



Data Sharing/Use Agreement

Between

Jefferson County Board of Education

And

Discovery Education, Inc.

This Data Sharing/Use Agreement ("Agreement") between the Jefferson County Board of Education, a political subdivision of the Commonwealth of Kentucky doing business as the Jefferson County Public Schools ("JCPS"), and ***Discovery Education, Inc.***, a corporation organized under the laws of Illinois. ("Services Provider") describes the services to be provided to JCPS by Services Provider, and the means to be used by Services Provider to ensure the confidentiality and security of information and data exchanged between JCPS and Services Provider in connection with the provision of the services.

A. PERIOD OF THE AGREEMENT

This Agreement shall be effective as of **September 30, 2020** and will terminate when the services contract referenced in Paragraph B.1. below terminates, unless terminated earlier by either party pursuant to Section H.

B. SCOPE OF THE AGREEMENT AND INTENDED USE OF THE DATA

1. Services Provider will provide the following services to JCPS under the terms of a services contract between JCPS and Services Provider effective September 30, 2020: Science X Bundle both digital and print for Grade 6-8, Discovery Education Experience, and additional curriculum solutions for JCPS consideration.
2. JCPS and Services Provider agree that Services Provider is an organization to which JCPS can disclose, personally identifiable information from an education record of a student, as defined in 34 CFR 99.3, under the "school official exception" of the Family Educational Rights and Privacy Act, 20 U.S.C. 1232(g) and 34 C.F.R. 99.31 (a)(1) ("FERPA"), because the disclosure is to a contractor to whom JCPS has outsourced institutional services or functions for which JCPS would otherwise use employees; the contractor is under the direct control of JCPS with respect to the use and maintenance of education records; and the contractor is subject to the requirements of 34 CFR 99.33(a) governing the use and redisclosure of personally identifiable information from education records.
3. JCPS shall disclose to Services Provider, confidential, personally identifiable information from an education record of a student, as defined in 34 C.F.R. 99.3,

under the "school official exception" of FERPA, 34 C.F.R. 99.31 (a)(1), when the disclosure is within such exception as stated in Paragraph B.2 above and Services Provider has a legitimate educational interest for access to such education records. The confidential data, including student and non-student information to be disclosed, is described in a document attached to this agreement as **Attachment A**. Services Provider shall use personally identifiable information from education records and other records in order to perform the services described in Paragraph B.1 above. Services Provider shall notify JCPS and JCPS shall provide written consent, if approved, of any changes to the list of disclosed data necessary for the services or any changes to the scope, purpose or duration of the services themselves. Any agreed upon changes to the data disclosed shall be reduced to writing and included in an update to Attachment A to this Agreement. Any agreed upon changes to the scope, purpose or duration of the services shall be reduced to writing and included in an amendment to the services contract described in Paragraph B.1 above.

4. Services Provider and JCPS shall work cooperatively to determine the proper medium and method for the transfer of confidential data between each other. Services Provider shall confirm the transfer of confidential data and notify JCPS as soon as practicable of any discrepancies between the actual data transferred and the data described in this Agreement. The same protocol shall apply to any transfer of confidential data from Services Provider to JCPS.

C. CONSTRAINTS ON USE OF DATA

1. Services Provider agrees that the services shall be provided in a manner that does not permit personal identification of parents and students by individuals other than representatives of Services Provider that have legitimate interests in the information.
2. Services Provider will not contact the individuals included in the data sets without obtaining advance written authorization from JCPS.
3. Services Provider shall not re-disclose any individual-level data with or without identifying information to any other requesting individuals, agencies, or organizations without prior written authorization by JCPS.
4. Services Provider shall use the data only for the purpose described in Paragraph B.1 above. The data shall not be used for personal gain or profit.

D. DATA CONFIDENTIALITY AND DATA SECURITY

Services Provider agrees to the following confidentiality and data security statements:

1. Services Provider acknowledges that the data is confidential data and proprietary to JCPS, and agrees to protect the data from unauthorized disclosures and to comply with all applicable Local, State and Federal confidentiality laws and regulations including but not limited to FERPA; the Kentucky Family Educational

Rights and Privacy Act, KRS 160.700 et seq.; the Richard B. Russell National School Lunch Act, 42 U.S.C. 1751 et seq.; the Child Nutrition Act of 1966, 42 U.S.C. 1771 et seq.; 7 C.F.R. 245.6 et seq.; the Personal Information Security and Breach Investigation Procedures and Practices Act, KRS 61.931 et seq.; and the Kentucky Open Records Act, KRS 61.820 et seq.

