

## **DATA PROTECTION ADDENDUM**

This Data Protection Addendum (“Addendum”) is attached to and applies to all services provided by Contractor to District, whether by contract, memorandum of understanding or other form of agreement (the “Contract”) dated September 18, 2020, by and between School District No. 1 in the City and County of Denver and State of Colorado, d/b/a Denver Public Schools (“District”) and Scholastic Inc. (“Contractor”) (the Addendum and the Contract are collectively referred to hereinafter as “Agreement”) in connection with Contractor’s digital version of Short Reads. This Addendum supersedes the Contract by adding to, deleting from and modifying the Contract as set forth herein. To the extent any such addition, deletion or modification results in any conflict or inconsistency between the Contract and this Addendum, this Addendum shall govern and the terms of the Contract that conflict with this Addendum or are inconsistent with this Addendum shall be of no force or effect.

In consideration of the mutual covenants, promises, understandings, releases and payments described in the Contract and this Addendum, the parties agree to amend the Contract by adding the following language:

### **1. Definitions**

1.1. “*Biometric Record*,” as used in the definition of “Personally Identifiable Information,” means a record of one or more measurable biological or behavioral characteristics that can be used for automated recognition of an individual. Examples include fingerprints; retina and iris patterns; voiceprints; DNA sequence; facial characteristics; and handwriting.

1.2. “*Contract*” means the End User License Agreement (the “EULA”) and any other form of agreement signed between the District and Contractor. The EULA is attached hereto as Attachment 1.

1.3. “*Designated Representative*” means District or Contractor employees as specified on Schedule 1 to whom all notices required in this Addendum will be sent.

1.4. “*District Data*” means any Personally Identifiable Information, Record, Education Records, as defined herein, and all Personally Identifiable Information included therein or derived therefrom that is not intentionally made generally available by the District on public websites or publications but is made available directly or indirectly by the District to Contractor or that is otherwise collected or generated by Contractor in connection with the performance of the Services, as defined herein.

1.5. “*De-identified Data*” means District Data from which all Personally Identifiable Information, as defined herein, and attributes about such data, have been permanently removed so that no individual identification can be made.

1.6. “*Education Records*” means records, files, documents and other materials that: (a) contain information directly related to a student; and (b) are maintained by the District, or by a party acting for the District such as Contractor.

1.7. “*End User*” means individuals authorized by the District to access and use the Services as defined herein.

1.8. “*Incident*” means a suspected, attempted, or imminent threat of unauthorized access, use, disclosure, breach, modification, disruption or destruction to or of District Data.

1.9. “*Mine District Data*” means the act of searching through, analyzing, accessing, or extracting District Data, metadata, or information not necessary to accomplish the Services or purpose(s) of this Agreement for the benefit of the District. For the avoidance of doubt, standard analytics that do not collect PII and are not used to track or market to any individual user across the internet shall not be considered to “Mine District Data”.

1.10. “*Personally Identifiable Information*” or “*PII*” means information and metadata that, alone or in combination, is linked or linkable to a specific student so as to allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty. Personally Identifiable Information includes, but is not limited to: (a) the student’s name; (b) the name of the student’s parent or other family members; (c) the address or phone number of the student or student’s family; (d) personal identifiers such as the student’s state-assigned student identifier, social security number, student number or biometric record; (e) indirect identifiers such as the student’s date of birth, place of birth or mother’s maiden name; and (f) demographic attributes, such as race, socioeconomic information, and gender.

To the extent it is not already included in the definition hereinabove, PII also includes: (a) “personal information” as defined in the Colorado Open Records Act, C.R.S. 24-72-101 et seq. (“CORA”); (b) Personally Identifiable Information contained in student “education records” as that term is defined in the Family Educational Rights and Privacy Act, 20 U.S.C. 1232g; (c) “protected health information” as that term is defined in the Health Insurance Portability and Accountability Act, 45 C.F.R. Part 160.103; (d) “nonpublic personal information” as that term is defined in the Gramm-Leach-Bliley Financial Modernization Act of 1999, 15 U.S.C. 6809; (e) credit and debit card numbers and/or access codes and other cardholder data and sensitive authentication data as those terms are defined in the Payment Card Industry Data Security Standards; and (f) other financial account numbers, access codes, and state- or federal-identification numbers such as driver’s license, passport or visa numbers.

1.11. “*Record*” means any information recorded in any way, including, but not limited to, handwriting, print, computer media, video or audio tape, film, microfilm, and microfiche.

1.12. “*Securely Destroy*” means to remove District Data from Contractor’s systems, paper files, records, databases, and any other media regardless of format, in accordance with the standard detailed in National Institute of Standards and Technology (“NIST”) SP 800-88 r1 (2014) or as amended Guidelines for Media Sanitization so that District Data is permanently irretrievable in Contractor’s and its Subcontractors’ normal course of business.

1.13. “*Security Breach*” means an event in which District Data is exposed to unauthorized disclosure, access, alteration or use or a system configuration that results in a documented unsecured disclosure, access, alteration or use, in a manner not permitted in this Addendum, which poses a significant risk of financial, reputational or other harm to the affected End User or the District.

1.14. “*Services*” means any goods or services acquired by the District from the Contractor, or under the contract, including but not limited to computer software, mobile applications (apps), and web-based tools accessed by End Users through the Internet, installed, or run on a computer or electronic device.

1.15. “*Subcontractor*” means Contractor’s subcontractors or agents, identified on Schedule 2, as updated by Contractor from time to time in accordance with the requirements of this Addendum, who Contractor has engaged to enable Contractor to perform its obligations under the Contract and who will have access to District Data in connection therewith..

1.16. “*Student Profile*” means a collection of PII data elements relating to a student of the District.

## **2. Rights and License in and to District Data**

District owns all rights, title, and interest in and to District Data and any and all now known or hereafter existing intellectual property rights associated therewith, and any derivative works thereof or modifications thereto, including without limitation, De-identified Data. The District hereby grants to Contractor a limited, nonexclusive license to use District Data solely for the purpose of performing its obligations specified in the Contract. This Agreement does not give Contractor any rights, title, or interest implied or otherwise, to District Data or De-identified Data, except as expressly stated in the Contract. Nothing contained in this Agreement shall be deemed to limit Contractor’s use of aggregate, anonymous data for its lawful quality assurance, product development or improvement, or for marketing or demonstration purposes. For the avoidance of

doubt, standard analytics data that does not contain PII shall not be deemed included in the definitions of District Data.

### **3. Data Privacy**

3.1 Use of District Data. Contractor shall use District Data only for the purpose of performing the Services and fulfilling its duties under the Contract.

3.2 Prohibited Uses of District Data. With the exception of De-identified Data that the District has agreed in writing to allow Contractor to use as specified in Section 3.5, Contractor shall not:

3.2.1 Use, sell, rent, transfer, distribute, alter, mine, or disclose District Data to any third party without the prior written consent of the District, except as required by law;

3.2.2 Use District Data for its own commercial benefit, including but not limited to, advertising or marketing of any kind directed toward children, parents, guardians, or District employees, unless such use is specifically authorized by this Agreement or otherwise authorized in writing by the District;

3.2.3 Use District Data in a manner that is inconsistent with Contractor's privacy policy;

3.2.4 Use District Data to create a Student Profile other than as authorized or required by the Contract to perform the Services; and

3.2.5 Store District Data outside the continental United States unless Contractor has given the District Designated Representative advance written notice of where and how the servers are housed, managed, and secured, and that the security standards required herein can be achieved.

3.3 Qualified FERPA Exception. If Contractor will have access to Education Records, Contractor acknowledges that, for the purposes of this Agreement, pursuant to the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g and its implementing regulations, 34 C.F.R. Part 99 ("FERPA"), it will be designated as a "school official" with "legitimate educational interests" in the District Education Records and PII disclosed pursuant to the Contract, and Contractor agrees to abide by the FERPA limitations and requirements imposed on school officials. Contractor will use the Education Records only for the purpose of fulfilling its duties under the Contract for District's and its End Users' benefit, and shall not share District Data with or disclose it to any third party except as provided for in the Agreement, as required by law, or if authorized in writing by the District. Contractor warrants and represents that during the five-year

period preceding the Effective Date of this Agreement, it has not been found in violation of FERPA by the U.S. Department of Education's Family Policy Compliance Office.

3.4 Subcontractor Use of District Data. To the extent necessary to perform its obligations specified in the Contract, Contractor may disclose District Data to Subcontractors pursuant to a written agreement, specifying the purpose of the disclosure and providing that: (a) Subcontractor shall not disclose District Data, in whole or in part, to any other party; (b) Subcontractor shall not use any District Data to advertise or market to students or their parents/guardians; (c) Subcontractor shall access, view, collect, generate and use District Data only to the extent necessary to assist Contractor in performing its obligations specified in the Contract; (d) at the conclusion of its/their work under its/their subcontract(s) Subcontractor shall, as directed by written request from the District through Contractor, Securely Destroy all District Data in its/their possession, custody or control, de-identify, or return such District Data to the District, at the election of the District; and (e) Subcontractor shall utilize appropriate administrative, physical and technical safeguards in accordance with industry standards and best practices to secure District Data from unauthorized disclosure, access and use. Contractor shall ensure that its employees who have potential access to District Data have undergone appropriate background screening in accordance with Contractor's standard practices, to the District's satisfaction, and possess all needed qualifications to comply with the terms of this Addendum. Contractor's indemnification obligations set forth in Section 10 below shall extend to any such indemnifiable claims arising from the acts or omissions of its Subcontractors.

3.5 Use of De-identified Data. Contractor may use De-identified Data for purposes of research, the improvement of Contractor's products and services, and/or the development of new products and services and any other lawful purpose. In no event shall Contractor or Subcontractors re-identify or attempt to re-identify any De-identified Data or use De-identified Data in combination with other data elements in such a way as to pose risks of re-identification.

3.6 Privacy Policy Changes. Prior to making a material adverse change to Contractor's privacy policies, Contractor shall send District's Designated Representative written notice, which includes a clear explanation of the proposed changes.

