Version 1.1 Agreement Approved: 6-19-18

TEXAS DATA PRIVACY AGREEMENT

_____

and

PenPal Schools

_____

4/25/19

_____

This Texas Data Privacy Agreement ("DPA") is entered into by and between the PenPal Schools (hereinafter referred to as "LEA") and PenPal Schools (hereinafter referred to as "Operator") on _____. The Parties agree to the terms as stated herein.

RECITALS

WHEREAS, the Operator has agreed to provide the Local Education Agency ("LEA") with certain digital educational services ("Services") pursuant to a contract dated 4/25/19 ("Service Agreement"); and

WHEREAS, in order to provide the Services described in the Service Agreement, the Operator may receive or create and the LEA may provide documents or data that are covered by several federal statutes, among them, the Federal Educational Rights and Privacy Act ("FERPA") at 20 U.S.C. 1232g (34 CFR Part 99), Children's Online Privacy Protection Act ("COPPA"), 15 U.S.C. 6501-6506, and Protection of Pupil Rights Amendment ("PPRA") 20 U.S.C. 1232h; and

WHEREAS, the documents and data transferred from LEAs and created by the Operator's Services are also subject to state student privacy laws, including Texas Education Code Chapter 32; and

WHEREAS, this Agreement complies with Texas and Federal laws; and

WHEREAS, the Parties wish to enter into this DPA to ensure that the Service Agreement conforms to the requirements of the privacy laws referred to above and to establish implementing procedures and duties; and

WHEREAS, the Operator may, by signing the "General Offer of Privacy Terms", agree to allow other LEAs in Texas the opportunity to accept and enjoy the benefits of this DPA for the Services described herein, without the need to negotiate terms in a separate DPA.

NOW THEREFORE, for good and valuable consideration, the parties agree as follows:

ARTICLE I: PURPOSE AND SCOPE

1. **Purpose of DPA**. For Operator to provide services to the LEA it may become necessary for the LEA to share certain Data related to the LEA's students, employees, business practices, and/or intellectual property. This agreement describes responsibilities to protect Data between the LEA and Operator.

2. **Nature of Services Provided**. The Operator has agreed to provide the following digital educational services described below and as may be further outlined in Exhibit "A" hereto:

3. **Data to Be Provided**. In order to perform the Services described in the Service Agreement, LEA shall provide the categories of data described below or as indicated in the Schedule of Data, attached hereto as Exhibit "B":

4. **DPA Definitions**. The definitions of terms used in this DPA are found in Exhibit "C". In the event of a conflict, definitions used in this DPA shall prevail over terms used in the Service Agreement.

ARTICLE II: DATA OWNERSHIP AND AUTHORIZED ACCESS

1. **Data Property of LEA**. All Data transmitted to the Operator pursuant to the Service Agreement is and will continue to be the property of and under the control of the LEA. The Operator further acknowledges and agrees that all copies of such Data transmitted to the Operator, including any modifications or additions or any portion thereof from any source, are subject to the provisions of this Agreement in the same manner as the original Data. The Parties agree that as between them, all rights, including all intellectual property rights in and to Data contemplated per the Service Agreement shall remain the exclusive property of the LEA. For the purposes of FERPA, the Operator shall be considered a School Official, under the control and direction of the LEA as it pertains to the use of Data notwithstanding the above. Operator may transfer pupil-generated content to a separate account, according to the procedures set forth below.

2. **Parent Access**. LEA shall establish reasonable procedures by which a parent, legal guardian, or eligible student may review Data on the pupil's records, correct erroneous information, and procedures for the transfer of pupil-generated content to a personal account, consistent with the functionality of services. Operator shall respond in a reasonably timely manner (and no later than 45 days from the date of the request) to the LEA's request for Data in a pupil's records held by the Operator to view or correct as necessary. In the event that a parent of a pupil or other individual contacts the Operator to review any of the Data accessed pursuant to the Services, the Operator shall refer the parent or individual to the LEA, who will follow the necessary and proper procedures regarding the requested information.

3. **Separate Account**. Operator shall, at the request of the LEA, transfer Pupil Generated Content to a separate student account.

