

CALIFORNIA EDUCATION CODE SECTION 49073.1 AMENDMENT TO
SAN JOAQUIN COUNTY OFFICE OF EDUCATION
SPECIAL EDUCATION INFORMATION SYSTEM LICENSE AGREEMENT
BETWEEN SAN JOAQUIN COUNTY OFFICE OF EDUCATION AND
LODI UNIFIED SCHOOL DISTRICT (“AMENDMENT”)

This Amendment is made part of and modifies the San Joaquin County Office of Education Special Education Information System License Agreement dated November 28th, 2017, and any subsequent amendments thereto (hereinafter referred to as the “Agreement”) between the San Joaquin County Office of Education (“Provider”) and Lodi Unified School District (“Customer”). Terms not defined otherwise herein shall have the meaning ascribed to them in the Agreement. To the extent of any conflict or inconsistency between this Amendment and the terms and conditions of the Agreement, this Amendment will prevail.

RECITALS

WHEREAS, through the Agreement Provider provides digital education software that is authorized to access, store and use Pupil Records and/or provides services, including cloud-based services, for the digital storage, management and/or retrieval of Pupil Records;

WHEREAS, Customer is a “local educational agency” under California Education Code section 49073.1(3), which defines “local educational agency” as including “school districts, county offices of education, and charter schools;”

WHEREAS, Provider is a “third party” under California Education Code section 49073.1(6), which defines “third party” as a provider of digital educational software or services, including cloud-based services, for the digital storage, management, and retrieval of Pupil Records;

WHEREAS, California Education Code section 49073.1 requires that any contract for the provision of services entered into between Provider and Customer contain provisions specified in sections (b)(1) through (b)(9) of California Education Code section 49073.1;

WHEREAS, Provider and Customer desire to amend the terms of the Agreement to satisfy the requirements of California Education Code section 49073.1; and now therefore, provider and customer agree to the terms in compliance with California education code section 49073.1:

1. **Definitions:** As used in herein the following terms are defined as follows:
 - a. “Adult Pupil” means a Pupil who has reached 18 years of age.

- b. “Deidentified Information” means information that cannot be used to identify an individual pupil.
 - c. “Parent” means a natural parent, an adopted parent or legal guardian of a Pupil.
 - d. “Pupil” or “Pupils” means a student or students of Customer.
 - e. “Personally Identifiable Information” includes: 1) the Pupil’s name, 2) the name of the Pupil’s parent or other family members, 3) the address of the Pupil or Pupil’s family, 4) a personal identifier, such as a Pupil’s social security number, Pupil’s number, or biometric record, 5) other indirect identifiers, such as the Pupil’s date of birth, place of birth, and mother’s maiden name, 6) other information that, alone or in combination, is linked or linkable to a specific Pupil that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the Pupil with reasonable certainty, or 7) information requested by a person who the educational agency or institution reasonably believes knows the identity of the Pupil to whom the Pupil Record relates.
 - f. “Pupil Records” means both of the following: 1) any information directly related to a Pupil that is maintained by Provider, including Personally Identifiable Information, 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 Customer employee. “Pupil Records” does not mean aggregated Deidentified Information used by Provider for the following purposes: to improve educational products for adaptive learning purposes and for customizing Pupil learning; to demonstrate the effectiveness of Provider’s products in the marketing of those products; or for the development and improvement of educational sites, services, or applications.
- 2. Ownership and Control of Customer Data, Including Pupil Records. At all times during the term of this Agreement and after termination of this Agreement, all Pupil Records remain the exclusive property of Customer and Customer retains exclusive rights, ownership and control thereto.
 - 3. Use of Pupil Records. Provider shall not use any Pupil Records to which it has access by way of this Agreement for any purpose other than those required or specifically permitted by this Agreement.
 - 4. Review and Correction of Pupil Records. A Parent or Adult Pupil may review his/her Pupil Records that are retained, stored, hosted, accessed or used by Provider by making a request in writing to Customer for access to the subject Pupil Records. Subject to Customer verification of identity, approval of disclosure and redaction of any Personally Identifiable Information of a Pupil other than the Pupil of the

Parent or Adult Pupil, who is making the request, Customer will direct Provider to provide access to any/all requested Pupil Records within five (5) business days or as otherwise required by law, by issuing the Parent or Adult Pupil a temporary user name and password to log on to the Provider's software/information system to review the requested Pupil Records. This time frame may be extended by written consent of the Parent or Adult Pupil. A Parent or Adult Pupil may submit written corrections to Pupil Records retained, stored, hosted, accessed or used by Provider to Customer. Customer shall have exclusive authority over Provider with respect to authorizing disclosure of Pupil Records pursuant to this Agreement.