#### **4. Data Security**

4.1 Security Safeguards. Contractor shall store and process District Data in accordance with commercial best practices, including implementing appropriate administrative, physical, and technical safeguards that are no less rigorous than those outlined in SANS Top 20 Security Controls, as amended, to secure such data from unauthorized access, disclosure, alteration, and use. Contractor shall ensure that all such safeguards, including the manner in which District Data is collected, accessed, used, stored, processed, disposed of and disclosed, comply with all applicable federal and state data protection and privacy laws, regulations and directives, including

without limitation C.R.S. § 22-16-101 *et seq.*, as well as the terms and conditions of this Addendum. Without limiting the foregoing, and unless expressly agreed to the contrary in writing, Contractor warrants that all electronic District Data will be encrypted in transmission and at rest in accordance with NIST Special Publication 800-57, as amended.

4.2 Risk Assessments. Contractor shall conduct periodic risk assessments and remediate any identified security vulnerabilities in a timely manner.

4.3 Audit Trails. Contractor shall take reasonable measures, including audit trails, to protect District Data against deterioration or degradation of data quality and authenticity, and to ensure data is deidentified in accordance with this Addendum.

4.4 Verification of Safeguards. Upon District's reasonable written request, Contractor shall provide or make available to the District for review, one or more of the following, verifying Contractor's administrative, physical and technical safeguards are in compliance with industry standards and best practices: (1) a summary of the third-party network security audit report; (2) certification from Contractor indicating that an independent vulnerability or risk assessment of the Contractor's data security program has occurred; (3) district data has been deidentified by Contractor as set forth in the definition of Deidentified Data in section 1.3 of this Addendum. District agrees to treat such report, summary or certification as the Contractor's confidential information and to protect it against public disclosure to the maximum extent permitted by law.

4.5 Background Checks. The Contractor and every person, including any subcontractor or agent of the Contractor, who provides direct services to students, or who has access to student data, shall be required to have a criminal background check that meets the requirements of § 22-32-109.7, C.R.S.. Conducting a Colorado Bureau of Investigation criminal history check or a Name Check investigation for any person providing services under this Contract does not meet District requirements. The costs associated with the background checks are solely the Contractor's responsibility. Thereafter, any personnel, subcontractor, volunteer or agent hired or added during the term of this Contract shall satisfy the requirements set forth in this Section before performing services on Contractor's behalf. The Contractor shall make the background check results available upon request of the District in compliance with the provisions of § 24-72-305.3, C.R.S. The District also reserves the right to conduct its own criminal background check of every person before Services begin.

4.5.1 Notwithstanding the criminal background check requirement as set forth above, Contractor hereby certifies that no employee of the Contractor performing the Services has been convicted in Colorado or in any other State of a criminal offense involving: (i) the abuse, abduction, sexual molestation, physical or sexual assault on, or rape of a minor; or (ii) any crime involving exploitation of minors, including but not limited to, child pornography offenses or any crime of violence. Contractor shall notify the District immediately upon the discovery or receipt

of any information that any person performing services on Contractor's behalf has been detained or arrested by a law enforcement agency of the aforementioned crimes. Contractor understands that allowing any employee, subcontractor, volunteer or agent of the Contractor performing the Services who has been arrested or convicted of the aforementioned crimes to: (i) provide direct services to students, (ii) access student data, or (iii) enter onto District property, constitutes a material breach of this Contract and may result in the immediate termination of this Contract and referral to law enforcement for possible criminal charges, or additional civil sanctions pursuant to federal and state law. Misdemeanor conviction(s) may not necessarily result in the immediate termination of this Contract. Misdemeanor convictions are evaluated on a case-by-case basis, considering the nature and gravity of the offense, time elapsed since the offense, conviction, or time served, and the nature of the Services. Upon the District's request, Contractor shall provide documentation of every person performing the Services to substantiate the basis for this certification.

## **5. Security Incident and Security Breach**

5.1 Security Incident Evaluation. In the event of an Incident, Contractor shall follow industry best practices to fully investigate and resolve the Incident, and take steps to prevent developments that may result in the Incident becoming a Security Breach at Contractor's expense in accordance with applicable privacy laws.

5.2 Response. Immediately upon confirmation of a Security Breach, or an investigation of a complaint of a Security Breach, Contractor shall notify the District Designated Representative in writing as set forth herein, fully investigate the Security Breach, cooperate fully with the District's investigation of and response to the Security Breach, and use best efforts to prevent any further Security Breach at Contractor's expense in accordance with applicable privacy laws. Except as otherwise required by law, Contractor shall not provide notice of the Security Breach directly to individuals whose Personally Identifiable Information was involved, to regulatory agencies, or to other entities, without first providing written notice to the District's Designated Representative.

5.3 Security Breach Report. If the District reasonably determines that Contractor has committed a Security Breach, then the District may request Contractor to submit, within seven (7) calendar days (or as promptly as reasonably possible) from discovery of such breach, a written report, and any supporting documentation, identifying (i) the nature of the Security Breach, (ii) the steps Contractor has executed to investigate the Security Breach, (iii) what District Data or PII was used or disclosed, (iv) who or what was the cause of the Security Breach, (v) what Contractor has done or shall do to remediate any deleterious effect of the Security Breach, and (vi) what corrective action Contractor has taken or shall take to prevent a future Incident or Security Breach. District agrees to treat the Security Breach report and the information therein as the Contractor's confidential information and to protect it against public disclosure to the maximum extent

permitted by law. The District reserves the right to require Contractor to amend its remediation plans and Contractor agrees to cooperate with such request to the extent reasonably possible.

5.4 Effect of Security Breach. Upon the occurrence of a Security Breach, the District may terminate this Agreement in accordance with District policies. The District may require Contractor to suspend all Services, pending the investigation and successful resolution of any Security Breach, and Contractor may be required to reimburse District all amounts paid for any period during which Services were not rendered. Contractor acknowledges that, as a result of a Security Breach, the District may also elect to disqualify Contractor and any of its Subcontractors from future contracts with the District.

5.5 Liability for Security Breach. In addition to any other remedies available to the District under law or equity, Contractor shall reimburse the District in full for all costs, including but not limited to, payment of legal fees, audit costs, fines, and other fees imposed that were actually incurred by the District and caused in whole or in part by Contractor or Contractor's Subcontractors for any Security Breach. If Personally Identifiable Information is compromised, Contractor shall provide notification to the affected individuals on behalf of the District, pursuant to the Student Data Transparency and Security Act, C.R.S. 22-16-108 (4). Contractor shall provide one year's credit monitoring to the affected individuals if the Personally Identifiable Information exposed during any Security Breach could be used to commit financial identity theft.

## **6. Response to Legal Orders, Demands or Requests for Data**

6.1 Received by Contractor. Except as otherwise expressly prohibited by law, Contractor shall immediately notify the District of any subpoenas, warrants, or other legal orders, demands or requests received by Contractor seeking District Data; consult with the District regarding its response; cooperate with the District's reasonable requests in connection with efforts by the District to intervene and quash or modify the legal order, demand or request; and, upon the District's request, provide the District with a copy of its response.

6.2 Received by District. If the District receives a subpoena, warrant, or other legal order, demand or request seeking District Data maintained by Contractor, including but not limited to, a request pursuant to the CORA, the District will promptly notify Contractor and, within five (5) business days (or as soon as reasonably practicable), excluding national holidays, Contractor shall supply the District with copies of the District Data for the District to respond.

6.3 Parent Request. If a parent, legal guardian or student contacts the District with a request to review or correct District Data or PII, pursuant to FERPA or the Student Data Transparency and Security Act, C.R.S. § 22-16-101 *et seq.* (the "Act"), the District will promptly notify Contractor's Designated Representative and Contractor shall use reasonable and good faith efforts to assist the District in fulfilling such requests, as directed by the District, within ten



calendar (10) days after receipt of District’s notice. Conversely, if a parent, legal guardian or student contacts the Contractor with a request to review or correct District Data or PII, within ten calendar (10) days after receipt of such notice, Contractor shall promptly notify the District and shall use reasonable and good faith efforts to assist the District in fulfilling such requests, as directed by the District.

6.4 Access to District Data. District shall have the right to access and retrieve any or all District Data stored by or in possession of Contractor upon written notice to Contractor’s Designated Representative. Contractor shall make the District Data available to the District within seven (7) calendar days from the date of request, or if it is not possible to do so, as soon as reasonably practicable.

## **7. Compliance with Applicable Law**

7.1. Children’s Online Privacy and Protection Act. If Contractor collects personal information (as defined in the Children’s Online Privacy and Protection Act of 1998, 5 U.S.C. 6501 to 6505, and its implementing regulations (“COPPA”)) from children under thirteen (13) years of age in performing the Services, Contractor warrants, represents, and covenants that such collection is and shall be for the use and benefit of the District and for no other commercial purpose. Contractor has provided District with written notice of its collection, use, and disclosure practices.

7.2 Compliance with Laws. Contractor warrants that it will abide by all applicable laws, ordinances, rules, regulations, and orders of all governmental agencies or authorities having jurisdiction over the Services including but not limited to: (a) COPPA; (b) FERPA; (c) the Health Insurance Portability and Accountability Act, 45 C.F.R. Part 160.103; (d) the Health Information Technology for Economic and Clinical Health Act, (e) Gramm-Leach-Bliley Financial Modernization Act of 1999, 15 U.S.C. 6809; (f) Payment Card Industry Data Security Standards; (g) Protection of Pupil Rights Amendment, 20 U.S.C. 1232h, 34 C.F.R. Part 98; and (h) Americans with Disabilities Act, and Federal Export Administration Regulations.

7.3 Americans with Disabilities Act. To the extent the District is required to provide accommodations in compliance with the Americans with Disability Act (“ADA”), Contractor will take reasonable steps to assist the District in providing its services to end users pursuant to this Agreement in a manner that its system and services will conform with laws, regulations and guidance that apply to accessibility in accordance with the ADA, Section 504 of the Rehabilitation Act of 1973, and the Web Content Accessibility Guidelines (WCAG) 2.0 Level AA guidelines; provided, however, Contractor makes no representation, warranty or other agreement that its system and services comply or will comply with the foregoing, and provided further, Contractor

will have no obligations with respect to such compliance as it relates to any portion of the system and services provided or developed by the District including District content.

## **8. Term and Termination**

8.1 This Addendum takes effect immediately as of the Effective Date, and remains in full force and effect until the successful completion of the services, unless earlier terminated under Sections 8.3 or 12.3.