4. **Third Party Request**. Should a Third Party, including law enforcement and government entities, contact Operator with a request for data held by the Operator pursuant to the Services, the Operator shall redirect the Third Party to request the data directly from the LEA. Operator shall notify the LEA in advance of a compelled disclosure to a Third Party. The Operator will not use, disclose, compile, transfer, or sell the Data and/or any portion thereof to any third party or

other entity or allow any other third party or other entity to use, disclose, compile, transfer or sell the Data and/or any portion thereof.

5. **No Unauthorized Use**. Operator shall not use Data for any purpose other than as explicitly specified in the Service Agreement.

6. **Subprocessors**. Operator shall enter into written agreements with all Subprocessors, listed in Exhibit F, performing functions pursuant to the Service Agreement, whereby the Subprocessors agree to protect Data in a manner consistent with the terms of this DPA.

ARTICLE III: DUTIES OF LEA

1. **Provide Data In Compliance With State and Federal Law**. LEA shall provide data for the purposes of the Service Agreement in compliance with FERPA, COPPA, PPRA, Texas Education Code Chapter 32, and all other Texas privacy statutes cited in this DPA.

2. **Annual Notification of Rights.** If the LEA has a policy of disclosing education records under 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, and determine whether Operator qualifies as a school official.

3. **Reasonable Precautions**. LEA shall take reasonable precautions to secure usernames, passwords, and any other means of gaining access to the services and hosted data.

4. **Unauthorized Access Notification**. LEA shall notify Operator promptly of any known or suspected unauthorized access. LEA will assist Operator in any efforts by Operator to investigate and respond to any unauthorized access.

ARTICLE IV: DUTIES OF OPERATOR

1. **Privacy Compliance**. The Parties expect and anticipate that Operator may receive personally identifiable information in education records from the District only as an incident of service or training that Operator provides to the LEA pursuant to this Agreement. The Operator shall comply with all applicable State and Federal laws and regulations pertaining to data privacy and security, including FERPA, COPPA, PPRA, Texas Education Code Chapter 32, and all other Texas privacy statutes cited in this DPA. The Parties agree that Operator is a "school official" under FERPA and has a legitimate educational interest in personally identifiable information from education records because for purposes of the contract, Operator: (1) provides a service or function for which the LEA would otherwise use employees; (2) is under the direct control of the LEA with respect to the use and maintenance of education records; and (3) is subject to the requirements of FERPA governing the use and redisclosure of personally identifiable information from education records

2. **Authorized Use**. The data shared pursuant to the Service Agreement, including persistent unique identifiers, shall be used for no purpose other than the Services stated in the Service Agreement

and/or otherwise authorized under the statutes referred to in subsection (1), above. Operator also acknowledges and agrees that it shall not make any re-disclosure of any Data or any portion thereof, including without limitation, meta data, user content or other non-public information and/or personally identifiable information contained in the Data, without the express written consent of the LEA.

3. **Employee Obligation**. Operator shall require all employees and agents who have access to Data to comply with all applicable provisions of this DPA with respect to the data shared under the Service Agreement. Operator agrees to require and maintain an appropriate confidentiality agreement from each employee or agent with access to Data pursuant to the Service Agreement.

4. **No Disclosure**. De-identified information may be used by the Operator for the purposes of development, research, and improvement of educational sites, services, or applications, as any other member of the public or party would be able to use de-identified data pursuant to 34 CFR 99.31(b). Operator agrees not to attempt to re-identify de-identified Data and not to transfer de-identified 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 LEA who has provided prior written consent for such transfer. Operator shall not copy, reproduce or transmit any data obtained under the Service Agreement and/or any portion thereof, except as necessary to fulfill the Service Agreement.

5. **Disposition of Data**. Operator shall dispose of or delete all Data obtained under the Service Agreement when it is no longer needed for the purpose for which it was obtained and transfer said data to LEA or LEA's designee within sixty (60) days of the date of termination and according to a schedule and procedure as the Parties may reasonably agree. Nothing in the Service Agreement authorizes Operator to maintain Data obtained under the Service Agreement beyond the time period reasonably needed to complete the disposition. Disposition shall include (1) the shredding of any hard copies of any Data; (2) Data Destruction; or (3) Otherwise modifying the personal information in those records to make it unreadable or indecipherable. Operator shall provide written notification to LEA when the Data has been disposed of. The duty to dispose of Data shall not extend to data that has been de-identified or placed in a separate Student account, pursuant to the other terms of the DPA. The LEA may employ a "Request for Return or Deletion of Data" FORM, a copy of which is attached hereto as Exhibit "D"). Upon receipt of a request from the LEA, the Operator will immediately provide the LEA with any specified portion of the Data within three (3) calendar days of receipt of said request.