2. If the performance of this Agreement involves the transfer by JCPS to Services Provider of any data regarding any JCPS student that is subject to FERPA, Services Provider agrees to:
 - a. In all respects comply with the provisions of FERPA.
 - b. Use any such data for no purpose other than to fulfill the purposes of the services contract described in Paragraph B.1 above, and not share any such data with any person or entity other than Services Provider and its employees, contractors and agents, without the prior written approval of JCPS.
 - c. Require all employees, contractors and agents of Services Provider to comply with all applicable provisions of FERPA with respect to any such data.
 - d. Maintain any such data in a secure computer environment, and not copy, reproduce or transmit any such data except as necessary to fulfill the purposes of the services contract described in Paragraph B.1 above.
 - e. Provide the services under the services contract described in Paragraph B.1 above in a manner that does not permit the identification of an individual student by anyone other than employees, contractors or agents of Services Provider having a legitimate interest in knowing such personal identification.
 - f. Destroy any such data obtained under this Agreement within thirty days (30) after the date within it is no longer needed by Services Provider for the purposes of the services contract described in Paragraph B.1 above.
3. Services Provider shall not release or otherwise reveal, directly or indirectly, the data to any individual, agency, entity, or third party not included in this Agreement, unless such disclosure is required by law or court order or except to subcontractors as needed. If Services Provider becomes legally compelled to disclose any confidential and otherwise personally identifiable data (whether by judicial or administrative order, applicable law, rule or regulation, or otherwise), then Services Provider shall use all reasonable efforts to provide JCPS with prior notice before disclosure so that JCPS may seek a protective order or other appropriate remedy to prevent the disclosure or to ensure JCPS's compliance with the confidentiality requirements of federal or state law; provided, however, that Services Provider will use all reasonable efforts to maintain the confidentiality of confidential and otherwise personally identifiable data. If a

protective order or other remedy is not obtained prior to the deadline by which any legally compelled disclosure is required, Services Provider will only disclose that portion of confidential and otherwise personally identifiable data that Services Provider is legally required to disclose.

4. Services Provider shall not distribute, reprint, alter, sell, assign, edit, modify or create derivative works or any ancillary materials from or with the data.
5. Services Provider shall not use data shared under this Agreement for any purpose other than the services contract described in Paragraph B.1 above. Nothing in this Agreement shall be construed to authorize Services Provider to have access to additional data from JCPS that is not included in the scope of this Agreement (or addenda). Services Provider understands that this Agreement does not convey ownership of the data to Services Provider.
6. Services Provider shall take reasonable security precautions and protections to ensure that persons not authorized to view the data do not gain access to the data. Reasonable security precautions and protections include, but are not limited to:
 - a. Creating, distributing, and implementing data governance policies and procedures which protect data through appropriate administrative, technical and physical security safeguards, and outline staff responsibilities for maintaining data security;
 - b. Encrypting all data carried on mobile computers/devices;
 - c. Encrypting data before it is transmitted electronically;
 - d. Requiring that users be uniquely identified and authenticated before accessing data;
 - e. Establishing and enforcing well-defined data privilege rights which restrict users' access to the data necessary for this to perform their job functions;
 - f. Services Provider staff's obligation to safeguard confidential data shall be as set forth in the Student Data Protection Addendum, Section 4, and Section II, "Privacy of Personally Identifiable Information", on Schedule 1, attached hereto as Attachment B;
 - g. Securing access to any physical areas/electronic devices where sensitive data are stored;
 - h. Installing a firewall to permit or deny network transmissions based upon a set of rules; and
 - i. Installing anti-virus software to protect the network.

7. If Services Provider receives Personal Information as defined by and in accordance with the Kentucky Personal Information Security and Breach Investigation Procedures and Practices Act, KRS 61.931, et seq. (the "Act"), Services Provider shall secure, protect and maintain the confidentiality of the Personal Information by, without limitation, complying with all requirements applicable to "non-affiliated third parties" set forth in the Act, including but not limited to the following:
 - a. "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:
 - i. 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;
 - ii. A Social Security number;
 - iii. A taxpayer identification number that incorporates a Social Security number;
 - iv. A driver's license number, state identification card number or other individual identification number issued by an agency;
 - v. A passport number or other identification number issued by the United States government; or
 - vi. 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 FERPA.
 - b. As provided in KRS 61.931(5), a "non-affiliated third party" means any person or entity that has a contract or agreement with an agency and receives (accesses, collects or maintains) personal information from the agency pursuant to the contract or agreement.
 - c. Services Provider shall not re-disclose, without the written consent of JCPS, any "personal information," as defined in KRS 61.931, or any other personally identifiable information of a student or other persons, such as employees.
 - d. Services Provider agrees to cooperate with JCPS in complying with the response, mitigation, correction, investigation, and notification requirements of the Act.

