DATA PRIVACY AMENDMENT TO AGREEMENT
THE ROCKLIN UNIFIED SCHOOL DISTRICT

AND

FUEL EDUCATION LLC

WHEREAS, the Rocklin Unified School District ("District") and Fuel Education LLC, (hereinafter referred to as Provider"), have entered into an Agreement whereby Provider has agreed to provide web-based educational products and services; (hereinafter referred to as "Service") and

WHEREAS, in order to provide the Services described above, Provider may receive documents defined as student records under FERPA and California AB 1584, among other statutes, which are therefore subject to statutory protection; and

WHEREAS, the Agreement, either having been executed prior to or after the enactment of AB 1584, (currently found in Education Code section 49073.1), and may not contain all of the provisions required by that Statute;

WHEREAS, the parties wish to execute this Amendment to bring the underlying Agreement in full compliance with AB 1584.

NOW THEREFORE, for good and valuable consideration, the Parties agrees as follows:

PURPOSE

1. The purpose of this Amendment is to bind the parties to uphold their responsibilities under all applicable privacy statutes, including the Family Education Rights Privacy Act (FERPA), the Protection of Pupil Rights Amendment (PPRA), the Children's Online Privacy Protection Act (COPPA), and AB 1584, found in Education Code including Section 49073.1). Specific duties are set forth below.

DATA OWNERSHIP AND AUTHORIZED ACCESS

2. <u>Data Property of District</u>: All Pupil Records transmitted by the District to the Provider, or entered or uploaded under District's user accounts, remain the sole property of the District. "Pupil Records" shall be defined as any information directly related to a pupil that is maintained by the District or acquired directly from the pupil through the use of instructional software or applications assigned to the pupil by a teacher or other District employees. Pupil Records does not include information that cannot be used to identify an individual pupil ("De-Identified Information") used by Provider to (i) improve educational products for adaptive learning purposes and for customized pupil learning; (ii) demonstrate the effectiveness of Provider's products in the marketing of those products; or, (iii) for the development and improvement of educational sites, services, or applications. The District retains Control over Pupil Records. "Control" shall be defined as the right of District to direct Provider to (i) use Pupil Records in Provider's performance of the services purchased; (ii) destroy some or all Pupil Records in a commercially reasonable time; or, (iii) return some or all Pupil Records in a mutually agreed upon media format in a commercially reasonable time. Provider and the District shall establish reasonable procedures by which a parent, legal guardian or eligible student may review personally identifiable information on the pupil's records, correct erroneous information, and procedures for the transfer of pupil-generated content to a personal account.

The procedures by which pupils may retain Control of their own Pupil-Generated Content are outlined as follows: Pupils may exercise possession or Control directly through the learning management system in which the Pupil-Generated Content resides, or provide a specific request to the District. The District will then forward the request to Provider, which will take commercially reasonable steps to comply. These steps will be limited to the following actions: (1) deleting the Pupil-Generated Content if not otherwise prohibited by applicable law, and (2) providing District with a copy of the requested Pupil-Generated Content in a mutually agreed upon media format in a commercially reasonable time. "Pupil-Generated Content" shall be defined as materials created by a pupil, including, but not limited to, essays, research reports, portfolios, creative writing, music or other audio files, photographs, and account information that enables ongoing ownership of pupil content. Pupil-Generated Content does not include pupil responses to a standardized assessment where pupil possession and control would jeopardize the validity and reliability of that assessment.

Parents, legal guardians, or eligible pupils may review Pupil Records and correct erroneous information by the following protocol: Requestors eligible to review and correct such documents under applicable law shall submit such requests to District. If such data is available to District through its account administration on a Provider learning management system, District shall respond to the request directly. If the requested information is not available to District, District shall then forward valid requests to Provider. Provider will respond by providing the Pupil Record to District in a mutually agreed upon media format or make corrections to a Pupil Record, both in a commercially reasonable time.

3. Data Access: Provider may access Pupil Records solely to fulfill its obligations under this Amendment.

4. Third Party Access: Provider may not allow access to Pupil Records to a third party without District's express written consent, except as required for the provision of Services and unless as required or allowed by law or court order. Provider will ensure that approved subcontractors adhere to all provisions of the Agreement and this Amendment.

5. Third Party Request: Except as legally prohibited, should a third party contacts Provider with a request for Pupil Records, including law enforcement and government entities, the Provider shall redirect the third party to request the Pupil Records directly from the District. Provider shall notify the District in advance of a compelled disclosure to a third party unless legally prohibited.