6. **Advertising Prohibition**. Operator is prohibited from using or selling Data to (a) market or advertise to students or families/guardians; (b) inform, influence, or enable marketing, advertising, or other commercial efforts by a Operator; (c) develop a profile of a student, family member/guardian or group, for any commercial purpose other than providing the Service to LEA; or (d) use the Data for the development of commercial products or services, other than as necessary to provide the Service to LEA. This section does not prohibit Operator from generating legitimate personalized learning recommendations.

7. **Access to Data**. Operator shall make Data in the possession of the Operator available to the LEA within five (5) business days of a request by the LEA.

ARTICLE V: DATA PROVISIONS

1. **Data Security**. The Operator agrees to abide by and maintain adequate data security measures, consistent with industry standards and technology best practices, to protect Data from unauthorized disclosure or acquisition by an unauthorized person. The general security duties of Operator are set forth below. Operator may further detail its security programs and measures in Exhibit "F" hereto. These measures shall include, but are not limited to:

    a. **Passwords and Employee Access**. Operator shall secure usernames, passwords, and any other means of gaining access to the Services or to Data, at a level suggested by Article 4.3 of NIST 800-63-3. Operator shall only provide access to Data to employees or contractors that are performing the Services. Employees with access to Data shall have signed confidentiality agreements regarding said Data. All employees with access to Data shall pass criminal background checks.

    b. **Security Protocols**. Both parties agree to maintain security protocols that meet industry best practices in the transfer or transmission of any data, including ensuring that data may only be viewed or accessed by parties legally allowed to do so. Operator shall maintain all data obtained or generated pursuant to the Service Agreement in a secure computer environment and not copy, reproduce, or transmit data obtained pursuant to the Service Agreement, except as necessary to fulfill the purpose of data requests by LEA.

    c. **Employee Training**. The Operator shall provide periodic security training to those of its employees who operate or have access to the system. Further, Operator shall provide LEA with contact information of an employee who LEA may contact if there are any security concerns or questions.

    d. **Security Technology**. When the service is accessed using a supported web browser, Secure Socket Layer ("SSL") or equivalent technology shall be employed to protect data from unauthorized access. The service security measures shall include server authentication and data encryption. Operator shall host data pursuant to the Service Agreement in an environment using a firewall that is periodically updated according to industry standards.

    f. **Security Coordinator**. Operator shall provide the name and contact information of Operator's Security Coordinator for the Data received pursuant to the Service Agreement, pursuant to Exhibit "F".

    g. **Subprocessors Bound**. Operator shall enter into written agreements whereby Subprocessors, listed in Exhibit "F", agree to secure and protect Data in a manner consistent with the terms of this Article V. Operator shall periodically conduct or review compliance monitoring and assessments of Subprocessors to determine their compliance with this Article.

    h. **Periodic Risk Assessment**. Operator further agrees to conduct periodic risk assessments and remediate any identified security and privacy vulnerabilities in a timely manner. Upon request, Operator will provide the LEA with the results of the above risk

assessments and will promptly modify its security measures as needed based on those results in order to meet its obligations under this DPA.

i. **Backups.** Operator agrees to maintain backup copies, backed up at least daily, of Data in case of Operator's system failure or any other unforeseen event resulting in loss of Data or any portion thereof.

j. **Audits.** Upon receipt of a request from the LEA, the Operator will allow the LEA to audit the security and privacy measures that are in place to ensure protection of the Data. The Operator will cooperate fully with the LEA and any local, state, or federal agency with oversight authority/jurisdiction in connection with any audit or investigation of the Operator and/or delivery of Services to students and/or LEA, and shall provide full access to the Operator's facilities, staff, agents and LEA's Data and all records pertaining to the Operator, LEA and delivery of Services to the Operator. Failure to cooperate shall be deemed a material breach of the DPA.

