

**ADDENDUM TO _____ TERMS OF SERVICE
APPLICABLE TO CARROLL COUNTY PUBLIC SCHOOLS**

This Amendment is an agreement between _____ (“Vendor,”) and Carroll County Public Schools, Westminster, Maryland (“School System”).

School System is required, when entering into agreements with other parties, to follow applicable laws, regulations, policies, and standards including those related to ethics; privacy and security; accessibility; records retention; limitations on indemnification; fiscal law constraints; advertising and endorsements; freedom of information; and governing law and dispute resolution forum. Vendor and School System (together, the "Parties") agree to modify the Vendor's standard Terms of Service, available at:

[Insert URL, e.g., <http://Vendor.com/tos.php>.] (the "TOS") to accommodate School System's legal status, its public (in contrast to private) mission, and other special circumstances. Accordingly, the TOS are hereby modified by this Amendment as they pertain to School System's use of the Vendor Site and Services. All terms in this Amendment supersede and take precedence over any conflicting terms in the original TOS.

In this agreement, the term “Data” shall include all Personally Identifiable Information (PII) and other non-public information. Data include, but are not limited to, student data, metadata, and School System content.

1. **Government entity:** "You" within the TOS shall mean the School System itself and shall not apply to, nor bind (i) the individual(s) who utilize the Vendor Site or Services on the School System's behalf, or (ii) any individual users who happen to be employed by, or otherwise associated with, the School System. Vendor will look solely to the School System to enforce any violation or breach of the TOS by such individuals, subject to federal law.
2. **Public purpose:** School System shall use the Vendor Site and Services solely in furtherance of the School System’s public purpose. Any requirement(s) set forth within the TOS that use of the Vendor Site and Services be for private, personal and/or non-commercial purposes is hereby waived.
3. **School System content serving the public:** Vendor will allow School System's distribution or other publication via the Site or Services of material that may contain or constitute promotions, advertisements or solicitations for goods or services, so long as the material relates to the School System's mission.
4. **Marketing and Advertising:** Any and all forms of advertisement, directed towards children, parents, guardians, or District Employees will be strictly prohibited unless allowed with express written consent of School System. As such, Vendor agrees not to serve or display any commercial advertisements or solicitations in the publicly available portion of the Site displaying content uploaded by or under the control of School System. This exclusion shall not extend to house ads, which Vendor may place in a non-intrusive manner. Further, Vendor will not use any Data to advertise or market to students or their parents. Advertising or marketing may be directed to School System only if student information is properly de-identified
5. **Indemnification, Liability, Statute of Limitations:** Any provisions in the TOS related to indemnification and filing deadlines are hereby waived, and shall not apply except to the extent expressly authorized by law. Liability for any breach of the TOS as modified by this Amendment, or any claim arising from the TOS as modified by this Amendment, shall be determined under the Federal Tort Claims Act, or other governing federal authority. Federal Statute of Limitations provisions shall apply to any breach or claim.

