

STATE OF GEORGIA

FORSYTH COUNTY

SOFTWARE PRODUCTS AND SERVICES AGREEMENT

This Software Products and Services Agreement (“Agreement”) is between the Forsyth County School District, a political subdivision of the State of Georgia, (“FCS”) and the Company listed below (“Company”). This Agreement is effective as of the date of signing by Company (“Effective Date”).

Company legal name: _____

Company address: _____

Principle contact: _____

Phone number: _____

Email address: _____

The parties agree as follows:

1.1. **Purpose.** Company agrees to provide the following products and services to FCS: _____
_____.

1.2. **Agreement Documents.** The following documents are incorporated into this Agreement by reference:

- (a) The “Terms and Conditions” attached hereto as **Exhibit “A”**;
- (b) The “Data Sharing Agreement” attached hereto as **Exhibit “B”**;
- (c) Any Company privacy policy, terms and conditions, terms of use, end user license agreement, or other documents related to the products and services Company intends to provide to FCS (collectively the “Company Documents”) and attached hereto as **Exhibit “C”**.

1.3. **Inconsistency.** Any inconsistency or conflict among the specific provisions of this Agreement, the Data Sharing Agreement, and the Company Documents shall be resolved as follows: first, by giving preference to the specific provisions of this Agreement; second, by giving preference to the specific provisions of the Terms and Conditions; third, by giving preference to the specific provisions of the Data Sharing Agreement; and, fourth, by giving preference to the specific provisions of the Company Documents.

1.4. **Scope.** This Agreement applies to any use of Company’s products or services by FCS or its employees, agents, teachers, or students. The terms of this Agreement shall govern over any conflicting terms and conditions, purporting to apply to FCS’s use of Company’s products or services, not signed in writing by an individual authorized to enter into contracts on behalf of FCS.

ACCEPTED AND AGREED:

Forsyth County School District

Company

(signature)

(signature)

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Exhibit A
Terms and Conditions

Section 1. Scope of Agreement

1.1 Relationship of the parties.

This Agreement does not create a partnership, joint venture, franchise, agency, or other such relationship. Neither party has the right, power, or authority to obligate or bind the other party in any manner whatsoever, without the other party's prior written consent.

1.2 No Competitive Advantage.

This Agreement is not exclusive and imposes no obligation on FCS to acquire or use any Company products or services. Company understands and agrees that nothing in this Agreement will result in favoritism for Company in any bidding arrangements.

1.3 Pricing.

The price charged to FCS shall not exceed the annually negotiated quote. This Agreement may be renewed as determined by FCS.

1.4 Term.

This Agreement terminates when FCS ends the subscription. However, as required by O.C.G.A. § 20-2-506, this Agreement shall terminate absolutely and without further obligation on the part of FCS at the close of the calendar year in which it was executed and at the close of each succeeding calendar year for which it may be renewed, but shall be automatically renewed through the then existing term unless FCS terminates the agreement by providing Company with sixty (60) days advance notice of termination prior to the end of the defined termination date.

Section 2. General Restrictions

2.1 Neutral.

All services provided by Company under this Agreement will be secular, neutral, and nonideological in content.

2.2 No Research.

Company is not authorized under this Agreement to conduct a research study of FCS or any of its programs. If Company wishes to conduct a research study, it must comply with the requirements of Board Policy ICC (Educational Research) and FCS Procedure ICC (Educational Research).

2.3 No Advertising.

Company shall not distribute advertising materials, whether printed or electronic, in FCS schools or to FCS students.

2.4 No Publicity.

Company shall not advertise, publicly announce, or provide to any other person information relating to the existence or details of this Agreement or use FCS's name in any format for any promotion, publicity, marketing or advertising purpose without the prior written consent of FCS.

2.5 No Unilateral Modifications.

Company may not unilaterally modify the Company Documents. To the extent any of the Company Documents permit unilateral modifications, such provisions are null and void.

2.6 No New or Conflicting Terms.

To the extent parents, students, or teachers must create an account prior to using the services provided by Company, such activation process should not be a means to force parents, students, or teachers to consent to weaker privacy protections in circumvention of the privacy protections included in this Agreement. Company shall ensure that any activation process required of parents, students, or teachers is consistent with the terms of this Agreement and will not override the terms of this Agreement.

2.7 No Interest Fees or Collection Costs.

Company shall not impose any cancellation fees, late fees or interest fees for payments not made by FCS on time. FCS will not pay any costs of collections incurred by Company.

2.8 E-Verify Compliance

In performing their duties under this Agreement FCS and Company each agree that they will comply with all E-Verify requirements and execute any documents reasonably required related to such compliance.