8.2 Subject to Sections 8.3 and 12.3, this Addendum will automatically terminate without any further action of the Parties upon the termination or expiration of the Contract between the Parties or successful completion of the Services. Alternatively, upon re-execution of the Contract by the authorized persons of District and Contractor, this Addendum shall also be revived and be of full force and effect.

### **8.3 Termination by the District.**

8.3.1 The District may immediately terminate the Contract in accordance with District policies if, at any time, the District determines in its sole discretion, that Contractor has breached any of the requirements of this Addendum subject to a thirty-day notice and cure period.

8.3.2 Intentionally deleted.

8.3.3 Intentionally deleted.

## **9. Data Transfer Upon Termination or Expiration**

9.1 Destruction or Return of District Data. With the exception of De-identified Data that District has specifically agreed herein or otherwise in writing to allow Contractor to use after termination or expiration of this Agreement, or District Data for which Contractor has specifically obtained consent from the parent, legal guardian or student to keep, no later than sixty (60) calendar days after termination or expiration of this Agreement, Contractor shall certify in writing that all District Data and PII that Contractor collected, generated or inferred pursuant to the Contract (“Contract Data”), is securely returned or Securely Destroyed, pursuant to Schedule 4 attached hereto.

9.2 Transfer and Destruction of District Data. If the District elects to have all District Data or Contract Data that is in Contractor’s possession or in the possession of Contractor’s Subcontractors transferred to a third party designated by the District, such transfer shall occur within a reasonable period of time but no later than sixty (60) calendar days after expiration or termination of this Agreement, and without significant interruption in service or access to such

District Data. Contractor shall work closely with such third party transferee to ensure that such transfer/migration uses facilities and methods compatible with the relevant systems of the District or its transferee, and to the extent technologically feasible, that the District will have reasonable access to District Data during the transition. District will pay all costs associated with such transfer, unless such transfer is as the result of termination of this Agreement following Contractor's breach of the terms of this Agreement. Upon successful transfer of District Data, as confirmed in writing by the District's Designated Representative, Contractor shall Securely Destroy all District Data in accordance with Section 9.1.

9.3 Response to Specific Data Destruction or Return Requests. After receiving a written request from the District, Contractor shall Securely Destroy or return any specific District Data or Contract Data that is in its possession or in the possession of its Subcontractors within forty-five (45) calendar days, excluding national holidays, after receiving a written request from the District.

## **10. Indemnification**

10.1 If Contractor is a "public entity" then it will be responsible for the negligent acts and omissions of its officers, agents, employees and representatives with respect to its obligations under this Agreement. Any provision of this Agreement, whether or not incorporated herein by reference, shall be controlled, limited and otherwise modified so as to limit any liability of the Contractor under the Colorado Governmental Immunity Act, C.R.S. 24-10-101 et seq. It is specifically understood and agreed that nothing contained in this paragraph or elsewhere in this Agreement shall be construed as an express or implied waiver of its governmental immunity or as an express or implied acceptance of liabilities arising as a result of actions which lie in tort or could lie in tort in excess of the liabilities allowable under the Act, as a pledge of the full faith and credit of the Partner, or as the assumption by the Partner of a debt, contract or liability of the District or its affiliates in violation of Article XI, Section 1 of the Constitution of the State of Colorado.

10.2 If Contractor is not a "public entity" then Contractor shall indemnify, defend and hold District and its elected officials, employees, representatives, and agents harmless, without limitation, from and against any and all losses, damages, liabilities, deficiencies, actions, judgments, interest, awards, penalties, fines, costs or expenses, including attorneys' fees, the costs of enforcing any right to indemnification hereunder, and the cost of pursuing any insurance providers, arising out of or resulting from Contractor's, or Contractor's subcontractors, performance of services under this Addendum, any third-party claim against any Indemnified party to the extent arising out of or resulting from Contractor's, or Contractor's subcontractors, failure to comply with any of its obligations under Sections 3, 4, 5, and 9 of this Addendum, and any breach of Contractor's, or Contractor's subcontractors, obligations under this Addendum. These indemnification duties shall survive termination or expiration of this Agreement.

## **11. Insurance**

11.1 Coverage. As required by Schedule 6.

## **12. Miscellaneous**

12.1 End User Agreements. The District acknowledges that it must enter into an end user license agreement (EULA) with Contractor to use its digital products. In the event that the terms of the EULA conflict with the terms of this Addendum, the terms of this Addendum shall prevail over conflicting terms in the Contractor's agreement.

12.2 Public Inspection of Agreement. Contractor acknowledges and agrees that this Agreement and all documents Contractor provides District as required herein, are public records for purposes of the CORA and shall at all times be subject to public inspection. The parties understand that in the event of a request for disclosure of such information, the District will notify Contractor to give Contractor the opportunity to redact its proprietary or confidential material. In the event of the filing of a lawsuit to compel disclosure, the District will tender Contractor's material to the court for judicial determination of the issue of disclosure and Contractor agrees to intervene in such lawsuit to protect and assert its claims of privilege against disclosure or waive the same. District agrees to use reasonable efforts to seek confidential treatment of information provided by Contractor pursuant to Sections 4 and 5 to the extent permitted by law.

12.3 Survival. The Contractor's obligations under Sections 3, 4, 5, 6, 9, and 10, and any other obligations or restrictions that expressly or by their nature are to continue after termination, shall survive termination of this Agreement for any reason until all District Data has been returned or Securely Destroyed.

12.4 Choice of Law. Any claim, controversy or dispute arising under or related to this Addendum shall be construed pursuant to the substantive, not conflicts, laws of the State of Colorado. Each of the Parties submits to the exclusive jurisdiction of any state court sitting in or federal court with jurisdiction over Denver County, Colorado, in any action or proceeding arising out of or relating to this Agreement and agrees that all claims in respect of the action or proceeding may be heard and determined in any such court. Each Party also agrees not to bring any action or proceeding arising out of or relating to this Addendum in any other court. Each of the Parties waives any defense of inconvenient forum to the maintenance of any action or proceeding so brought and waives any bond, surety or other security that might be required of any other Party with respect to any such action or proceeding.

12.5 Immunities. The District retains all of its rights, privileges and immunities under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 *et seq.*

12.6 No Assignment. Contractor shall not assign or subcontract any of its rights or obligations hereunder without the express written consent of District. Any assignment in violation of this section shall be void.

12.7 No Third Party Beneficiaries. Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than District.

12.8 Schedules. The following schedules are attached hereto, or shall be attached hereto, and are specifically made a part hereof by this reference:

Attachment 1- Contractor's EULA

Schedule 1 – Designated Representatives

Schedule 2 – Subcontractors

Schedule 3 – Written Consent to Maintain De-identified Data

Schedule 4 – Certification of Destruction\Return of District Data

Schedule 5 – Data Elements

Schedule 6 – Insurance

12.9 Counterparts. This Addendum may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.


12.10 Effectiveness; Date. This Addendum will become effective when all parties have signed it. The date of this Addendum will be the date this Addendum is signed by the last party to sign it (as indicated by the date associated with the party's signature).

12.11 Electronic Signatures and Electronic Records. The Contractor consents to the use of electronic signatures by the District. This Addendum, and any other documents requiring a signature under this Addendum, may be signed electronically by the District in the manner specified by the District. The parties agree not to deny the legal effect or enforceability of this Addendum solely because it is in electronic form or because an electronic record was used in its formation. The parties agree not to object to the admissibility of the Addendum in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

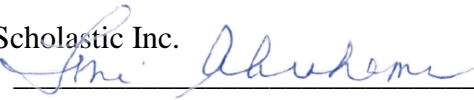
Each party is signing this agreement on the date stated opposite that party's signature.

SCHOOL DISTRICT NO. 1 IN THE CITY  
AND COUNTY OF DENVER AND STATE  
OF COLORADO, D/B/A DENVER PUBLIC  
SCHOOLS

Date: 11/12/2020

By:   
Staci Crum/DeeDee Case  
Manager, Strategic Sourcing

Date: 11/12/20

Scholastic Inc.  
By:   
Toni. R. Abrahams  
Vice President of Operations

## Attachment 1: Contractor's EULA

# Terms and Agreements

Please read the [Institutional Customer Agreement](#) if purchasing this product for your institution.

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Last Updated: August 21st, 2015

### PRODUCT TERMS

Please read these Product Terms (the "Terms") carefully. Your use of the Site or Scholastic Products (as defined below) constitutes your consent to these Terms.

These Terms are between you and Scholastic Inc. and/or any affiliated entities set forth in an applicable Order ("Scholastic" or "we") concerning your use of (including any access to) the text, images, audio and audiovisual recordings, software, databases, documentation and other information, content, material and services (the "Scholastic Products") made available to you through the Scholastic websites and mobile apps displaying a link to these Terms (together with any successor website(s) and app(s) thereto, the "Site"). These Terms hereby incorporate by this reference any additional terms and conditions posted by Scholastic through the Site, or otherwise made available to you by Scholastic.

If you have entered into an Institutional Customer Agreement with Scholastic (currently available upon request as described in the "*Information or Complaints*" section below, and referred to herein as a "Customer Agreement"), then please note that (1) these Terms are incorporated into such Customer Agreement, and (2) as used in these Terms, the word "you" means both Customer and any other Users permitted to use the Site and Scholastic Products under the applicable Order, as defined in the Customer Agreement.

- For example, if an Institutional Customer Agreement has been entered into by a school or school district, then the word "you" in these Terms may include such school or district and its teachers and students.

BY USING THE SITE OR THE SCHOLASTIC PRODUCTS, YOU AFFIRM THAT YOU ARE OF LEGAL AGE TO ENTER INTO THESE TERMS, OR, IF YOU ARE NOT, THAT YOU HAVE OBTAINED PARENTAL/GUARDIAN OR TEACHER/LIBRARIAN CONSENT TO DO SO.

**1. Changes.** We may change these Terms by notifying you of such changes by any reasonable means, including by posting revised Terms through the Site. Any such changes will not apply to any dispute between you and us arising prior to the date on which we posted the revised Terms incorporating such changes, or otherwise notified you of such changes.