- e. Services Provider agrees to undertake a prompt and reasonable investigation of any breach as required by KRS 61.933.
8. If Services Provider is a cloud computing service provider (as defined in KRS 365.734(1)(b) as "any person other than an educational institution that operates a cloud computing service"), Services Provider agrees that:
 - a. Services Provider 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. Services Provider 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."
 - b. Pursuant to KRS 365.734(2), Services Provider 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.
 - c. Pursuant to KRS 365.734(2), Services Provider shall not sell, disclose, or otherwise process student data for any commercial purpose.
 - d. Pursuant to KRS 365.734(3), Services Provider shall certify in writing to the agency that it will comply with KRS 365.734(2).
9. Services Provider shall report all known or suspected breaches of the data, in any format, to Dr. Kermit Belcher, Chief Information Officer. The report shall include (1) the name, job title, and contact information of the person reporting the incident; (3) the date and time the incident was discovered; (4) the nature of the incident (e.g. system level electronic breach, an electronic breach of one computer or device, a breach of hard copies of records, etc.); (5) a description of the information lost or compromised as known at the time; (6) the name of the electronic system and possible interconnectivity with other systems; (7) the storage medium from which information was lost or compromised; (8) the controls in place to prevent unauthorized use of the lost or compromised information; (9) the number of individuals potentially affected; and (10) whether law enforcement was contacted.
10. Services Provider shall securely and permanently destroy the data, and any and all hard and soft (electronic) copies thereof, upon the termination of this Agreement. Services Provider agrees to require all employees, contactors, or agents of any kind using JCPS data to comply with this provision. Services Provider agrees to document the methods used to destroy the data, and upon request, provide certification to JCPS that the data has been destroyed.
11. For purposes of this agreement and ensuring Services Provider's compliance with the terms of this Agreement and all application of the state and Federal laws, Services Provider designates **Michael Vargas** (or an alternative designee specified in writing) as the temporary custodian ("Temporary Custodian") of the

data that JCPS shares with Services Provider. JCPS will release all data and information under this Agreement to Temporary Custodian. Temporary Custodian shall be responsible for transmitting all data requests and maintain a log or other record of all data requested and received pursuant to this Agreement, including confirmation of the return or destruction of the data as described below. JCPS or its agents may, upon request, review the records Services Provider is required to keep under this Agreement.

12. Services Provider acknowledges that any violation of this Agreement and/or the provisions of FERPA or accompanying regulations related to the nondisclosure of protected student information constitutes just cause for JCPS to immediately terminate this Agreement.
13. Services Provider shall maintain, during the term of this Agreement, a cyber-insurance liability policy, in the amount of \$5M. Upon request, Services Provider shall furnish the certificate of insurance evidencing this coverage. The certificate of insurance shall name the Board of Education of Jefferson County as additional insured in the Description of Operations section of the Certificate of Insurance which shall read:

Board of Education of Jefferson County
Attn: Insurance/Real Estate Dept.
3332 Newburg Road
Louisville, Kentucky 40218

14. Services provider shall maintain, during the term of this Agreement, ISO27001 or SOC2 certification. If Services Provider is unable to provide ISO27001 or SOC2 certification, minimum requirements on a JCPS-provided standardized questionnaire must be met. Upon request, Services Provider shall furnish a current ISO27001, SOC2 certification, or updated questionnaire.

E. FINANCIAL COSTS OF DATA-SHARING

Each party shall be responsible for their portion of costs that may result from data sharing. Examples of potential costs to JCPS are costs associated with the compiling of student data requested under this agreement and costs associated with the electronic delivery of the student data to Services Provider.

No payments will be made under this Agreement by either party. Any payments to Services Provider will be made under the services contract described in Paragraph B.1 above.

F. OBLIGATIONS OF JCPS

During the term of this Agreement, JCPS shall:

1. Prepare and deliver the data described in **Attachment A**.

G. LIABILITY

Services Provider agrees to hold harmless JCPS and pay any costs incurred by JCPS in connection with any Claim that may arise from or relate to Services Provider's intentional or negligent release of personally identifiable student, parent or staff data. The provisions of this Section shall survive the termination or expiration of this Agreement.

