



Dear Cumberland CUSD 77,

We are continuously upgrading our offerings to our clients. As part of this we would like to implement the following service agreement with your school district.

This is the New Lumen Touch Master Services Agreement that will supersede all previous agreements.

Please be sure to read this and ensure that all the people in your organization are aware of the conditions in this agreement.

Considering that the essence of our offering relates to the **confidentiality** of student data, we pay the utmost attention to all aspects of security governed by federal and state statutes. We build as many safety elements as possible to ensure that student data is secure at all times. We encourage you to inform us of any improvements you think can be brought about to enhance the integrity of our products.

Best regards,

Dr John Vandewalle CEO

**MASTER SERVICES AGREEMENT**

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**MASTER SERVICES AGREEMENT**

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MASTER SERVICES AGREEMENT  
LUMEN TOUCH, LLC.

This Master Services Agreement (“**Agreement**”) is made as of May 19, 2021 (the “**Effective Date**”) by and between Cumberland CUSD 77 (“**Customer**”), a School District having an office at 1496 IL Rte 121, Toledo, IL 62468 and Lumen Touch, LLC, a Kansas Limited Liability Company (“**Provider**”). In consideration of the mutual covenants set forth herein, Customer and Provider (hereinafter referred to together as “**Parties**”) hereby agree as follows:

## 1. SERVICES

**1.1 Services.** Provider will supply the services and/or products (the “**Services**”) set forth in any Additional Service Order executed by the parties in the form of Exhibit A attached hereto and incorporated herein (“**Additional Service Order**” or “**ASO**”). Provider will provide the Services in accordance with the specifications and schedule set forth in the applicable ASO. To the extent any terms or provisions of an ASO conflict with the terms and provisions of this Agreement, the terms and provisions of this Agreement shall control, except to the extent such ASO specifically states the parties’ intent that such ASO controls with respect to a particular matter. If the parties do not agree upon a schedule or milestones for the performance of certain Services, then Provider will perform such Services with reasonable diligence under the circumstances. Customer registration for, or use of the Services, constitutes Customer’s assent to this Agreement, as well as any terms and conditions available on Provider’s website (located at <http://www.lumentouch.com>), including, but not limited to Provider’s Privacy Policy and End User License Agreement (“**EULA**”). Except as provided for herein to the contrary, Provider reserves the right to make modifications to its Privacy Policy or EULA that are not otherwise in conflict with the terms of this Agreement upon its website and shall use Provider’s reasonable best efforts to inform Customer of any such changes.

**1.2 Performance Standards.** The parties will consult and cooperate to coordinate the Services with the activities of Customer’s representatives. Provider will supply the Services in accordance with the terms of the ASO and the specifications therein and in a manner consistent with general industry standards reasonably applicable to the provision of the Services.

**1.3 Features License & Restrictions.** If the Services include access to any of Provider’s databases, content, online systems, functions, software, remotely-accessed gateways, platforms, or other products (collectively, “**Features**”) such access shall be governed by this paragraph. Access to certain Features may be restricted and Features may change from time to time. Provider hereby grants Customer a non-exclusive, non-transferable, limited license (“**License**”) to access the Features and to use content made available by the Features (“**Content**”), solely for Customer’s internal business and educational purposes, subject to the terms and conditions of this Agreement. All rights not expressly granted to Customer are reserved by Provider and its licensors. Except as otherwise provided with respect to certain Content, the License includes the right to download and temporarily store insubstantial portions of Content to a storage device solely: (i) to display such Content; and (ii) to quote and excerpt from such Content by electronic cutting and pasting or other means in internal reports, lesson plans, lessons, and similar works created by Customer, its administrators, teachers, enrolled students, or parents or legal guardians of Customer’s enrolled students. The License shall expire upon termination or expiration of the Term of this Agreement.

No individual shall be authorized to access Features or Content under the License unless such individual is an administrator, employee, teacher, consultant, contractor, agent, enrolled student, or a parent or legal guardian of an enrolled student of Customer. The number of individuals authorized to access the Features under the License shall be set in the applicable ASO and Provider will supply Customer with an equal number of distinct keys, codes, passwords, or similar devices (“**Access Keys**”) which will permit individuals authorized to access the Features and Content (“**Users**”) to access the Features and Content. When issued by Provider, Access Keys shall be assigned to specific individuals and shall not be

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shared or used by more than one individual User. Access Keys may be reassigned upon written request and authorization of Provider in the event a User's relationship with Customer changes such that the User no longer accesses Features or Content. Certain Features and Content are licensed subject to "Additional Terms" (as defined below), which take precedence over the rights granted in this Section.

Neither Customer nor any User may copy, download, store, publish, transmit, transfer, sell or otherwise use the Features or Content, or any portion thereof, in any form or by any means, except: (i) as expressly permitted by this Agreement; (ii) with Provider's prior written permission; or (iii) if not expressly prohibited by this Agreement or by the "Additional Terms," as allowed under the fair use provision of the Copyright Act (17 U.S.C. § 107). Features and Content shall not be stored or used in an archival database or other searchable database except as expressly permitted by this Agreement. Neither Customer nor any User shall: (i) license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party, the Features or the Content in any way; (ii) modify or make derivative works based upon the Features or the Content; (iii) create Internet "links" to the Features or Content or "frame" or "mirror" any Features or Content on any other server or wireless or Internet-based device; or (iv) reverse engineer or access the Features or Content in order to: (a) build a competitive product or service, (b) build a product using similar ideas, features, functions or graphics of the Features or Content, or (c) copy any ideas, features, functions or graphics of the Features or Content. Neither Customer nor any User may access the Features or Content if Customer or User is a competitor of Provider, except with Provider's prior written consent. In addition, neither Customer nor any User may access the Features or Content for purposes of monitoring availability, performance or functionality, or for any other benchmarking or competitive purposes.

Certain Features or Content may be governed by terms and conditions, including charges, which are different from those set forth in this Agreement ("**Additional Terms**"). Any Additional Terms shall be in writing and shall not be enforceable unless signed by both of the Parties. All Additional Terms will be considered part of this Agreement.

**1.4 Remote Backup and Disaster Recovery Service.** As an additional service, and at an additional cost, Provider may offer to supply a periodic remote backup of "Customer Data" (defined below) in the event of a server malfunction, catastrophic event, or other data loss ("**Disaster Recovery Service**"). **Unless otherwise stated in an ASO, Disaster Recovery Service is not included in the Services. If Disaster Recovery Service is not included on the applicable ASO, Customer is solely responsible for any backup, disaster recovery, and restoration of Customer Data.** If Provider supplies data restoration services following a server malfunction, catastrophic event, or other data loss, Customer will be charged Provider's then-current rate.

**1.5 Data Storage.** The maximum disk storage space provided to Customer at no additional charge is 5 MB per User. If the amount of disk storage required exceeds these limits, Customer will be charged the then-current storage fees. Provider will use reasonable efforts to notify Customer when the average storage used per User reaches approximately 90% of the maximum; however, any failure by Provider to notify Customer shall not affect Customer's responsibility for such additional storage charges. Provider reserves the right to establish or modify its general practices and limits relating to storage of Customer Data.

## 2. COMPENSATION

**2.1 Service Fees.** For delivery of the Services, Customer agrees to pay Provider the fees as set forth in this Agreement and the ASO attached and incorporated herein as Exhibit A ("**Service Fees**"). To the extent that the Services are subject to any taxes, fees or levies of any nature which may be imposed by any governmental authority, Customer shall be solely responsible for the payment of any and all such taxes, fees or levies. For Services including access to Features, initial Service Fees are computed by

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multiplying the number of individual Users authorized to access the Features by the Individual User Fee provided in the ASO.

**2.2 Invoices/Manner of Payment.** Service Fees are non-refundable and shall be fully earned, due and payable to Provider as provided in the Payment Schedule in Exhibit A. Any increase in Service Fees must be agreed upon in writing by Customer prior to each annual renewal. If additional ASOs are added after the Effective Date which do not include specific payment provisions, Provider shall send Customer for each ASO one or more separate invoices, which invoice(s) shall summarize the Services provided during that period of time under such ASOs and the Service Fees due thereunder. Except as otherwise provided, Customer shall pay all amounts to Provider within thirty (30) days after Customer's receipt of such invoice(s). If Customer believes an invoice is incorrect, Customer must contact Provider in writing within sixty (60) days of the invoice date. The notice must contain the invoice and amount in question to be eligible to receive an adjustment or credit.

Customer agrees to supply Provider with complete and accurate billing and contact information, including without limitation, Customer's legal name, street address, e-mail address, name and telephone number of Customer's authorized billing agent and any individuals authorized to approve "Change Order Estimates" (defined below) and administer Customer's use of the Services on behalf of Customer ("**License Administrator**"). Customer agrees to update this information within thirty (30) days of any change.