Your use of the Site or Scholastic Products following any changes to these Terms will constitute your acceptance of such changes. The “*Last Updated*” legend above indicates when these Terms were last changed. We may, at any time and without liability, modify or discontinue all or part of the Site or Scholastic Products (including access to the Scholastic Products via any third-party links, and including any titles available through the Scholastic Products and any other content or functionality availability restrictions); charge, modify or waive any fees required to use the Site or Scholastic Products; or offer opportunities to some or all users.

**2. Information Submitted.** Your submission of information through the Site or the Scholastic Products is governed by the Scholastic Privacy Policy, currently available at <https://www.scholastic.com/edtechprivacy.htm>, or as otherwise set forth in such Privacy Policy.

**3. Jurisdictional Issues.** The Site and the Scholastic Products are controlled or operated (or both) from the United States, and are not intended to subject Scholastic to any non-U.S. jurisdiction or law. The Site and the Scholastic Products may not be appropriate or available for use in some non-U.S. jurisdictions. Any use of the Site and the Scholastic Products is at your own risk, and you must comply with all applicable laws, rules and regulations in doing so. We may limit the availability of the Site or the Scholastic Products at any time, in whole or in part, to any person, geographic area or jurisdiction that we choose.

**4. Rules of Conduct.** You will not: (a) copy, modify, create derivative works of, publicly display or perform, distribute, download, mirror, sell, rent, lease, loan, sublicense or timeshare the Site or the Scholastic Products; (b) decompile, disassemble or reverse engineer the Site or the Scholastic Products; (c) disrupt the operation of the Site or the Scholastic Products, or any third party’s use of the same; (d) remove any proprietary notices from the Site or the Scholastic Products; (e) use any robot, spider, or other device to retrieve, index, “scrape,” “data mine” or otherwise gather content from the Site or the Scholastic Products, or reproduce or circumvent the navigational structure or presentation of the same; (f) use the Site or the Scholastic Products for any commercial purpose or for the purposes of any third party, or exploit the Site or Scholastic Products except as expressly authorized herein; or (g) permit or facilitate any unauthorized access to the Site or Scholastic Products. You must cease using the Site and the Scholastic Products if you violate these Terms, or upon our reasonable request.

You are responsible for obtaining, maintaining and paying for all hardware, telecommunications and other services and resources needed to use the Site and the Scholastic Products.

**5. Prohibited Materials.** You will not post any material that is: (a) threatening, harassing or otherwise disrespectful; (b) false, defamatory or fraudulent; (c) obscene, indecent, profane, discriminatory or otherwise objectionable; (d) a promotion, advertisement, solicitation, or offer to buy or sell any product or service; (e) infringing or violating any copyright, trademark, trade secret, right of publicity, right of privacy or other proprietary right; (f) violating any confidentiality or other contractual or fiduciary obligation; (g) intended to harm or disrupt any software, hardware or network; or (h) otherwise tortious or illegal.



**6. Registration; User Names and Passwords.** You may need to register to use all or part of the Site or Scholastic Products. You represent and warrant that any information you provide in connection with any such registration is complete and accurate, and that you will promptly update any such information as necessary from time to time. We may reject, or require that you change, any user name, password or other information that you provide to us in registering. Your user name and password are for your personal use only, and should be kept confidential; you, and not Scholastic, are responsible for any use or misuse of your user name or password, and you must promptly notify us of any actual or suspected confidentiality breach or unauthorized use of your user name or password, or your account.

**7. Submissions.** Users of the Site and the Scholastic Products may make available certain materials (each, a “Submission”) through or in connection with the Site or the Scholastic Products, including on profile pages or on interactive services that may make such Submissions available to other users within a designated user group and/or to the general public. Scholastic has no control over and, except to the extent expressly provided otherwise by applicable law or by the Scholastic Privacy Policy, Scholastic is not responsible for any use or misuse (including any distribution) by any third party of Submissions, including the further distribution of Submissions by any user in a designated user group and/or by the general public. IF YOU CHOOSE TO MAKE ANY OF YOUR PERSONALLY IDENTIFIABLE OR OTHER INFORMATION PUBLICLY AVAILABLE THROUGH THE SITE OR THE SCHOLASTIC PRODUCTS, YOU DO SO AT YOUR OWN RISK.

**8. License; Feedback.** You hereby grant to Scholastic a non-exclusive, worldwide, royalty-free, perpetual, irrevocable, fully sublicensable (through multiple tiers) and transferable license to reproduce, adapt, modify, create derivative works based upon, store, host, publish, display and perform (publicly or otherwise), distribute, maintain and otherwise retain, analyze and use your Submissions in connection with the Site and/or Scholastic Products, and as otherwise permitted in these Terms, in any format or media now known or hereafter developed.

In addition, you agree to assign and hereby do assign to Scholastic, and Scholastic shall exclusively own, all right, title and interest in any ideas, enhancement requests, feedback, recommendations, testimonials and other similar information related to the Site and/or Scholastic Products provided by you or on your behalf (“Feedback”), and you acknowledge that Scholastic will have no confidentiality, fiduciary or other obligations with respect to any Feedback.

You represent and warrant that you have all rights necessary to grant the rights granted in this Section 8, and that your Submissions and Feedback are not fraudulent, tortious or otherwise in violation of any applicable law or any right of any third party. You further irrevocably waive any “moral rights” or other rights with respect to attribution of authorship or integrity of materials regarding any Submissions and Feedback that you may have under any applicable law under any legal theory.

**9. Monitoring.** We may (but have no obligation to) monitor any use of the Site or Scholastic Products, and monitor, evaluate, alter or remove Submissions before or after they appear on the Site or the Scholastic Products.

**10. Scholastic’s Proprietary Rights.** As between you and Scholastic, the Site and the Scholastic Products, and any corrections, modifications, additions, improvements and enhancements thereto, and all intellectual property rights therein, are owned exclusively by Scholastic and its licensors. Subject to these Terms, you may access and use the Site and the Scholastic Products solely for your personal, non-commercial use during the term of the applicable Subscription Period under the applicable Customer Agreement, and solely in accordance with any applicable documentation or usage restrictions that Scholastic may make available to you or that are otherwise set forth in such Customer Agreement. For clarity, the word “you” in this Section 10 and elsewhere in these Terms includes your school district’s or school’s teachers or students or your library’s patrons, as applicable, if you are a party to an Institutional Customer Agreement.

All other rights in the Site and Scholastic Products not expressly granted herein are expressly reserved by us. All trade names, trademarks, service marks and logos on the Site or the Scholastic Products not owned by us are the property of their respective owners. You may not use our or our licensors’ trade names, trademarks, service marks or logos (including our SCHOLASTIC mark and our Red Bar logo) in connection with any product or service that is not ours, or in any manner that is likely to cause confusion. Nothing contained on the Site or the Scholastic Products should be construed as granting any right to use any trade names, trademarks, service marks or logos without the express prior written consent of the owner.

**11. Third Party Materials; Links.** Certain Site or Scholastic Products functionality may make available access to materials made available by third parties, including Submissions (“Third Party Materials”), or allow for the routing or transmission of such Third Party Materials, including via links.

We neither control nor endorse, nor are we responsible for, any Third Party Materials, including the accuracy, integrity, quality, legality, usefulness or safety of Third Party Materials, or any intellectual property rights therein. Nothing in these Terms shall be deemed to be a representation or warranty by Scholastic with respect to any Third Party Materials. We have no obligation to monitor Third Party Materials, and we may block or disable access to any Third Party Materials (in whole or part) through the Site or Scholastic Products at any time. In addition, the availability of any Third Party Materials through the Site or Scholastic Products does not imply our endorsement of, or our affiliation with, any provider of such Third Party Materials, nor does such availability create any legal relationship between you and any such provider.

YOUR USE OF THIRD PARTY MATERIALS IS AT YOUR OWN RISK AND IS SUBJECT TO ANY ADDITIONAL TERMS, CONDITIONS AND POLICIES APPLICABLE TO SUCH THIRD PARTY MATERIALS (SUCH AS TERMS OF SERVICE OR PRIVACY POLICIES OF THE PROVIDERS OF SUCH THIRD PARTY MATERIALS).

## **12. DISCLAIMER OF WARRANTIES**

THE SITE, THE SCHOLASTIC PRODUCTS AND THIRD PARTY MATERIALS ARE MADE AVAILABLE TO YOU “AS IS” WITHOUT ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED OR STATUTORY. SCHOLASTIC DISCLAIMS ALL WARRANTIES WITH

RESPECT TO THE SITE, THE SCHOLASTIC PRODUCTS AND THIRD PARTY MATERIALS TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW, INCLUDING THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND TITLE. ALL DISCLAIMERS OF ANY KIND (INCLUDING IN THIS SECTION AND ELSEWHERE IN THESE TERMS) ARE MADE ON BEHALF OF BOTH SCHOLASTIC AND ITS PARENT, SUBSIDIARIES AND OTHER AFFILIATES AND THEIR RESPECTIVE SHAREHOLDERS, DIRECTORS, OFFICERS, EMPLOYEES, AFFILIATES, AGENTS, REPRESENTATIVES, LICENSORS, SUPPLIERS AND SERVICE PROVIDERS (COLLECTIVELY, THE "AFFILIATED ENTITIES").

While we try to maintain the timeliness, integrity and security of the Site and the Scholastic Products, we do not guarantee that they are or will remain updated, complete, correct or secure, or that access to the Site or Scholastic Products will be uninterrupted. The Site and Scholastic Products may include inaccuracies, errors and materials that violate or conflict with these Terms. Additionally, third parties may make unauthorized alterations to the Site or Scholastic Products. If you become aware of any such alteration, contact us at [tm&c@scholastic.com](mailto:tm&c@scholastic.com) with a description of such alteration and its location.

