

Data Security Rider
Rider to Board of Education of Trigg County, Kentucky Contract
For Vendors who Receive Personal Information Regarding
Data Security and Breach Protocols

Vendor Name: Learning A-Z hereafter "Vendor" or "Contractor."

Purchaser: Board of Education of Trigg County, Kentucky, hereafter "Board" or "Purchaser."

"Purchaser" or "Board" includes without limitation all schools, organizations, and departments of the Board or Purchaser. This document may be referred to, without limitation, as "Data Security Rider" or "Rider" or "Document."

General Provisions

1. The terms of this Rider apply to all current and future agreements of the parties and shall amend and supersede all other agreements. If there is a conflict between the terms of this Rider and current or future agreements of the parties, the terms of this Rider shall control unless the future agreement contains a specific agreement to amend this Rider. No term or provision of any agreement which is inconsistent with the terms for this Rider shall be valid. Performance or action or use, including logging on a website, using software, or "clicking" a button on a computer to indicate agreement to a policy such as a privacy policy or user agreement shall not be sufficient to modify this Rider. The Rider may only be amended by written agreement of the Purchaser and the Vendor. The terms of this Rider shall be incorporated by reference in all current and future agreements of the parties.

2. The terms of this Rider shall be applicable to and incorporated by reference in all current and future agreements between the Vendor and the Purchaser's contractors, agents, employees, and students. Any terms or provisions of agreements between the Vendor and such users which are inconsistent with the requirements of this Rider shall be invalid and unenforceable. For example, a provision of the Vendor's privacy policy for students which provide for indemnification would be unenforceable.

3. Any terms or provisions of agreements between the parties which waive or limit, or attempt to waive or limit the liability of the Vendor to the Purchaser in any respect shall be invalid and unenforceable. Any terms or provisions which provide for or attempt to provide for indemnification by the Purchaser to the Vendor shall be invalid and unenforceable. Any terms or provisions which require the Purchaser to purchase insurance shall be invalid and unenforceable. Any terms or provisions which limit the time in which the Purchaser may bring suit shall be invalid and unenforceable. Any terms or provisions which require the Purchaser to submit to arbitration shall be invalid and unenforceable. All warranty limitations are invalid and unenforceable. The invalidity of a particular term or provision of an agreement shall not invalidate the entire agreement. If a specific term or provision of an agreement is invalid, the remainder of the agreement shall continue to be valid and enforceable.

4. Any agreements, terms, or provisions between the parties shall be enforceable only to the extent allowed by Kentucky law. This Rider and all agreements of the parties shall be governed by the laws of the Commonwealth of Kentucky without regard to conflicts of law rules. Each party submits to the jurisdiction of the courts, or administrative agencies as applicable, located in the Commonwealth of Kentucky for the purposes of any action, suit or proceeding arising out of or related to this agreement and agrees not to plead or claim that any action, suit or proceeding arising out of or related to this agreement that is brought in such Kentucky courts or such appropriate Kentucky agency has been brought in an inconvenient forum. Kentucky law may require that claims be brought through the Kentucky Claims Commission and the Board does not waive this requirement. The Board does not waive sovereign immunity or any other limitations on claims or damages against the Board. Any provisions requiring the Board to obtain waivers from parents or students, unless reasonable and specific requests are made by the Vendor shall be invalid and unenforceable. All provisions of this Rider shall survive any termination or expiration of the agreement of the parties and of any and all agreements of the parties. In the event that any provision of this Rider is held by a court of competent jurisdiction to be unenforceable for any reason, the remainder of this Rider shall remain valid and enforceable. The Purchaser may terminate any agreements between the parties one year after the date that the agreement becomes binding by giving thirty (30) days written notice.

5. The Vendor will comply with all applicable Kentucky and Federal law including but not limited to the Family Educational Rights and Privacy Act (20 U.S.C. § 1232g) (FERPA), the Protection of Pupil Rights Amendment, 20 U.S.C. 1232h (PPRA), the data protection provisions of the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 *et seq*) (NSLA), the Child Nutrition Act of 1966 (42 U.S.C. 1751 *et seq*)(CNA), KRS 61.931 *et seq*, KRS 365.720 through KRS 365.734 and the applicable regulations for these statutes. Vendor will sign such documents as are required by the Kentucky Department of Education.

Data Security and Breach Protocols

6. Vendors that receive personal information as defined by and in accordance with Kentucky's Personal Information Security and Breach Investigation Procedures and Practices Act, KRS 61.931, *et seq.*, (the "Act"), shall secure and protect the Personal Information by, without limitation, complying with all requirements applicable to non-affiliated third parties set forth in the Act.

7. "Personal Information" is defined in accordance with KRS 61.931(6) as "an individual's first name or first initial and last name; personal mark; or unique biometric or genetic print or image, in combination with one (1) or more of the following data elements:

- a) An account, credit card number, or debit card number that, in combination with any required security code, access code or password, would permit access to an account;
- b) A Social Security number;
- c) A taxpayer identification number that incorporates a Social Security number;
- d) A driver's license number, state identification card number or other individual identification number issued by an agency;
- e) A passport number or other identification number issued by the United States government; or

f) Individually Identifiable Information as defined in 45 C.F.R. sec. 160.013 (of the Health Insurance Portability and Accountability Act), except for education records covered by the Family Education Rights and Privacy Act, as amended 20 U.S.C. sec 1232g ("FERPA").

