

WASHINGTON STUDENT DATA PRIVACY AGREEMENT Version 1.0
Monroe School District

AGENCY

and

Vista Higher Learning

ARTICLE I: PURPOSE AND SCOPE

1. Purpose of DPA. The purpose of this DPA is to describe the duties and responsibilities to protect student data transmitted to Provider from the LEA pursuant to the Service Agreement, including compliance with all applicable statutes, including the FERPA, PPRA, COPPA, SUPER and other applicable Washington State laws, all as may be amended from time to time. In performing these Services, the Provider shall be considered a School Official with a legitimate educational interest, and performing services otherwise provided by the LEA. With respect to the use and maintenance of Student Data, Provider shall be under the direct control and supervision of the LEA.

2. Nature of Services Provided. The Provider has agreed to provide the following digital educational products and Services described below and as may be further outlined in Exhibit “A” attached hereto:

K12 Instructional Materials

3. Student Data to Be Provided. In order to perform the Services described in the Service Agreement, LEA shall provide the categories of data indicated in the Schedule of Data, attached hereto as Exhibit “B”.

4. DPA Definitions. The definition of terms used in this DPA is found in Exhibit “C” attached hereto. In the event of a conflict, definitions used in this DPA shall prevail over term used in the Service Agreement.

ARTICLE II: DATA OWNERSHIP AND AUTHORIZED ACCESS

1. Student Data Property of LEA. All Student Data transmitted to the Provider pursuant to the Service Agreement is and will continue to be the property of and under the control of the LEA. The Provider further acknowledges and agrees that all copies of such Student Data transmitted to the Provider, including any modifications or additions or any portion thereof from any source, are subject to the provisions of this DPA in the same manner as the original Student Data. The Parties agree that as between them, all rights, including all intellectual property rights in and to Student Data contemplated per the Service Agreement shall remain the exclusive property of the LEA. For the purposes of FERPA, the Provider shall be considered a School Official, under the control and direction of the LEAs as it pertains to the use of Student Data notwithstanding the above. Provider may transfer student-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 Student Data in the student’s records, correct erroneous information, and procedures for the transfer of student-generated content to a personal account, consistent, if at all, with the functionality of Services. Provider shall respond in a timely manner (and no later than 45 days from the date of the request) to the LEA’s request for Student Data in a student’s records held by the Provider to view or correct as necessary. In the event that a parent of a student or other individual contacts the Provider to review any of the Student Data accessed pursuant to the Services, the Provider shall refer the parent or

3. Employee Obligation. Provider shall require all officers, employees and agents (including, but not limited to, Subprocessors) who have access to Student Data to comply with all applicable provisions of this DPA with respect to the data shared under the Service Agreement.

4. No Disclosure. De-identified Information may be used by the Provider 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). Provider agrees not to attempt to re-identify de-identified Student Data and not to transfer de-identified Student Data to any party unless (a) that party agrees in writing not to attempt re-identification, and (b) prior written notice has been given to LEA, which has provided prior written consent for such transfer. Provider 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 or as otherwise consistent with the terms of this DPA.

5. Disposal of Data. Within sixty (60) days of a written request from LEA, Provider shall dispose of or delete all Student Data obtained under the Service Agreement when it is no longer needed for the purpose for which it was obtained. Disposal shall include (1) the shredding of any hard copies of any Student Data; (2) Erasing; or (3) Otherwise modifying the personal information in those records to make it unreadable and/or indecipherable by human or digital means. Nothing in the Service Agreement authorizes Provider to maintain Student Data obtained under the Service Agreement beyond the time period reasonably needed to complete the disposal. Provider shall provide written notification to LEA when the Student Data has been disposed. The duty to dispose of Student 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 Student Data” form, a copy of which is attached hereto as Exhibit “D”).

a. Complete Disposal Upon Termination of Service Agreement. Upon termination of the Service Agreement, and further upon written request from the LEA to the Provider, Provider shall dispose of or delete all Student Data obtained under the Service Agreement. . In no event shall Provider dispose of data pursuant to this provision unless and until Provider has received affirmative written confirmation from LEA that data will not be transferred to a separate account.

b. Pre-termination Data Disposal Meeting. In addition to the foregoing requirements, the LEA may request in writing that Provider participate in a meeting to discuss disposal of the Student Data prior to termination of the Service Agreement.