### **13. LIMITATION OF LIABILITY**

SCHOLASTIC WILL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES OF ANY KIND, UNDER ANY CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHER THEORY, INCLUDING DAMAGES FOR LOSS OF PROFITS, USE OR DATA, LOSS OF OTHER INTANGIBLES, LOSS OF SECURITY OF SUBMISSIONS (INCLUDING UNAUTHORIZED INTERCEPTION BY THIRD PARTIES OF ANY SUBMISSIONS), EVEN IF ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES. WITHOUT LIMITING THE FOREGOING, SCHOLASTIC WILL NOT BE LIABLE FOR DAMAGES OF ANY KIND RESULTING FROM YOUR USE OF OR INABILITY TO USE THE SITE, THE SCHOLASTIC PRODUCTS OR THIRD PARTY MATERIALS. YOUR SOLE AND EXCLUSIVE REMEDY FOR DISSATISFACTION WITH THE SITE, THE SCHOLASTIC PRODUCTS OR THIRD PARTY MATERIALS IS TO STOP USING THE SAME. THE MAXIMUM AGGREGATE LIABILITY OF SCHOLASTIC FOR ALL DAMAGES, LOSSES AND CAUSES OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, SHALL BE THE GREATER OF (A) THE TOTAL AMOUNT, IF ANY, ACTUALLY PAID BY YOU TO SCHOLASTIC TO USE THE SITE OR THE SCHOLASTIC PRODUCTS WITH RESPECT TO THE SIX (6) MONTHS PRECEDING THE DATE ON WHICH THE FIRST APPLICABLE CLAIM AROSE; AND (B) TEN U.S. DOLLARS (\$10.00). ALL LIMITATIONS OF LIABILITY OF ANY KIND (INCLUDING IN THIS SECTION AND ELSEWHERE IN THESE TERMS) ARE MADE ON BEHALF OF BOTH SCHOLASTIC AND THE AFFILIATED ENTITIES. Applicable law may not allow for limitations on certain implied warranties, or exclusions or limitations of certain damages; solely to the extent that such law applies to you, some or all of the above disclaimers, exclusions or limitations may not apply to you, and you may have certain additional rights.

**14. Suspension; Termination.** These Terms are effective so long as you are permitted by Scholastic to use the Site and Scholastic Products. Scholastic may terminate or suspend your use of the Site or Scholastic Products at any time and without prior notice, including if Scholastic believes that you have violated these Terms. Upon any such termination or suspension, your right to use the Site and Scholastic Products will immediately cease. Sections 2–5, 7–9, 10 (excluding the rights granted by Scholastic therein) and 11–20 shall survive any expiration or termination of these Terms.

**15. Governing Law; Arbitration.** These Terms are governed by the laws of the State of New York, U.S.A., without regard to its principles of conflicts of law, and regardless of your location. EXCEPT FOR DISPUTES THAT QUALIFY FOR SMALL CLAIMS COURT, ALL DISPUTES ARISING OUT OF OR RELATED TO THESE TERMS OR ANY ASPECT OF THE RELATIONSHIP BETWEEN YOU AND SCHOLASTIC, WHETHER BASED IN CONTRACT, TORT, STATUTE, FRAUD, MISREPRESENTATION OR ANY OTHER LEGAL THEORY, WILL BE RESOLVED THROUGH FINAL AND BINDING ARBITRATION BEFORE A NEUTRAL ARBITRATOR INSTEAD OF IN A COURT BY A JUDGE OR JURY, AND YOU AGREE THAT SCHOLASTIC AND YOU ARE EACH WAIVING THE RIGHT TO TRIAL BY A JURY. YOU AGREE THAT ANY ARBITRATION UNDER THESE TERMS WILL TAKE PLACE ON AN INDIVIDUAL BASIS; CLASS ARBITRATIONS AND CLASS ACTIONS ARE NOT PERMITTED AND YOU ARE AGREEING TO GIVE UP THE ABILITY TO PARTICIPATE IN A CLASS ACTION. The arbitration will be administered by the American Arbitration Association under its Consumer Arbitration Rules, as amended by this Agreement. The Consumer Arbitration Rules are currently available online at <https://www.adr.org/aaa/ShowProperty?nodeId=/UCM/ADRSTAGE2021425&revision=latestreleased>. The arbitrator will conduct hearings, if any, by teleconference or videoconference, rather than by personal appearances, unless the arbitrator determines upon request by you or by us that an in-person hearing is appropriate. Any in-person appearances will be held at a location which is reasonably convenient to both parties with due consideration of their ability to travel and other pertinent circumstances. If the parties are unable to agree on a location, such determination should be made by the AAA or by the arbitrator. The arbitrator's decision will follow the provisions of these Terms and will be final and binding. The arbitrator will have authority to award temporary, interim or permanent injunctive relief or relief providing for specific performance of these Terms or any other applicable agreement between us, but only to the extent necessary to provide relief warranted by the individual claim before the arbitrator. The award rendered by the arbitrator may be confirmed and enforced in any court having jurisdiction thereof. Notwithstanding any of the foregoing, nothing in these Terms will preclude you from bringing issues to the attention of federal, state or local agencies and, if the law allows, they can seek relief against us for you.

**16. Information or Complaints.** If you have a question or complaint regarding the Site or the Scholastic Products, please send an e-mail to [custserv@scholastic.com](mailto:custserv@scholastic.com). You may also contact us by writing to Scholastic Inc, Teacher Store, 557 Broadway, New York, NY 10012, Attn: EVP & General Counsel, or by calling us at 1-800-SCHOLASTIC. Please note that e-mail communications will not necessarily be secure; accordingly you should not include credit card information or other sensitive information in your e-mail correspondence with us.

**17. Copyright Infringement Claims.** Notification of a copyright infringement claim must be submitted to the following:

Legal Dept.  
Scholastic Inc.  
557 Broadway  
New York, NY 10012  
Phone: 212-343-6726

Email: [tm&c@scholastic.com](mailto:tm&c@scholastic.com)

The notification must be in writing and include: (a) a signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed; (b) identification of each alleged infringing copyrighted work or works; (c) identification of the allegedly infringing material and information reasonably sufficient to enable us to locate such material; (d) information reasonably sufficient to enable us to contact the party complaining of an alleged infringement (*e.g.*, an address, telephone number, and e-mail address); a statement that the complaining party has a good-faith belief that use of the allegedly infringing material in the manner complained of is not authorized by the copyright owner, its agent or the law; and (e) a statement that the information in the notification is accurate, and under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

**18. Export Controls.** You agree not to directly or indirectly export or re-export the Scholastic Products or any code found therein, except as authorized by the laws and regulations of the United States and any other applicable jurisdiction. You will not permit the Scholastic Products to be accessed or used at any location or by any person that would violate such laws or regulations. To the extent permitted by law, you will defend, indemnify and hold Scholastic harmless from and against any violation of such laws or regulations by you or any of your agents, officers, directors or employees.

**19. Miscellaneous.** These Terms do not, and shall not be construed to, create any partnership, joint venture, employer-employee, agency or franchisor-franchisee relationship between you and Scholastic. If any provision of these Terms is found to be unlawful, void or for any reason unenforceable, that provision will be deemed severable from these Terms and will not affect the validity and enforceability of any remaining provision. You may not assign, transfer or sublicense any or all of your rights or obligations under these Terms without our express prior written consent. We may assign, transfer, sublicense or subcontract any or all of our rights or obligations under these Terms without restriction. No waiver by either party of any breach or default hereunder will be deemed to be a waiver of any preceding or subsequent breach or default. Any heading, caption or section title contained herein is for convenience only, and in no way defines or explains any section or provision. All terms defined in the singular shall have the same meanings when used in the plural, where appropriate and unless otherwise specified. Any use of the term “including” or variations thereof in these Terms shall be construed as if followed by the phrase “without limitation.” These Terms, including any terms and conditions incorporated herein, together with the Customer Agreement if you are a Customer, is the entire agreement between you and Scholastic relating to the

subject matter hereof, and supersedes any and all prior or contemporaneous written or oral agreements or understandings between you and Scholastic relating to such subject matter. Notices to you (including notices of changes to these Terms) may be made via posting to the Site or by e-mail (including in each case via links), or by regular mail. Notices to Scholastic shall be sent in writing by registered mail, return receipt requested, to: Scholastic Inc., 557 Broadway, New York, NY 10012, Attn: SVP, Corporate Finance; with a copy sent to: Scholastic Inc., 557 Broadway, New York, NY 10012, Attn: EVP & General Counsel. Without limitation, a printed version of these Terms and of any notice given in electronic form shall be admissible in judicial or administrative proceedings based upon or relating to these Terms to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form. Scholastic will not be responsible for any failure to fulfill any obligation due to any cause beyond its reasonable control.

**20. Apple-Specific Terms.** In addition to your agreement with the foregoing terms and conditions, and notwithstanding anything to the contrary herein, the following provisions apply with respect to your use hereunder of any version of any Scholastic mobile app compatible with Apple Inc.'s iOS operating system (an "App"). Apple Inc. is not a party to these Terms and does not own and is not responsible for any App. Apple Inc. is not providing any warranty for any App except, if applicable, to refund the purchase price for it. Apple Inc. is not responsible for maintenance or other support services for any App and shall not be responsible for any other claims, losses, liabilities, damages, costs or expenses with respect to any App, including any third-party product liability claims, claims that an App fails to conform to any applicable legal or regulatory requirement, claims arising under consumer protection or similar legislation, and claims with respect to intellectual property infringement. Any inquiries or complaints relating to the use of an App, including those pertaining to intellectual property rights, must be directed to Scholastic in accordance with the "*Information or Complaints*" section above. The license you have been granted herein is limited to a non-transferable license to use the App(s) on an Apple-branded product that runs Apple Inc.'s iOS operating system and is owned or controlled by you, or as otherwise permitted by the Usage Rules set forth in Apple's App Store Terms of Service. In addition, you must comply with the terms of any third-party agreement applicable to you when using any App, such as your wireless data service agreement. Apple Inc. and its subsidiaries are third-party beneficiaries of these Terms and, upon your acceptance of the terms and conditions of these Terms, will have the right (and will be deemed to have accepted the right) to enforce these Terms against you as a third-party beneficiary thereof; notwithstanding the foregoing, Scholastic's right to enter into, rescind or terminate any variation, waiver or settlement under these Terms is not subject to the consent of any third party.

## **INSTITUTIONAL CUSTOMER AGREEMENT**

This Institutional Customer Agreement (the “Agreement”) is made as of the Effective Date (as defined below) by and between Customer (as defined below) and Scholastic Inc., located at 557 Broadway, New York, NY 10012, and/or any applicable affiliated entities set forth in an Order with respect to particular Licensed Products, each as defined below (“Scholastic”). This Agreement includes the Product Terms (as updated by Scholastic from time to time), which are currently available above ([Product Terms](#)) and are hereby incorporated into this Agreement by reference.