2.9 Adherence.

Company is responsible for ensuring that its contractors and subcontractors that provide services on Company's behalf under this Agreement comply with the terms of this Agreement.

2.10 Legal Compliance.

Company will comply with all applicable laws and regulations.

Section 3. Termination

3.1

Either party may terminate this Agreement without cause upon 60-days' prior written notice to the other party. Upon early termination, FCS will be entitled to a pro-rata refund of payments made.

Section 4. Miscellaneous

4.1 Governing Law and Venue.

This Agreement shall be governed in all respects by the laws of the State of Georgia, without regard to its conflict of laws. The exclusive venue for any action arising out of or related to this Agreement shall be in the federal, superior, or state courts of Forsyth County, Georgia. FCS does not agree to any alternative dispute resolution process. To the extent any Company documents provide for an alternative dispute resolution process, including, but not limited to, arbitration and mediation, such provisions are null and void.

4.2 Hold Harmless.

Company agrees to indemnify, hold harmless, and defend FCS, its current, future, or past officers, agents, and employees from any and against all claims, liabilities, damages, losses, judgments, charges, expenses (including attorney fees) and/or causes of action arising of whatever kind or nature arising out of any conduct or misconduct of Company (and its representatives, agents, contractors and subcontractors) and for which FCS, the Board of Education, its agents, servants, or employees are alleged to be liable.

4.3 No Prohibitive Agreements.

Nothing contained in this Agreement is intended to be a waiver in any respect whatsoever of FCS's right to assert under any circumstances whatsoever its claims of sovereign, governmental, or official immunity from any liability or damages asserted against it by any natural person or entities created by law. To the extent any of the Company Documents purport to require FCS to indemnify or hold harmless Company, such provisions are null and void. To the extent any of the Company Documents contains a representation or warranty made by FCS, such provisions are null and void.

4.4 No Limitation of Remedies.

The parties agree that no remedy conferred by any of the specific provisions of this Agreement, including Subsection 9.2 of the Data Sharing Agreement, is intended to be exclusive of any other remedy, and each and every remedy shall be cumulative and shall be in addition to every other remedy conferred by this Agreement or existing at law or in equity or by statute or otherwise.

4.5 Open Records Act.

Company acknowledges and agrees that FCS is obligated to timely comply with requests for information pursuant to state and federal laws and regulation, including the Georgia Open Records Act ("GORA"). O.C.G.A. § 50-18-70 *et seq.* FCS will comply with GORA at its discretion and is not required to notify Company prior to compliance. Company also agrees to comply with GORA and to make records subject to GORA, as determined by FCS, available for inspection as required by law, unless otherwise exempt under other provisions of the GORA.

4.6 Notices.

Unless otherwise provided in this Agreement, all notices shall be in writing and shall be personally delivered, sent by regular mail, overnight delivery service or sent by certified mail, return receipt requested, postage prepaid. Notices will be deemed given (a) on the date delivered if delivered personally, (b) on the first business day following the date of dispatch if delivered by overnight delivery service, or (c) on the earlier of confirmed receipt or the fifth business day following the date of mailing if sent by certified mail. Notices to Company must be sent to the address listed above or such other address that Company specifies in a notice delivered pursuant to this Subsection 4.6. Notice to FCS must be sent to each address set forth below or such other addresses that FCS specifies in a notice delivered pursuant to this Subsection 4.6.

4.6.1 - Kathy Carpenter, Director of Information Systems, 136 Almon C. Hill Drive, Cumming, GA 30040 and _____, _____, Cumming, GA 30040

4.7 Severability and Waiver.

All rights and remedies conferred under this Agreement or by any other instrument or law shall be cumulative and may be exercised singularly or concurrently. Failure by FCS to enforce any provision of this Agreement shall not be deemed a waiver of future enforcement of that or any provision. In the event that any portion of this Agreement shall be held to be unenforceable, the remaining portions of this Agreement shall remain in force an effect.

4.8 Insurance.

The following is the minimum insurance and limits that the Company must maintain. If the Company maintains higher limits than the minimums shown below, FCS requires and shall be entitled to the coverage and for the higher limits maintained by the Company. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to FCS. Company shall maintain the following minimum insurance limits during the term of the Agreement: (a) \$1 million Commercial General Liability; (b) \$1 million Cyber Liability; and (c) \$1 million Professional Liability coverage.

4.9 Limitation of Liability.

Notwithstanding any other agreement or provision to the contrary in the Company Documents or this Agreement, Company shall remain liable under this Agreement for the greater of the contract amount or the applicable insurance coverage provided by Company under this Agreement.