**2.3 Change Orders, Additional Access to Features.** Customer may from time to time request additional Services by issuing a written request to Provider ("**Change Order Request**"). Provider will respond in writing to any Change Order Request, stating how such proposed changes to the Services will affect the time and/or materials required for Provider to provide the Services, as well as the increase in the Service Fees ("**Change Order Estimate**"). If Customer agrees in writing to such Change Order Estimate, the applicable ASO will automatically be deemed amended to incorporate the revisions to the Services as set forth in the Change Order Request (or as otherwise mutually agreed to in writing by the parties) and any agreed-upon modifications to the time, materials and/or Service Fees as set forth in the Change Order Estimate (or as otherwise mutually agreed to in writing by the parties). If Provider authorizes an increase in the number of individual Users authorized to access Features: (i) such additional access shall be coterminous with the then-current Term of this Agreement; (ii) the fee for the added access shall be at Provider's then-current rate; and (iii) such additional charges shall be assessed as of the first day of the month in which such access is granted, without proration.

**2.4 Non-Payment and Suspension.** In addition to any other rights granted to Provider herein, in the event Customer fails to pay Provider any amounts owed Provider under the Agreement when due, Provider may suspend provision of Services under the Agreement until such amounts are paid, or Provider may terminate the Agreement pursuant to Section 8. All such unpaid amounts shall bear interest at the maximum rate permitted by law, and may be collected by Provider. Suspension of Services under this Section shall not relieve Customer of its obligation to pay Service Fees under this Agreement. Provider may charge Customer a reconnection fee at Provider's then-current rate if Customer requests that Services resume after a period of suspension under this Section. Customer agrees that Provider has no obligation to retain Customer Data and that Customer Data may be irretrievably deleted without notice if Customer's account is thirty (30) days or more delinquent.

### 3. CONFIDENTIALITY

**3.1 Confidentiality Obligation.** During the term of this Agreement and for a period of ten (10) years thereafter, the Parties will maintain all "Confidential Information" (as defined below) as confidential and will not disclose any Confidential Information or use any Confidential Information for any purpose, without prior written consent of the other party, except: (i) as expressly authorized by this Agreement; (ii) as permitted by Section 3.3; or (iii) to its employees and Provider-approved subcontractors or other representatives who require access to such information for Customer to realize the benefit of the Services,

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so long as such persons are under obligations regarding the confidentiality of the Confidential Information that are consistent with and no less protective than the terms of this Agreement. The Parties will use at least the same standard of care used to protect a party's own confidential information (but in no event less than reasonable care) to ensure that its employees and subcontractors and other representatives do not disclose or make any unauthorized use of the Confidential Information. Each party shall be responsible for any breach of this Agreement by any of its employees, subcontractors or other representatives.

**3.2 Definition of Confidential Information.** For purposes of this Agreement, "**Confidential Information**" means all information, whether in oral, written, graphic or electronic form, provided or otherwise made available pursuant to or in connection with this Agreement, any ASOs and/or any separate confidentiality or non-disclosure agreement entered into by the parties (including, without limitation, all information relating to any of Provider's products made available to Customer, Service Fees, Access Keys, and terms of this Agreement), and all data, inventions and information developed, generated, produced or made in connection with the Services or any ASOs. Notwithstanding the foregoing, Confidential Information shall not include information shared by Provider which Customer can demonstrate by competent written proof: (i) is or becomes publicly known other than as a result of any breach of this Agreement by Customer; (ii) is disclosed to Customer by a third party who rightfully possesses the information and is not under an obligation of confidentiality with respect thereto; or (iii) was known to Customer prior to its first receipt from Provider (whether such first receipt occurred before or during the term of this Agreement); neither shall Confidential Information include information designated as "directory information" by law. "Work Product" and "Intellectual Property" (as defined below) shall not be subject to the exception in the foregoing clause (iii) and shall in all events be Confidential Information of Provider. "Customer Data" (as defined below) shall in all events be Confidential Information of Customer subject to Providers limited rights to use aggregated, depersonalized Customer Data in a manner consistent with all relevant statutes and laws as provided for in Section 4.3.

**3.3 Authorized Disclosure.** Notwithstanding the provisions of Section 3.1, Parties may disclose Confidential Information, without violating their obligations under this Agreement, to the extent the disclosure is required by a valid order of a court or other governmental body having jurisdiction or is otherwise required by law or regulation, *provided* that the party: (i) shall give reasonable prior written notice to the other party of such required disclosure; (ii) shall obtain, or shall cooperate with the other party's efforts to obtain, a protective order or other confidential treatment of such Confidential Information; and (iii) shall disclose only that portion of the Confidential Information which it is legally required to disclose. Notwithstanding the foregoing, the Parties acknowledge that Customer is or may be a public governmental body and as such, is or may be required to comply with the "Sunshine Laws" of its state or legal jurisdiction and nothing in this Agreement requires Customer to give Provider notice of its intention to disclose public records in accordance with such legal requirements.

**3.4 Additional Limits on Use.** The Parties shall not use the Confidential Information for any purpose or in any manner that would constitute a violation of any law or regulation. The Parties will take all appropriate steps to safeguard the Confidential Information and to protect it against disclosure, misuse, espionage, loss and theft. The Parties shall promptly notify one another in the event of any loss or unauthorized use or disclosure of any of the Confidential Information.

#### **4. PROPRIETARY RIGHTS**

**4.1 Provider's Work Product & Intellectual Property.** Provider shall own and retain all right, title and interest in and to: (i) all deliverables, reports, documents, techniques, know-how, algorithms, software, specifications, plans, notes, drawings, designs, pictures, inventions, data, information, conclusions, results, materials, compounds and other items authored, produced, provided, created, developed, made or generated by the Provider in the course of conducting, or otherwise in connection with, the Services

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(“**Work Product**”), and (ii) any and all patent rights, copyrights, trade secrets, trademark rights and other intellectual property rights in the Work Product (“**Intellectual Property**”). Provider specifically acknowledges and agrees that curriculum, lesson plans, reports and other documents and files created by the Customer for their own use shall not be deemed to be the Work Product of the Provider. To the extent applicable, Provider shall be deemed to be the “author” of all Work Product and all works of authorship contained in any Work Product shall not constitute “work made for hire” under the U.S. Copyright Act (17 U.S.C. §§ 101 et seq.) or any other applicable copyright law. Customer hereby waives any and all moral rights (including rights of integrity and attribution) in and to the Work Product. Customer hereby assigns to Provider all right, title and interest in and to all Work Product and Intellectual Property. All Work Product will be deemed to be the Confidential Information of Provider under and subject to Section 3. Provider shall have the right to publish, disclose and use any and all Work Product containing Customer Data, as that term is defined in Paragraph 4.3 of this Agreement, only after obtaining the written permission of Customer.

**4.2 Proprietary Material.** Customer acknowledges that Provider alone (and its licensors, where applicable) own all right, title and interest, including all related intellectual property rights, in and to all constituents of the Services, including without limitation, the Features, Provider’s technology, the “Lumen Touch, LLC” name, the Lumen Touch, LLC logo and the product names and marks associated with the Services (“**Proprietary Material**”) and Customer acknowledges that this Agreement does not convey to Customer any rights of ownership in or related to the Proprietary Material. Customer agrees to abide by all copyright notices, trademark rules, information, and restrictions applicable to Proprietary Material, and Customer agrees to not use, copy, reproduce, modify, translate, publish, broadcast, transmit, distribute, perform, upload, display, license, sell or otherwise exploit for any purpose Proprietary Material, without obtaining the prior consent of the owner of that Proprietary Material. The requirements of this paragraph apply notwithstanding any functional capability of the Services which makes the violation of this paragraph technically possible. Provider reserves the right to remove material from the Services, Features, Content, or Customer Data, which Provider believes in good faith to violate copyright or intellectual property rights.

**4.3 Customer Data.** Provider agrees to protect Customer Data in accordance with the Provider’s Privacy Policy as updated upon the Provider website from time to time. Provider has accepted and agrees to be bound by the [Future of Privacy Forum \(FPF\)](#) and the [Software & Information Industry Association \(SIIA\)](#) Student Privacy Pledge 2020. Further, for Customers in jurisdictions that have adopted the privacy protocols established by the Student Data Privacy Consortium, Provider and Customer shall execute a Standard Student Data Privacy Agreement, which shall take precedence over any conflicting terms contained in the Privacy Policy or this Agreement. For the purposes of this Agreement, “Customer Data” means any data, information, material, or content provided or submitted by Customer or any User to Provider or to the Features in connection with the Services (“**Customer Data**”). Except for the limited grant of rights contained herein, all Customer Data is owned by Customer and is to be strictly held as confidential in accordance with the Confidentiality provisions of this Agreement. Customer hereby grants Provider a worldwide, royalty free, perpetual, irrevocable, non-exclusive, and fully sub-licensable license to use, reproduce, modify, adapt, publish, translate, create derivative works from, distribute, transmit, share, perform and display aggregated, depersonalized Customer Data in a manner consistent with the Privacy Policy and all relevant statutes and laws, subject to advanced review and approval by Customer which shall not be unreasonably withheld. The rights granted Provider under this paragraph shall survive termination of this Agreement. Customer and/or User(s) retain any rights in Customer Data that Customer and/or User(s) may have in such Customer Data, subject to the rights, licenses and privileges granted in this Section. Customer represents and warrants to Provider that Customer owns or otherwise has adequate rights to grant the rights granted Provider by this Section. Customer represents, warrants and undertakes that: (i) use of the Customer Data will not infringe the rights of any third parties (including that the Customer Data is not defamatory); (ii) Customer has obtained all rights and consents that are

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necessary for Customer to provide the Customer Data; (iii) Customer is solely responsible for complying with the Children’s Online Privacy Protection Act (15 U.S.C. § 6501 et seq.) and Customer has obtained advance written consent from all parents or guardians whose children under 13 will be accessing Services and Provider is entitled to rely upon the same; and (iv) Customer will immediately remove and notify Provider of any Content that does not comply with these terms and conditions or that may infringe the rights of third parties.