By accessing or using the Licensed Products (as defined below), or by otherwise indicating your acceptance of this Agreement (for example, by clicking “I Agree” or through another mechanism confirming your acceptance), Customer is agreeing to be bound by this Agreement, and you represent and warrant that you have the legal authority to bind Customer to this Agreement. Please note that your Internet browser will typically permit you to print or save a copy of this Agreement.

- **1. Definitions.**

- **§ 1.1 “Customer”** means the institution or other legal entity identified on the applicable Order, or, if no legal entity is identified on such Order, then “Customer” means the legal entity on behalf of which the person identified on such Order is acting.
- **§ 1.2 “Customer Data”** means user data (including Personally Identifiable Information), which may include student education record data, provided by or on behalf of Customer to Scholastic or received by Scholastic from Users in connection with the Licensed Products.
- **§ 1.3 “Customer Materials”** means any data, information, content and materials provided by or on behalf of Customer to Scholastic, or submitted or otherwise posted or uploaded to the Licensed Products, which are used in connection with the Licensed Products, including, for example, technical information, functional specifications and Customer Data.
- **§ 1.4 “Effective Date”** means the effective date of this Agreement, as set forth in the applicable Order.
- **§ 1.5 “Licensed Products”** means those Scholastic products and services as set forth in the applicable Order.
- **§ 1.6 “Order”** means the written (including electronic) ordering or registration materials applicable to this Agreement, subject to written acceptance of such materials by Scholastic in its discretion, and which are incorporated by reference into this Agreement upon such acceptance by Scholastic.

- **§ 1.7 “Personally Identifiable Information”** means any information regarding or that identifies (or that could be used to identify) any individual, including, for example, any individual student or parent name, address, personal identifiers such as school- or district-issued student identification numbers, and any other information or combination of information that would make the identity of an individual easily traceable, or any other information that is defined as personally identifiable or as “personal information” by applicable law.
  - **§ 1.8 “Subscription Period”** means, with respect to each Licensed Product, the applicable subscription time period set forth on the applicable Order.
  - **§ 1.9 “Territory”** means the territory set forth on the applicable Order.
  - **§ 1.10 “User”** means any individual who accesses or uses the Licensed Products.
- **2. Fees; Payment Terms.** Customer will pay to Scholastic, for each Subscription Period, the fees and other amounts for the Licensed Products as set forth on the applicable Order (the “Fees”) in accordance with the payment terms set forth therein.
  - **3. Licenses.**
    - **§ 3.1 *Scholastic License Grant.*** Subject to the terms and conditions of this Agreement, Scholastic hereby grants to Customer a limited, non-exclusive, non-sublicensable and non-transferable right for Customer to access and use the Licensed Products in the Territory, and to permit Users to access and use the Licensed Products in the Territory, solely for the personal, non-commercial use of Customer and such Users, and solely during each Subscription Period with respect to which Customer has paid to Scholastic all applicable Fees, subject to the terms and conditions of this Agreement and any other applicable terms and conditions, restrictions or instructions provided by Scholastic to Customer and/or any User, including any eligibility criteria for Users. At the end of each Subscription Period, Customer shall have sixty (60) calendar days to run any final, read-only usage reports for certain Customer Data with respect to the applicable Licensed Products. Following such sixty (60) calendar day period, Scholastic may delete or retain any or all Customer Materials associated with such Licensed Products, but Customer shall have no further access to any such retained Customer Materials, except as otherwise required by law. Any rights not expressly granted by Scholastic in this Agreement are expressly reserved to Scholastic.
    - **§ 3.2 *Customer License Grant.*** Customer, on behalf of Customer and each User, hereby grants to Scholastic a non-exclusive, worldwide, royalty-free, perpetual, irrevocable, fully sublicensable (through multiple tiers) and transferable license to reproduce, adapt, modify, create derivative works based upon, store, host, publish, display and perform (publicly or otherwise), distribute, maintain and otherwise retain, analyze and use the Customer Materials in connection with the Licensed Products and as otherwise permitted in this Agreement, in any format or media now known or hereafter developed. Customer understands and agrees that Scholastic may be accessing the Customer Materials, including Customer Data, in order to provide the Licensed Products and as otherwise permitted by this Agreement. For clarity, as between Customer and Scholastic, and subject to Section 3.3 below, Customer retains any ownership rights that Customer has in any Customer Materials.



- **§ 3.3 Feedback.** Customer, on behalf of Customer and each User, agrees to assign and hereby does assign to Scholastic, and Scholastic shall exclusively own, all right, title and interest in any ideas, enhancement requests, feedback, recommendations, testimonials and other similar information related to the Licensed Products provided by or on behalf of Customer or any User, and acknowledges that Scholastic will have no confidentiality, fiduciary or other obligations with respect to any such information.
  
- **4. Customer Obligations.**
- **§ 4.1 Product Terms.** Customer must comply with the Product Terms, including Sections 4 (Rules of Conduct), 5 (Prohibited Materials) and 10 (Scholastic’s Proprietary Rights). Customer must also ensure that its Users comply with the Product Terms, and Customer shall be responsible for any User’s violation of the Product Terms. Any violation of the Product Terms by any User will be deemed a breach of this Agreement by Customer.
- **§ 4.2 Security; Passwords.** Customer will take all reasonable security measures to prevent unauthorized access to the Licensed Products. Customer is responsible for all activities that occur under Customer’s or any User’s account in connection with the Licensed Products. Such accounts are non-transferable and are solely for the personal use of Customer or the applicable User to which such account is assigned. Customer agrees to immediately notify Scholastic of any unauthorized use of any such account, or any other actual or suspected breach of security or confidentiality with respect to any such account, and, in such event, Scholastic may terminate such account without liability and without limiting any other remedy under this Agreement or applicable law. Customer assumes all responsibility, liability and risk associated with the use of any Licensed Product feature that does not require passwords, with the failure of Customer or any User to set a password where there is an option to do so, and with the level of strength or security of any password selected by Customer or any User.
- **§ 4.3 Personally Identifiable Information.** Customer acknowledges and agrees that Personally Identifiable Information and other information collected by or on behalf of Scholastic in connection with the Licensed Products shall be governed by the Scholastic Privacy Policy (as updated from time to time), currently available at <https://www.scholastic.com/edtechprivacy.htm> , or as otherwise set forth in such Privacy Policy.
- **§ 4.4 FERPA.** In the event that any Customer Materials contain Personally Identifiable Information, Customer agrees only to provide or otherwise make available to Scholastic such Customer Materials (a) in compliance with all applicable laws, rules, regulations and privacy policies (including the Family Educational Rights and Privacy Act (20 U.S.C. Sec. 1232(g)) and the regulations thereunder (34 CFR Part 99) (collectively, “FERPA”)) (collectively, including FERPA, “Applicable Law”), and (b) in accordance with all necessary permissions, rights and consents as required by and in full compliance with all Applicable Law. Both Scholastic and Customer acknowledge that FERPA imposes obligations and restrictions onto “educational institutions or agencies” (such as Customer), including with respect to the handling and disclosure of Personally Identifiable Information contained in the educational records Customer maintains regarding its students. With respect to any Customer Materials that may be accessed, obtained, received, extracted or otherwise used by Scholastic (or which may otherwise be disclosed in any manner to Scholastic by Data Protection Addendum

or on behalf of Customer), in individualized or aggregate form, in connection with the Licensed Products provided pursuant to this Agreement, Customer hereby: (1) acknowledges and agrees that Scholastic can rely, is relying and will continue to rely on Customer's full compliance with the applicable obligations imposed by Applicable Law, as any such obligations may be amended or modified from time to time; and (2) expressly waives and releases Scholastic from and against any and all claims, actions, damages and liability arising in connection with Customer's provision of such Customer Materials to Scholastic (and any required consents in connection therewith) and Scholastic's receipt and use of such Customer Materials on behalf of Customer in accordance with the provisions of Applicable Law and the terms and conditions of this Agreement.

- **5. Student Education Record Data.** Any student education record data contained in Customer Data (such data, "Student Data") will remain the property of, and under the control of, Customer. Scholastic will use Student Data only to provide the Licensed Products and as otherwise specifically permitted by this Agreement, including as set forth in the Scholastic Privacy Policy. For purposes of this Section 5, "student education record data" does not include information that cannot be used to identify an individual student.
  - **§5.1 Access and Correction.** Any parent or legal guardian of a student who is under eighteen (18) years of age and any student who is at least eighteen (18) years of age may review Personally Identifiable Information in such student's Student Data and correct erroneous information in such Student Data by contacting Customer.
  - **§5.2 Security.** Scholastic will use reasonable organizational, technical and administrative measures, including designation and training of responsible individuals, to protect the security and confidentiality of Student Data within Scholastic's possession or control.
  - **§5.3 Unauthorized Disclosure.** In the event of unauthorized disclosure of Student Data while within the possession or control of Scholastic, Scholastic will notify Customer of such disclosure, and Customer will notify a parent or legal guardian of each affected student who is under eighteen (18) years of age and each affected student who is at least eighteen (18) years of age of such disclosure.
  - **§5.4 Termination.** Upon termination or expiration of this Agreement, to the extent required by applicable law, Scholastic will return to Customer all Student Data, or destroy the same, in accordance with such reasonable written instructions as may be given by Customer; however, except to the extent prohibited by applicable law, Scholastic may retain back-up and similar copies of Student Data that Scholastic is unable to destroy using commercially reasonable measures. Upon Customer's written request, Scholastic will certify to Customer that Scholastic has destroyed such Student Data.
  - **§5.5 Advertising.** Scholastic will not use any Personally Identifiable Information contained in Student Data to engage in targeted advertising.
- **6. Warranties.**
  - **§ 6.1 Mutual Warranties.** Each party hereby represents and warrants to the other party that: (a) it is a duly organized entity, validly existing and in good standing under the laws of the state of its formation; (b) it has the requisite power and authority to execute and deliver this Agreement and to

fully perform its obligations under this Agreement; and (c) it is not subject to any contractual obligation that would reasonably be expected to interfere in any way with its full performance of its obligations under this Agreement.

