

**School District  
Addendum to Agreement with Pear Deck, Inc.**

The provisions of this Addendum amend the Pear Deck, Inc. General Terms and Conditions (the “Agreement”) between the Board of Education of Community Unit School District No. 300, Kane, McHenry, Cook, and DeKalb Counties, Illinois (“School District”) and Pear Deck, Inc., an Iowa based corporation (“Company”). This Addendum supersedes the Agreement by adding to, deleting from, and modifying the Agreement. To the extent any provision in this Addendum results in any conflict or inconsistency between the Agreement and this Addendum, this Addendum shall govern and the term(s) of the Agreement that conflict(s) with this Addendum or are inconsistent with this Addendum shall be of no force or effect.

**1. Covered Data**

As used in this Addendum, “School District data” means any data or information collected, maintained, generated, or inferred that alone or in combination personally identifies an individual student or the student’s parent or family, in accordance with the Family Educational Rights and Privacy Act, 34 C.F.R. § 99.3, and the Illinois School Student Records Act, 105 ILCS 10/2 and other non-public information, including student data, metadata, and user content.

**2. Compliance with State and Federal Law**

All data sharing, use, and storage will be performed in accordance with the requirements of the Family Educational Rights and Privacy Act of 1974 as amended, 20 U.S.C. § 1232g & 34 C.F.R. § 99 (“FERPA”) and the Illinois School Student Records Act (ISSRA), 105 ILCS 10/1 *et seq.* & 23 IAC 375.

The Company acknowledges for the purposes of this Addendum that it will be designated as a “school official” with “legitimate educational interests” in the School District data, as those terms have been defined under FERPA and ISSRA and their implementing regulations.

To the extent that the Company’s collection, use or disclosure of personal information from students is governed by the Children’s Online Privacy Protection Act (“COPPA”), the Company agrees that the Company’s use of the School District data will be solely for the benefit of the School District’s students and for the school system, and that the operator will not collect personal information from students for any purpose other than the School District’s purpose, including any other commercial purpose.

With respect to the Company’s collection, disclosure, or use of School District data as governed by the Protection of Pupil Rights Amendment (“PPRA”), the Company agrees that such collection, disclosure, or use, and any use of any School District data, shall be for the exclusive purpose of developing, evaluating, or providing educational products or services for, or to, the School District’s students or educational institutions.

With respect to any “Covered Information” as defined by the Illinois Student Online Personal Protection Act, the Company agrees to comply with the terms of that Act and refrain from using the Covered Information in any way prohibited by the Act.

With respect to any “Personal Information” as defined by the Illinois Children’s Privacy Protection and Parental Empowerment Act, the Company agrees to comply with the terms of that Act to the extent applicable.

### 3. Company Obligations:

- 3.1 *Uses and Disclosures as Provided in the Agreement.* The Company may use and disclose the School District data provided by the School District only for the purposes described in the Agreement and only in a manner that does not violate local, state, or federal privacy laws and regulations. Only the individuals or classes of individuals will have access to the data that need access to the School District data to do the work described in the Agreement. The Company shall ensure that any subcontractors who may have access to School District data are contractually bound to follow the provisions of the Agreement.
- 3.2 *Nondisclosure except as Provided in the Agreement.* The Company shall not use or further disclose the School District data except as stated in and explicitly allowed by the Agreement and state and federal law. The Company does not have permission to re-disclose School District data to a third party except as provided for in this Addendum, as required by law, or as authorized in writing by the School District.
- 3.3 *Safeguards.* The Company agrees to take appropriate administrative, technical and physical safeguards reasonably designed to protect the security, privacy, confidentiality, and integrity of School District data. The Company shall ensure that School District data are secured and encrypted to the greatest extent practicable during use, storage and/or transmission. The Company agrees to store and process the School District data in a manner that is no less protective than those methods used to secure the Company's own data. The Company agrees that School District data will be stored on equipment or systems located within the United States. The Company shall maintain complete and accurate records of these security measures and produce such records to the School District for purposes of audit upon reasonable prior notice during normal business hours. The School District reserves the right at its sole discretion to perform audits of the Company's storage of School District data at the School District's expenses to ensure compliance with the terms of the Agreement and this Addendum.
- 3.4 *Reasonable Methods.* The Company agrees to use "reasonable methods" to ensure to the greatest extent practicable that the Company and all parties accessing School District data are compliant with state and federal law.
- 3.5 *Privacy Policy.* The Company must publicly disclose material information about its collection, use, and disclosure of covered information, including, but not limited to, publishing a terms of service agreement, privacy policy, or similar document. Any changes the Company may implement with respect to its privacy policies or terms of use documents shall be ineffective and inapplicable with respect to the School District and/or School District data unless the School District affirmatively consents in writing to be bound by such changes. Access by students or parents/guardians to the Company's programs or services governed by the Agreement or to any School District data stored by the Company shall not be conditioned upon agreement by the parents/guardians to waive any of the student data confidentiality restrictions or a lessening of any of the confidentiality or privacy requirements contained in this Addendum.
- 3.6 *Data Return/Destruction.* Upon expiration of the term of the Agreement, upon the earlier termination of the Agreement for any reason, or upon the School District's request, the Company covenants and agrees that it promptly shall deliver to the School District, and shall