In the event this Agreement is terminated, Provider will make available to Customer, a file of the Customer Data within thirty (30) days of termination if Customer so requests, in writing, within five (5) business days of termination.

## 5. CUSTOMER RESPONSIBILITIES

**5.1 Responsible for Users.** Customer is responsible for all activity of User(s). Customer agrees that Customer and Users(s) will abide by all applicable local, state, federal, and foreign laws, treaties and regulations in connection with use of the Services, including without limitation those related to data privacy, international communications and the transmission of technical or personal data.

**5.2 Obligation to Report.** Customer shall: (i) notify Provider immediately of any unauthorized use of any Access Key or account or any other known or suspected breach of security; (ii) report to Provider immediately and use reasonable efforts to stop any unauthorized copying or distribution of Content that is known or suspected by Customer or User(s); and (iii) not impersonate User(s) or provide false identity information to gain access to or use the Services.

**5.3 Children’s Privacy.** Customer is responsible for complying with the Federal and State Regulations including the Children’s Online Privacy Protection Act (15 U.S.C. § 6501 et seq.), the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99) and the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), and the National School Lunch Act (79 P.L. 396, 60 Stat. 230).

**Customer hereby agrees to obtain on behalf of, and for the benefit of Provider, advance written consent in writing for any User that is a child under 13 years of age from the parent(s) or guardian(s) of such child. Such parental consent must specifically authorize the child to use the Services and authorize the child to disclose personal information to Provider for the purposes allowed by this Agreement. Customer is responsible for understanding how any third-party software or services accessed through or obtained from the Services may collect and use information of Users.**

## 6. REPRESENTATIONS AND WARRANTIES

Customer represents and warrants to Provider as follows:

**6.1** Customer has properly identified itself and has all necessary right, power and authority to execute this Agreement and grant the rights herein;

**6.2** The execution of this Agreement and provision of the Services by Provider will not violate any service, confidentiality, consulting or other agreement to which Customer or its employees is a party or by which Customer or its employees may be bound.

**6.3** Customer incorporates the additional representations and warranties located in any other Sections of this Agreement as though completely set forth in this Section.

## 7. E-VERIFY

Within seven days of the execution of this Agreement, Provider shall provide to Customer an affidavit containing the following:

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- i. A statement that Provider has enrolled in and currently participating in E-Verify, a federal work authorization program, or any other equivalent electronic verification of work authorization program operated by the United States Department of Homeland Security under the Immigration Reform and Control Act of 1986 (IRCA);
- ii. A statement that Provider does not knowingly employ any person who is an unauthorized alien in conjunction with the Services being provided under this Agreement; and
- iii. A notarized signature of the registered agent or legal representative of Provider, or a corporate officer, including but not limited to, the human resources director of Provider or their equivalent.

## 8. TERM AND TERMINATION

**8.1 Term.** The term of this Agreement (the “**Term**”) will commence on the Effective Date and will continue for a period of two (2) years thereafter, unless earlier terminated as provided herein. The Term will automatically renew for periods of one (1) year each, unless one party gives the other party written notice of non-renewal at least sixty (60) days prior to the expiration of the then-current term. Upon renewal, Customer agrees to pay Provider’s then-current Service Fees applicable to the Services.

**8.2 Termination For Cause.** Except as otherwise specifically provided in this Agreement, either party may terminate this Agreement or an individual ASO if the other party materially breaches this Agreement. In the case of a material breach that is not capable of being cured, the non-breaching party may terminate this Agreement immediately upon giving written notice of termination. In the case of a material breach that is capable of being cured, the non-breaching party shall send written notice to the breaching party describing the breach in reasonable detail, and the non-breaching party may terminate this Agreement if the breaching party does not cure such breach within thirty (30) days following its receipt of such notice. A breach by Customer of the obligations set forth in Sections 2 shall be deemed a material breach for purposes of this Section, in addition to and without limitation of any other material breach which may arise.

**8.3 Effect of Termination.** Upon the termination of this Agreement and any then outstanding ASO by Customer without cause, Customer shall pay to Provider as liquidated damages any amounts due and remaining unpaid for the remainder of the then-current Term, together with interest accruing as of such termination at the maximum rate permitted by law. The parties acknowledge and agree that this is a reasonable estimate of the actual damages which will be sustained by Company should Customer terminate early without cause. Following termination or expiration of this Agreement, (i) Customer will promptly provide all Work Product to Provider (including any unfinished Work Product), (ii) Customer will return any Confidential Information and any property of Provider within ten (10) days from the date of such termination or expiration, (iii) the terms and conditions of Sections 3, 4, 7, 8, 9, 10, and 11 will survive such termination or expiration of this Agreement, and (iv) at Customer’s request, Provider will make its staff available to assist with any transition of the Services at Provider’s then-current hourly rates, and (v) Provider shall have no obligation to retain Customer Data and may delete Customer Data thirty (30) days after termination of the Agreement.

## 9. RECORDS, INSPECTIONS AND AUDIT

During the Term and for a period of five (5) years thereafter or, if later, until expiration of the minimum retention period required by applicable laws, rules and regulations, and subject to the continuing confidentiality obligations under Section 3, Customer will maintain accurate and complete records related to the Services and this Agreement. At Provider’s written request, Customer shall continue

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to maintain any such records beyond the applicable period specified above, subject to payment by Provider of reasonable storage fees, or shall transfer such records to Provider or its designee at Customer's expense. Representatives of Provider may visit Customer's facilities or meet with Customer or its representatives at reasonable times and with reasonable frequency during normal business hours to observe and evaluate the progress of the Services. If any regulatory authority conducts or gives notice to Customer of its intent to conduct an inspection of the Services at Customer's facilities or to take any other regulatory action with respect to the Services, Customer shall notify Provider of the same and shall promptly provide Provider with a copy of the results of any such regulatory inspection or action. Provider may, upon twenty-four (24) hours' notice, audit Customer's records relating to the Services and consult with Customer's accountants for the purpose of verifying Customer's compliance with the terms of this Agreement.

## **10. LIMITATION OF LIABILITY**

**10.1 Responsibility for Content and Customer Data.** All Content and Customer Data is the sole responsibility of the person from whom such content originated, and Customer or User(s) access all such information and content at their own risk. Provider is not liable for any errors or omissions in such information or for any damages or loss Customer or User(s) may suffer in connection with it. Provider cannot control and Provider assumes no duty to take any action regarding how Customer or Users may interpret or use the Content or what actions Customer or Users may take as a result of having been exposed to the Content, and Customer hereby releases Provider from all liability for Customer or User(s) having acquired or not acquired Content through the Service. Provider cannot guarantee the identity of any users with whom Customer or User(s) interact in using the Services and Provider does not assume any duty or responsibility for any users of other customers who may gain access to the Services.

**10.2 Third Party Materials.** The Services may contain links or connections to third party websites or services that are not owned, operated, or controlled by Provider. If Customer or Users access third party websites or use third party services, Customer accepts that there are risks in doing so, and agrees that Provider cannot be held liable with respect to the same. Provider encourages Customer and Users to read the terms and conditions and privacy policy of each third party website or service that Customer or Users may visit or utilize. Provider assumes no responsibility for the content in any third party website or from any third party that Customer or User may interact with through the Service. By using the Service, Customer releases and holds Provider harmless from any and all liability arising from Customer's or Users' use of any third party website or service. Customer recognizes that certain third party providers of ancillary software, hardware or services may require that Customer or Users agree to additional or different license or other terms prior to Customer's or Users' use of or access to such software, hardware or services, and that any such subsequent agreement or license between Customer and third party providers of ancillary software shall not relieve Customer of any responsibilities Customer incurs by reason of this Agreement.

**10.3 DAMAGES.** THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE SERVICES IS WITH THE CUSTOMER. EXCEPT FOR EITHER PARTY'S BREACH OF SECTION 3 (CONFIDENTIALITY), IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY EXCEED THE AMOUNTS ACTUALLY PAID BY AND/OR DUE FROM CUSTOMER FOR THE TERM DURING WHICH THE EVENT GIVING RISE TO SUCH CLAIM OCCURS. IN NO EVENT SHALL EITHER PARTY AND/OR ITS LICENSORS BE LIABLE TO ANYONE FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES OF ANY TYPE OR KIND (INCLUDING LOSS OF DATA, REVENUE, PROFITS, USE OR OTHER ECONOMIC ADVANTAGE) ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THE SERVICES, INCLUDING BUT NOT LIMITED TO THE USE OR INABILITY TO USE THE SERVICES, OR FOR ANY CONTENT OBTAINED FROM OR THROUGH THE SERVICE, ANY INTERRUPTION, INACCURACY, ERROR OR OMISSION, REGARDLESS OF CAUSE IN THE CONTENT, EVEN

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IF THE PARTY FROM WHICH DAMAGES ARE BEING SOUGHT OR SUCH PARTY'S LICENSORS HAVE BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**10.4 INTERNET & ELECTRONIC COMMUNICATIONS.** PROVIDER'S SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. PROVIDER IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS EXCEPT AS SET FORTH IN THIS AGREEMENT.