6. Applicability of COPPA: Provider warrants to District that all data collected directly from children and/or data resulting from tracking children's use of the service is subject to parental consent and will occur in strict conformity to the requirements of the Children's Online Privacy Protection Act (COPPA). District shall obtain such parental consent, unless expressly agreed to otherwise by the parties. Provider may not sell or market student data, or use student data for sale or marketing purposes without express parental consent.

DUTIES

7. District: The District will perform the following duties:

> (a) Provide Data: Provide Pupil Records for the purposes of the Agreement in compliance with the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. section 1232 g.

> (b) Precautions: Take reasonable precautions to secure usernames, passwords, and any other means of gaining access to the services and hosted data.

(c) <u>Notification</u>: Notify Provider promptly of any known or suspected unauthorized access.

8. <u>Provider</u>: Provider will perform the following duties:

(a) <u>Privacy Compliance</u>: Comply with all FERPA, COPPA, PPRA and AB 1584 (Education Code section 49073.1), among others. These duties shall include the following:

(b) <u>Authorized Use</u>: The Pupil Records shared under the Agreement shall be used for no purpose other than the work stated in this Amendment and or otherwise authorized under the statutes referred to in subsection (a), above.

(c) <u>Employees Bound</u>: Require all employees of Provider and agents of any kind to comply with all applicable provisions of FERPA laws with respect to the Pupil Records shared under this Amendment. Provider agrees to require and maintain an appropriate confidentiality agreement from each employee or agent with access to Pupil Records pursuant to this Amendment.

(d) <u>Secure Environment</u>: Maintain all Pupil Records obtained pursuant to this Amendment in a secure computer environment and not copy, reproduce or transmit data obtained pursuant to this Amendment except as necessary for the provision of Services or as required or allowed under applicable law or court order. Provider has security measures in place to help protect against loss, misuse and alteration of the Pupil Records under Provider's control. When the Service is accessed using a supported web browser, Secure Socket Layer ("SSL") or equivalent technology protects information, using both server authentication to help ensure that Pupil Records are safe, secure and available to only authorized users. Provider shall host the service in a secure server environment that uses a firewall and other advance technology in an effort to prevent interference or access from outside intruders. The service will require unique account identifiers, usernames and passwords.

(e) <u>No Disclosure</u>: Not disclose any Pupil Records obtained under this Amendment in a manner that could identify an individual student to any other entity in published results of studies as authorized by this Amendment. Deidentified information may be used by the vendor for the purposes of development and improvement of educational sites, services or applications.

(f) <u>Disposition of Data</u>: Destroy all personally identifiable data obtained under this Amendment when it is no longer needed for the purpose for which it was obtained, or transfer said data to the District or District's designee, according to a schedule and procedure as the Parties may reasonable agree. Nothing in this Amendment authorizes Provider to maintain personally identifiable data beyond the time period reasonably needed to complete the disposition.

(g) <u>Data Breach Notification</u>: Upon becoming aware of any unlawful or unauthorized access to Pupil Records stored on equipment used by Provider or in facilities used by Provider, Provider will: promptly notify the District of the suspected or actual incident; promptly investigate the incident and provide District with detailed information regarding the incident, including the identity of affected users; support the District in its efforts to notify affected users; and use reasonable steps to mitigate the effects and to minimize any damage resulting from the incident.

DATA REQUEST

9. <u>Data Requested</u>: Student number, name, grade level, grades, test scores and any student work necessary for the provision of services.

10. <u>School Year</u>: Provider is requesting data for the following school year(s): <u>July 1, 2021</u> through June 30, <u>2022</u>.

AGREEMENT

11. <u>Priority of Agreements</u>: This Amendment shall govern the treatment of student records in order to comply with the privacy protections, including those found in FERPA and AB 1584. In the event there is conflict between the terms of this Amendment and the Agreement or any other bid/RFP, license agreement, or contract document(s) in existence, the terms of this Amendment shall apply.

12. <u>Other Provisions Unaffected</u>: Except as described in paragraph 11 above, all other provisions of the Agreement shall remain unaffected.

13. <u>Modification of Agreement</u>: No modification or waiver of any term of this Amendment is effective unless both parties sign it.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the last day noted below.

ROCKLIN UNIFIED SCHOOL DISTRICT

By: _____   Date: June 25, 2021 _____

Printed Name: Ryan Johnson _____   Title/Position: CTO _____

Provider Legal Name

By: Patrick Neeman _____   Date: 6/28/2021 _____
82588F0571BB456...

Printed Name: Patrick Neeman _____   Title/Position: VP Finance _____

REV May 2017