2. **Data Breach**. When Operator reasonably suspects and/or becomes aware of a disclosure or security breach concerning any Data covered by this Agreement, Operator shall immediately notify the District and take immediate steps to limit and mitigate the damage of such security breach to the greatest extent possible.

a. Subject to the following requirements, the Operator shall provide a security breach notification to the LEA.

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

ii. The security breach notification described above in section 2(a)(i) shall include, at a minimum, the following information:

1. The name and contact information of the reporting LEA subject to this section.
2. A list of the types of personal information that were or are reasonably believed to have been the subject of a breach.
3. 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.
4. 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.
5. A general description of the breach incident, if that information is possible to determine at the time the notice is provided.

iii. The security breach notification must include at least:

1. Information about what the Operator has done to protect individuals whose information has been breached.
2. Advice on steps that the person whose information has been breached may take to protect himself or herself.
3. Information about the steps the Operator has taken to cure the breach and the estimated timeframe for such cure.

b. Operator agrees to adhere to all requirements in applicable state and federal law with respect to a data breach related to the Data, including, when appropriate or required, the required responsibilities and procedures for notification and mitigation of any such data breach.

c. Operator further 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 Data or any portion thereof, including personally identifiable information and agrees to provide LEA, upon request, with a copy of said written incident response plan.

d. At the request and with the assistance of LEA, Operator shall notify the affected parent, legal guardian or eligible pupil of the unauthorized access, which shall include the information listed in subsection (a) above.

e. The Parties agree that any breach of the privacy and/or confidentiality obligation set forth in the DPA may, at the LEA's discretion, result in the LEA immediately terminating the Service Agreement and any other agreement for goods and services with Operator. Termination does not absolve the Operator's responsibility to comply with the disposition procedures of Data.

ARTICLE VI- GENERAL OFFER OF TERMS

Operator 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 this DPA to any other LEA who signs the acceptance in said Exhibit. The Form is limited by the terms and conditions described therein.

ARTICLE VII: MISCELLANEOUS

1. **Term**. The Operator shall be bound by this DPA for the duration of the Service Agreement or so long as the Operator maintains any Data. Notwithstanding the foregoing, Operator agrees to be bound by the terms and obligations of this DPA for no less than three (3) years.

2. **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.

3. **Effect of Termination Survival**. If the Service Agreement is terminated, the Operator shall

dispose of all of LEA's Data pursuant to Article IV, section 5.

4. **Priority of Agreements**. This DPA shall govern the treatment of Data in order to comply with the privacy protections, including those found in FERPA and all applicable privacy statutes cited in this DPA. In the event there is conflict between the terms of the DPA and the Service Agreement, or with any other bid/RFP, license agreement, terms of service, privacy policy, or other writing, the terms of this DPA shall apply and take precedence. Except as described in this paragraph herein, all other provisions of the Service Agreement shall remain in effect.

5. **Notice**. All notices or other communication required or permitted to be given hereunder must be in writing and given by personal delivery, facsimile or e-mail transmission (if contact information is provided for the specific mode of delivery), or first class mail, postage prepaid, sent to the designated representatives before:

   The designated representative for the Operator for this Agreement is:

   _____
   _____
   _____
   _____
   _____

   The designated representative for the LEA for this Agreement is:

   Maggie Brown
   _____
   _____
   _____
   _____
   _____

6. **Entire Agreement**. This DPA constitutes the entire agreement of the parties relating to the subject matter hereof and supersedes all prior communications, representations, or agreements, oral or written, by the parties relating thereto. This DPA may be amended and the observance of any provision of this DPA may be waived (either generally or in any particular instance and either retroactively or prospectively) only with the signed written consent of both parties. Neither failure nor delay on the part of any party in exercising any right, power, or privilege hereunder shall operate as a waiver of such right, nor shall any single or partial exercise of any such right, power, or privilege preclude any further exercise thereof or the exercise of any other right, power, or privilege.

