

**MAIN SERVICES AGREEMENT
(COVER PAGE)**

This Main Services Agreement (including this Cover Page, the following Exhibits: Master Terms and Conditions, Professional Services, Cloud-Based Services, Future Services, User Agreement and Data Privacy Addendum, and Service Orders, collectively, “**Agreement**”) is entered into as of _____, 2024 (the “**Effective Date**”) by and between Gradient Learning, a California nonprofit public benefit corporation (“**Gradient Learning**”) and the Local Education Agency listed below (“**LEA**”). Gradient Learning and LEA shall be referred to collectively as “**Parties**” and each a “**Party**”.

LEA desires to access and use the Services (as defined in the Master Terms and Conditions) from Gradient Learning for LEA and **Participant Schools** (as defined in the Master Terms and Conditions), and Gradient Learning desires to provide the Services to LEA and Participant Schools. By executing this Agreement, the Parties hereby agree and LEA represents and warrants that (i) as of the Effective Date and for the duration of this Agreement, LEA has the authority to bind, and hereby binds, Participant Schools to this Agreement and; (ii) LEA shall be liable for any breach by any Participant School of this Agreement.

In addition to providing the professional services set forth on Exhibit B (“**Professional Services**”), Gradient Learning may provide the cloud-based services set forth on Exhibit C (“**Cloud-Based Services**”) and/or future services that the parties may agree to provide and receive as may be set forth in a subsequently agreed upon services exhibit which may be added to this Agreement via amendment (“**Future Services**”) to LEA. The following selected Services shall be included in and are governed by this Agreement:

- Professional Services
- Cloud-Based Services
- Future Services

As further described in Section 4 (Innovation Hub) of the Master Terms and Conditions, LEA shall have the option to Opt-Out (as defined in the Master Terms and Conditions) of Innovation Hub Opportunities (as defined in the Master Terms and Conditions). By selecting “No” below, LEA shall hereby Opt-Out of Innovation Hub Opportunities:

No

Accepted and Agreed:

<u>Gradient Learning</u> (“ Gradient Learning ”)	_____ (“ Local Education Agency ” or “ LEA ”)
By:  Name: Monica Milligan Title: Executive Director Date: _____	By: _____ Name: _____ Title: _____ Date: _____
<u>California nonprofit public benefit corporation</u> Place of Incorporation, type of entity	_____ Place of Incorporation, type of entity
<u>Legal Notice Address:</u> 818 W. Seventh Street, Suite 930 Los Angeles, CA 90017 Attention: _____ Email: legal@gradientlearning.org	<u>Legal Notice Address:</u> _____ _____ Attention: _____ Email: _____

EXHIBIT A

MASTER TERMS AND CONDITIONS

These Master Terms and Conditions (“**Terms and Conditions**”) are incorporated into and constitute a material part of the Main Services Agreement by and between Gradient Learning, a California nonprofit public benefit corporation (“**Gradient Learning**”) and the Local Education Agency listed on the Cover Page (“**LEA**”) dated as of _____, 2024 (the “**Agreement**”). Any capitalized terms not defined herein shall have the meanings set forth in the Agreement. The Parties agree as follows:

1. **Definitions.** In these Terms and Conditions, the following terms shall have the meanings set forth below:
 - 1.1. “**Claim**” has the meaning set forth in Section 12.1.
 - 1.2. “**Creative Commons License**” has the meaning set forth in Section 7.4.
 - 1.3. “**Data Protection Laws**” means any applicable data privacy and security laws, regulations, and regulatory guidance, that govern the Processing and protection of Personal Data, including the Family Educational Rights and Privacy Act and the US Department of Education’s implementing regulations at 34 CFR Part 99 (collectively, “**FERPA**”), Child Online Privacy Policy Act (“**COPPA**”), and the California Consumer Privacy Act, as amended (“**CCPA**”), all as may be amended from time to time.
 - 1.4. “**Deliverables**” means items, materials or services provided by or on behalf of Gradient Learning to Participant Schools pursuant to a Service Order.
 - 1.5. “**Discloser**” has the meaning set forth in Section 10.1.
 - 1.6. “**Dispute**” has the meaning set forth in Section 14.2.
 - 1.7. “**Documentation**” means the related materials customarily supplied or made available by Gradient Learning, including printed and on-line technical materials and documentation and training materials.
 - 1.8. “**DPA**” means the Data Privacy Addendum by and between the Parties dated as of the Effective Date and set forth on Exhibit F.
 - 1.9. “**Feedback**” has the meaning set forth in Section 7.6.
 - 1.10. “**Fees**” has the meaning set forth in Section 5.1.
 - 1.11. “**Gradient Learning Intellectual Property**” has the meaning set forth in Section 8.1.
 - 1.12. “**Gradient Learning Website**” means the Gradient Learning Website located at www.gradientlearning.org.
 - 1.13. “**Indemnified Party**” has the meaning set forth in Section 12.3.
 - 1.14. “**Indemnifying Party**” has the meaning set forth in Section 12.3.
 - 1.15. “**Intellectual Property Rights**” means all intellectual property rights recognized by the laws of any country including, but not limited to, all copyrights, patents, trademarks and trade names, trade secrets, specifications, methodologies, documentation, algorithms, criteria, designs, report formats, and know how, as well as any underlying source code and object code related thereto.