6. Advertising Prohibition. Provider is prohibited from using or selling Student Data to (a) market or advertise to students or families/guardians; (b) inform, influence, or enable marketing, advertising, or other commercial efforts by a Provider; (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 Student Data for the development of commercial products or Services, other than as necessary to provide the Service to LEA. This section does not prohibit Provider from using Student Data for adaptive learning or customized student learning purposes, responding to

security measures shall include server authentication and data encryption. Provider shall host data pursuant to the Service Agreement in an environment using a firewall that is updated according to industry standards.

g. Security Coordinator. If different from the designated representative identified in Article VII, section 5, Provider shall provide the name and contact information of Provider's Security Coordinator for the Student Data received pursuant to the Service Agreement.

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h. Subprocessors Bound. Provider shall enter into written agreements whereby Subprocessors agree to secure and protect Student Data in a manner consistent with the terms of this Article V. Provider shall periodically (no less than annually) conduct or review compliance monitoring and assessments of Subprocessors to determine their compliance with this Article

I. Periodic Risk Assessment. Provider further acknowledges and agrees to conduct digital and physical periodic (no less than annual) risk assessments and remediate any identified security and privacy vulnerabilities in a timely manner.

j. Compliance Audit. Upon receipt of a written request from LEA, the Provider will provide LEA, subject to a non-disclosure agreement reasonably acceptable to the parties, with the results of an audit of security policies, practices, and procedures on an annual or biennial basis, to be performed by a qualified third party selected by Provider.

2. Data Breach. In the event that Student Data is accessed or obtained by an unauthorized individual, Provider shall provide notification to LEA within a reasonable amount of time following discovery of the incident. Provider shall follow the following process

a. 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.

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

who signs the acceptance on in said Exhibit. The Form is limited by the terms and conditions described therein.

ARTICLE VIII: MISCELLANEOUS

1. Term. The Provider shall be bound by this DPA for the duration of the Service Agreement or so long as the Provider maintains any Student Data. Notwithstanding the foregoing, Provider agrees to be bound by the terms and obligations of this DPA for a period of three (3) years, or so long as the Provider performs services under this Agreement, whichever shall be longer.

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. LEA Either Party shall have the right to terminate the DPA and Service Agreement in the event of a material breach by the other Party, its employees, or agents of the terms of this DPA.

3. Effect of Termination Survival. If the Service Agreement is terminated, the Provider shall destroy all of LEA's data pursuant to Article V, section 1(b), and Article II, section 3, above.

4. Priority of Agreements. This DPA shall govern the treatment of Student Data in order to comply with privacy protections, including those found in FERPA and all applicable privacy statutes identified in this DPA. In the event there is conflict between the DPA and the Service Agreement, the 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, 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:

a. Designated Representatives

The designated representative for the LEA for this DPA is:

Name: Rachelle Butz Title: Executive Director of Digital Learning and Infrastructure

Contact Information: butzr@monroe.wednet.edu
200 East Fremont St, Monroe, WA 98272
360-804-2570

The designated representative for the Provider for this DPA is:

Name: Kurt Gerdenich

Title: Chief Technology Officer

Contact Information:

Vista Higher Learning
500 Boylston Street, Suite 620
Boston, MA 02116

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

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

10. Waiver. No delay or omission of the LEA to exercise any right hereunder shall be construed as a waiver of any such right and the LEA reserves the right to exercise any such right from time to time, as often as may be deemed expedient.

11. Successors Bound. This DPA is and shall be binding upon Provider's respective successors in interest in the event of a merger, acquisition, consolidation or other business reorganization or sale of all or substantially all of the assets of such business.