H. TERMINATION

1. This Agreement may be terminated as follows, after notification via the United States Postal Service (certified mail or registered mail) or recognized overnight delivery service (e.g., UPS, DHL, or FedEx):
 - a. By either party in the event of a material breach of this Agreement by another party provided however, the breaching party shall have thirty (30) days to cure such breach and this Agreement shall remain in force.
 - b. By either party after thirty (30) days advance written notice to the other party, for any reason or no reason.
2. The confidentiality provisions of this Agreement shall survive the termination of this Agreement. If this Agreement is terminated by either party for material breach or for any other reason with thirty (30) days written notice, within seven (7) days of the termination the confidential information shall be returned or destroyed within seven (7) days of the termination and the Temporary Custodian shall provide JCPS confirmation of the return or destruction of the data pursuant to Paragraph D.11. If this Agreement terminates at the end of the term described in Section A, within seven (7) days after the end of the term, Services Provider shall return or destroy all confidential information and the Temporary Custodian shall provide JCPS confirmation of the return or destruction of the data pursuant to Paragraph D.11.
3. Destruction of the confidential information shall be accomplished by utilizing an approved method of confidential destruction, including but not limited to shredding, burning or certified/witnessed destruction for physical materials and verified erasure of magnetic media using approved methods of electronic file destruction.

I. PUBLICATIONS AND COPYRIGHTS

Both parties recognize that each organization may have extant work that predates this agreement. If those materials and/or data are used in the course of this work, they remain the property of the original developer. If new materials are developed during the term of the services contract described in Paragraph B.1 above, ownership and copyright of such will be governed by the terms of the services contract.

J. MODIFICATION

No waiver, alteration or modification of the provisions of this Agreement shall be binding unless in writing and mutually agreed upon. Any modifications or additions to this Agreement must be negotiated and approved by both parties.

L. Intentionally Omitted BREACH OF DATA CONFIDENTIALITY

Services Provider acknowledges that the breach of this agreement or its part may result in irreparable and continuing damage to JCPS for which money damages may not provide adequate relief. In the event of a breach or threatened breach of this agreement by Services Provider, JCPS, in addition to any other rights and remedies available to JCPS at law or in equity, may be entitled to preliminary and permanent injunctions to enjoin and restrain the breach or threatened breach. If the United States Department of Education's Family Policy Compliance Office determines that Services Provider has violated paragraph 34 C.F.R. 99.31(a)(6)(iii)(B), JCPS may not allow Services Provider access to personally identifiable information from its education records for at least five (5) years.

M. CHOICE OF LAW AND FORUM

This Agreement shall be governed and construed in accordance with the laws of the Commonwealth of Kentucky. Any action or Claim arising from, under or pursuant to this Agreement shall be brought in the Jefferson County, Kentucky, Circuit Court, and the parties expressly waive the right to bring any legal action or Claims in any other courts.

N. WAIVER

No delay or omission by either party in exercising any right under this Agreement shall operate as a waiver of that or any other right or prevent a similar subsequent act from constituting a violation of this Agreement.

O. SEVERABILITY

If any part of this Agreement is held to be void, against public policy or illegal, the balance remaining provisions of this Agreement shall continue to be valid and binding.

P. NOTICES

Any notices or reports by one party to the other party under this Agreement shall be made in writing, to the address shown in the signature portions of this Agreement, or to such other address as may be designated in writing by one party to the other. Notices shall be effective when received if personally delivered, or three days after mailing if mailed.

Q. RELATIONSHIP OF PARTIES

JCPS is not an employee, agent, partner or co-venturer of or with Services Provider. Discovery Education is an independent Contractor. Neither Services Provider nor JCPS shall represent or imply to any party that it has the power or authority to enter into a

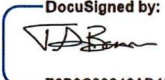
contract or commitment in the name of or on behalf of the other, or to otherwise bind the other.

R. ENTIRE AGREEMENT; ASSIGNMENT

This Agreement, together with any attachments hereto and any amendment or modifications that may hereafter be agreed to, constitute the entire understanding between the parties with respect to the subject-matter hereof and supersede any and all prior understandings and agreements, oral and written, relating hereto. Services Provider shall not assign this Agreement or any portion thereof to a subcontractor or other third party without the prior written consent of JCPS, and any attempted assignment without such prior written consent in violation of this Section R shall automatically terminate this Agreement.

AGREED:

Discovery Education, Inc.
4530 Congress St. Suite 700
Charlotte NC 28209

BY: 
78B6C33846AD459...

Name: **Travis Barrs**

COO, K12 Education

Date: September 11, 2020

AGREED:

Jefferson County Board of Education
3332 Newburg Road
Louisville KY 40218

BY: _____

Name: Martin A. Pollio, Ed. D.,

Title: Superintendent

Date: _____

Attachment A

CONFIDENTIAL INFORMATION TO BE DISCLOSED

Although no student personally identifiable information is required for the use of any of the basic Contractor services, in the event users of the services elect to use any of the functionality within the Contractor's services which provide personalized pages, individual accounts, other user- specific customization, such as Clever Instant Login, or otherwise submit or upload information (all such data is generally limited to the following: school name, first name, and last name), all such personally identifiable information authorized by District to be provided to Contractor will be protected, used and disclosed in accordance with Contractor's Data Security Policy.