return to the School District all School District data. If return of the data is not feasible or if the School District agrees, then the Company shall destroy the data. School District data must be destroyed in a secure manner. The Company agrees to send a written certificate that the data was properly destroyed or returned within 30 days of the end of the Agreement or within 30 days of the School District's request for destruction. The Company shall destroy School District data in such a manner that it is permanently irretrievable in the normal course of business.

- 3.7 *Minimum Necessary.* The Company attests that the data requested by the Company from the School District for the School District to access the Company's products or services represents the minimum necessary data for the services as described in the Agreement and that only necessary individuals or entities who are familiar with and bound by this Addendum will have access to the School District data to perform the work.
- 3.8 *Authorizations.* When necessary, the Company agrees to secure individual authorizations to maintain or use the School District data in any manner beyond the scope or after the termination of the Agreement.
- 3.9 *Data Ownership.* The School District is the data owner. The Company does not obtain any right, title, or interest in any of the data furnished by the School District.
- 3.10 *Misuse or Unauthorized Release.* The Company shall notify the School District as soon as possible upon discovering the misuse or unauthorized release of School District data held by the Company or one of its subcontractors, regardless of whether the misuse or unauthorized release is the result of a material breach of the Agreement.
- 3.11 *Data Breach.* In the event of a data breach, which means an unauthorized disclosure, access, alteration, or use of School District data or circumstances that could have resulted in such unauthorized disclosure, access, alteration or use, the Company shall promptly institute the following: (1) notify the School District by telephone and email as soon as practicable, but no later than twenty-four hours after the Company becomes aware of the data breach; (2) provide the School District with the name and contact information for an employee of the Company who shall serve as the Company's primary security contact; (3) assist the School District with any investigation, including interviews with Company employees and review of all relevant records; and (4) assist the School District with any notification the School District deems necessary related to the security breach. The Company shall not, unless required by law, provide any notices except to the School District without prior written permission from the School District. The Company shall reimburse and indemnify the School District for any costs imposed on the School District or reasonably undertaken by the School District at its discretion associated with a data breach, including reimbursement of fees paid by the School District related to providing credit monitoring to affected individuals and payment of legal fees, audit costs, fines, and other fees undertaken by the School District because of the security breach.
- 3.12 *Access to Data.* Any School District data in the possession or under the control of the Company shall be made available to the School District upon request by the School District. The Company shall be responsible to provide copies of or access to School District's data in the possession or under the control of the Company to the School District within a reasonable time frame and in all cases within time frames that will allow timely compliance by the School District with any statutorily or court ordered deadline. This includes requests

under the Illinois Freedom of Information Act (“FOIA”), requests for student records under FERPA or ISSRA, requests for records in discovery in state or federal court or administrative proceedings, or any other request.

3.13 *Service Levels.* The Company’s products or services are provided 24 hours per day, seven days per week. The Company shall ensure 99.9% up-time, Monday through Friday between 6 a.m. and 6 p.m. US Central Time (“Up-time”). Where Up-time percentage averages less than 99.9% in a calendar month, the School District shall have the right to terminate the Agreement immediately upon written notice to the Company and obtain a pro-rata reimbursement for its past payments to the Company.

3.14 *Limited Warranty.* For the purposes of this Addendum, a “Defect” is defined as a failure of the Company’s products or services to substantially conform to the then-current Company’s User Guides materials. For as long as the Agreement is in place, the Company warrants that the Company’s products or services will not contain Defects. If the products or services do not perform as warranted, the Company will use reasonable efforts, consistent with industry standards, to cure the Defect in accordance with the Company’s then current support call process. Should the Company be unable to cure the Defect or provide a replacement product within five business days, the School District shall be entitled to a pro-rata reimbursement for its past payments to the Company.