4.10 Integration.

This Agreement represents the entire and integrated agreement between FCS and Company and supersedes all prior negotiations, representations or agreements, received either written or oral, in conjunction with the signing of this agreement. FCS and Company hereby waive and mutually release each other from any and all prior representations, negotiations or agreements not embodied in this Agreement. This Agreement may be amended only by written instrument signed by an authorized representative of FCS.

Exhibit B

Data Sharing Agreement

Section 1. Definitions

1.1

“Transferred Data” means any data, information, records, and files that FCS (or any FCS employee, agent, teacher, or student) provides Company, including education records and personally identifiable student information.

1.2

“Derivative Data” means all modifications, compilations, derivative works and results from processing (including analyses, usage statistics and patterns, datasets, databases, reports, recommendations, and visual presentations) created or developed from Transferred Data or on the basis of the use of Company’s products or services by FCS or its employees, agents, or students.

1.3

“FCS Data” means Transferred Data and Derivative Data.

Section 2. Types of Data

2.1 Definitions:

2.1.1 “Common Data Elements” includes student ID, student name, grade level, school ID, school name, teacher name, teacher ID, course ID, section ID, and course name.

2.1.2 “Restricted Data Elements” includes student gender, student race/ethnicity, student birth date, special education status, special program information, student photos, student address, and parent contact information.

2.1.3 “Prohibited Data Elements” includes student social security numbers, student email addresses, and economic status or free/reduced lunch information.

2.2

FCS intends to provide Company only with data elements necessary for the functionality of Company’s products and services. FCS will provide Restricted Data Elements to Company if, in FCS’s sole discretion, there is a compelling reason to provide Restricted Data Elements. FCS will not share Prohibited Data Elements.

2.3

If Company inadvertently receives or obtains Prohibited Data Elements or Restricted Data Elements that FCS did not authorize Company to receive, Company shall notify FCS and immediately delete all copies of the Prohibited Data Elements, unauthorized Restricted Data Elements, or both.

Section 3. Compliance with Applicable Privacy Laws

3.1

Company shall comply and shall assist FCS in compliance, in all material respects, with federal and state laws and regulations regarding privacy of information and confidentiality of student records, including, without limitation, the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C § 1232g, the Protection of Pupil Rights Amendment (PPRA), 20 U.S.C. § 1232h, the Children’s Online Privacy Protection Act (COPPA), 15 U.S.C. § 6501, and the Georgia Student Data Privacy, Accessibility, and Transparency Act (O.C.G.A. §§ 20-2-660 *et seq.*) (SDA). To the extent any of the Company Documents purport to place responsibility on FCS to comply with COPPA, such provisions are null and void.

Section 4. Transmission of Data

4.1

Company may send and receive FCS Data by a secure file transfer protocol (SFTP) connection, a secure internet site transfer using an HTTPS web address, or other secure means including direct connections through API process. FCS will not provide data to Company through spreadsheets sent by email.

Section 5. Use of Data.

5.1

Company may collect FCS Data only for the use and benefit of FCS and its students. Company may use FCS Data and its analysis FCS Data only to provide services to FCS. Company shall not sell FCS Data or use FCS Data for any commercial or marketing purposes.

5.2

Company shall comply with the SDA to the extent Company is an “operator” as defined by the SDA. Specifically, Company shall not: (1) use student data to engage in behaviorally targeted advertising based on any student data and

state-assigned student identifiers or other persistent unique identifiers that Company has acquired because of a student's use of Company's website, service, or application; (2) use information created or gathered by Company's website, service, or application to amass a profile about a student except in furtherance of K-12 school purposes; (3) sell a student's data except as authorized by O.C.G.A. § 20-2-666; or, (4) disclose student personally identifiable data without explicit written or electronic consent from a student's parent or guardian, given in response to clear and conspicuous notice of the activity, unless disclosure is made for a purpose authorized under O.C.G.A. § 20-2-666.

5.3

To the extent Company must analyze FCS Data to provide services to FCS, all results of such data analysis will be reported in aggregate and no individual student will ever be identified or identifiable in formal reporting or publications.

5.4

To the extent Company has a legitimate educational interest in student educational records and information and must access such records and information in order to provide services to FCS and its employees, agents, teachers, and students, FCS designates Company a "school official" within the meaning of FERPA. Company will be under the direct control of FCS with respect to the use and maintenance of personally identifiable information and education records, as those terms are defined by FERPA, and Company may use personally identifiable information and education records only for the purpose of performing its obligations under the Agreement.

5.5

Within thirty days of a request by FCS, Company shall provide FCS an analysis of FCS's use of Company's products and services. Such analysis shall include, at a minimum, the number of unique users, number of users per month, and modules used.

Section 6. Ownership of Data

6.1

FCS retains all ownership rights in FCS Data. Notwithstanding any other term of this Data Sharing Agreement, Company will not disclose FCS Data to any third party except as permitted by FCS and 34 C.F.R. § 99.33(a).