**10.5 SOVEREIGN IMMUNITY.** Nothing in this Agreement shall constitute any waiver of Customer's sovereign immunity pursuant to the laws of the state or jurisdiction in which the Customer is located.

## 11. DISCLAIMER OF WARRANTIES

PROVIDERS AND ITS LICENSORS MAKE NO REPRESENTATION, WARRANTY, OR GUARANTY AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, TRUTH, AVAILABILITY, ACCURACY OR COMPLETENESS OF THE SERVICE OR ANY CONTENT OR CUSTOMER DATA. PROVIDER AND ITS LICENSORS DO NOT REPRESENT OR WARRANT THAT: (i) THE USE OF THE SERVICE WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM OR DATA; (ii) THE SERVICE WILL MEET CUSTOMER REQUIREMENTS OR EXPECTATIONS; (iii) ANY STORED DATA WILL BE ACCURATE OR RELIABLE; (iv) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY CUSTOMER OR USERS THROUGH THE SERVICE WILL MEET CUSTOMER OR USER REQUIREMENTS OR EXPECTATIONS; (v) ERRORS OR DEFECTS WILL BE CORRECTED; OR (vi) THE SERVICES OR THE SERVER(S) THAT MAKE THE SERVICES AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. THE SERVICES AND ALL CONTENT IS PROVIDED TO CUSTOMER AND USERS STRICTLY ON AN "AS IS" BASIS. ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS, ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW BY PROVIDER AND ITS LICENSORS.

## 12. MISCELLANEOUS

**12.1 Notices.** All notices, authorizations, and requests in connection with this Agreement shall be in writing and will be deemed given: (a) on the day they are sent by air express courier, charges prepaid; or (b) on the day of transmittal if sent by confirmed facsimile, or by other means of accepted electronic communication, in each case to the address set forth below or to such other address as the party to receive the notice or request so designates by written notice to the other.

If given to Provider:

Lumen Touch, LLC  
1931 SW Gage Blvd.  
Topeka, KS 66604  
Attention: CEO Dr. John Vandewalle

If given to Customer:

Cumberland CUSD 77  
1496 IL Rte 121  
Toledo, IL 62468  
Attention: Superintendent Todd Butler

**12.2 Relationship of Parties.** Provider's relationship with Customer is that of an independent contractor and nothing in this Agreement shall be construed as creating a partnership, joint venture or employer-employee relationship between the Parties. Provider acknowledges that it is not authorized to

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MASTER SERVICES AGREEMENT  
LUMEN TOUCH, LLC.

make any contract, agreement or warranty on behalf of Customer. Under no circumstance will one party's employees be construed to be employees of the other party, nor will one party's employees be entitled to participate in the profit sharing, pension or other plans established for the benefit of the other party's employees.

**12.3 No Exclusivity.** Notwithstanding anything contained herein to the contrary, the Parties agree that nothing contained in this Agreement or any ASO will be construed as creating an exclusive relationship between the parties. Nothing in this Agreement will prevent either Provider or Customer from entering into the same or similar relationship with others.

**12.4 Governing Law.** This Agreement will be interpreted, construed and enforced in all respects in accordance with the laws of the State of Missouri. Neither party will commence or prosecute any action, suit, proceeding or claim arising out of or related to this Agreement other than in the United States District Court for the State of Missouri or the District Court of Clay County, Missouri. Each party hereby irrevocably consents to the jurisdiction and venue of such courts in connection with any such action, suit, proceeding or claim. In any suit, arbitration, mediation or other action to enforce any right or remedy under this Agreement or to interpret any provision of this Agreement, the substantially prevailing party will be entitled to recover its costs, including reasonable attorneys' fees.

**12.5 Waiver.** No waiver of any term, condition or obligation of this Agreement will be valid unless made in writing and signed by the party to which such performance is due. No failure or delay by any party at any time to enforce one or more of the terms, conditions or obligations of this Agreement will (a) constitute a waiver of such term, condition or obligation, (b) will preclude such party from requiring performance by the other party at any later time, or (c) will be deemed to be a waiver of any other subsequent term, condition or obligation, whether of like or different nature.

**12.6 Assignment.** Neither this Agreement nor any right or obligation hereunder shall be assigned or delegated, in whole or in part, by either party without the prior express written consent of the other, which shall not be unreasonably withheld and for which no additional consideration shall be necessary; provided, however, that either party may, without the written consent of the other, assign this Agreement and its rights and delegate its obligations hereunder in connection with the transfer or sale of all or substantially all of its business related to the Agreement, or in the event of its merger, consolidation, change in control, or similar transaction. Any purported assignment in violation of this Section shall be void. Subject to this Section, this Agreement is binding upon and is for the benefit of the parties and their respective successors and permitted assigns.

**12.7 Severability.** This Agreement will be enforced to the fullest extent permitted by applicable law. If any provision of this Agreement is held to be invalid or unenforceable to any extent, then the remainder of this Agreement will have full force and effect and such provision will be interpreted, construed or reformed to the extent reasonably required to render the same valid, enforceable and consistent with the original intent underlying such provision.

**12.8 Entire Agreement.** This Agreement, together with all ASOs attached hereto, contains the entire agreement between the Parties with respect to the subject matter hereof and supersedes all oral understandings, representations, prior discussions and preliminary agreements.

**12.9 Counterparts; Electronic Signature.** This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. Each party may execute this Agreement by facsimile transmission or in Adobe™ Portable Document Format (PDF) sent by electronic mail. Facsimile or PDF signatures of authorized signatories of the Parties will be deemed to be original signatures, will be valid and binding, and, upon delivery, will constitute due execution of this Agreement.

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**12.10 Read and Understood.** Each party acknowledges that it has read and understands this Agreement and agrees to be bound by its terms and conditions. Each party acknowledges that this Agreement shall not be construed for or against either party by reason of who did or did not draft this Agreement. The provisions of this Agreement shall be binding upon and will inure to the benefit of the Parties hereto, their heirs, administrators, successors and assigns.

**12.11 Amendment.** This Agreement and any ASOs hereto may be amended only in writing signed by all parties, and no text or information set forth on any purchase order, preprinted form or document (other than a final ASO, if applicable) shall add to or vary the terms and conditions of this Agreement.

**12.12 Compliance with Law.** To the extent applicable, Provider and Customer shall adhere to all pertinent and relevant laws and regulations when engaged in the performance of this Agreement, including but not limited to the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232(g) (FERPA), 45 C.F.R. §§ 160 and 164 (“HIPAA Privacy Rule”), Section 504 of the Rehabilitation Act of 1973, the Individuals with Disabilities Education Act (IDEA), and all civil rights laws.

**13. PRIOR AGREEMENT(S)**

**13.1 Termination of Prior Agreement(s).** This Agreement, upon execution, will hereby terminate and supersede all prior understandings, representations, discussions, commitments, and agreements, both verbal and written, between the Parties. All agreements and commitments between the Parties must be contemplated in this Agreement to be considered in effect and binding between the Parties.

**IN WITNESS WHEREOF, THE PARTIES HAVE EXECUTED THIS AGREEMENT AS OF THE EFFECTIVE DATE.**

**Signatures:**

**District Name**

Representative Name: Amy Carr

Representative Title: Technology Assistant

Signature: *Amy Carr*

Date: 6/1/2021 | 1:38 PM CDT

**LUMEN TOUCH**

Representative Name: Audrey Mathis

Representative Title: COO

Signature: *Audrey Mathis*

Date: 5/24/2021 | 11:35 AM CDT

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**EXHIBIT A****ADDITIONAL SERVICE ORDER (ASO)**

This Additional Service Order, dated    May 19   , 2021, is made pursuant to that certain Master Services Agreement (the “**Agreement**”), dated    May 19   , 2021 by and between LUMEN TOUCH, LLC (“**Provider**”) and (“**Customer**”). All capitalized terms, where not otherwise defined in this Additional Service Order, will have the meanings set forth in the Agreement.

Fees listed in this ASO are current as of    May 19   , 2021.