Attachment A confidential information to be disclosed:

Student credentials
Student district
Student email
Student name
Student School
Student Schools
Student sis id
Student state id
Student number
Teacher district
Teacher email
Teacher name
Teacher phone
Teacher phone_type
Teacher relationship
Teacher students
Teacher type
District admins district
District admin email
District admin name

Attachment B**DISCOVERY EDUCATION****STUDENT DATA PROTECTION ADDENDUM**

This Discovery Education Student Data Protection Addendum (“**DPA**”) describes Discovery’s obligations to protect Student Data (defined below) during Discovery’s provision the Services to Subscriber.

1. **Student Data and Purpose of DPA.** As between Subscriber and Discovery, Subscriber or the party who provided such data (such as the student or parent), is the exclusive owner of all right, title, and interest in and to any and all Student Data disclosed or transmitted to Discovery under the Agreement and this DPA. Discovery hereby waives any and all statutory and common law liens it may now or hereafter have with respect to Subscriber’s Student Data. Nothing in the Agreement or this DPA will operate as an obstacle to Subscriber’s right to retrieve any and all Student Data disclosed or transmitted to Discovery under the Agreement and this DPA. Notwithstanding the foregoing, Discovery may de-identify and aggregate Subscriber’s Student Data with Discovery’s other Subscribers’ Student Data and use and exploit the de-identified and aggregate data for any lawful purpose. The parties agree to comply with the terms of this Addendum and Data Protection Laws as they relate to Student Data.
2. **Schedule A (Discovery’s Security Policy).** Schedule A attached hereto and incorporated herein sets forth Discovery’s policies regarding: (i) what steps Discovery takes to protect personally identifiable information (“**PII**”) that is provided to Discovery; (ii) how PII may be used; (iii) with whom Discovery may share PII, and (iv) the steps Discovery takes to protect the PII. For purposes of this DPA, PII includes Student Data.
3. **Consents and Notifications for Disclosures of Student Data.** Subscriber affirms, represents, and warrants that it has obtained, and is solely responsible for obtaining, all consents as may be required by the Data Protection Laws, as well as making all required disclosures to the parents, legal guardians, and students as may be required by the Data Protection Laws, to disclose or transmit Student Data to Discovery. Subscriber will provide proof of the required consent within 5 business days of Discovery’s written request.
4. **Discovery’s Personnel and Subcontractors.** Discovery will ensure that its personnel and subcontractors that access the Student Data are informed of the confidential nature of the Student Data and are bound by appropriate obligations of confidentiality or are under an appropriate statutory obligation of confidentiality. Discovery will take all reasonable steps and to ensure the reliability of Discovery personnel and subcontractors that access Student Data.
5. **Student Data Requests.** Discovery will, without undue delay, notify, then record, and then refer to Subscriber full details of all Student Data Requests. To the extent Subscriber is unable to respond to a Student Data Request with information available through Discovery’s products or services, Discovery will provide reasonable assistance to Subscriber in responding to a Student Data Request. Discovery will not respond to a Student Data Request without Subscriber’s explicit instruction.

6. Deletion or Return Of Student Data. Upon termination or expiration of the Agreement, Discovery will promptly, but without undue delay, destroy Student Data upon Subscriber's written request. Discovery may retain Student Data to the extent required by the laws, rules, and regulations to which Discovery is subject, or if Student Data resides in Discovery's backup archives, Discovery will continue to protect the security and confidentiality of such retained Student Data in accordance with the Agreement and this DPA. Discovery has implemented retention rules so that Student Data in backup archives is retained for as short a time as necessary.

7. Audits. Subscriber may request once per calendar year to audit Discovery's Security Policy and related systems that are used to store Student Data in order to verify compliance with this DPA and the Data Protection Laws. If Subscriber wishes to conduct an audit using a third party auditor, Discovery may object to Subscriber's choice of third party auditor on reasonable grounds and in such event, Subscriber will select a different auditor. Subscriber will reimburse Discovery for any time expended in relation to such audit at Discovery's then-current hourly professional services rate. Subscriber and Discovery will mutually agree upon the scope and timing of an audit prior to any such audit. An audit performed pursuant to this DPA will not exceed one business day and will not unreasonably interfere with the normal conduct of Discovery's business. Subscriber (or Subscriber's third-party auditor) will at all times comply with the use, security, and access policies at such location. Any audit performed pursuant to this Section DPA will be conducted under a confidentiality agreement and any information or report derived from such audit will be deemed Discovery's confidential information.

