

<i>Clause</i>	<i>New Language</i>	<i>Description of Change</i>
<b>ARTICLE I: PURPOSE AND SCOPE</b>		
<b><u>1. Purpose of DPA.</u></b>	With respect to the use and maintenance of Student Data, Provider shall be under the direct control and supervision of the LEA.	Clarifies prior language stating, "Provider shall be under the direct control and supervision of the LEA..."
<b>ARTICLE II: DATA OWNERSHIP AND AUTHORIZED ACCESS</b>		
<b><u>1. Student Data Property of LEA</u></b>	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 Agreement in the same manner as the original Student Data.	Clarifies that even modified forms of student data are property of the LEA.
<b><u>2. Parent Access.</u></b>	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 pupil's records held by the Provider to view or correct as necessary.	Adds specific number of days for provider response.
<b><u>3. Separate Account</u></b>	If pupil generated content is stored or maintained by the Provider as part of the Services described in Exhibit "A", Provider shall, at the request of the LEA, transfer said pupil generated content to a separate student account upon termination of the Service Agreement; provided, however, such transfer shall only apply to pupil generated content that is severable from the Service.	Clarifies prior language for providers who do not store pupil generated content. Also limits this requirement to content that is servable from the Service.

<b><u>Former 5. No Unauthorized Use</u></b>	Deleted in V2	Eliminates redundant language. See Article IV.2 Authorized Use.
<b>ARTICLE III: DUTIES OF LEA</b>		
<b><u>2. Annual Notification of Rights.</u></b>	If the LEA has a policy of disclosing education records under FERPA (4 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.	New language regarding LEA's criteria for designation of "School Official" in annual notification of rights (if LEA provides such annual notification).
<b><u>Former 4. District Rep</u></b>	Designation of District Representative	moved to Article VII, section 5
<b>ARTICLE IV: DUTIES OF PROVIDER</b>		
<b><u>2. Authorized Use</u></b>	Provider also acknowledges and agrees that it shall not make any re-disclosure of any Student 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 Student Data, without the express written consent of the LEA.	Clarifies that re-disclosure of all types of student data is prohibited unless specifically authorized by LEA in writing.
<b><u>3. Employee Obligation</u></b>	Provider shall require all employees and agents 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.	Eliminates requirement that provider obtain confidentiality agreements for employees. Broadens requirement for compliance with terms of DPA to all types of student data, not just data subject to FERPA.

<p><b><u>4. No Disclosure</u></b></p>	<p>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 who 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.</p>	<p>Explains instances where provider may use de-identified data, and restricts re-identification and transfer of deidentified data.</p>
	<p>Upon <u>written request and in accordance with the applicable terms in subsection a or b, below</u>, Provider shall dispose or delete... The LEA may employ a “Request for Return or Deletion of Student Data” form, a copy of which is attached hereto as Exhibit “D”. Upon receipt of a request from the LEA, the Provider will immediately provide the LEA with any specified portion of the Student Data within ten (10) calendar days of receipt of said request.</p>	<p>Adds written request to initiate data disposition and eliminates 60 day timeline</p> <p>Adds new language to clarify partial and complete disposal of data, and further addresses scope of request to delete data based on timing of request (either termination of agreement or other request during contract term).</p>

<p><b><u>5. Disposition of Data</u></b></p>	<p>a. Partial Disposal During Term of Service Agreement. Throughout the Term of the Service Agreement, LEA may request partial disposal of Student Data obtained under the Service Agreement that is no longer needed. Partial disposal of data shall be subject to LEA’s request to transfer data to a separate account, pursuant to Article II, section 3, above.</p> <p>b. Complete Disposal Upon Termination of Service Agreement. Upon Termination of the Service Agreement Provider shall dispose or delete all Student Data obtained under the Service Agreement. Prior to disposition of the data, Provider shall notify LEA <u>in writing</u> of its option to transfer data to a separate account, pursuant to Article II, section 3, above. 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.</p>	<p>Adds new language to clarify partial and complete disposal of data, and further addresses scope of request to delete data based on timing of request (either termination of agreement or other request during contract term).</p>
<p><b><u>6. Advertising Prohibition</u></b></p>	<p>...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.</p>	<p>Sale of student data is explicitly prohibited. Subpart (d) clarifies that provider may use student data for adaptive/customized learning for students.</p>
<p><b>ARTICLE V: DATA PROVISIONS</b></p>		
<p><b><u>1. Data Security</u></b></p>	<p>adds Exhibit F</p>	<p>former Exhibit D is now Exhibit F. New Exhibit D is Disposition of Data.</p>