- **§ 6.2 Customer Warranties.** Customer represents and warrants that: (a) for all Customer Materials, and for all User access to and use of the Licensed Products, Customer is solely responsible for obtaining, and Customer hereby represents and warrants to Scholastic that it has previously obtained, all of the necessary and applicable rights, permissions and consents, including parental consents, to make available (and to permit Users and other third parties, such as Customer's third-party data hosting providers, to make available) the Customer Materials to Scholastic, and for Scholastic to use such Customer Materials in accordance with this Agreement, including Scholastic's use of Customer Data in accordance with the Scholastic Privacy Policy; (b) Customer is and will continue to be in compliance in all respects with all Applicable Law in connection with its and its Users' use of the Licensed Products; (c) the Customer Materials shall not include any Social Security Numbers; (d) Customer, and not Scholastic or any third party, is responsible for responding to any request from a parent or legal guardian of a User, or to any request from a User who is at least eighteen (18) years old, for access to, or other action with respect to, such User's Personally Identifiable Information or student education record data; and (e) all information provided by or on behalf of Customer in connection with any Order is and will remain complete and accurate.
  
- **7. DISCLAIMER OF WARRANTIES.** EXCEPT AS EXPRESSLY SET FORTH IN SECTION 5 ABOVE, CUSTOMER EXPRESSLY ACKNOWLEDGES AND AGREES TO BE BOUND BY THE DISCLAIMERS SET FORTH IN SECTION 12 OF THE PRODUCT TERMS, CURRENTLY AVAILABLE ABOVE HERE: [PRODUCT TERMS SECTION 12](#).
  
- **8. LIMITATION OF LIABILITY.** CUSTOMER EXPRESSLY ACKNOWLEDGES AND AGREES TO BE BOUND BY THE LIMITATIONS OF LIABILITY SET FORTH IN SECTION 13 OF THE PRODUCT TERMS, CURRENTLY AVAILABLE ABOVE HERE: [PRODUCT TERMS SECTION 13](#).
  
- **9. Indemnity.** Except to the extent prohibited under applicable law, Customer agrees to defend, indemnify and hold harmless Scholastic and the Affiliated Entities (as defined in the Product Terms) from and against all claims, losses, costs and expenses (including reasonable attorneys' fees) arising out of (a) Customer's or any User's use of, or activities in connection with, the Licensed Products; and (b) any violation or alleged violation of any covenant, representation, warranty or other provision of this Agreement by Customer.
  
- **10. Term; Termination.** The term of this Agreement commences on the Effective Date and shall continue until terminated as set forth herein. Scholastic may terminate this Agreement upon written notice to Customer if Customer breaches any term or condition of this Agreement, or upon written notice to Customer at any time if no Subscription Period is then in effect. Customer may terminate this Agreement upon thirty (30) days' prior written notice to Scholastic, subject to Customer's

payment to Scholastic of all Fees set forth in this Agreement (including in all Orders). In addition, Scholastic may suspend any or all rights granted to Customer and/or any User under this Agreement at any time and without prior notice, including if Scholastic believes that Customer has violated this Agreement. For clarity, upon any termination of this Agreement, all rights granted to Customer and any Users under this Agreement (including under the Product Terms and any Orders) will automatically cease. Sections 1, 2 (with respect to any Fees incurred under this Agreement prior to its termination), 3.2, 3.3, 4.1, 4.3, 4.4 and 5–13 shall survive any termination of this Agreement.

- **11. Publicity.** No public statement, press release or other announcement relating to this Agreement, the Licensed Products or the other party shall be issued by either party hereunder, nor shall either party use any name, trademark or logo of the other party (which, with respect to Scholastic, includes the SCHOLASTIC mark and the Red Bar logo) without the prior written consent of such other party. Notwithstanding the foregoing, Scholastic may use Customer's name and logo in Scholastic's customer lists, including publicly available lists.
- **12. Confidentiality.** Except as otherwise required by law, Customer acknowledges and agrees that the terms and conditions of this Agreement (including pricing and other terms of any Orders) shall be kept confidential by Customer at all times, and Customer shall not divulge such knowledge to any third party, or use such knowledge other than to fulfill Customer's obligations or exercise its rights under this Agreement, without Scholastic's prior written consent.
- **13. Governing Law; Arbitration.** ANY DISPUTES ARISING OUT OF OR RELATED TO THIS AGREEMENT (INCLUDING THE PRODUCT TERMS) OR ANY ASPECT OF THE RELATIONSHIP BETWEEN CUSTOMER AND SCHOLASTIC, WHETHER BASED IN CONTRACT, TORT, STATUTE, FRAUD, MISREPRESENTATION OR ANY OTHER LEGAL THEORY, WILL BE RESOLVED THROUGH FINAL AND BINDING ARBITRATION BEFORE A NEUTRAL ARBITRATOR INSTEAD OF IN A COURT BY A JUDGE OR JURY, AND EACH PARTY AGREES THAT IT IS WAIVING THE RIGHT TO TRIAL BY A JURY. EACH PARTY AGREES THAT ANY ARBITRATION UNDER THIS AGREEMENT WILL TAKE PLACE ON AN INDIVIDUAL BASIS; CLASS ARBITRATIONS AND CLASS ACTIONS ARE NOT PERMITTED, AND EACH PARTY IS AGREEING TO GIVE UP THE ABILITY TO PARTICIPATE IN A CLASS ACTION. The arbitration will be administered by the American Arbitration Association under its Commercial Arbitration Rules, as amended by this Agreement. Any in-person appearances requested by the arbitrator shall be held in New York County, New York. The arbitration decision shall be based upon the laws of New York State, without regard to its principles of conflicts of law. Arbitration proceedings shall be conducted in English and in a manner that preserves confidentiality. The arbitrator's decision will follow the provisions of this Agreement and will be final and binding. The arbitrator will have authority to award temporary, interim or permanent injunctive relief or relief providing for specific performance of this Agreement or any other applicable agreement between us, but only to the extent necessary to provide relief warranted by the individual claim before the arbitrator. The award rendered by the arbitrator may be

confirmed and enforced in any court having jurisdiction thereof. For clarity, Section 15 of the Product Terms shall not apply to any dispute between Customer and Scholastic.

- **14. Miscellaneous.** This Agreement does not, and shall not be construed to, create any partnership, joint venture, employer-employee, agency or franchisor-franchisee relationship between Customer and Scholastic. If any provision of this Agreement is found to be unlawful, void or for any reason unenforceable, that provision will be deemed severable from this Agreement and will not affect the validity and enforceability of any remaining provision. Customer may not assign, transfer or sublicense any or all of its rights or obligations under this Agreement without Scholastic's express prior written consent. Scholastic may assign, transfer, sublicense or subcontract any or all of its rights or obligations under this Agreement without restriction. No waiver by either party of any breach or default under this Agreement will be deemed to be a waiver of any preceding or subsequent breach or default. Any heading, caption or section title contained in this Agreement is for convenience only, and in no way defines or explains any section or provision. All terms defined in the singular shall have the same meanings when used in the plural, where appropriate and unless otherwise specified. Any use of the term "including" or variations thereof in this Agreement shall be construed as if followed by the phrase "without limitation." This Agreement, including the Product Terms and any Orders or other terms and conditions incorporated into this Agreement, is the entire agreement between Customer and Scholastic relating to its subject matter, and supersedes any and all prior or contemporaneous written or oral agreements or understandings between Customer and Scholastic relating to such subject matter. Notices to Customer (including notices of changes to this Agreement) may be made via posting to the Site (as defined in the Product Terms) or by e-mail (including in each case via links), or by regular mail. Notices to Scholastic shall be sent in writing by registered mail, return receipt requested, to: Scholastic Inc., 557 Broadway, New York, NY 10012, Attn: SVP, Corporate Finance; with a copy to: Scholastic Inc., 557 Broadway, New York, NY 10012, Attn: EVP & General Counsel. Without limitation, a printed version of this Agreement and of any notice given in electronic form shall be admissible in judicial or administrative proceedings based upon or relating to this Agreement to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form. Scholastic will not be responsible for any failure to fulfill any obligation due to any cause beyond its reasonable control. Solely to the extent of any irreconcilable conflict between any Order, this Customer Agreement and/or the Product Terms, the terms and conditions of the Customer Agreement shall govern, followed by the terms and conditions of the Product Terms followed by the terms and conditions of the Order.

**SCHEDULE 1**  
**Designated Representatives**

<b>DISTRICT REPRESENTATIVE</b>	<b>CONTRACTOR REPRESENTATIVE</b>
<p><b>Name:</b> Jennifer Collins</p> <p><b>Title:</b> Chief Privacy Officer, Deputy General Counsel</p> <p><b>Address:</b> 1860 Lincoln St Denver, CO 80203</p> <p><b>Phone:</b> 720-423-2211</p> <p><b>E-mail:</b> <a href="mailto:legal_contracts@dpsk12.org">legal_contracts@dpsk12.org</a></p>	<p><b>Name:</b> Toni R. Abrahams</p> <p><b>Title:</b> Vice President of Operations</p> <p><b>Address:</b> The Scholastic Building, 557 Broadway (Entrance at 130 Mercer Street), New York, NY 10012</p> <p><b>Phone:</b> 203-797-3846</p> <p><b>E-mail:</b> <a href="mailto:rfp-scholastic@scholastic.com">rfp-scholastic@scholastic.com</a></p>

**SCHEDULE 2  
Subcontractors**

*Contractor shall update this information as necessary to maintain accuracy and shall send revised attachments, exhibits or schedules to the District’s Authorized Representative.*

**What third party vendors does Contractor do business with that may have access to student personally identifiable data, and what is the purpose of these third party vendors (please fill complete the table below with this information)?**

<b>Name of Subcontractor</b>	<b>Primary Contact Person</b>	<b>Subcontractor’s Address</b>	<b>Subcontractor’s Phone/email</b>	<b>Purpose of re-disclosure to Subcontractor</b>
*Presidio Networked Solutions LLC as a reseller of Amazon Web Services	*Contact <b>rfp-scholastic@scholastic.com</b> and do not go through Amazon Web Services.	N/A	N/A	Hosting Services necessary for Supplier to provide the contracted education services and for no other purposes.

**SCHEDULE 3**  
**Written Consent to Maintain De-identified Data**

The District hereby gives its consent for Contractor to retain and use for the stated purpose and period, De-identified Data elements as set forth below:

Description of De-identified Data Elements	Purpose for Retention and Use	Period of Use

**I\We, Toni R. Abrahams, as Vice President of Operations and the authorized representative(s) of the Contractor do hereby certify that no attempt will be made to re-identify De-identified Data.**

Contractor Name: Scholastic Inc.