7. **Severability**. Any provision of this DPA that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this DPA, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Notwithstanding the foregoing, if such provision could be more narrowly drawn so as not to be prohibited or unenforceable in such jurisdiction while, at the same time, maintaining the intent of the parties, it shall, as to such jurisdiction, be so narrowly drawn without invalidating the remaining provisions of this DPA or affecting the validity or enforceability of such provision in any other jurisdiction.

8. **Governing Law; Venue and Jurisdiction**. THIS DPA WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, 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 IN WHICH THIS AGREEMENT IS FORMED FOR ANY DISPUTE ARISING OUT OF OR RELATING TO THIS SERVICE AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

9. **Authority**. Operator represents that it is authorized to bind to the terms of this DPA, including confidentiality and destruction of Data and any portion thereof contained therein, all related or associated institutions, individuals, employees or contractors who may have access to the Data and/or any portion thereof, or may own, lease or control equipment or facilities of any kind where the Data and portion thereof is stored, maintained or used in any way.

10. **Waiver**. Waiver by any party to this DPA of any breach of any provision of this DPA or warranty of representation set forth herein shall not be construed as a waiver of any subsequent breach of the same or any other provision. The failure to exercise any right under this DPA shall not operate as a waiver of such right. All rights and remedies provided for in this DPA are cumulative. Nothing in this DPA shall be construed as a waiver or relinquishment of any governmental immunities or defenses on behalf of the LEA, its trustees, officers, employees, and agents as a result of the execution of this DPA or performance of the functions or obligations described herein.

11. **Assignment**. None of the parties to this DPA may assign their rights, duties, or obligations under this DPA, either in whole or in part, without the prior written consent of the other party to this DPA.

[*Signature Page Follows*]

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

_____

BY:_____ Date: 4/25/19

Printed Name: Maggie Brown Title/Position: Sr. Account Manager

Address for Notice Purposes: 411 W Monroe St. Austin, TX 78704

_____

BY:_____ Date: 4/25/19

Printed Name:_____ Title/Position:_____

Address for Notice Purposes: 411 W Monroe St. Austin, TX 78704

Note: Electronic signature not permitted.

EXHIBIT "A"

DESCRIPTION OF SERVICES

global project-based learning

EXHIBIT "B"

SCHEDULE OF DATA

Category of Data	Elements	Check if used by your system
Application Technology Meta Data	IP Addresses of users, Use of cookies etc.	✔
	Other application technology meta data-Please specify:	
Application Use Statistics	Meta data on user interaction with application	✔
Assessment	Standardized test scores	
	Observation data	
	Other assessment data-Please specify:	
Attendance	Student school (daily) attendance data	
	Student class attendance data	
Communications	Online communications that are captured (emails, blog entries)	
Conduct	Conduct or behavioral data	
Demographics	Date of Birth	
	Place of Birth	
	Gender	✔
	Ethnicity or race	
	Language information (native, preferred or primary language spoken by student)	
	Other demographic information-Please specify:	birth year
Enrollment	Student school enrollment	✔
	Student grade level	
	Homeroom	
	Guidance counselor	
	Specific curriculum programs	
	Year of graduation	
	Other enrollment information-Please specify:	
Parent/Guardian Contact Information	Address	
	Email	
	Phone	
Parent/Guardian ID	Parent ID number (created to link parents to students)	
Parent/Guardian Name	First and/or Last	
Schedule	Student scheduled courses	
	Teacher names	
Special Indicator	English language learner information	
	Low income status	
	Medical alerts /health data	
	Student disability information	

	Specialized education services (IEP or 504)	☐
	Living situations (homeless/foster care)	☐
	Other indicator information-Please specify:	
Category of Data	**Elements**	**Check if used by your system**
Student Contact Information	Address	☐
	Email	☐
	Phone	☐
Student Identifiers	Local (School district) ID number	☐
	State ID number	☐
	Vendor/App assigned student ID number	✔
	Student app username	✔
	Student app passwords	✔
Student Name	First and/or Last	✔
Student In App Performance	Program/application performance (typing program-student types 60 wpm, reading program-student reads below grade level)	✔
Student Program Membership	Academic or extracurricular activities a student may belong to or participate in	☐
Student Survey Responses	Student responses to surveys or questionnaires	☐
Student work	Student generated content; writing, pictures etc.	☐
	Other student work data -Please specify:	
Transcript	Student course grades	✔
	Student course data	✔
	Student course grades/performance scores	✔
	Other transcript data -Please specify:	
Transportation	Student bus assignment	☐
	Student pick up and/or drop off location	☐
	Student bus card ID number	☐
	Other transportation data -Please specify:	
Other	Please list each additional data element used, stored or collected through the services defined in Exhibit A	

EXHIBIT "C"

DEFINITIONS

HB 2087: The statutory designation for what is now Texas Education Code Chapter 32 relating to pupil records.