6. **Changes to standard TOS:** Language in the TOS reserving to Vendor the right to change the TOS without notice at any time is hereby amended to grant School System at least 30 days' advance notice of any material change to the TOS. However, no changes made to the original TOS will override or negate any of the provisions of this Amendment. In no case will the Vendor change how Data are collected, used, or shared under the terms of this Agreement without advance notice to and consent from the School System. Vendor shall send this notice in writing to the staff member designated at the time School System signs up for service, and School System shall notify Vendor of any change in the notification contact or address during the life of the Amendment. This Agreement is the entire agreement between School System (including all District and School Systems) and the Vendor. All other agreements or understandings, whether electronic, click-through, verbal or in writing, with District Employees or other End School Systems shall be null and void if in conflict with the terms of this Amendment.
7. **Access and use:** Vendor acknowledges that the School System's use of Vendor's Site and Services may energize significant citizen engagement and otherwise become important to the School System's mission. Language in the TOS allowing Vendor to terminate service or close the School System's account at any time, for any reason, is modified to reflect the Parties' agreement that Vendor may unilaterally terminate service and/or terminate School System's account only for breach of School System's obligations under the TOS or School System's material failure to comply with the instructions and guidelines posted on the Site, or if Vendor ceases to operate its Site or Services generally. Vendor will provide School System with a reasonable opportunity to cure any breach or failure on School System's part.
8. **Provision on crawlers:** Any provision in the TOS prohibiting "crawl," "spider" or similar processes is amended to allow the School System to apply such tools solely to its pages and content, and solely to fulfill the School System's obligations under applicable Records laws and regulations or other applicable laws or regulations.
9. **Ownership of names:** Any provision in the TOS related to Vendor's ownership of and right to change the selected School System name(s), School System ID(s), domain name(s), channel name(s), and group name(s), are modified to reasonably accommodate School System's proprietary, practical, and/or operational interest in its own publicly-recognized name and the names of School System programs.
10. **Rights and License in and to School System content and data:** Any right Vendor reserves in the TOS to modify or adapt School System content is limited to technical actions necessary to index, format and display that content. The right to modify or adapt does not include the right to substantively edit or otherwise alter the meaning of the content. In the event School System discovers that School System content has been modified in a manner that alters the meaning of such content, School System may contact Vendor and the Parties shall work together in good faith to resolve the matter.

Parties agree that all rights, including all intellectual property rights, shall remain the exclusive property of School System or its students, and Vendor has a limited, nonexclusive license solely for the purpose of performing its obligations as outlined in the Agreement. This Agreement does not give Vendor any rights, implied or otherwise, to Data, content, or intellectual property, except as expressly stated in the Agreement. This includes the right to sell or trade Data.

11. **Limitation of liability:** The Parties agree that nothing in the Limitation of Liability clause or elsewhere in the TOS in any way grants Vendor a waiver from, release of, or limitation of liability pertaining to, any past, current or future violation of Maryland or federal law.

12. **Uploading, deleting:** The Parties understand and agree that School System is not obligated to place any School System content on the Site, and School System reserves the right to remove any and all Content at School System’s sole discretion.
13. **No endorsement:** Vendor agrees that School System seals, trademarks, logos, service marks, trade names, and the fact that School System has a presence on the Vendor Site and use its Services, shall not be used by Vendor in such a manner as to state or imply that Vendor's products or services are endorsed, sponsored or recommended by School System, or are considered by School System to be superior to any other products or services. Except for pages whose design and content is under the control of the School System, or for links to or promotion of such pages, Vendor agrees not to display any School System or government seals, trademarks, logos, service marks, and trade names on the Vendor's homepage or elsewhere on the Vendor Site unless permission to do has been granted by the School System. Vendor may list the School System's name in a publicly available customer list on its homepage or elsewhere so long as the name is not displayed in a more prominent fashion than that of any other third party name.
14. **No business relationship created:** The Parties are independent entities and nothing in the TOS as modified by this Amendment creates a partnership, joint venture, agency, or employer/employee relationship.
15. **No cost agreement:** Nothing in the TOS as modified by this Amendment obligates School System to expend appropriations or incur financial obligations. The Parties acknowledge and agree that none of the obligations arising from the TOS as modified by this Amendment are contingent upon the payment of fees by one party to the other.
16. **Data Collection, Use, Mining, Sharing, Transfer, and Destruction:** If Vendor will have access to “education records” as defined under FERPA, the Vendor acknowledges that for the purpose of this Amendment it will be designated as a “school official” with “legitimate educational interests” and will use the de-identified data only for the purpose of fulfilling its duties and providing services under this Agreement, and for improving services under this Agreement. Vendor is prohibited from mining Data for any purposes other than those agreed to by the parties. Data mining or scanning of School System content for the purpose of advertising or marketing to students or their parents is prohibited. Data cannot be shared with any additional parties without prior written consent of the School System except as required by law.