3.15 *Harmful Code.* Using a recent version of a reputable virus- checking product (to the extent commercially available), Company will check the Software, as well as any systems used by Company to deliver the Software, for any harmful code, including, without limitation, any viruses, worms, or similar harmful code, and will use commercially reasonable efforts to eliminate any such harmful code that the Company discovers.

#### **4. Prohibited Uses**

4.1 The Company shall not sell School District data; use or share School District data for purposes of targeted advertising; or use School District data to create a personal profile of a student other than for accomplishing the purposes described in the Agreement.

4.2 Notwithstanding the previous paragraph, the Company may use School District data to ensure legal or regulatory compliance or take precautions against legal liability; respond to or participate in the judicial process; protect the safety of users or others on the Company’s website, online service, or application; or investigate a matter related to public safety. The Company shall notify the School District as soon as possible of any use described in this paragraph.

#### **5. Miscellaneous**

5.1 *Indemnification and Insurance.* The Company agrees to indemnify, defend and hold harmless School District and its officers, directors, employees, agents, attorneys and assigns, against any third-party claims, demands, actions, arbitrations, losses and liabilities resulting from damage caused by the Company employees, contractors, or subcontractors in performing the obligations under the Agreement or this Addendum. The Company shall maintain liability insurance evidencing that the Company has workers compensation

insurance as required by law and general liability insurance with a minimum limit of \$2,000,000. All insurers shall be licensed by the State of Illinois and rated A+-VII or better by A.M. Best or comparable rating service. The comprehensive general liability shall name the School District, its Board, Board members, employees, agents, and successors as an additional insured with a waiver of subrogation in favor of the School District. The Company shall provide the School District with certificates of insurance and/or copies of policies reasonably acceptable to the School District evidencing the existence of the coverage described above, including form and deductibles, during the duration of the Agreement. The failure to provide acceptable insurance shall be deemed a breach of the Agreement and the School District may immediately terminate the Agreement. Such certificates of insurance shall indicate that should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered to the School District in accordance with the policy provisions.

- 5.2 *Infringement.* The Company warrants that no third party has any claim to any trademark, patent, or proprietary interest in any product or services the Company provides to the School District. The Company will defend, hold harmless, and indemnify the School District from any claims brought by a third party against the School District to the extent based on an allegation that the Company product or services infringe any U.S. patent, copyright, trademark, trade secret or other proprietary right of a third party. If the School District's use of the Company's products is restricted as the result of a claim of infringement, the Company shall do one of the following: (i) substitute other equally suitable product or service; (ii) modify the allegedly infringing Company product or service to avoid the infringement; (iii) procure for the School District the right to continue to use the Company products or services free of the restrictions caused by the infringement; or (iv) take back such Company products or services and refund to the School District the license fee previously paid for the Company products depreciated on a straight line basis over 12 months and terminate the School District's license to use the Company's product.
- 5.3 *No Indemnification or Limitation of Liability by School District.* Any provision included in the Agreement that requires the School District to indemnify the Company or any other party is deleted and shall not apply to the School District. Any provision in the Agreement, except for Section 5.4 of this Addendum, that limits the Company's liability, requires the School District to release the Company for claims the School District may have against the Company is deleted. Further, any provisions requiring the School District to release its class action rights is deleted.
- 5.4 *Mutual Limitation of Liability.* Neither party will be liable for breach-of-contract damages that the breaching party could not reasonably have foreseen on entry into the Agreement.
- 5.5 *Taxes.* The School District is a tax-exempt organization. Federal excise tax does not apply to the School District and State of Illinois Sales Tax does not apply. The amounts to be paid to the Company hereunder are inclusive of all other taxes that may be levied, including sales, use, nonresident, value-added, excise, and similar taxes levied or imposed upon the work. The Company shall be responsible for any taxes levied or imposed upon the income or business privileges of the Company.
- 5.6 *Payments.* The School District shall make payments to the Company in accordance with the Illinois Local Government Prompt Payment Act, 50 ILCS 505/1. If the School District is late

in making a payment it shall make interest payments at the maximum amount permitted under the Illinois Local Government Prompt Payment Act, 50 ILCS 505/4.

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

5.8 *Freedom of Information Act.* The Company acknowledges that School District is subject to the Illinois Freedom of Information Act, 5 ILCS 140/1 *et seq.* (the "FOIA"), and that the School District shall not be in breach of any confidentiality provisions contained in the Agreement if the School District releases a record in compliance with the FOIA.