Data: Data shall include, but is not limited to, the following: student data, employee data, metadata, user content, course content, materials, and any and all data and information that the District (or any authorized end user(s)) uploads or enters through their use of the product. Data also specifically includes all personally identifiable information in education records, directory data, and other non-public information for the purposes of Texas and Federal laws and regulations. Data as specified in Exhibit B is confirmed to be collected or processed by the Operator pursuant to the Services. Data shall not constitute that information that has been anonymized or de-identified, or anonymous usage data regarding a student's use of Operator's services.

Educational Records: Educational Records are official records, files and data directly related to a student and maintained by the school or local education agency, including but not limited to, records encompassing all the material kept in the student's cumulative folder, such as general identifying data, records of attendance and of academic work completed, records of achievement, and results of evaluative tests, health data, disciplinary status, test protocols and individualized education programs. For purposes of this DPA, Educational Records are referred to as Data.

De-Identifiable Information (DII): De-Identification refers to the process by which the Operator removes or obscures any Personally Identifiable Information ("PII") from Data in a way that eliminates the risk of disclosure of the identity of the individual and information about them.

Data Destruction: Provider shall certify to the District in writing that all copies of the Data stored in any manner by Provider have been returned to the District and permanently erased or destroyed using industry best practices to assure complete and permanent erasure or destruction. These industry best practices include, but are not limited to, ensuring that all files are completely overwritten and are unrecoverable. Industry best practices do not include simple file deletions or media high level formatting operations.

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

Operator: The term "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 primarily for K–12 school purposes and was designed and marketed for K–12 school purposes. This term shall encompass the term "Third Party," as it is found in applicable state statutes.

Personally Identifiable Information (PII): The terms "Personally Identifiable Information" or "PII" shall include, but are not limited to, Data, metadata, and user or pupil-generated content obtained by reason of the use of Operator's software, website, service, or app, including mobile apps, whether gathered by Operator or provided by LEA or its users, students, or students' parents/guardians. PII

includes Indirect Identifiers, which is any information that, either alone or in aggregate, would allow a reasonable person to be able to identify a student to a reasonable certainty. For purposes of this DPA, Personally Identifiable Information shall include the categories of information listed in the definition of Data.

Pupil-Generated Content: The term "pupil-generated content" means materials or content created by a pupil during and for the purpose of education including, but not limited to, essays, research reports, portfolios, creative writing, music or other audio files, photographs, videos, and account information that enables ongoing ownership of pupil content.

Pupil Records: Means both of the following: (1) Any information that directly relates to a pupil that is maintained by LEA and (2) any information acquired directly from the pupil through the use of instructional software or applications assigned to the pupil by a teacher or other LEA employee. For the purposes of this Agreement, Pupil Records shall be the same as Educational Records.

Service Agreement: Refers to the Contract or Purchase Order that this DPA supplements and modifies.

School Official: For the purposes of this Agreement and pursuant to 34 CFR 99.31 (B), a School Official is a contractor that: (1) Performs an institutional service or function for which the agency or institution would otherwise use employees; (2) Is under the direct control of the agency or institution with respect to the use and maintenance of education records; and (3) Is subject to 34 CFR 99.33(a) governing the use and re-disclosure of personally identifiable information from student records.

Subscribing LEA: A LEA that was not party to the original Services Agreement and who accepts the Operator's General Offer of Privacy Terms.

Subprocessor: For the purposes of this Agreement, the term "Subprocessor" (sometimes referred to as the "Subcontractor") means a party other than LEA or Operator, who Operator uses for data collection, analytics, storage, or other service to operate and/or improve its software, and who has access to PII.