Vendor may use de- identified Data for product development, research, or other purposes. De-identified Data will have all direct and indirect personal identifiers removed. This includes, but is not limited to, name, ID numbers, date of birth, demographic information, location information, and school ID. Furthermore, Vendor agrees not to attempt to re-identify de-identified Data and not to transfer de-identified Data to any party unless that party agrees not to attempt re-identification.”

In the event of termination of service, within 30 days of such termination Vendor will provide School System with all School System-generated content that is publicly visible on the Site. Data will be provided in a commonly used file or database format as Vendor deems appropriate. Vendor will not provide data if doing so would violate its privacy policy, available at:

[Insert URL, e.g., <http://Vendor.com/privacy.php>].

Vendor will not share data, including anonymized data, with or disclose it to any third party without prior written consent of School System, except as required by law. District Data will not be stored outside of the United States without prior written consent from School System. Vendor ensures

that all Data in its possession and in the possession of any subcontractors, or agents to which the Vendor may have transferred Data, are destroyed or transferred to School System under the direction of School System when the Data are no longer needed for their specified purpose, at the request of the School System.

17. **Separate future action for fee based Services:** If Vendor provides Services at no cost, School System acknowledges that while Vendor will provide School System with some Services and features for free, Vendor reserves the right to begin charging for the Services and features at some point in the future. Vendor will provide School System with at least 30 days' advance notice of a change involving the charging of fees for currently free services. School System also understands that Vendor may currently offer other premium and enterprise Services for a fee. The Parties understand that fee-based products and services are categorically different than free products and services, and are subject to Maryland procurement rules and processes. Before School System decides to enter into a premium or enterprise subscription, or any other fee-based service that this Vendor or alternative Vendors may offer now or in the future, School System agrees to determine if it has a need for those additional services for a fee, to consider the subscription's value in comparison with comparable services available elsewhere, to determine that School System funds are available for payment, to properly use the School System Procurement Card if that Card is used as the payment method, to review any then-applicable TOS for conformance to applicable procurement law, and in all other respects to follow applicable acquisition laws, regulations, and School System guidelines when initiating that separate action.
18. **Assignment:** Neither party may assign its obligations under the TOS as modified by this Amendment to any third party without prior written consent of the other; provided however, Vendor or its subsidiaries may assign the TOS as modified by this Amendment to a subsidiary or parent without written consent from the School System provided that the successor assumes Vendor's obligations under the TOS as modified by this Amendment.
19. **Termination rights:** School System may immediately terminate the Agreement if School System determines any breach of this Agreement. However, the Vendor's obligations shall survive termination of this Agreement until ALL District Data has been returned and/or securely removed or destroyed. School System may close School System's account and terminate the Service and this Amendment at any time.
20. **Posting and availability of this Amendment:** Any provision of the TOS requiring modifications of its terms to be posted on Vendor's Site is inapplicable since this Amendment is of limited, not general, application, and is otherwise waived for this special circumstance. The Parties agree this Amendment contains no confidential or proprietary information, and either party may release it to the public upon request and to other agencies interested in using the Services.
21. **Security:** Vendor will, in good faith, exercise due diligence using generally accepted commercial business practices for IT security, to ensure that systems are operated and maintained in a secure manner, and that management, operational and technical controls are employed to ensure security of systems and data. This includes appropriate administrative, physical, and technical safeguards to secure Data from unauthorized access, disclosure, and use. These safeguards shall prevent any intentional or unintentional unauthorized access, alterations, use, or disclosure of School System Data.

Vendor will conduct periodic risk assessments and remediate any identified security vulnerabilities in a timely manner. Vendor will also have a written incident response plan, to include prompt notification of School System in the event of a security or privacy incident, as well as best practices

for responding to a breach of PII. Vendor agrees to share its incident response plan upon request.