**A. Products Purchased / Included:**

- |   |   |
|---|---|
| <input checked="" type="checkbox"/> Bright STUDENT – Student Information          | <input type="checkbox"/> Bright CARE – Health Management              |
| <input type="checkbox"/> Bright LEARNING – Curriculum Management                  | <input type="checkbox"/> Bright INSIGHT – Data Dashboards             |
| <input type="checkbox"/> Bright RESOURCE – Library and Inventory                  | <input type="checkbox"/> Bright SUCCESS – College and Career Planning |
| <input checked="" type="checkbox"/> Bright SPACE 1 – Emergency Message Management | <input type="checkbox"/> Bright SPACE 2 – Social Media Management     |
| <input type="checkbox"/> Bright SPED – Special Education Management               | <input type="checkbox"/> Bright STEPS – Early Learning Management     |
| <input type="checkbox"/> Bright PATH – Professional Development                   | <input type="checkbox"/> Bright SUITE– All-In-One Bundle              |
| <input type="checkbox"/> Bright TRACKS 1 – Tracking buses                         | <input type="checkbox"/> Bright TRACKS 2 – Tracking students          |
| <input type="checkbox"/> Bright CODE –Contract Design Services                    | <input type="checkbox"/> Bright SAGE INTACCT - Financial Management   |

**B. Delivery Schedule and Milestones:**

Bright STUDENT – Currently Installed and Operational  
Bright SPACE 1 - Currently Installed and Operational

**C. Lumen Services Purchased/Included:**

- Training Package
- Lumen Touch Hosting
- SSL Certificate: Included
- Lumen Backup & Recovery Service
- Lumen Hardware Maintenance

**D. Product/Service Fees:**

- Unit Fee for Year 2021-2022: Bright STUDENT (\$7.15), Bright SPACE 1 (\$2.50)  
Unit Fee for Year 2022-2023: Bright STUDENT (\$7.25), Bright SPACE 1 (\$2.50)  
User count\*: 1106 Student Count  
(\* Users are calculated from 2020-2021 Active Student Count. )

Service	Fee based on:	2021-22 Fee	2022-23 Fee (est)
Bright STUDENT	Per K-12 Student	\$ 7,907.90	\$ 8,018.50
Bright SPACE 1	Per K-12 Student	\$ 2,765.00	\$ 2,765.00

**2. Additional Service Fees:**

Service	Fee based on:	2021-22 Fee	2022-23 Fee (est)
Hosting, Backup & Recovery	School Year	\$1,500.00	\$1,500.00
Training	School Year	\$525.00	\$525.00

**3. Total Fees**

Lumen Touch Services	2021-22	2022-23
Total	\$12,697.90	\$12,808.50

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**4. Subsequent Training and Development**

- a. Additional training and software development that is requested by Customer over the included 3 hours of online training and the free online webinars will be billed at \$175.00 per hour.

**E. Payment Schedule:** With the exception of Subsequent Training and Development, all fees will be invoiced annually and be due on **July 1st** each year that such service is scheduled to be provided. The per user fees will be estimated based upon demographic information provided by the Customer.

**F. Miscellaneous**

**1. True-up**

- a. Provider reserves the right to perform a fee true-up if Provider believes the actual per user population is more than 5% greater than the user population billed by Provider.

**2. Proposal(s)**

- a. Proposals issued by Provider to Customer will contain more specific information regarding the full services and fees to be offered to Customer. The signed proposal will be used in conjunction with this Agreement and ASO to determine the Services that will be provided to the Customer.

This Additional Service Order shall be attached to and incorporated into the Agreement, and is subject to all the terms and conditions of the Agreement.

LEA Representative Initials:   *AL*  

If you choose to provide paper documents, please return signed copies to:

Chief Financial Officer  
Lumen Touch, LLC  
1931 SW Gage Blvd.  
Topeka, KS 66604

Or email to: [janev@lumentouch.com](mailto:janev@lumentouch.com)

**Lumen Touch will return the signed copies to you.**

## LUMEN TOUCH, LLC

### Student Data Privacy Agreement

This Student Data Privacy Agreement ("**DPA**") is entered into on the date of full execution (the "**Effective Date**") and is entered into by and between Cumberland CUSD 77, located at 1496 IL Rte 121, Toledo, IL 62468 (the "Local Education Agency" or "LEA") and **LUMEN TOUCH, LLC**, a Kansas Limited Liability Company located at 1931 SW Gage Blvd., Topeka Kansas 66604, (the "**Provider**").

**WHEREAS**, the Provider is providing educational or digital services to LEA.

**WHEREAS**, the Provider and LEA recognize the need to protect personally identifiable student information and other regulated data exchanged between them as required by applicable laws and regulations, such as the Family Educational Rights and Privacy Act ("**FERPA**") at 20 U.S.C. § 1232g (34 CFR Part 99); the Children's Online Privacy Protection Act ("**COPPA**") at 15 U.S.C. § 6501-6506 (16 CFR Part 312), applicable state privacy laws and regulations and

**WHEREAS**, the Provider and LEA desire to enter into this DPA for the purpose of establishing their respective obligations and duties in order to comply with applicable laws and regulations.

**NOW THEREFORE**, for good and valuable consideration, LEA and Provider agree as follows:

1. A description of the Services to be provided, the categories of Student Data that may be provided by LEA to Provider, and other information specific to this DPA are contained in the Standard Clauses hereto.
2. **Special Provisions. Check if Required**
  - If checked, the Supplemental State Terms and attached hereto as **Exhibit "G"** are hereby incorporated by reference into this DPA in their entirety.
  - if checked, LEA and Provider agree to the additional terms or modifications set forth in **Exhibit "H"**
  - If Checked, the Provider, has signed **Exhibit "E"** to the Standard Clauses, otherwise known as General Offer of Privacy Terms
3. In the event of a conflict between the SDPC Standard Clauses, the State or Special Provisions will control. In the event there is conflict between the terms of the DPA and any other writing, including, but not limited to the Service Agreement and Provider Terms of Service or Privacy Policy the terms of this DPA shall control.
4. This DPA shall stay in effect for three years. Exhibit E will expire 3 years from the date the original DPA was signed.
5. The services to be provided by Provider to LEA pursuant to this DPA are detailed in **Exhibit "A"** (the "**Services**").
6. **Notices.** All notices or other communication required or permitted to be given hereunder may be given via e-mail transmission, or first-class mail, sent to the designated representatives below.

The designated representative for the LEA for this DPA is:

Name: Amy Carr Title: Technology Assistant

Address: 1496 Illinois Route 121, Toledo, Illinois

Phone: (217)923-3132 Email: acarr@cusd77.org

The designated representative for the Provider for this DPA is:

Name: Audrey Mathis Title: COO

Address: 1931 SW Gage Blvd., Topeka, Kansas 66604

Phone: 816.912.2670 Email: amathis@lumentouch.com

**IN WITNESS WHEREOF**, LEA and Provider execute this DPA as of the Effective Date.

**LEA:** Cumberland CUSD 77

By: Amy Carr Date: 6/1/2021 | 1:38 PM CDT

Printed Name: Amy Carr Title/Position: Technology Assistant

**Provider:**

**LUMEN TOUCH, LLC,**  
a Kansas Limited Liability Company

By: Audrey Mathis Date: 5/24/2021 | 11:35 AM CDT

Printed Name: Audrey Mathis Title/Position: COO



## **STANDARD CLAUSES**

### **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 including compliance with all applicable federal, state, and local privacy laws, rules, and regulations, all as may be amended from time to time. In performing these services, the Provider shall be considered a School Official with a legitimate educational interest, and performing services otherwise provided by the LEA. Provider shall be under the direct control and supervision of the LEA, with respect to its use of Student Data
2. **Student Data to Be Provided.** In order to perform the Services described above, LEA shall provide Student Data as identified in the Schedule of Data, attached hereto as **Exhibit "B"**.
3. **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 any other writing, including, but not limited to the Service Agreement, Terms of Service, Privacy Policies etc.

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

1. **Student Data Property of LEA.** All Student Data transmitted to the Provider pursuant to the Service Agreement is and will continue to be the property of and under the control of the LEA. The Provider further acknowledges and agrees that all copies of such Student Data transmitted to the Provider, including any modifications or additions or any portion thereof from any source, are subject to the provisions of this DPA in the same manner as the original Student Data. The Parties agree that as between them, all rights, including all intellectual property rights in and to Student Data contemplated per the Service Agreement, shall remain the exclusive property of the LEA. For the purposes of FERPA, the Provider shall be considered a School Official, under the control and direction of the LEA as it pertains to the use of Student Data, notwithstanding the above.
2. **Parent Access.** To the extent required by law the LEA shall establish reasonable procedures by which a parent, legal guardian, or eligible student may review Education Records and/or Student Data correct erroneous information, and procedures for the transfer of student-generated content to a personal account, consistent with the functionality of services. Provider shall respond in a reasonably timely manner (and no later than forty five (45) days from the date of the request or pursuant to the time frame required under state law for an LEA to respond to a parent or student, whichever is sooner) to the LEA's request for Student Data in a student's records held by the Provider to view or correct as necessary. In the event that a parent of a student or other individual contacts the Provider to review any of the Student Data accessed pursuant to the Services, the Provider shall refer the parent or individual to the LEA, who will follow the necessary and proper procedures regarding the requested information.
3. **Separate Account.** If Student-Generated Content is stored or maintained by the Provider, Provider shall, 'at the request of the LEA, transfer, or provide a mechanism for the LEA to transfer, said Student- Generated Content to a separate account created by the student.
4. **Law Enforcement Requests.** Should law enforcement or other government entities ("Requesting Party(ies)") contact Provider with a request for Student Data held by the Provider pursuant to the Services, the Provider shall notify the LEA in advance of a compelled disclosure to the Requesting Party, unless

lawfully directed by the Requesting Party not to inform the LEA of the request.

5. **Subprocessors**. Provider shall enter into written agreements with all Subprocessors performing functions for the Provider in order for the Provider to provide the Services pursuant to the Service Agreement, whereby the Subprocessors agree to protect Student Data in a manner no less stringent than the terms of this DPA.