Targeted Advertising: Targeted advertising means presenting an advertisement to a student where the selection of the advertisement is based on student information, student records or student generated content or inferred over time from the usage of the Operator's website, online service or mobile application by such student or the retention of such student's online activities or requests over time.

Texas Student Privacy Alliance: The Texas Student Privacy Alliance (TXSPA) is a collaborative group of Texas school districts that share common concerns around student privacy. The goal of the TXSPA is to set standards of both practice and expectations around student privacy such that all parties involved have a common understanding of expectations. The Texas K-12 CTO Council is the organization that sponsors TXSPA and the TXSPA is the Texas affiliate of the National Student Privacy Consortium.

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 pupil records. However, for the purpose of this Agreement, the term "Third Party" when used to indicate the provider of digital educational software or services is replaced by the term "Operator."

EXHIBIT "D"

DIRECTIVE FOR DISPOSITION OF DATA

PenPal Schools

_____ directs _____ to dispose of data obtained by Company pursuant to the terms of the Service Agreement between LEA and Company. 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. Timing of Disposition

Data shall be disposed of by the following date:

☐ As soon as commercially practicable

☐ By 4/25/19

4. Signature

_____ 4/25/19

Authorized Representative of LEA Date

5. Verification of Disposition of Data

_____ 4/25/19

Authorized Representative of Company Date

EXHIBIT "E"

GENERAL OFFER OF PRIVACY TERMS

1. **Offer of Terms**

Operator offers the same privacy protections found in this DPA between it and [Name of LEA] and which is dated [Insert Date] to any other LEA ("Subscribing LEA") who accepts this General Offer through its signature below. This General Offer shall extend only to privacy protections and Operator's signature shall not necessarily bind Operator to other terms, such as price, term, or schedule of services, or to any other provision not addressed in this DPA. The Operator and the other LEA may also agree to change the data provided by LEA to the Operator to suit the unique needs of the LEA. The Operator 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 (3) the expiration of three years after the date of Operator's signature to this Form. Operator shall notify the Texas Student Privacy Alliance (TXSPA) in the event of any withdrawal so that this information may be transmitted to the Alliance's users.

BY: _____ Date: 4/25/19

Printed Name: Maggie Brown Title/Position: Sr. Account Manager

2. **Subscribing LEA**

A Subscribing LEA, by signing a separate Service Agreement with Operator, and by its signature below, accepts the General Offer of Privacy Terms. The Subscribing LEA and Operator shall therefore be bound by the same terms of this DPA. The Subscribing LEA, also by its signature below, agrees to notify Operator that it has accepted this General Offer, and that such General Offer is not effective until Operator has received said notification.

BY: _____ Date:_____

Printed Name:_____ Title/Positon_____

EXHIBIT "F" DATA SECURITY

1. **Security Coordinator Information:**

Miguel Vasquez
Named Security Coordinator

miguel@penpalschools.com
Email of Security Coordinator

Phone Number of Security Coordinator

2. **Subprocessor List:**

3. **Additional Data Security Requirements:**

See Privacy Policy at www.penpalschools.com

00763-00001/4199055.1

Cypress-Fairbanks ISD Addendum

Article II section 2 is modified in the following manner by those signing this agreement:

2. **Parent Access**. LEA shall establish reasonable procedures by which a parent, legal guardian, or eligible student may review Data on the pupil's records, correct erroneous information, and procedures for the transfer of pupil- generated content to a personal account, consistent with the functionality of services. Operator shall respond in a reasonably timely manner (and no later than 15 days from the date of the request) to the LEA's request for Data in a pupil's records held by the Operator to view or correct as necessary. In the event that a parent of a pupil or other individual contacts the Operator to review any of the Data accessed pursuant to the Services, the Operator shall refer the parent or individual to the LEA, who will follow the necessary and proper procedures regarding the requested information.

PenPal Schools

_____ _____

Name of School District Name of Company

_____

Printed Name of Authorized School District Representative

4/25/19

_____ _____

Signature of Authorized School District Representative Date

Maggie Brown

_____

Printed Name of Authorized Company Representative

4/25/19

_____ _____

Signature of Authorized Company Representative Date