An SAS 70 Type II audit certification will be conducted annually, and Vendor agrees to provide School System with the current SAS 70 Type II audit certification upon the School System's request. Recognizing the changing nature of the Web, Vendor will continuously work with School System to ensure that its Site and Services meet School Systems' requirements for the security of systems and data.

Vendor shall ensure that its employees and all subcontractors who have potential access to District Data have undergone appropriate background screening and possess all needed qualifications to comply with the terms of this Agreement. Further, all employees and subcontractors are subject to the same FERPA compliance in relation to the "school official" designation. Annual compliance training for all employees and contractors on FERPA and other applicable laws should be performed.

22. **School System Records and Access:** School System acknowledges that use of Vendor's Site and Services may require management of School System records. School System and School System-generated content may meet the definition of records as determined by the School System. If the Vendor holds School System records, School System and the Vendor must manage the records in accordance with all applicable records management laws and regulations. Managing the records includes, but is not limited to; secure storage, retrievability, and proper disposition of all records including transfer of permanently valuable records to the Maryland Archives in a format and manner acceptable to the Maryland Archives at the time of transfer. The School System is responsible for ensuring that the Vendor is compliant with applicable records management laws and regulations through the life and termination of its use of the Site and Services. Any Data or Records held by the Vendor will be made available to School System upon request by an authorized School System representative.
23. **Intellectual property ownership:** All goods, products, materials, documents, reports, writings, video images, photographs, papers and intellectual property of any nature including software or computer images prepared by the Vendor (or subcontractors) will not be disclosed to any other person or entity and remains the property of the School System. All student produced work remains the property of that student. The Vendor has a limited, nonexclusive license solely for the purpose of performing its obligations as outlined in the Amendment. This Amendment does not give Vendor any rights, implied or otherwise, to Data, content, or intellectual property, except as expressly stated in the Amendment. This includes the right to sell or trade Data.
24. **Precedence; Further Amendments:** If there is any conflict between this Amendment and the TOS, or between this Amendment and other terms, rules or policies on the Vendor Site or related to its Services, this Amendment shall prevail. This Amendment constitutes an amendment to the TOS; any language in the TOS indicating it may not be modified or that it alone is the entire agreement between the Parties is waived. Any further amendment must be agreed to by both Parties.
25. **Additional Items for discussion and possible inclusion in this Amendment:** Vendor understands current law, regulation and policy may affect the School System's use of the Vendor's products and Services in ways not addressed in the list of clauses above. Among the topics School System may need to discuss with Vendor, and which may lead to a mutual agreement to insert additional clauses in this Amendment, are Privacy and Accessibility.
26. **Governing law:** Any arbitration, mediation or similar dispute resolution provision in the TOS is hereby deleted. The TOS and this Amendment shall be governed by and interpreted and enforced in accordance with the laws of the United States of America and the State of Maryland without reference to conflict of laws. To the extent permitted by Maryland and federal law, the laws of the State of

[Vendor to insert name of state if one is mentioned in its TOS] (excluding [Vendor's state] choice of law rules) will apply in the absence of applicable Maryland or federal law. Any action or proceeding seeking any relief under or with respect to this Agreement shall be brought solely in the appropriate Maryland Court.

Vendor will comply with Maryland Education Code ANN. § 4-131, Operators of school Internet Web sites, online services, online applications, and mobile applications. Vendor agrees to be bound as an “operator” under the law regardless of the vendor’s exemptions that may exist in Maryland Education Code ANN. § 4-131(a)(3).

Vendor will comply with all applicable Federal Laws including, but not limited to: Family Educational Rights and Privacy Act, Protecting Pupil Rights Amendment, Protecting Children in the 21st Century Act, Children’s Internet Protection Act, and Children’s Online Privacy Protection Act.

**Carroll County Public Schools
125 North Court Street
Westminster, Maryland 21157**

(Signature)

Name: _____

Title: _____

Date: _____

(Signature)

Name: _____

Title: _____

Date: _____