8. Student Data Breach.

8.1. Student Data Breach Notification. In the event of any Student Data Breach, upon Discovery becoming aware of such Student Data Breach, without undue delay Discovery will:

8.1.1. notify Subscriber of the Student Data Breach; and

8.1.2. provide Subscriber with details that are available to Discovery at the time of notice regarding:

- (a) the nature of the Student Data Breach, including the categories and approximate numbers of students and Student Data records concerned;
- (b) any investigations into such Student Data Breach; and
- (c) any measures taken to address the Student Data Breach, including to mitigate its possible adverse effects and prevent the re-occurrence of the Student Data Breach.

8.2. Notification Sharing. Subscriber may share any notification and details provided by Discovery under this Section 11 with the appropriate government agency or law enforcement authority if required to do so under the Data Protection Laws.

9. Suspension. Subscriber may suspend the transfer of Student Data to Discovery, or terminate the affected Agreement without penalty to Subscriber if: (i) Discovery is in material breach of its obligations under this DPA and does not cure such breach within thirty (30) days of

Subscriber's notification to Discovery of such breach; or (ii) Discovery notifies Subscriber that it cannot comply with the obligations set forth in this DPA or the Data Protection Laws.

10. Student Data Disclosures. To the extent legally permissible, Discovery will promptly notify Subscriber of any legally binding request for disclosure or seizure of Student Data by a government agency or law enforcement authority.

11. Term. The term of this DPA will end simultaneously and automatically at the later of (i) the termination of the Agreement; or (ii) when all Student Data is deleted from Discovery's systems.

12. Indemnification. Each of the parties ("**Indemnifying Party**") agrees to indemnify and hold harmless the other party and its officers, employees, directors, and agents ("**Indemnified Party**") from, and at the Indemnifying Party's option defend against, any and all third party claims, losses, liabilities, damages, costs, and expenses (including attorneys' fees, consultants' fees, and court costs) (collectively, "**Claims**") arising out of the Indemnifying Party's (i) violation of a Data Protection Law; or (ii) breach of any provision of this DPA.

13. Definitions and Interpretation.

13.1. Definitions.

"**Data Protection Law**" means:

- (a) the Family Educational Rights and Privacy Act (20 U.S.C. 1232g; 34 CFR part 99) ("**FERPA**");
- (b) the Children's Online Privacy and Protection Act (15 U.S.C. §§ 6501–6506) ("**COPPA**");
- (c) the Colorado Student Data Transparency and Security Act (C.R.S. 22-16-101 et.al.);
- (d) the Connecticut Public Act 16-189;
- (e) the California Consumer Privacy Act of 2018 ("**CCPA**");
- (f) the California Student Online Student Information Protection Act (**SB-1177**) ("**SOPIPA**");
- (g) the California Assembly Bill No. 1584;
- (h) the New York State Education Law § 2-d
- (i) the Canada Personal Information Protection and Electronic Documents Act ("**PIPEDA**"); and
- (j) all other federal and state data protection and breach notification laws applicable to Student Data;

in each case, as in force and applicable, and as may be amended, supplemented, or replaced from time to time.

“Student Data” means any personally identifiable information of a student that through the course of Subscriber’s use of the Services is: (i) provided by a student, or the student’s parent or legal guardian, to Discovery in the course of the student’s, parent’s, or legal guardian’s use of Discovery’s website, service, or application that is designed and marketed for K–12 school purposes; (ii) created or provided by an employee or agent of the K–12 school, school district, local education agency, or county office of education, to Discovery; or (iii) gathered by Discovery through the operation of Discovery’s website, service, or application that is designed and marketed for K–12 school purposes and is descriptive of a student or otherwise identifies a student, including, but not limited to, information in the student’s educational record or email, first and last name, home address, telephone number, email address, or other information that allows physical or online contact.

“Student Data Breach” means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Student Data; and

“Student Data Request” means a request made by Subscriber, a parent or legal guardian, or student to exercise any rights granted by the Data Protection Laws.

Schedule 1

DISCOVERY EDUCATION, INC. DATA SECURITY POLICY

This Policy describes, in general, (i) what steps Discovery takes to protect personally identifiable information ("PII") that is provided to Discovery; (ii) how PII may be used; (iii) with whom Discovery may share PII, and (iv) the steps Discovery takes to protect the PII.

No student PII is required for the use of any of the basic Discovery Education services, however, in the event Users elect to use any of the functionality within the Discovery Education services which provide personalized pages, individual accounts, other user-specific customization, or otherwise submit or upload information (all such data is generally limited to the following: school name, first name, last name, grade level, and Discovery generated username/password), all such PII provided to Discovery will be protected in accordance with this Policy.

No school employee PII is required for Professional Development Services other than first name and last name for the purposes of attendance logs.