5. A Parent or Adult Pupil may correct erroneous information identified upon review of Pupil Records by making a written request to Customer. Subject to Customer's verification of identity and approval of such a request to correct the erroneous information, Customer shall notify Provider of the approved request and direct Provider to correct the erroneous information. Provider will not make any modification to Pupil Records unless specifically directed to do so by Customer. Provider shall direct all requests to review and/or correct erroneous information to Customer through the following contact information:

Jonathan Martin
(209) 331-7061
jmartin@lodiUSD.net
1305 E Vine Street, Lodi, CA 95240


6. Targeted Advertising Prohibited. Provider shall not use any Customer Data, including Pupil Records, to engage in targeted advertising during the term of this Agreement, and this provision survives the termination of this Agreement.
7. Security and Confidentiality of Pupil Records. Provider will do the following to ensure the security and confidentiality of Pupil Records:
 - a. Designate an employee responsible for the training and compliance of all Provider employees, agents, and assigns on compliance with security and confidentiality provisions detailed in this Agreement.
 - b. Provider will protect the confidentiality of Pupil Records and take all reasonably necessary measures consistent with industry standards to protect Customer Data from any and all unauthorized access and disclosures.
 - c. Provider has designated an individual responsible for training Provider employees, agents and assigns on reasonable protection measures and the confidentiality of Pupil Records consistent with state and federal law.
 - d. Provider shall not disclose Pupil Records, except as specified under the terms of this Agreement or as required by law.

- e. Provider shall develop, implement, maintain and use appropriate administrative, technical and physical security measures to preserve the confidentiality, integrity and availability of all stored, managed, retained, accessed or used Pupil Records received from or on behalf of Customer and/or Pupils.
 - f. Provider warrants that all confidentiality and security measures identified in this Agreement will be extended by contract to any and all subcontractors used by Provider, if any, to execute the terms of this Agreement.
 - g. Provider warrants that all Pupil Records will be encrypted in transmission and storage.
 - h. Provider will use appropriate and reliable storage media, which shall include weekly backup of all input provided by Customer and offsite storage of backup material for a 30-day period.
8. Unauthorized Disclosure Notifications. In the event of an unauthorized disclosure of Pupil Records, the following process will be followed:
- a. Immediately upon becoming aware of a compromise of Pupil Records, or of circumstances that could have resulted in an unauthorized access to or disclosure of Pupil Records, Customer and Provider agree to notify the other Party, fully investigate the incident and fully cooperate with the other Party's investigation of the incident, implement remedial measures and respond in a timely manner.
 - i. Parent or Adult Pupil will be immediately notified of:
 - 1. The nature of the unauthorized use or disclosure (e.g., security breach, nonconsensual re-disclosure, etc.);
 - 2. The specific Pupil Records that were used or disclosed without authorization;
 - 3. What Provider and Customer have done or will do to mitigate any effects of the unauthorized use or disclosure; and
 - 4. What corrective action Provider and Customer have taken or will take to prevent future occurrences.
 - b. Except as otherwise required by law, Provider will not provide notice of the incident directly to the Parent or Adult Pupil whose Pupil Records were involved, regulatory agencies, or other entities, without prior written permission from Customer.

9. Compliance with Applicable Laws. Customer Data includes Pupil Records subject to the Family Educational Rights and Privacy Act (20 U.S.C. Sec. 1232g). Provider recognizes that as a county office of education and public entity, Provider is considered a "School Official" (as the term is used in FERPA and its implementing regulations) for any and all software, hosting and services provided to Customer through this Agreement. The Parties agree that the services provided to Customer through this Agreement serve a "legitimate educational interest," as defined and used in FERPA and its implementing regulations. The Parties agree to jointly ensure compliance with FERPA, its implementing regulations and Pupil privacy and confidentiality requirements of California law, including but not limited to Education Code section 49060 et. seq. The Parties shall comply with the following process for compliance with FERPA and California law:
- a. Provider and Customer warrant that they are familiar with the confidentiality, security and disclosure requirements of FERPA, its implementing regulations and Pupil privacy and confidentiality requirements of California law, including but not limited to Education Code section 49060 et. seq., and have designated an individual responsible for ensuring compliance therewith.
 - b. Provider and Customer shall abide by the disclosure, security, breach notification, retention/destruction and use provisions contained in this Agreement and as required by law.
 - c. By the signature of its authorized representative or agent below, Provider hereby acknowledges that Customer has provided notice under Education Code section 49075(a) and 34 C.F.R. section 99.33(d) that Provider is strictly prohibited from disclosing Pupil Records from Customer to any third party without the prior written consent and direction to authorize disclosure by Customer.
10. Within thirty (30) days of the Effective Date of termination of this Agreement, or within thirty (30) days from completion of this Agreement, Provider warrants that it will securely transmit all Customer Data, including Pupil Records, to Customer in ASCII delimited file format or other mutually agreed format, without retaining any copies of Customer Data. In the alternative, and subject to a written request from Customer, Provider will securely destroy all Customer Data, including Pupil Records, upon termination of this Agreement. Provider will then provide verification to Customer that the Customer Data not otherwise returned to Customer was destroyed subject to Customer's written request, the date of destruction and the method of destruction.

Except as specifically modified herein, all other terms and conditions contained in the Agreement between Provider and Customer shall remain unchanged and in full force and effect.

Dated this 28th day of November, 2017.

By: 

John Arguelles, Director Center
for Educational Development and Research
San Joaquin County Office of Education

Jonathan Martin
Administrative Director of Student
Services/SELPA
Lodi Unified School District
Authorized Representative



Leonard Khan
Chief Business Officer

12/13/17