### ARTICLE III: DUTIES OF LEA

1. **Provide Data in Compliance with Applicable Laws**. LEA shall provide Student Data for the purposes of obtaining the Services in compliance with all applicable federal, state, and local privacy laws, rules, and regulations, all as may be amended from time to time.
2. **Annual Notification of Rights**. If the LEA has a policy of disclosing Education Records and/or Student Data under FERPA (34 CFR § 99.31(a)(1)), LEA shall include a specification of criteria for determining who constitutes a school official and what constitutes a legitimate educational interest in its annual notification of rights.
3. **Reasonable Precautions**. LEA shall take reasonable precautions to secure usernames, passwords, and any other means of gaining access to the services and hosted Student Data.
4. **Unauthorized Access Notification**. LEA shall notify Provider promptly of any known 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 applicable federal, state, and local laws, rules, and regulations pertaining to Student Data privacy and security, all as may be amended from time to time.
2. **Authorized Use**. The Student Data shared pursuant to the Service Agreement, including persistent unique identifiers, shall be used for no purpose other than the Services outlined in Exhibit A or stated in the Service Agreement and/or otherwise authorized under the statutes referred to herein this DPA.
3. **Provider Employee Obligation**. Provider shall require all of Provider's employees and agents who have access to Student Data to comply with all applicable provisions of this DPA with respect to the Student Data shared under the Service Agreement. Provider agrees to require and maintain an appropriate confidentiality agreement from each employee or agent with access to Student Data pursuant to the Service Agreement.
4. **No Disclosure**. Provider acknowledges and agrees that it shall not make any re-disclosure of any Student Data or any portion thereof, including without limitation, user content or other non-public information and/or personally identifiable information contained in the Student Data other than as directed or permitted by the LEA or this DPA. This prohibition against disclosure shall not apply to aggregate summaries of De-Identified information, Student Data disclosed pursuant to a lawfully issued subpoena or other legal process, or to subprocessors performing services on behalf of the Provider pursuant to this DPA. Provider will not Sell Student Data to any third party.

5. **De-Identified Data**: Provider agrees not to attempt to re-identify de-identified Student Data. De-Identified Data may be used by the Provider for those purposes allowed under FERPA and the following purposes: (1) assisting the LEA or other governmental agencies in conducting research and other studies; and (2) research and development of the Provider's educational sites, services, or applications, and to demonstrate the effectiveness of the Services; and (3) for adaptive learning purpose and for customized student learning. Provider's use of De-Identified Data shall survive termination of this DPA or any request by LEA to return or destroy Student Data. Except for Subprocessors, Provider agrees not to transfer de-identified Student Data to any party unless (a) that party agrees in writing not to attempt re-identification, and (b) prior written notice has been given to the LEA who has provided prior written consent for such transfer. Prior to publishing any document that names the LEA explicitly or indirectly, the Provider shall obtain the LEA's written approval of the manner in which de-identified data is presented.
6. **Disposition of Data**. Upon written request from the LEA, Provider shall dispose of or provide a mechanism for the LEA to transfer Student Data obtained under the Service Agreement, within sixty (60) days of the date of said request and according to a schedule and procedure as the Parties may reasonably agree. Upon termination of this DPA, if no written request from the LEA is received, Provider shall dispose of all Student Data after providing the LEA with reasonable prior notice. The duty to dispose of Student Data shall not extend to Student Data that had been De-Identified or placed in a separate student account pursuant to section II 3. The LEA may employ a "Directive for Disposition of Data" form, a copy of which is attached hereto as **Exhibit "D"**. If the LEA and Provider employ Exhibit "D," no further written request or notice is required on the part of either party prior to the disposition of Student Data described in Exhibit "D."
7. **Advertising Limitations**. Provider is prohibited from using, disclosing, or selling Student Data to (a) inform, influence, or enable Targeted Advertising; or (b) develop a profile of a student, family member/guardian or group, for any purpose other than providing the Service to LEA. This section does not prohibit Provider from using Student Data (i) for adaptive learning or customized student learning (including generating personalized learning recommendations); or (ii) to make product recommendations to teachers or LEA employees; or (iii) to notify account holders about new education product updates, features, or services or from otherwise using Student Data as permitted in this DPA and its accompanying exhibits

## **ARTICLE V: DATA PROVISIONS**

1. **Data Storage**. Where required by applicable law, Student Data shall be stored within the United States. Upon request of the LEA, Provider will provide a list of the locations where Student Data is stored.
2. **Audits**. No more than once a year, or following unauthorized access, upon receipt of a written request from the LEA with at least ten (10) business days' notice and upon the execution of an appropriate confidentiality agreement, the Provider will allow the LEA to audit the security and privacy measures that are in place to ensure protection of Student Data or any portion thereof as it pertains to the delivery of services to the LEA . The Provider will cooperate reasonably with the LEA and any local, state, or federal agency with oversight authority or 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 LEA. Failure to reasonably cooperate shall be deemed a material breach of the DPA.

3. **Data Security.** The Provider agrees to utilize administrative, physical, and technical safeguards designed to protect Student Data from unauthorized access, disclosure, acquisition, destruction, use, or modification. The Provider shall adhere to any applicable law relating to data security. The provider shall implement an adequate Cybersecurity Framework based on one of the nationally recognized standards set forth set forth in **Exhibit "F"**. Exclusions, variations, or exemptions to the identified Cybersecurity Framework must be detailed in an attachment to **Exhibit "H"**. Additionally, Provider may choose to further detail its security programs and measures that augment or are in addition to the Cybersecurity Framework in **Exhibit "F"**. Provider shall provide, in the Standard Schedule to the DPA, contact information of an employee who LEA may contact if there are any data security concerns or questions.
  
4. **Data Breach.** In the event of an unauthorized release, disclosure or acquisition of Student Data that compromises the security, confidentiality or integrity of the Student Data maintained by the Provider the Provider shall provide notification to LEA within seventy-two (72) hours of confirmation of the incident, unless notification within this time limit would disrupt investigation of the incident by law enforcement. In such an event, notification shall be made within a reasonable time after the incident. Provider shall follow the following process:
  - (1) The security breach notification described above shall include, at a minimum, the following information to the extent known by the Provider and as it becomes available:
    - 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; and
    - v. A general description of the breach incident, if that information is possible to determine at the time the notice is provided.
  - (2) Provider agrees to adhere to all federal and state requirements 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.
  - (3) Provider further acknowledges and agrees to have a written incident response plan that reflects best practices and is consistent with industry standards and federal and state law for responding to a data breach, breach of security, privacy incident or unauthorized acquisition or use of Student Data or any portion thereof, including personally identifiable information and agrees to provide LEA, upon request, with a summary of said written incident response plan.
  - (4) LEA shall provide notice and facts surrounding the breach to the affected students, parents or guardians.
  - (5) In the event of a breach originating from LEA's use of the Service, Provider shall cooperate with LEA to the extent necessary to expeditiously secure Student Data.

## ARTICLE VI: GENERAL OFFER OF TERMS

Provider may, by signing the attached form of "General Offer of Privacy Terms" (General Offer, attached hereto as **Exhibit "E"**), be bound by the terms of **Exhibit "E"** to any other LEA who signs the acceptance on said Exhibit. The form is limited by the terms and conditions described therein.

## ARTICLE VII: MISCELLANEOUS

- 1. Termination.** In the event that either Party seeks to terminate this DPA, they may do so by mutual written consent so long as the Service Agreement has lapsed or has been terminated. Either party may terminate this DPA and any service agreement or contract if the other party breaches any terms of this DPA.
- 2. Effect of Termination Survival.** If the Service Agreement is terminated, the Provider shall destroy all of LEA's Student Data pursuant to Article IV, section 6.
- 3. Priority of Agreements.** This DPA shall govern the treatment of Student Data in order to comply with the privacy protections, including those found in FERPA and all applicable privacy statutes identified in this DPA. In the event there is conflict between the terms of the DPA and the Service Agreement, Terms of Service, Privacy Policies, or with any other bid/RFP, license agreement, or writing, the terms of this DPA shall apply and take precedence. In the event of a conflict between Exhibit H, the SDPC Standard Clauses, and/or the Supplemental State Terms, Exhibit FI will control, followed by the Supplemental State Terms. Except as described in this paragraph herein, all other provisions of the Service Agreement shall remain in effect.
- 4. Entire Agreement.** This DPA and the Service Agreement constitute 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.
- 5. 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.
- 6. Governing Law; Venue and Jurisdiction.** THIS DPA WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF THE LEA, WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES. EACH PARTY CONSENTS AND SUBMITS TO THE SOLE AND EXCLUSIVE

JURISDICTION TO THE STATE AND FEDERAL COURTS FOR THE COUNTY OF THE LEA FOR ANY DISPUTE ARISING OUT OF OR RELATING TO THIS DPA OR THE TRANSACTIONS CONTEMPLATED HEREBY.

7. **Successors Bound**: This DPA is and shall be binding upon the respective successors in interest to Provider in the event of a merger, acquisition, consolidation or other business reorganization or sale of all or substantially all of the assets of such business. In the event that the Provider sells, merges, or otherwise disposes of its business to a successor during the term of this DPA, the Provider shall provide written notice to the LEA no later than sixty (60) days after the closing date of sale, merger, or disposal. Such notice shall include a written, signed assurance that the successor will assume the obligations of the DPA and any obligations with respect to Student Data within the Service Agreement. The LEA has the authority to terminate the DPA if it disapproves of the successor to whom the Provider is selling, merging, or otherwise disposing of its business.
8. **Authority**. Each party represents that it is authorized to bind to the terms of this DPA, 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.
9. **Waiver**. No delay or omission by either party to exercise any right hereunder shall be construed as a waiver of any such right and both parties reserve the right to exercise any such right from time to time, as often as may be deemed expedient.