- 1.16. "**Innovation Hub Opportunities**" has the meaning set forth in Section 4.
- 1.17. "**Innovation Hub Participant**" has the meaning set forth in Section 4.1.
- 1.18. "**Innovation Hub Participant Agreement**" has the meaning set forth in Section 4.1.
- 1.19. "**Innovation Hub Potential Participant Data**" has the meaning set forth in Section 4.2.
- 1.20. "**IP Laws**" has the meaning set forth in Section 8.1.
- 1.21. "**JAMS**" has the meaning set forth in Section 14.3.
- 1.22. "**Legal Guardian**" means a Student User's parent, caregiver, or legal guardian.
- 1.23. "**LEA Intellectual Property**" has the meaning set forth in Section 8.2.
- 1.24. "**LEA Marks**" has the meaning set forth in Section 7.5.
- 1.25. "**Licensed Educational Material**" has the meaning set forth in Section 7.3.
- 1.26. "**Modified Curriculum Material**" has the meaning set forth in Section 7.2.
- 1.27. "**Opt-Out**" has the meaning set forth in Section 4.3(a).
- 1.28. "**Participant School(s)**" means an educational institution affiliated with and identified by LEA on **Exhibit G**, as updated from time to time upon mutual agreement of the Parties. As provided in the Agreement, LEA's execution of the Agreement binds Participant Schools to the Agreement.
- 1.29. "**Participant School Addition**" has the meaning set forth in Section 3.1(b).
- 1.30. "**Participant School Content**" means, any and all, information, data, results, plans, sketches, text, files, links, images, photos, videos, audio files, notes, or other materials that are uploaded, shared or otherwise provided by a Participant School to Gradient Learning. Participant School Content shall not include Student Content.
- 1.31. "**Participant School Removal**" has the meaning set forth in Section 3.1(b).
- 1.32. "**Participant School Update**" has the meaning set forth in Section 3.1(b).
- 1.33. "**Participant School Users**" means teachers, employees, officials and other agents of a Participant School or LEA that access and use the Services in accordance with the Agreement.
- 1.34. "**Personal Data**" means any information relating to an identified or reasonably identifiable person, including Student Data. Personal Data includes similarly defined terms in Data Protection Laws, including, but not limited to, the definition of "personal information" in the CCPA.
- 1.35. "**Process(ing)(es)**" or "**process(ing)(es)**" means any action, process, or operation (e.g., collecting, copying, structuring, storing, modifying, accessing, using, sharing, making available, transferring, or destroying) performed on any LEA or Participant School Personal Data, and/or Student Data.

