorized Access Notification.** LEA shall notify Provider promptly of any known or suspected unauthorized access. LEA will assist Provider in any efforts by Provider to investigate and respond to any unauthorized access.

### **ARTICLE IV: DUTIES OF PROVIDER**

1. **Privacy Compliance.** The Provider shall comply with all New Hampshire and Federal laws and regulations pertaining to data privacy and security, including FERPA, COPPA, PPRA, RSA 189:1-e and 189:65 through 69; RSA 186-C; NH Admin. Code Ed. 300; NH Admin. Code Ed. 1100 and all other applicable New Hampshire privacy statutes and regulations.
2. **Authorized Use.** Student Data shared pursuant to this DPA, including persistent unique identifiers, shall be used for no purpose other than the Services stated in this DPA and as 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, any student data, 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, unless it fits into the de-identified information exception in Article IV, Section 4, or there is a court order or lawfully issued subpoena for the information.

3. **Employee Obligation.** Provider shall require all employees and agents who have access to Student Data to comply with all applicable provisions of this DPA with respect to the data shared under this DPA. Provider agrees to require and maintain an appropriate confidentiality agreement from each employee or agent with access to Student Data.
  
4. **No Disclosure.** De-identified information, as defined in Exhibit “C”, may be used by the Provider for the purposes of development, research, and improvement of educational sites, services, or applications, as any other member of the public or party would be able to use de-identified data pursuant to 34 CFR 99.31(b). The Provider and LEA agree that the Provider cannot successfully de-identify information if there are fewer than five (5) students in the samples of a particular field or category of information collected, *i.e.*, five students in a particular grade, five students of a particular race, or five students with a particular disability. Provider agrees not to attempt to re-identify de-identified Student Data. Provider shall not copy, reproduce or transmit any data obtained under this DPA and/or any portion thereof, except for purposes permitted by the DPA.
  
5. **Disposition of Data.** Provider shall dispose or delete all personally identifiable data obtained under the DPA when it is no longer needed for the purpose for which it was obtained and transfer said data to LEA or LEA’s designee within sixty (60) days of the date of termination and according to a schedule and procedure as the Parties may reasonably agree. Nothing in the DPA authorizes Provider to maintain personally identifiable data obtained under any other writing beyond the time period reasonably needed to complete the disposition. 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. Provider shall provide written notification to LEA when the 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 Deletion 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 immediately provide the LEA with any specified portion of the Student Data within ten (10) calendar days of receipt of said request.
  
6. **Advertising Prohibition.** Provider is prohibited from leasing, renting, 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 Client.

## ARTICLE V: DATA PROVISIONS

1. **Data Security.** The Provider agrees to abide by and maintain adequate data security measures, as outlined in IXL Information Security Policies and Procedures, attached in “Exhibit F” to protect Student Data from unauthorized disclosure or acquisition by an unauthorized person. The general security duties of Provider are set forth below. Provider may further detail its security programs and measures in Exhibit “F” hereto. These measures shall include, but are not limited to:
  - a. **Passwords and Employee Access.** Provider shall secure usernames, passwords, and any other means of gaining access to the Services or to Student Data using encryption and secure protocols for external connections and firewall rules. 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 said Student Data. All employees with access to Student Records shall pass criminal background checks according to Provider’s then current criminal background check procedures
  - b. **Destruction of Data.** Provider shall destroy or delete all Personally Identifiable Data contained in Student Data and obtained under the DPA 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 a schedule and procedure as the parties may reasonable agree as outlined in Article IV, Section 5. Nothing in the DPA authorizes Provider to maintain personally identifiable data beyond the time period reasonably needed to complete the disposition.
  - c. **Security Protocols.** Both parties agree to maintain security protocols in the transfer or transmission of any data, including taking steps so that data may only be viewed or accessed by parties legally allowed to do so. Provider shall maintain all data obtained or generated pursuant to the DPA in a secure computer environment and not copy, reproduce, or transmit Student Data obtained pursuant to the DPA, except as necessary to fulfill the purpose of data requests by LEA. The foregoing does not limit the ability of the Provider to allow any necessary service providers to view or access data as set forth in Article IV, section 4.
  - 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, Secure Socket Layer (“SSL”), or equivalent technology shall be employed to protect data from unauthorized access. The service security measures shall include server authentication and data encryption. Provider shall host data pursuant to the DPA in an environment using a firewall that is periodically updated.
  - f. **Security Coordinator.** Provider shall provide the name and contact information of Provider’s Security Coordinator for the Student Data received pursuant to the DPA.
  - g. **Subprocessors Bound.** Provider shall enter into written agreements whereby Subprocessors agree to secure and protect Student Data in a manner consistent with the terms of this Article V. Provider shall periodically conduct or review compliance

monitoring and assessments of Subprocessors to determine their compliance. with the written agreement. **h. Periodic Risk Assessment.** Provider further acknowledges and agrees to conduct periodic risk assessments and remediate any identified security and privacy vulnerabilities in a timely manner.