**EXHIBIT "A"**

**DESCRIPTION OF SERVICES**

*See description of services contained in Master Services Agreement*

**EXHIBIT "B"**

Category of Data	Elements	Check if Used by Your System		
Application Technology Meta Data	IP Addresses of users. Use of cookies, etc.	X		
	Other application technology meta data-Please specify:			
Application Use Statistics	Meta data on user interaction with application	X		
Assessment	Standardized test scores	X		
	Observation data	X		
	Other assessment data-Please specify: Any assessment data that the district chooses to upload to the system.	X		
Attendance	Student school (daily) attendance data	X		
	Student class attendance data	X		
Communications	Online communications captured (emails, blog entries)	X		
Conduct	Conduct or behavioral data	X		
Demographics	Date of Birth	X		
	Place of Birth	X		
	Gender	X		
	Ethnicity or race	X		
	Language information (native, or primary language spoken by student)	X		
	Other demographic information-Please specify:			
Enrollment	Student school enrollment	X		
	Student grade level	X		
	Homeroom	X		
	Guidance counselor	X		
	Specific curriculum programs	X		
	Year of graduation	X		
	Other enrollment information-Please specify:			
Parent/Guardian Contact Information	Address	X		
	Email	X		
	Phone	X		



**SCHEDULE OF DATA**

Category of Data	Elements	Check if Used by Your System		
Parent/Guardian ID	Parent ID number (created to link parents to students)			
Parent/Guardian Name	First and/or Last	X		
Schedule	Student scheduled courses	X		
	Teacher names	X		
Special Indicator	English language learner information	X		
	Low income status	X		
	Medical alerts/ health data	X		
	Student disability information	X		
	Specialized education services (IEP or 504)	X		
	Living situations (homeless/foster care) Other indicator information-Please specify:	X		
Student Contact Information	Address	X		
	Email	X		
	Phone	X		
Student Identifiers	Local (School district) ID number	X		
	State ID number	X		
	Provider/App assigned student ID number	X		
	Student app username	X		
	Student app passwords	X		
Student Name	First and/or Last	X		
Student In App Performance	Program/application performance (typing program-student types 60 wpm, reading program-student reads below grade level)	X		
Student Program Membership	Academic or extracurricular activities a student may belong to or participate in	X		
Student Survey Responses	Student responses to surveys or questionnaires	X		
Student work	Student generated content; writing, pictures, etc.	X		
	Other student work data -Please specify:			
Transcript	Student course grades	X		
	Student course data	X		

Category of Data	Elements	Check if Used by Your System		
	Student course grades/ performance scores	X		
	Other transcript data - Please specify:			
Transportation	Student bus assignment	X		
	Student pick up and/or drop off location	X		
	Student bus card ID number			
	Other transportation data - Please specify:			
Other	Please list each additional data element used, stored, or collected by your application:			
None	No Student Data collected at this time. Provider will immediately notify LEA if this designation is no longer applicable.			

## EXHIBIT "C"

### DEFINITIONS

**De-Identified Data and De-Identification:** Records and information are considered to be de-identified when all personally identifiable information has been removed or obscured, such that the remaining information does not reasonably identify a specific individual, including, but not limited to, any information that, alone or in combination is linkable to a specific student and provided that the educational agency, or other party, has made a reasonable determination that a student's identity is not personally identifiable, taking into account reasonable available information.

**Educational Records:** Educational Records are records, files, documents, and other materials directly related to a student and maintained by the school or local education agency, or by a person acting for such 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.

**Metadata:** means information that provides meaning and context to other data being collected; including, but not limited to: date and time records and purpose of creation Metadata that have been stripped of all direct and indirect identifiers are not considered Personally Identifiable Information.

**Operator:** means the operator of an internet website, online service, online application, or mobile application with actual knowledge that the site, service, or application is used for K-12 school purposes. Any entity that operates an internet website, online service, online application, or mobile application that has entered into a signed, written agreement with an LEA to provide a service to that LEA shall be considered an "operator" for the purposes of this section.

**Originating LEA:** An LEA who originally executes the DPA in its entirety with the Provider.

**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 Student Data. Within the DPA the term "Provider" includes the term "Third Party" and the term "Operator" as used in applicable state statutes.

**Student Generated Content:** The term "student-generated content" means materials or content created by a student in the services 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.

**School Official:** For the purposes of this DPA 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 Student Data including Education Records; and (3) Is subject to 34 CFR § 99.33(a) governing the use and re-disclosure of personally identifiable information from Education Records.

**Service Agreement:** Refers to the Contract, Purchase Order or Terms of Service or Terms of Use.

**Student Data:** Student Data includes any data, whether gathered by Provider or provided by LEA or its users, students, or students' parents/guardians, that is descriptive of the student including, but not limited to.

information in the student's educational record or email, first and last name, birthdate, home or other physical address, telephone number, email address, or other information allowing physical or online contact, discipline records, videos, test results, special education data, juvenile dependency records, grades, evaluations, criminal records, medical records, health records, social security numbers, biometric information, disabilities, socioeconomic information, individual purchasing behavior or preferences, food purchases, political affiliations, religious information, text messages, documents, student identifiers, search activity, photos, voice recordings, geolocation information, parents' names, or any other information or identification number that would provide information about a specific student. Student Data includes Meta Data. Student Data further includes "personally identifiable information (PII)," as defined in 34 C.F.R. § 99.3 and as defined under any applicable state law. Student Data shall constitute Education Records for the purposes of this DPA, and for the purposes of federal, state, and local laws and regulations. Student Data as specified in **Exhibit "B"** is confirmed to be collected or processed by the Provider pursuant to the Services. Student Data shall not constitute that information that has been anonymized or de-identified, or anonymous usage data regarding a student's use of Provider's services.

**Subprocessor:** For the purposes of this DPA, 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 service, and who has access to Student Data.

**Subscribing LEA:** An LEA that was not party to the original Service Agreement and who accepts the Provider's General Offer of Privacy Terms. /

**Targeted Advertising:** means presenting an advertisement to a student where the selection of the advertisement is based on Student Data or inferred overtime from the usage of the operator's Internet web site, online service or mobile application by such student or the retention of such student's online activities or requests over time for the purpose of targeting subsequent advertisements. "Targeted advertising" does not include any advertising to a student on an Internet web site based on the content of the web page or in response to a student's response or request for information or feedback.

**Third Party:** The term "Third Party" means a provider of digital educational software or services, including cloud-based services, for the digital storage, management, and retrieval of Education Records and/or Student Data, as that term is used in some state statutes. However, for the purpose of this DPA, the term "Third Party" when used to indicate the provider of digital educational software or services is replaced by the term "Provider."

**EXHIBIT "D"**

**DIRECTIVE FOR DISPOSITION OF DATA**

**[Insert Name of District or LEA]** Provider to dispose of data obtained by Provider pursuant to the terms of the Service Agreement between LEA and Provider. The terms of the Disposition are set forth below:

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:

[ ]

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:

3. Schedule of Disposition Data shall be disposed of by the following date:

Data shall be disposed of by the following date:

As soon as commercially practicable

By

4. Signature

\_\_\_\_\_  
Authorized Representative of LEA

\_\_\_\_\_  
Date

5. Verification of Disposition of Data

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

\_\_\_\_\_  
Date

**EXHIBIT "E"**

**GENERAL OFFER OF PRIVACY TERMS**

**1. Offer of Terms**

Provider offers the same privacy protections found in this DPA between it and Cumberland CUSD 77 ("Originating LEA") which is dated 5/24/2021 | 11:35 AM CDT, 2021, to any other LEA ("Subscribing LEA") who accepts this General Offer of Privacy Terms ("General Offer") through its signature below. This General Offer shall extend only to privacy protections, and Provider's signature shall not necessarily bind Provider to other terms, such as price, term, or schedule of services, or to any other provision not addressed in this DPA. The Provider and the Subscribing LEA may also agree to change the data provided by Subscribing LEA to the Provider to suit the unique needs of the Subscribing LEA. The Provider may withdraw the General Offer in the event of: (1) a material change in the applicable privacy statutes; (2) a material change in the services and products listed in the originating Service Agreement; or three (3) years after the date of Provider's signature to this Form. Subscribing LEAs should send the signed **Exhibit "E"** to Provider at the following email address: amathis@lumentouch.com

**By:** Audrey Mathis **Date:** 5/24/2021 | 11:35 AM CDT

**Printed Name:** Audrey Mathis **Title/Position:** Chief Operations Officer

**2. Subscribing LEA**

A Subscribing LEA, by signing a separate Service Agreement with Provider, and by its signature below, accepts the General Offer of Privacy Terms. The Subscribing LEA and the Provider shall therefore be bound by the same terms of this DPA for the term of the DPA between the Cumberland CUSD 77 and the Provider. **\*\*PRIOR TO ITS EFFECTIVENESS, SUBSCRIBING LEA MUST DELIVER NOTICE OF ACCEPTANCE TO PROVIDER PURSUANT TO ARTICLE VII, SECTION 5. \*\***

**By:** Amy Carr **Date:** 6/1/2021 | 1:38 PM CDT

**Printed Name:** Amy Carr **Title/Position:** Technology Assistant

SCHOOL DISTRICT NAME: Cumberland CUSD 77

DESIGNATED REPRESENTATIVE OF LEA:

Name: Amy Carr  
Title: Technology Assistant  
Address: 1496 Illinois Route 121, Toledo, Illinois  
Telephone Number: (217)923-3132  
Email: acarr@cusd77.org

**EXHIBIT "F"****DATA SECURITY REQUIREMENTS****Adequate Cybersecurity  
Frameworks 2/24/2020**

The Education Security and Privacy Exchange ("Edspex") works in partnership with the Student Data Privacy Consortium and industry leaders to maintain a list of known and credible cybersecurity frameworks which can protect digital learning ecosystems chosen based on a set of guiding cybersecurity principles\* ("Cybersecurity Frameworks") that may be utilized by Provider.