6.2

Upon request by FCS, Company shall give FCS access to FCS Data maintained by Company within ten business days of such request and at no charge to FCS.

6.3

Unless otherwise agreed to by FCS in writing, within ten business days of termination of the Agreement, for any reason, Company shall return all FCS Data to FCS at no charge to FCS.

6.4

With respect to information protected by FERPA, Company may not continue to maintain education records or personally identifiable student information after termination of the Agreement or after it ceases to provide services to FCS. Unless otherwise directed by FCS, Company shall destroy all education records and personally identifiable student information within 45 days of termination of the Agreement as required by the SDA. Company shall destroy this information in accordance with acceptable industry standards for secure and comprehensive destruction of sensitive data. No later than 50 days after termination of the Agreement, Company shall provide FCS written confirmation that all education records and personally identifiable student information have been securely destroyed.

6.5

Should a parent of a FCS student request the deletion of all student information the Company shall destroy all individual student information within 10 days of the parent request.

Section 7. Audit Right

7.1

FCS may audit the records and systems of Company to ensure compliance with the terms of this Data Sharing Agreement. FCS will notify Company in writing at least ten business days prior to any such audit. Any such audit will be conducted during Company's regular business hours at Company's location and will not interfere unreasonably with Company's business activities. If an audit reveals that Company is using FCS Data beyond the scope of the Agreement, then, in addition to any other remedies available to FCS, Company shall reimburse FCS for the cost of such audit.

Section 8. Data Security

8.1 Privacy, Confidentiality, and Security

Company understands and agrees that it is imperative to protect FCS Data in order to protect public resources and to prevent identity theft or other malicious and damaging acts. Company shall comply with all applicable federal, state, and local laws, rules, and regulations, as the same may be amended or supplemented from time to time, including, but not limited to, the SDA and other laws pertaining in any way to the privacy, confidentiality, security, management, and disclosure of FCS Data and information. Company shall also adhere to all applicable industry standards concerning privacy, data protection, confidentiality and information security as well as all FCS policies, procedures, and operating guidelines regarding privacy, confidentiality, and security. In accordance with the SDA, Company shall implement and maintain reasonable security procedures and practices appropriate to the nature of the student data to protect that information from unauthorized access, destruction, use, modification, or disclosure.

8.2 Education Records

Company represents and warrants that it will adhere to applicable privacy standards as required with respect to education records and personally identifiable information as required by FERPA and its implementing regulations, as well as the requirements under the SDA, the PPRA and its implementing regulations. Company will also comply with the Children's Online Privacy Protection Act (COPPA) and its implementing regulations.

8.3 Protection of Data

Company shall take all commercially reasonable measures necessary to keep FCS Data confidential, including, without limitation, all measures it takes to protect its confidential information of a similar nature. Without limiting the effect of the preceding sentence, Company will take commercially reasonable actions, legal or otherwise, necessary to cause its representatives to comply with the provisions of this Agreement and to prevent any disclosure of FCS Data by any of them.

8.4 Foreign Transmission and Storage

Company shall not transmit, transport, or store FCS Data outside the United States except on prior written authorization by FCS.

Section 9. Breach of Data Sharing Agreement

9.1 Notice of Data Breach

Company shall give prompt written notice to FCS of any suspected or actual security breach that may or does impact FCS Data or of any unauthorized use or disclosure of FCS Data. Company shall assist FCS in remedying each unauthorized use or disclosure at Company's expense. Giving assistance does not waive any breach of this Data Sharing Agreement by Company, nor does acceptance of the assistance constitute a waiver of any breach of this Data Sharing Agreement.

9.2 Breach of Data Sharing Agreement

Company acknowledges and agrees that any breach of FCS Data by Company, or any of its respective agents, representatives, administrators, employees, officers, directors, attorneys, successors and assigns causes FCS irreparable harm. Therefore, in the event of any breach or threatened breach of this Data Sharing Agreement by Company or any of its representatives, FCS is entitled to equitable relief, including injunctive relief and specific performance, without proof of actual damages and without the posting of a bond.

Exhibit C
Company Documents

The following documents listed below are attached to this agreement as Company Documents. Any inconsistency or conflict among the specific provisions of this Agreement, the Data Sharing Agreement, and the Company Documents shall be resolved as follows: first, by giving preference to the specific provisions of this Agreement; second, by giving preference to the specific provisions of the Terms and Conditions; third, by giving preference to the specific provisions of the Data Sharing Agreement; and, fourth, by giving preference to the specific provisions of the Company Documents.

1. _____
2. _____
3. _____
4. _____
5. _____