8. As provided in KRS 61.931(5), a "non-affiliated third party" means "any person or entity that has a contract or agreement with the Commonwealth and receives (accesses, collects or maintains) personal information from the Commonwealth pursuant to the contract or agreement."

9. The Vendor hereby agrees to cooperate with the Commonwealth of Kentucky and the Purchaser in complying with the response, mitigation, correction, investigation, and notification requirements of the Act.

10. The Vendor shall notify as soon as possible, but not to exceed seventy-two (72) hours, the contracting agency, the Commissioner of the Kentucky State Police, the Auditor of Public Accounts, and the Commonwealth Office of Technology of a determination of or knowledge of a breach, unless the exception set forth in KRS 61.932(2)(b)2 applies and the vendor abides by the requirements set forth in that exception. If the agency is a unit of government listed in KRS 61.931(1)(b), the vendor shall notify the Commissioner of the Department of Local Government in the same manner as above. If the agency is a public school district listed in KRS 61.931(1)(d), the vendor shall notify the Commissioner of the Department of Education in the same manner as above. If the agency is an educational entity listed under KRS 61.931(1)(e), the vendor shall notify the Council on Postsecondary Education in the same manner as above. Notification shall be in writing on a form developed by the Commonwealth Office of Technology.

11. The vendor hereby agrees to report, immediately and within twenty-four (24) hours, any known reasonably believed instances of missing data, data that has been inappropriately shared, or data taken off site to: the superintendent of the district or in his or her absence to the next highest ranking administrator.

12. The vendor hereby agrees that the Purchaser may withhold payment(s) owed to the vendor for any violation of the Identity Theft Prevention Reporting Requirements.

13. The vendor hereby agrees to undertake a prompt and reasonable investigation of any breach as required by KRS 61.933.

14. Upon conclusion of an investigation of a security breach of Personal Information as required by KRS 61.933, the vendor hereby agrees to an apportionment of the costs of the notification, investigation, and mitigation of the security breach as follows: Vendor shall indemnify, defend and hold harmless the Purchaser from and against any and all liability, loss, claim, injury, damage, penalty, fine, settlement or expense, including, without limitation, costs of Remediation Efforts and reasonable attorneys' fees and costs arising from or relating notification, investigation, and mitigation of a security

breach or incident. Any issues as to apportionment of such costs shall be determined by applicable Kentucky law.

15. Purchaser shall bear the full cost and expense of any audit performed by Purchaser Auditors, unless such audit discloses a security issue, in which case Contractor shall bear the full cost and expense of such audit. If Purchaser notifies Contractor that any audit identifies that Contractor is not in compliance with this Rider or with the Agreements of the parties or is not complying with Contractor's own quality assurance and internal controls or the provisions of the Agreements and this Rider, then Contractor shall promptly correct such problem at Contractor's sole expense. If any audit by the Purchaser's auditor results in Contractor being notified that Contractor or Contractor Personnel are not in compliance with any Law or audit requirement applicable to Contractor or the services or with which Contractor is otherwise required to comply under the terms of this Rider or other Agreements, Contractor shall, and shall cause Contractor Personnel to, promptly take actions to comply with such Law or audit requirement. Contractor shall bear the costs of any such response that is required by Law or audit requirement relating to Contractor's business or necessary due to Contractor's or Contractor Personnel's noncompliance with any such Law or audit requirement imposed on Contractor, including any Remediation Efforts.

16. Vendor shall bear all reasonable costs for re-testing performed to verify that any security issue has been remedied.

17. In accordance with KRS 61.932(2)(a) the Vendor shall implement, maintain, and update security and breach investigation procedures that are appropriate to the nature of the information disclosed, that are at least as stringent as the security and breach investigation procedures and practices established by the Commonwealth Office of Technology as amended from time to time. Such standards may be found on the website of the Office of Technology. See, <http://technology.ky.gov/ciso/Pages/InformationSecurityPolicies,StandardsandProcedures.aspx>

Student Data Security

18. Pursuant to KRS 365.734 (House Bill 232 (2014)), if Contractor is a known cloud computing service provider (as defined in KRS 365.734(1)(b) as "any person or entity other than an educational institution that operates cloud computing services"), or, through service to agency, becomes the equivalent of a cloud computing service provider, Contractor does further agree that:

- Contractor shall not process student data for any purpose other than providing, improving, developing, or maintaining the integrity of its cloud computing services, unless the provider receives express permission from the student's parent. The Contractor shall work with the student's school and district to determine the best method of collecting parental permission. KRS 365.734 defines "process" and "student data".
- With a written agreement for educational research, Contractor may assist an educational institution to conduct educational research as permitted by the Family Education Rights and Privacy Act of 1974, as amended, 20 U.S.C. sec. 1232g.

- Pursuant to KRS 365.734, Contractor shall not in any case process student data to advertise or facilitate advertising or to create or correct an individual or household profile for any advertisement purposes.
- Pursuant to KRS 365.734, Contractor shall not sell, disclose, or otherwise process student data for any commercial purpose.
- Pursuant to KRS 365.734, Contractor hereby certifies in writing to the Purchaser that it will comply with KRS 365.734(2).

The Vendor and the Purchaser agree that Vendor will adhere to the terms, directions, protocols, and requirements set forth above.

Sign: _____

Purchaser: Board of Education of Trigg County, Kentucky

By: Travis Hamby, Superintendent

Date: _____

Sign:  _____

Vendor: Learning A-Z

By: (Print Name) Paul Littlewood

Date: 09/20/18