Contractor Representative Name: Toni R. Abrahams

Title: Vice President of Operations

Signature:  Date: 11/12/20





**SCHEDULE 5**  
**Data Elements**

*(Mandatory to be completed if Service Provider is a School Service Contract Provider under CRS 22-16-101 et seq.)*

1. **Service Provider collects, generates or uses pursuant to the Agreement the following data elements of District Data or PII:**

<b>SDM PLATFORM DATA</b>	
<b>Organizations</b>	Name Organization Type Date Created & Updated Address IP address ( <b>Only</b> when supplied by the org for Site Auth) UCN number School Year Calendars Associated organizations (i.e., school to district relationship) Associated Subscriptions Associated Classes Associated Users EULA Agreement - user and date SITE Auth Credentials (i.e., username/password, referrer url)
<b>Educators</b>	First Name Last Name Email Address Date Created & Updated User ID User Type (i.e., manual, Clever, etc) User Role Associated organizations (i.e., teacher to school relationship) Associated Classes Associated Subscriptions

	Credentials Session Data
<b>Students</b>	First Name Last Name Student ID** Date Created & Updated User ID Associate Organizations (i.e., student to school relationship) Associated Classes Associated Subscriptions Credentials Grade Level Lexile Level*** Guided Reading Level*** Session Data  **This data is not mandatory and is only stored when entered by a teacher

APPLICATION DATA
<p>Depending on the application, application data can include:</p> <ul style="list-style-type: none"> <li>• Data regarding a user's Lexile level or reading level</li> <li>• Data regarding how a user interacts with an application such as which books were read, which activities the user completed, etc.</li> <li>• Usage data such as number of sessions, length of session, time of the session, etc.</li> <li>• Performance data such as a user's score in activities or quizzes, the speed at which a user answers a question, responses to multiple choice questions or prompts, etc.</li> <li>• Written responses or essays from the user</li> </ul>

2. **Service Provider collects and uses the District Data for the following educational purposes:**

De-identified data is used as follows:

Development and improvement of educational sites, services, and applications

Make product, service, or update recommendations to District

Other District Data is used as follows:

IP addresses are collected as part of a log file which is monitored to prevent cyber attacks. IP addresses may be used in the aggregate to measure site usage and performance. IP addresses are not stored in connection with personal information. IP addresses are stored for as long as reasonably necessary to fulfill the purpose for which they were collected.

The Scholastic Digital Manager (SDM) is the online platform through which students, teachers, and other school or district personnel access Scholastic digital products, including NSGRA, Literacy Pro, and Leveled Bookroom Accelerator. It provides K-12 educators and their students with a one-stop access point to utilize the Company's digital education resources. The platform provides school districts and teachers with tools to organize their students into classes and provides usage reports to support classroom instruction activities. SDM enables single sign on for educators to access all Scholastic digital educational resources to which they are subscribed. The platform stores the full names and email addresses of administrators, library staff, and teachers who have registered accounts with Scholastic. If a district chooses to share roster and classroom data via Clever, the platform will store the information the district provides, which may include student ID, full student names, and grade levels. Otherwise, the platform stores information provided by the teacher, which includes first name, either full last name or last initial, grade level and (optionally) student ID. Other data stored in the platform depends on the particular Scholastic digital product being used by the teacher. For schools that use Clever, students and teachers log in through Clever, with the sign-on process established by the school or district with Clever. Teachers in non-Clever schools, and administrators in all schools, log in using their Scholastic.com email address and password (the same account log-in used for Scholastic Reading Clubs Online, Scholastic

Teacher Store, etc.). Students in non-Clever schools are assigned a user name by SDM which includes the student's first name, last initial, and a number (ex.:johnd7). Schools not using Clever may also use LTI integration and Google Classroom as another way to log-in to SDM.

**3. Service Provider's policies regarding retention and disposal of District Data are as follows:**

Scholastic retains PII data collected via the product for as long as reasonably necessary to provide the product or services and otherwise as agreed in the contract with the customer. De-identified data may be retained indefinitely. The log file is cleared every four (4) weeks.

Scholastic will securely destroy or return data (other than de-identified data) in accordance with the contract's requirements (NIST SP 800-88 Guidelines for Media Sanitization) or Customer's instructions.

**4. Service Provider uses, shares or discloses the District Data in the following manner:**

District Data is used as described in paragraph 2 above.

Otherwise District Data is only shared with subcontractors listed on Schedule 2, who may not use data for their own purposes or further disclose it.

**5. Has Service Provider's agreement has ever been terminated by another school district for failure to comply with the same or substantially similar security obligations as those set forth in this Agreement?**

Yes       No.

If yes, describe:

**SCHEDULE 6**  
**Insurance**

**Denver Public Schools**

ENTERPRISE RISK MANAGEMENT

Tel: 720-423-1300

<http://risk.dpsk12.org>

[RiskManagement@dpsk12.org](mailto:RiskManagement@dpsk12.org)



**General Provisions**

Contractor agrees to secure, at or before the time of execution of this Agreement, the following insurance covering all operations, goods or services provided pursuant to this Agreement.

Contractor shall provide a copy of this Agreement to its insurance agent or broker. Contractor may not commence services or work relating to the Agreement prior to placement of coverage.

Contractor shall keep the required insurance coverage in force at all times during the term of the Agreement, or any extension thereof.

**Insurer Ratings:** The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A-" VIII or better.

**Cancellation, Non-Renewal Notifications:** Each policy shall contain a valid provision or endorsement requiring notification to the District in the event any of the required policies are to be cancelled or non-renewed before the expiration date thereof. Such written notice shall be sent to the parties identified in the Notices section of this Agreement. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, Contractor shall provide written notice of cancellation, non-renewal or reduction in limits to the parties identified in the Notices section by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s).

**Deductibles or Self-Insured Retentions:** If any policy is in excess of a deductible or self-insured retention, the Contractor must notify the District. Contractor shall be responsible for the payment of any deductible or self-insured retention.

**Minimum Requirements:** The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the Contractor. The Contractor shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

Contractor shall advise the District in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits. At its own expense, and where such general aggregate or other aggregate limits have been reduced below the required per occurrence limits, the Contractor will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.

**Proof of Insurance:** Contractor certifies that any certificate of insurance, (preferably an ACORD certificate), provided as evidence of insurance coverage under this Agreement, complies with all insurance requirements in this Agreement. The District's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of Contractor's breach of this Agreement or of any of the District's rights or remedies under this Agreement. The District's Risk Management Department may require additional proof of insurance including but not limited to policies and endorsements.

**Subcontractors and Subconsultants:** All Subcontractors and Subconsultants (including Independent Contractors, Suppliers or other entities providing goods or services required by this Agreement) shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of the Contractor. Contractor shall include all such Subcontractors as Additional Insureds under its policies (with the exception of Workers' Compensation) or shall ensure that all such Subcontractors and Subconsultants maintain the required coverages. Subcontractors and Subconsultants do not include third party service providers who work for the Contractor to provide it with certain functionalities, such as hosting services.

#### **Insurance Coverage and Limits**

**Workers' Compensation/Employer's Liability:** Contractor shall maintain the coverage as required by statute and shall maintain Employer's Liability insurance with limits of at least \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims.

Contractor expressly represents to the District, as a material representation upon which the District is relying on entering into this Agreement, that none of the Contractor's officers or employees who may be eligible under any statute or law to reject Workers' Compensation insurance shall affect such rejection during any part of the term of this Agreement, and that any such rejections previously effected, have been revoked as of the date Contractor executes this Agreement.

**Business Automobile Liability:** Contractor shall maintain Business Automobile Liability coverage with limits of at least \$1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing services under this Agreement.

**Commercial General Liability:** Contractor shall maintain Commercial General Liability coverage with limits of at least \$1,000,000 for each occurrence, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations aggregate, and \$2,000,000 policy aggregate.

**Excess/Umbrella Liability:** Contractor shall maintain Excess or Umbrella Liability coverage with limits of at least \$1,000,000 per occurrence and \$1,000,000 policy aggregate. Coverage must be written on a “follow form” or broader basis.

**The following three types of required insurance coverages may be met with separate policies or a combination of these coverages under one policy. If in a combined policy, the combined policy form shall include minimum limits of at least \$3,000,000 each occurrence and in the aggregate.**

**Technology Errors & Omissions:** Contractor shall maintain Technology Errors and Omissions Liability coverage including, but not limited, to Network Security, Privacy Liability and Product Failure coverage with limits of at least \$1,000,000 per occurrence and \$1,000,000 policy aggregate.

**Media Professional Liability:** Contractor shall maintain Media Professional Liability limits of at least \$1,000,000 per claim and \$1,000,000 in the aggregate. The policy shall include, but not be limited to, coverage for libel, slander, infringement of copyright, invasion of the right of privacy, and unauthorized use of titles, formats, ideas, characters, plots or other material used in the publication or design.

**Cyber/Network Security & Privacy Liability:** Contractor shall maintain Cyber/Network Security & Privacy Liability coverage with limits of at least \$1,000,000 per occurrence and \$1,000,000 policy aggregate including, but not limited to, coverage for claims involving privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion and network security.

#### **Other Insurance Provisions**

**Additional Insured Status:** For Commercial General Liability, Auto Liability, Excess/Umbrella Liability, Cyber/Network Security and Privacy Liability (if applicable), Contractor and Subcontractor’s insurer(s) shall name School District No. 1 in the City and County of Denver, d/b/a Denver Public Schools, and its elected officials, employees, representatives and agents as Additional Insureds.

**Waiver of Subrogation:** For coverages required under this Agreement, Contractor’s insurer shall waive subrogation rights against the District.

**Primary Coverage:** For claims related to this Agreement, Contractor’s insurance coverage shall be primary and non-contributory with other coverage or self-insurance maintained by the District.

**Claims Made Policies:** For claims-made coverage, the retroactive date must be on or before the contract date or the first date when any goods or services were provided to the District, whichever is earlier.



**Additional Provisions:** Defense costs must be outside the limits of liability. Policies must contain a severability of interests or separation of insureds provision (no insured versus insured exclusion). The Commercial General Liability coverage must provide that this is an Insured Contract under the policy.