## Cybersecurity Frameworks

<b>MAINTAINING ORGANIZATION/GROUP</b>	<b>FRAMEWORK(S)</b>
<input type="checkbox"/> National Institute of Standards and Technology	NIST Cybersecurity Framework Version 1.1
<input type="checkbox"/> National Institute of Standards and Technology	NIST SP 800-53, Cybersecurity Framework for Improving Critical Infrastructure Cybersecurity (CSF), Special Publication 800-171
<input type="checkbox"/> International Standards Organization	Information technology — Security techniques — Information security management systems (ISO 27000 series)
<input type="checkbox"/> Secure Controls Framework Council, LLC	Security Controls Framework (SCF)
<input type="checkbox"/> Center for Internet Security	CIS Critical Security Controls (CSC, CIS Top 20)
<input type="checkbox"/> Office of the Under Secretary of Defense for Acquisition and Sustainment (OUSD(A&S))	Cybersecurity Maturity Model Certification (CMMC, ~FAR/DFAR)

Please visit <http://www.edsoex.org> for further details about the noted frameworks.

\*Cybersecurity Principles used to choose the Cybersecurity Frameworks are located here

**EXHIBIT "G" - Supplemental SDPC State Terms for Illinois**  
Version 1.0

This **Exhibit G**, Supplemental SDPC State Terms for Illinois ("Supplemental State Terms"), effective simultaneously with the attached Student Data Privacy Agreement ("DPA") by and between **Cumberland CUSD 77** (the "Local Education Agency" or "LEA") and Lumen Touch, LLC (the "Provider"), is incorporated in the attached DPA and amends the DPA (and all supplemental terms and conditions and policies applicable to the DPA) as follows:

1. **Compliance with Illinois Privacy Laws.** In performing their respective obligations under the Agreement, the LEA and the Provider shall comply with all Illinois laws and regulations pertaining to student data privacy and confidentiality, including but not limited to the Illinois School Student Records Act ("ISSRA"), 105 ILCS 10/, Mental Health and Developmental Disabilities Confidentiality Act ("MHDDCA"), 740 ILCS 110/, Student Online Personal Protection Act ("SOPPA"), 105 ILCS 85/, Identity Protection Act ("IPA"), 5 ILCS 179/, and Personal Information Protection Act ("PIPA"), 815 ILCS 530/.

2. **Definition of "Student Data."** In addition to the definition set forth in **Exhibit C**, Student Data includes any and all "covered information," as that term is defined in Section 5 of SOPPA (105 ILCS 85/5), and Student Data shall constitute "school student records" as that term is defined in Section 2 of ISSRA (105 ILCS 10/2(d)).

3. **School Official Designation.** Pursuant to Article I, Paragraph 1 of the DPA Standard Clauses, and in accordance with FERPA, ISSRA and SOPPA, in performing its obligations under the DPA, the Provider is acting as a school official with legitimate educational interest; is performing an institutional service or function for which the LEA would otherwise use its own employees; is under the direct control of the LEA with respect to the use and maintenance of Student Data; and is using Student Data only for an authorized purpose.

4. **Limitations on Re-Disclosure.** The Provider shall not re-disclose Student Data to any Third Party or affiliate without the express written permission of the LEA or pursuant to court order, unless such disclosure is otherwise permitted under SOPPA, ISSRA, FERPA, and MHDDCA. In the event a Third Party, including law enforcement or a government entity, contacts the Provider with a request or subpoena for Student Data in the possession of the Provider, the Provider shall redirect the Third Party to seek the data directly from the LEA. In the event the Provider is compelled to produce Student Data to a Third Party in compliance with a court order, Provider shall notify the LEA at least five (5) school days in advance of the court ordered disclosure and, upon request, provide the LEA with a copy of the court order requiring such disclosure.

5. **Notices.** Any notice delivered pursuant to the DPA shall be deemed effective, as applicable, upon receipt as evidenced by the date of transmission indicated on the transmission material, if by e-mail; or four (4) days after mailing, if by first-class mail, postage prepaid.

6. **Parent Right to Access and Challenge Student Data.** The LEA shall establish reasonable procedures pursuant to which a parent, as that term is defined in 105 ILCS 10/2(g), may inspect and/or copy Student Data and/or challenge the accuracy, relevance or propriety of Student Data, pursuant to Sections 5 and 7 of ISSRA (105 ILCS 10/5; 105 ILCS 10/7) and Section 33 of SOPPA (105 ILCS 85/33). The Provider shall respond to any request by the LEA for Student Data in the possession of the Provider, for purposes of affording a parent an opportunity to inspect and/or copy the Student Data, no later than 10 business days from the date of the request. In the event that a parent contacts the Provider directly to inspect and/or copy



Student Data, the Provider shall refer the parent to the LEA, which shall follow the necessary and proper procedures regarding the requested Student Data.

7. **Corrections to Factual Inaccuracies.** In the event that the LEA determines that the Provider is maintaining Student Data that contains a factual inaccuracy, the LEA shall notify the Provider of the factual inaccuracy and the correction to be made. No later than 90 calendar days after receiving the notice of the factual inaccuracy, the Provider shall correct the factual inaccuracy and shall provide written confirmation of the correction to the LEA.

8. **Security Standards.** The Provider shall implement and maintain commercially reasonable security procedures and practices that otherwise meet or exceed industry standards designed to protect Student Data from unauthorized access, destruction, use, modification, or disclosure, including but not limited to the unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of the Student Data (a "Security Breach"). For purposes of the DPA and this **Exhibit G.** "Security Breach" does not include the good faith acquisition of Student Data by an employee or agent of the Provider or LEA for a legitimate purpose of the Provider or LEA, so long as the Student Data is used solely for purposes permitted by SOPPA and other applicable law, and so long as the Student Data is restricted from further unauthorized disclosure.

9. **Security Breach Notification.** In addition to the information enumerated in Article V, Section 4(1) of the DPA Standard Clauses, any Security Breach notification provided by the Provider to the LEA shall include:

- a. A list of the students whose Student Data was involved in or is reasonably believed to have been involved in the breach, if known; and
- b. The name and contact information for an employee of the Provider whom parents may contact to inquire about the breach.

10. **Reimbursement of Expenses Associated with Security Breach.** In the event of a Security Breach that is attributable to the Provider, the Provider shall reimburse and indemnify the LEA for any and all costs and expenses that the LEA incurs in investigating and remediating the Security Breach, including but not limited to costs and expenses associated with:

- a. Providing notification to the parents of those students whose Student Data was compromised and regulatory agencies or other entities as required by law or contract;
- b. Providing credit monitoring to those students whose Student Data was exposed in a manner during the Security Breach that a reasonable person would believe may impact the student's credit or financial security;
- c. Legal fees, audit costs, fines, and any other fees or damages imposed against the LEA as a result of the security breach; and
- d. Providing any other notifications or fulfilling any other requirements adopted by the Illinois State Board of Education or under other State or federal laws.

11. **Transfer or Deletion of Student Data.** The Provider shall review, on an annual basis, whether the Student Data it has received pursuant to the DPA continues to be needed for the purpose(s) of the DPA. If

any of the Student Data is no longer needed for purposes of the DPA, the Provider must delete such unnecessary Student Data or transfer to the LEA such unnecessary Student Data. The Provider shall effectuate such transfer or deletion of Student Data and provide written confirmation of said transfer or deletion to the LEA within thirty (30) calendar days of the operator becoming aware that the Student Data is no longer needed for purposes of the DPA.

If the LEA receives a request from a parent, as that term is defined in 105 ILCS 10/2(g), that Student Data being held by the Provider be deleted, the LEA shall determine whether the requested deletion would violate State and/or federal records laws. In the event such deletion would not violate State or federal records laws, the LEA shall forward the request for deletion to the Provider. The Provider shall comply with the request and delete the Student Data within a reasonable time period after receiving the request.

12. **Public Posting of DPA.** Pursuant to SOPPA, the LEA shall publish on its website a copy of the DPA between the Provider and the LEA, including this **Exhibit G.**

13. **Subcontractors.** By no later than (5) business days after the date of execution of the DPA, the Provider shall provide the LEA with a list of any subcontractors to whom Student Data may be disclosed or a link to a page on the Provider's website that clearly lists any and all subcontractors to whom Student Data may be disclosed. This list shall, at a minimum, be updated and provided to the LEA by the beginning of each fiscal year (July 1) and at the beginning of each calendar year (January 1).

**EXHIBIT "H"**

**Additional Terms or Modifications**

LEA and Provider agree to the following additional terms and modifications:

"None."