[Signature Page Follows]

EXHIBIT "A"
DESCRIPTION OF SERVICES

Type of Product or Service	Name of Product or Service	Description of Product or Service
<i>K12 Instructional Materials</i>	<i>Supersite or Vista Higher Learning Common Cartridge</i>	<i>Language learning courseware</i>

Indirect Identifiers: Indirect identifiers include information that can be combined with other information to identify specific individuals, including, for example, a combination of gender, birth date, geographic indicator (*e.g.*, state, county) and other descriptors.

NIST: Draft National Institute of Standards and Technology (“NIST”) Special Publication 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. For the purpose of the Data Privacy Agreement, the term “Operator” is replaced by the term “Provider.” This term shall encompass the term “Third Party,” as it is found in applicable state statutes.

Persistent Unique Identifiers. A long-lasting identification for digital objects, which allows for those digital objects to be located even if they are moved or removed.

Personally Identifiable Information (PII): The terms “Personally Identifiable Information” or “PII” shall include, but are not limited to, student data, metadata, and user or student-generated content obtained by reason of the use of Provider’s software, website, service, or app, including mobile apps, whether gathered by Provider 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 Student Data.

Provider: For purposes of the Service Agreement, the term “Provider” means provider of digital educational software or Services, including cloud-based services, for the digital storage, management, and retrieval of student records. Within the DPA the term “Provider” includes the term “Third Party” and the term “Operator” as used in applicable state statutes.

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, and Student Personal Information, all of which are deemed Student Data for the purposes of this Agreement.

Service Agreement: Refers to the Contract or Purchase Order to which 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.

EXHIBIT "D"
DIRECTIVE FOR DISPOSAL OF DATA

Monroe School District (hereinafter referred to as "LEA") directs Vista Higher Learning (hereinafter referred to as "Provider") to dispose of data obtained by Provider pursuant to the terms of the Service Agreement between LEA and Provider. Unless modified by separate agreement pursuant to a pre-termination data disposal meeting as described in Article IV Section 5(c), the terms of the Disposal are set forth below:

1. Extent of Disposition

Disposition is partial, subject to payment by LEA of Providers applicable special handling charges. 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, subject to payment by LEA of Providers applicable special handling charges. 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 [Insert Date, (which date shall not be earlier than sixty (60) days from the date of this request)]

Authorized Representative of LEA

Date

EXHIBIT "E"

GENERAL OFFER OF PRIVACY TERMS Monroe School District

1. Offer of Terms Provider offers the same privacy protections found in this DPA between it and Monroe School District and which is date 09/01/2019 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 Provider's signature shall not necessarily bind Provider to other terms, such as price, term, or schedule of Services, or to any other provision not addressed in this DPA. The Provider and the other LEA may also agree to change the data provided by LEA to the Provider to suit the unique needs of the LEA. The Provider may withdraw the General Offer in the event of: (1) a material change in the applicable privacy statutes; (2) a material change in the Services and products subject listed in the Originating Service Agreement; or three (3) years after the date of Provider's signature to this Form. Provider shall notify ACPE in the event of any withdrawal so that this information may be transmitted to the Alliance's users.

Vista Higher Learning

By:

Date:

Printed Name: Jon Aram

Title/Position: Chief Executive Officer

2. Subscribing LEA A Subscribing LEA, by signing a separate Service Agreement with Provider, and by its signature below, accepts the General Offer of Privacy Terms. The Subscribing LEA and the Provider shall therefore be bound by the same terms of this DPA.

By:

Date:

Printed Name:

Title/Position:

TO ACCEPT THE GENERAL OFFER, THE SUBSCRIBING LEA MUST DELIVER THIS SIGNED EXHIBIT TO THE PERSON AND EMAIL ADDRESS LISTED BELOW

Name: Jon Aram

Title: Chief Executive Officer

Email Address: jaram@vistahigherlearning.com

EXHIBIT "F"

DATA SECURITY REQUIREMENTS

No additional data security requirements needed beyond what is stated in above information