I. DEFINITIONS

Capitalized terms referenced herein but not otherwise defined shall have the meanings as set forth below:

"Authorized Disclosee" means the following: (1) third parties to whom the Subscriber/Customer/Distributor has given Discovery written approval to disclose PII; (2) third parties to whom disclosure is required by law; and (3) if applicable, third party vendors working on Discovery's behalf or performing duties in connection with Discovery's services (e.g. hosting companies) and who are required to implement administrative, physical, and technical infrastructure and procedural safeguards in accordance with accepted industry standards.

"Authorized Use" means a Discovery employee authorized by the Subscriber/Customer/Distributor to access PII in order to perform services under an Agreement.

"Destroy" or "Destruction" means the act of ensuring the PII cannot be reused or reconstituted in a format which could be used as originally intended and that the PII is virtually impossible to recover or is prohibitively expensive to reconstitute in its original format.

"FERPA" means the Family Educational Rights and Privacy Act of 1974 (codified at 20 U.S.C. § 1232g) and its implementing regulations, as they may be amended from time to time. The regulations are issued by the U.S Department of Education and are available at <http://www2.ed.gov/policy/gen/reg/ferpa/index.html>.

"Personally Identifiable Information" (or "PII") means any information defined as personally identifiable information under FERPA.

II. PRIVACY OF PERSONALLY IDENTIFIABLE INFORMATION

Basic Privacy Protections

1. Compliance with Law and Policy. All PII provided to Discovery is handled, processed, stored, transmitted and protected by Discovery in accordance with all applicable federal data privacy and security laws (including FERPA) and with this Policy.
2. Training. Employees (including temporary and contract employees) of Discovery are educated and trained on the proper uses and disclosures of PII and the importance of information privacy and security.
3. Personnel Guidelines. All Discovery employees are required to be aware of and work to protect the confidentiality, privacy, and security of PII. Discovery, and its respective personnel do not access PII except to comply with a legal obligation under federal or state law, regulation, subpoena, or if there is legitimate need for the information to maintain data systems or to perform required services under the Agreement with Subscriber/Customer/Distributor. The following provides a general description of the internal policies to which Discovery and its respective personnel adhere:
 - a. Limit internal access to PII to Discovery personnel with proper authorization and allow use and/or disclosure internally, when necessary, solely to personnel with a legitimate need for the PII to carry out the services provided under the Agreement.
 - b. Disclose PII only to Authorized Disclosees
 - c. Access PII only by Authorized Users.
 - d. When PII is no longer needed, delete access to PII.
 - e. Permit employees to store or download information onto a local or encrypted portable devices or storage only when necessary, and to create a written record for retention verifying that the information is encrypted and stored in password-protected files, and that devices containing the information have appropriate security settings in place (such as encryption, firewall protection, anti-virus software and malware protection).
 - f. Any downloaded materials consisting of PII remain in the United States.
 - g. Prohibit the unencrypted transmission of information, or any other source of PII, wirelessly or across a public network to any third party.
 - h. Upon expiration or termination of Agreement, Discovery shall Destroy all PII previously received from Subscriber/Customer/Distributor no later than sixty (60) days following such termination, unless a reasonable written request is submitted by Subscriber/Customer/Distributor to Discovery to hold such PII. Each electronic file

containing PII provided by Subscriber/Customer/Distributor to Discovery will be securely Destroyed. This provision shall apply to PII that is in the possession of Discovery, Discovery employees/personnel and/or Authorized Disclosees.

Information Security Risk Assessment

Discovery periodically conducts an accurate and thorough assessment of the potential risks and vulnerabilities to the confidentiality, integrity, and availability of electronic, paper, or other records containing PII maintained by Discovery; Discovery reports such risks as promptly as possible to Subscribers/Customers/Distributors; and Discovery implements security measures sufficient to reduce identified risks and vulnerabilities. Such measures are implemented by Discovery based on the level of risks, capabilities, and operating requirements. These measures include, as appropriate and reasonable, the following safeguards:

1. Administrative Safeguards

- a. Sanctions: Appropriate sanctions against Contractor personnel who fail to comply with Discovery's security policies and procedures.
- b. System Monitoring: Procedures to regularly review records of information systems activity, including maintaining access logs, access reports, security incident tracking reports, and periodic access audits.
- c. Security Oversight: Assignment of one or more appropriate management level employees of Discovery to be responsible for developing, implementing, and monitoring of safeguards and security issues.
- d. Appropriate Access: Procedures to determine that the access of Discovery personnel to PII is appropriate and meets a legitimate need to support their roles in business or educational operations. Procedures for establishing appropriate authorization and authentication mechanisms for Discovery personnel who have access to PII.
- e. Employee Supervision: Procedures for regularly monitoring and supervising Discovery personnel who have access to PII.
- f. Access Termination: Procedures for terminating access to PII when employment ends, or when an individual no longer has a legitimate need for access.