- i. Backups.** Provider agrees to maintain backup copies, backed up at least daily, of Student Data in case of Provider’s system failure or any other unforeseen event resulting in loss of Student Data or any portion thereof.
- j. Audits.** Upon receipt of a request from the LEA and at most once a year, except in the case of a verified breach, the Provider will allow the LEA to audit the security and privacy measures that are in place to ensure protection of the Student Record or any portion thereof. The audit will be subject to reasonable time, place and manner restrictions from the Provider. The Provider will cooperate reasonably with the LEA and any local, state, or federal agency with oversight authority/jurisdiction in connection with any audit or investigation of the Provider and/or delivery of Services to students and/or LEA, and shall provide reasonable access to the Provider’s facilities, staff, agents and LEA’s Student Data and all records pertaining to the Provider, LEA and delivery of Services to the Provider. The preceding sentence only applies to the extent such audits or investigations are required of Provider or LEA by law. Failure to cooperate shall be deemed a material breach of the Agreement. Provider may provide an independent, third-party report in place of allowing the LEA to conduct the audit, if the LEA consents to the independent, third-party. The LEA may not unreasonably withhold its consent.
- k. New Hampshire Specific Data Security Requirements.** The Provider agrees to comply with the “Minimum Standards for Privacy and Security of Student and Employee Data” from the New Hampshire Department of Education as it exists on the date of this Agreement (available at: <https://www.education.nh.gov/data/documents/minimum-standards-privacy.pdf>).

- 2. Data Breach.** In the event that Student Data is accessed or obtained by an unauthorized individual, Provider shall provide notification to LEA as soon as practicable and no later than within ten (10) days of discovery of the incident. 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 under the following headings: “What Happened,” “What Information Was Involved,” “When it Occurred,” “What We Are Doing,” “What You Can Do,” 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, 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 or are reasonably believed to have been the 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 as a result of a law enforcement investigation, if that information is possible to determine at the time the notice is provided.
  - v. A general description of the breach incident, if that information is possible to determine at the time the notice is provided.
  - vi. The estimated number of students and teachers affected by the breach, if any.
- c. Provider agrees to adhere to all requirements in the New Hampshire Data Breach law 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.
  - d. Provider further acknowledges and agrees to have a written incident response plan that 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 copy of said written incident response plan.

The Provider will assist the District, when requested in notifying the affected parent, legal guardian or eligible pupil of the unauthorized access,

#### **ARTICLE VI: MISCELLANEOUS**

1. **Term**. The Provider shall be bound by this DPA for so long as the Provider maintains any Student Data. Notwithstanding the foregoing, Provider agrees to be bound by the terms and obligations of this DPA for three (3) years.
2. **Termination**. In the event that either party seeks to terminate this DPA, they may do so by mutual written consent and as long as any service agreement or terms of service, to the extent one exists, has lapsed or has been terminated.

The LEA may terminate this DPA and any service agreement or contract with the Provider if the Provider breaches any terms of this DPA.

3. **Effect of Termination**. If the DPA is terminated, the Provider shall destroy all Personally Identifiable Data pursuant to Article V, section 1(b).
4. **Priority of Agreements**. This DPA shall govern the treatment of student records in order to comply with the privacy protections, including those found in FERPA, IDEA, COPPA, PPRA, RSA 189:1-e and 189:65-69; RSA 186; NH Admin. Code Ed. 300 and NH Admin. Code Ed. 1100. In the event there is conflict between the terms of the DPA and any other writing, such as service agreement or with any other bid/RFP, terms of service, privacy policy, license agreement, or writing, the terms of this DPA shall apply and take precedence. Except as described in this paragraph herein, all other provisions of any other 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, facsimile 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 below.

The designated representative for the Provider for this Agreement is:

Name \_\_\_\_\_  
Title \_\_\_\_\_  
Address \_\_\_\_\_  
Telephone Number \_\_\_\_\_  
Email legalnotices@ixl.com \_\_\_\_\_

The designated representative for the LEA for this Agreement is:

Clifton Dancy  
Director of Information Services  
cdancy@sau10.org 603-432-1224  
Derry Cooperative School District  
18 South Main Street, Derry, NH 03038

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 NEW HAMPSHIRE, WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES. EACH

PARTY CONSENTS AND SUBMITS TO THE SOLE AND EXCLUSIVE JURISDICTION TO THE STATE AND FEDERAL COURTS OF ROCKINGHAM COUNTY FOR ANY DISPUTE ARISING OUT OF OR RELATING TO THIS DPA OR THE TRANSACTIONS CONTEMPLATED HEREBY.