<b><u>a. Passwords and Employee Access</u></b>	All employees with access to Student Records shall be subject to criminal background checks in compliance with state and local ordinances.	Qualifies this requirement to ensure it does not run afoul of limitations imposed by state and local ordinances for criminal background checks.
<b><u>h. Periodic Risk Assessment</u></b>	Provider further acknowledges and agrees to conduct digital and physical periodic (no less than semi-annual) risk assessments and remediate any identified security and privacy vulnerabilities in a timely manner.	Adds new requirement for provider to conduct periodic risk assessments.
<b><u>2. Data Breach.</u></b>	Provider shall provide notification to LEA within a reasonable amount of time of the incident, and not exceeding forty eight (48) hours.	Adds 48 hour timeline for provider to notify LEA of provider breach.
<b><u>2d.</u></b>	Provider agrees to adhere to all requirements in applicable State and in federal law with respect to a data breach related to the Student Data, including, when appropriate or required, the required responsibilities and procedures for notification and mitigation of any such data breach.	Applicable breach requirements expanded to include state and federal requirements.

<b><u>2e.</u></b>	Provider further acknowledges and 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 Student 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.	Requires provider to have incident response plan.
<b><u>2f.</u></b>	Provider is prohibited from directly contacting parent, legal guardian or eligible pupil unless expressly requested by LEA. If LEA requests Provider's assistance providing notice of unauthorized access, and such assistance is not unduly burdensome to Provider, Provider shall notify the affected parent, legal guardian or eligible pupil of the unauthorized access, which shall include the information listed in subsections (b) and (c), above. <a href="#"><u>If requested by LEA, Provider shall reimburse LEA for costs incurred to notify parents/families of a breach not originating from LEA's use of the Service.</u></a>	Prohibits provider from directly contacting parents/students in case of provider breach unless expressly requested by LEA. Adds LEA ability to recoup costs associated with parent notification.
<b><u>2g.</u></b>	In the event of a breach originating from LEA's use of the Service, Provider shall cooperate with LEA to the extent necessary to expeditiously secure Student Data.	Requires provider to assist LEA with securing data in event of LEA breach.

**ARTICLE VII: MISCELLANEOUS**

<u>1. Term</u>	Removes no less than three year term	Eliminates three year term.
<u>2. Termination</u>	LEA shall have the right to terminate the DPA and Service Agreement in the event of a material breach of the terms of this DPA.	New language to allow LEA to terminate DPA in event of material breach of privacy terms.
<u>4. Priority of Agreements</u>	No indemnification provisions granted by the LEA in the Service Agreement shall be effective as to a breach of the terms of this DPA by the Provider.	Clarifies that indemnification provision in Service Agreement do not insulate provider from breach of DPA.
<u>5a. Notice</u>	<b>a. Designated Representatives:</b> The designated representative for the LEA for this Agreement is: Name:, Title, and Contact Information AND The designated representative for the Provider for this Agreement is: Name:, Title, and Contact Information	Identifies LEA and provider contacts for notifications.
	<b>b. Notification of Acceptance of General Offer of Terms.</b> Upon execution of Exhibit E, General Offer of Terms, Subscribing LEA shall provide notice of such acceptance 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, to the designated representative below.	Requires LEA to notify provider when LEA co-signs an existing Exhibit E.
<u>8. Governing Law; Venue and Jurisdiction</u>	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...	Changes venue to county where Agreement is formed (impacts venue for case arising from Exhibit E)

<b><u>9. Authority</u></b>	Provider represents that it is authorized to bind to the terms of this Agreement...	
<b><u>10. Waiver</u></b>	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.	New provision regarding waiver.
<b><u>11. Successors Bound</u></b>	This DPA is and shall be binding upon the respective successors in interest to Provider 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.	New provision binding successor in interest to the terms of DPA.
<b>EXHIBITS A - F</b>		
<b><u>Exhibit A</u></b>	...AND SERVICES HERE. IF MORE THAN ONE PRODUCT OR SERVICE IS INCLUDED, LIST EACH PRODUCT HERE]	Provider required to list all products covered by this DPA. Provides examples.
<b><u>Exhibit B</u></b>	No Student Data Collected at this time _____.*Provider shall immediately notify LEA if this designation is no longer applicable.	Optional checkbox if no data is collected currently.
<b><u>Exhibit C</u></b>	New terms: Educational Records, SDPC and changed terms: PII, Pupil Records	Definitions updated to provide clarity regarding terms of DPA.
<b><u>Exhibit D</u></b>	Entire new form: Directive for Disposition of Data	Strengthens disposition of data expectations with clear identification of data to be disposed/retained, why and when.



<u>Exhibit E</u>	<u>TO ACCEPT THE GENERAL OFFER, THE SUBSCRIBING LEA MUST DELIVER THIS SIGNED EXHIBIT TO THE PERSON AND EMAIL ADDRESS LISTED BELOW</u>	Requires LEA to notify provider that LEA has co-signed an Exhibit E
<u>Exhibit F</u>	Former Exhibit D	No changes other than exhibit name from D to F