2. Physical Safeguards

- a. Access to PII: Procedures that grant access to PII by establishing, documenting, reviewing, and modifying a user's right of access to a workstation, software application/transaction, or process.
- b. Awareness Training: On-going security awareness through training or other means that provide Discovery personnel (including management) with updates to security

procedures and policies (including guarding against, detecting, and reporting malicious software). Awareness training also addresses procedures for monitoring log-in attempts and reporting discrepancies, as well as procedures for safeguarding passwords.

c. Incident Response Plan: Procedures for responding to, documenting, and mitigating where practicable suspected or known incidents involving a possible breach of security and their outcomes.

d. Physical Access: Procedures to limit physical access to PII and the facility or facilities in which they are housed while ensuring that properly authorized access is allowed, including physical barriers that require electronic control validation (e.g., card access systems) or validation by human security personnel.

e. Physical Identification Validation: Access is physically safeguarded to prevent tampering and theft, including procedures to address control and validation of a person's access to facilities based on his or her need for access to the PII.

f. Operational Environment: Procedures that specify the proper functions to be performed, the manner in which they are to be performed, and the physical attributes of the surroundings of facilities where PII is stored.

g. Media Movement: Procedures that govern the receipt and removal of hardware and electronic media that contain PII into and out of a facility.

3. Technical Safeguards

a. Data Transmissions: Technical safeguards, including encryption, to ensure PII transmitted over an electronic communications network is not accessed by unauthorized persons or groups.

b. Data Integrity: Procedures that protect PII maintained by Discovery from improper alteration or destruction. These procedures include mechanisms to authenticate records and corroborate that they have not been altered or destroyed in an unauthorized manner.

c. Logging off Inactive Users: Inactive electronic sessions are designed to terminate automatically after a specified period of time.

Security Controls Implementation

Discovery has procedures addressing the acquisition and operation of technology, the specific assignment of duties and responsibilities to managers and staff, the deployment of risk-appropriate controls, and the need for management and staff to understand their responsibilities and have the knowledge, skills and motivation necessary to fulfill their duties.

Security Monitoring

In combination with periodic security risk assessments, Discovery uses a variety of approaches and technologies to make sure that risks and incidents are appropriately detected, assessed and mitigated on an ongoing basis. Discovery also assesses on an ongoing basis whether controls are effective and perform as intended, including intrusion monitoring and data loss prevention.

Security Process Improvement

Based on Discovery's security risk assessments and ongoing security monitoring, Discovery gathers and analyzes information regarding new threats and vulnerabilities, actual data attacks, and new opportunities for managing security risks and incidents. Discovery uses this information to update and improve its risk assessment strategy and control processes.

Audit

Discovery acknowledges Subscriber's/Customer's/Distributor's right to audit any PII collected by Discovery and/or the security processes listed herein upon reasonable prior written notice to Discovery's principal place of business, during normal business hours, and no more than once per year. Discovery shall maintain records and documentation directly and specifically related to the services performed under the Agreement for a period of three (3) years, unless otherwise stated in Section II(3)(h) of this Policy.

Breach Remediation

Discovery keeps PII provided to Discovery secure and uses reasonable administrative, technical, and physical safeguards to do so. Discovery maintains and updates incident response plans that establish procedures in the event a breach occurs. Discovery also identifies individuals responsible for implementing incident response plans should a breach occur.

If a Subscriber/Customer/Distributor or Discovery determines that a breach has occurred, when there is a reasonable risk of identity theft or other harm, or where otherwise required by law, Discovery provides any legally required notification to affected parties as promptly as possible, and fully cooperates as needed to ensure compliance with all breach of confidentiality laws.

Discovery reports as promptly as possible to Subscribers/Customers/Distributors (or their designees) and persons responsible for managing their respective organization's incident response plan any incident or threatened incident involving unauthorized access to or acquisition of PII of which they become aware. Such incidents include any breach or hacking of Discovery's Electronic Data System or any loss or theft of data, other electronic storage, or paper. As used herein, "Electronic Data System" means all information processing and communications hardware and software employed in Discovery's business, whether or not owned by Discovery or operated by its employees or agents in performing work for Discovery.

Personnel Security Policy Overview

Discovery mitigates risks by:

1. Performing appropriate background checks and screening of new personnel, in particular those who have access to PII.
2. Obtaining agreements from internal users covering confidentiality, nondisclosure and authorized use of PII.
3. Providing training to support awareness and policy compliance for new hires and annually for personnel.