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

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

5.11 *Termination.* The School District may immediately terminate the Agreement if the School District makes the determination that the Company has breached a material term of this Addendum. In addition, the School District may terminate this Agreement at any time without cause after providing the Company with 90 days written notice and shall be entitled to reimbursement of all fees previously paid but not yet incurred.

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

5.13 *Deleted Sections from Agreement.* TBD after District 300 attorney review of Pear Deck, Inc. Term and Conditions.

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

Pear Deck, Inc:



Date

1/14/2020

Community Unit School District  
No. 300

Date

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03/11/2020

TERMS AND CONDITIONS

1. **Revocable Offer** - Buyer reserves the right to revoke this offer at any time prior to acceptance by Seller.
  2. **Manager of Acceptance** - This offer shall become a binding contract upon the terms set forth herein when accepted either by Seller's acknowledgment of this Purchase Order or by Seller's shipment to Buyer of all or any part of the goods covered by this Purchase Order.
  3. **Rejection and Return of Goods** - All goods received by Buyer pursuant to this Purchase Order shall be subject to inspection and approval of Buyer. All goods tendered by Seller hereunder which are not fully up to standard and not in compliance with the specifications hereof or shipped contrary to instruction or delivery date (if any specified on face hereof) may be rejected by Buyer at Seller's expense at delivery or within a reasonable time thereof. In the event of rejection by Buyer of all or a portion of the goods, Buyer may charge Seller all expense of unpacking, examining, repacking, storing and reshipping of goods.
  4. **Delivery** - The goods shall be delivered to the location(s) specified by the Buyer on the face hereof unless Seller is directed otherwise in writing by Buyer. Goods are to be shipped prepaid to the place set forth on the face hereof. Seller will arrange transportation of the goods to Buyer unless notified to the contrary by Buyer on the face hereof or otherwise. Any documents necessary to enable Buyer to obtain the goods from the carrier when tendered will be delivered to Buyer prior to tender.
  5. **Invoicing** - Must be issue exactly as stated on the purchase order to insure prompt payment. Any price increase must be pre-approved by the purchasing department prior to shipment of goods or services rendered. Invoices can be email to [accounts.payable@d300.org](mailto:accounts.payable@d300.org) <<mailto:accounts.payable@d300.org>>
  6. **Seller Warranties** - Seller warrants as follows:
    - a. It has title to the goods and they are not subject to a security interest, lien, or other encumbrance. The goods shall be delivered free of the rightful claim of any third person by way of infringement of any patent, trademark, trade secret, copyright, or the like, or any unauthorized or improper use of proprietary or technical information.
    - b. **Indemnification** - Seller shall protect, defend, indemnify, save and keep harmless Buyer from and against any and all claims, liability, loss, costs, damage, penalties, charges and expenses, including but not limited to attorney's fees and expenses of investigation and/or litigation arising out of any breach by Seller of these terms and conditions.
    - c. Seller shall have written sexual harassment policies as set forth in the Illinois Human Rights Act 775 ILCS 5/2- 105(A)(4) as defined in 5/2-101(E) - (copies available).
  7. **Illinois Retailer Occupational Tax Act** - Seller is exempt from the provisions of the Illinois Retailers Occupational Tax Act, 35 ILCS 120.
  8. **Miscellaneous** -
    - a. Reference in this Purchase Order to Seller's quotation does not constitute acceptance of any terms, conditions or warranties contained in such quotation. In the event of a conflict between the terms contained in this Purchase Order shall govern.
    - b. This Purchase Order constitutes the entire contract between Buyer and Seller and exclusively determines the rights and obligations of said parties; any oral undertakings, prior to course of dealing, custom, usage of trade or course of performance between Buyer and Seller shall not be binding on the parties.
    - c. The Buyer reserves the right to cancel and terminate this Purchase Order at any time in its sole discretion by the giving of written notice to Seller, effective upon receipt by Seller, except that goods in process of manufacture on such effective date shall be completed and shipped to Buyer in accordance with the terms and conditions of this Purchase Order.
  9. **Vendor/Contractor Conflict of Interest**

Any vendor or contractor doing \$5,000 - \$25,000 in business with the District within a fiscal year shall not contribute to any political campaign that directly affects the District while doing business for the District or for a period of two years after completion of business with the District. Further, the District will not enter into significant business with a vendor or contractor that has contributed to a political campaign that directly affects the District within two years prior to commencing business. Any vendor or contractor that participates and is awarded a contract through the competitive bidding process is exempt from this policy. Political campaigns that directly affect the District shall be defined as: • School Board Election • Tax or bond referendum. Anyone violating this provision could be subject to having their contract terminated at the sole discretion of the Board of Education.
- LEGAL REF.: 105 ILCS 5/10-20.19c, 5/10-20.21, 5/10-22.34c, and 5/19b-~~ft~~ seq 820 ILCS 130/0.01 et seq. REVISED: August 10, 2009
10. **Compliance with the Illinois Prevailing Wage Act**