9. **Authority.** Provider represents that it is authorized to bind to the terms of this Agreement, including confidentiality and destruction 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.
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. **Multiple Counterparts:** This Agreement may be executed in any number of identical counterparts. If so executed, each of such counterparts shall constitute this Agreement. In proving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the parties have executed this New Hampshire Student Data Privacy Agreement as of the last day noted below.

**DERRY COOPERATIVE SCHOOL DISTRICT**

By: *Clifton Dancy* Date: 3/11/2020  
Clifton Dancy (Mar 11, 2020)

Printed Name: Clifton Dancy Title/Position: Director of Information Services

**IXL LEARNING, INC.**

By: *Paul Mishkin* Date: 3/11/2020

Printed Name: Paul Mishkin Title/Position: CEO

**EXHIBIT “A”**  
DESCRIPTION OF SERVICES

<https://www.ixl.com/>

The IXL Service, pursuant to the IXL terms of service ([www.ixl.com/termsofservice](http://www.ixl.com/termsofservice)) and IXL privacy policy ([www.ixl.com/privacypolicy](http://www.ixl.com/privacypolicy)).

<https://www.quia.com/web>

The Quia Service, pursuant to the Quia terms of service ([https://www.quia.com/web/terms\\_of\\_service.html](https://www.quia.com/web/terms_of_service.html)) and Quia privacy policy ([https://www.quia.com/web/privacy\\_policy.html](https://www.quia.com/web/privacy_policy.html)).





## EXHIBIT “C”

### DEFINITIONS

**De-Identified Information (DII):** De-Identification refers to the process by which the Vendor removes or obscures any Personally Identifiable Information (“PII”) from student records in a way that removes or minimizes the risk of disclosure of the identity of the individual and information about them. The Provider’s specific steps to de-identify the data will depend on the circumstances, but should be appropriate to protect students. Some potential disclosure limitation methods are blurring, masking, and perturbation. De-identification should ensure that any information when put together cannot indirectly identify the student, not only from the viewpoint of the public, but also from the vantage of those who are familiar with the individual.

**NIST 800-63-3:** Draft National Institute of Standards and Technology (“NIST”) Special Publication 800-63-3 Digital Authentication Guideline.

**Personally Identifiable Information (PII):** The terms “Personally Identifiable Information” or “PII” shall be as defined in FERPA, 34 CFR 99.3 and as “student personally-identifiable data” is defined in RSA 189:65(VII):

The term includes, but is not limited to -

- (a) The student's name;
- (b) The name of the student's parent or other family members;
- (c) The address of the student or student's family;
- (d) A personal identifier, such as the student's social security number, student number, or biometric record;
- (e) Other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name, email, social media address, or other electronic address, telephone number, credit card account number, insurance account number, and financial services account number;
- (f) Other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty, such as student work, discipline records, photos/videos, evaluations, medical/health records, criminal/juvenile records, disability status, and evaluations;; or
- (g) Information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates.

For the avoidance of doubt, PII excludes de-identified information.

**Provider:** For purposes of the DPA, 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.

**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:** Defined as an education records as defined in FERPA, 34 CFR 99.3: The term means those records that are:

(1) Directly related to a student; and

(2) Maintained by an educational agency or institution or by a party acting for the agency or institution. For the avoidance of doubt, Pupil Records excludes de-identified information.

**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. The definition of “school official” encompasses the definition of “authorized school personnel” under 603 CMR 23.02.

**Student:** For the purposes of this document, the terms “student” and “pupil” are used interchangeably.

**Student Data:** . Student Data includes data from Pupil Records as previously defined whether gathered by the Provider as the agent to the LEA or provided by the LEA or its users, students or students’ parents/guardians. 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.

**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 Data 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 an entity that is not the provider, a subprocessor or LEA.



**EXHIBIT "D"**

**DIRECTIVE FOR DISPOSITION OF DATA**

[Name or District or LEA] directs [Name of Company] to dispose of data obtained by Company pursuant to the terms of the DPA between LEA and Provider. The terms of the Disposition are set forth below:

1. Extent of Disposition

\_\_\_ Disposition is partial. The categories of data to be disposed of are set forth below or are found in an attachment to this Directive:

[Insert categories of data here]

\_\_\_ Disposition is Complete. Disposition extends to all categories of data.

2. Nature of Disposition

\_\_\_ Disposition shall be by destruction or deletion of data.

\_\_\_ Disposition shall be by a transfer of data. The data shall be transferred to the following site as follows:

[Insert or attach special instructions.]

3. Timing of Disposition

Data shall be disposed of by the following date:

\_\_\_ As soon as commercially practicable

\_\_\_ By (Insert Date)

4. Signature

\_\_\_\_\_  
(Authorized Representative of LEA)

\_\_\_\_\_  
Date

5. Verification of Disposition of Data

\_\_\_\_\_  
Authorized Representative of Company

\_\_\_\_\_  
Date