It shall be mandatory upon the bidder and upon any subcontractor thereof to pay all laborers, workmen, and mechanics employed by them not less than the general prevailing rate of wages as found by the District or Department of Labor for each craft or type of worker or mechanic needed to execute the contract and the general prevailing rate for legal holiday and overtime work as ascertained by the Illinois Department of Labor. The prevailing wage rates are revised by the Department of Labor periodically and are available on its website. The bidder shall comply with all provisions of the Illinois Prevailing Wage Act, 820 ILCS 130/0.01 et seq., applicable to the work. Payment of any bidder shall not be processed without receipt of certified employee records required by 820 ILCS 130/5
  11. **Modification** - Any substitutions or alterations of any kind or changes in the price of merchandise must receive prior District approval.
  12. **Transportation Charges** - Transportation expense for all shipments shall be prepaid to destination. Merchandise shipped by freight or express will be packed, marked, and described to obtain the lowest rate possible under freight or express classifications.
  13. **Unavoidable Delay** - If the Vendor is delayed in the delivery of goods purchased under the Purchase Order by a cause beyond its control, Vendor must immediately, upon receiving knowledge of such delay, give written notice to the purchasing agent of the earliest shipping date.
  14. **Quantity** - Quantities furnished in excess of those specified in the Purchase Order will not be accepted.
  15. **Inspection** - Materials or equipment purchased are subject to inspection and approval at the District's destination. The District reserves the right to reject and refuse acceptance of items which are not in accordance with the instruction specifications, drawings or data of Vendor's warranty (express or implied). Rejected materials or equipment shall be removed by, or at the expense of, the Vendor promptly after rejection.
  16. **All goods tendered** by Seller hereunder which are not fully up to standard and not in compliance with the specifications hereof or shipped contrary to instruction or delivery date (if any specified on face here of) may be rejected by Buyer at Seller's expense at delivery or within a reasonable time thereof. In the event of rejection by Buyer of all or a portion of the goods, Buyer may charge Seller all expense of unpacking, examining, repacking, storing and reshipping of goods.
  17. **Warranty** - The Vendor warrants that all goods and services furnished hereunder will conform in all respects to the terms of this order, including any drawings, specifications or standards incorporated herein, and that they will be free from latent and patent defects in materials, workmanship and title, and defects in design. In addition, Vendor warrants that said goods and services are suitable for, and will perform in accordance with, the purposes for which they are purchased, fabricated, manufactured and designed or for such other purposes as are expressly specified in this order. The District may return any nonconforming or defective items to the Vendor or require collection or replacement of item at the time the defect is discovered, all at the Vendor's risk and expense. Acceptance shall not relieve the Vendor of its warranty responsibility.
  18. **Taxes** - The District is exempt from all federal and state taxes under exemption number E9996-0079-07. The amounts to be paid to Vendor are inclusive of all other taxes that may be levied, including without limitation sales, use, nonresident, value-added, excise, and similar taxes levied or imposed upon the work. Vendor shall be responsible for any taxes levied or imposed upon the income or business privileges of Vendor.
  19. **Insurance** - Vendor shall procure and maintain in full force and effect, at its expense, products liability, completed operations, and other insurance which is customary for similar vendors in the industry and acceptable to the District.
  20. **Liability** - The Vendor shall be liable for all damages incurred while in performance of its services for the District. The Vendor assumes full responsibility for the work to be performed hereunder, and hereby defends, holds harmless, indemnifies, releases, relinquishes and discharges the District, its officers, agents and employees, from all claims, demands and causes of action of every kind and character including the cost of defense thereof, for any injury to including death of any person whether that person be a third person, contractor or an employee of the Vendor or the District, and any loss of or damage to property of the Vendor, the District, or a third party, caused by or alleged to be caused by, arising out of or in connection with the Vendor's services to the District, whether or not said claims, demands and causes of action in whole or in part are covered by insurance.
  21. **Toxic Substance** - The Vendor must comply with the Toxic Substance Act (PA83- 240a). This Act requires that a Safety Data Sheet be provided for any product containing one or more toxic substances covered in this Act. The SDS shall accompany delivery or have been submitted prior to delivery. A link to SDS sheets is acceptable Payment to vendor will not be made until SDS is provided.