- 1.36. "**Recipient**" has the meaning set forth in Section 10.1.
- 1.37. "**Renewal Date**" has the meaning set forth in Section 6.1.
- 1.38. "**Research Service Providers**" has the meaning set forth in Section 4.
- 1.39. "**Services**" means the Professional Services, Cloud-Based Services and/or Future Services performed by or on behalf of Gradient Learning under the Agreement.
- 1.40. "**Services Exhibit**" has the meaning set forth in Section 5.1.
- 1.41. "**Service Order**" has the meaning set forth in Section 2.1.
- 1.42. "**Significant Change**" means any removal of a key function, integration, curriculum partner or other substantial modification as determined by Gradient Learning.
- 1.43. "**Significant Service Provider**" has the meaning set forth in Section 2.6(a).
- 1.44. "**Specialized Services**" has the meaning set forth in Section 2.6(a).
- 1.45. "**Start Date**" has the meaning set forth in Section 6.1.
- 1.46. "**Student**" means any individual who is or has been in attendance at a Participant School and regarding whom such Participant School maintains education records.
- 1.47. "**Student Content**" means any and all, information, data, results, plans, sketches, text, files, links, images, photos, videos, audio files, notes, or other materials that are uploaded, shared or otherwise provided by a Student to Gradient Learning.
- 1.48. "**Student Data**" means all information that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with a Student that is Processed by Gradient Learning or LEA under the Agreement including without limitation, online identifier, Internet Protocol address, or similar identifiers, "directory information" and/or "education records" as defined in FERPA.
- 1.49. "**Student Users**" means students currently enrolled in a Participant School who access and use the Services in accordance with the Agreement.
- 1.50. "**Third-party Services**" has the meaning set forth in Section 2.6(b).
- 1.51. "**Usage Data**" means Internet or other electronic network activity information, including, but not limited to, Metadata (as defined in Exhibit F), browsing history, search history, and information regarding a consumer's interaction with an Internet Web site, application, or advertisement or similar data that can be used to identify an individual that Data Protection Laws define as personal information.
- 1.52. "**Users**" means the Student Users, Legal Guardian, and Participant School Users.
- 1.53. "**User Agreement**" means the agreement with Gradient Learning that sets forth the terms and conditions of a User's responsibilities, restrictions and permitted use of the Services. The User Agreement is attached as Exhibit E and is incorporated into the Agreement.

1.54. **“User Content”** means any and all information, data, results, plans, sketches, text, files, links, images, photos, videos, audio files, notes, or other materials uploaded, shared or otherwise provided by Users, including Participant School Content and Student User Content.

2. **Services.**

2.1. **Services.** Gradient Learning shall perform the Services for LEA and Participant Schools as provided in a service order prepared and agreed upon by Gradient Learning and such Participant School and as further described in Section 2.3 (**“Service Order”**). LEA shall provide Gradient Learning access to LEA and Participant Schools’ facilities as reasonably requested by Gradient Learning to perform Services and any other obligations set forth in the Agreement.

2.2. **Manner of Performance.** Gradient Learning shall have sole and exclusive control to direct the manner and means by which Services are performed and may subcontract or assign any or all of its obligations and rights under the Agreement. Gradient Learning shall not be liable for, or deemed in breach or default, in the event of, delay or failure to perform Services due to any cause or condition beyond its reasonable control including, but not limited to, fire, storm, flood, wind, civil unrest, pandemic and acts of God; breakdown of or damage to any equipment, facilities or other property; unavailability of materials, supplies, equipment, transportation, services and other necessary items; and any act or omission of LEA and/or Participant School.

2.3. **Service Order.** Unless otherwise agreed to by Gradient Learning and Participant School, Service Orders for such Participant School shall include the following details for Services: (a) a description of Services; (b) Start Date for Services; (c) any Deliverables; (d) a description of any goods, services or input to be provided by Participant School and/or LEA; (e) the timing of delivery of Services, Deliverables and of any goods, services or input from Participant School; (f) Fees, if any; and (g) specific terms applicable to such Service Order, if any. Each Service Order is governed by the terms of the Agreement and is incorporated into the Agreement by this reference.

2.4. **Modification and Improvements to Services.** From time to time, Gradient Learning may modify and/or improve Services. Such modifications and/or improvements may include updating, adding or removing functionalities, features or the look of the Services, including (in the case of Innovation Hub Participants) modifications and/or improvements in consultation with Research Service Providers. Gradient Learning may, at any time and for any or no reason, limit, restrict or terminate LEA’s access to a feature or functionality of the Services; provided that such feature or functionality shall not be a core product, service or feature of Services.

2.5. **Significant Change to Services.** In the event of a Significant Change to Services, Gradient Learning shall provide LEA sixty (60) days’ notice prior to such Significant Change. LEA shall have the option to either accept such Significant Change by continuing to use the Services or terminate the affected Service Order as provided in Section 6.4.

2.6. **Third-Party Services.**

(a) **Specialized Services.** As part of Services, Gradient Learning may provide LEA access to use Gradient Learning’s significant service provider’s (**“Significant Service Provider”**) proprietary software as a service offering(s) made available through a URL in a hosted environment (together with any other Significant Service Provider’s products and services identified in Services, **“Specialized Services”**). All rights in and to the Specialized Services not expressly granted to LEA in these Terms and Conditions are reserved by Significant Service Provider. Additional terms and restrictions governing LEA’s use of Specialized Services are set forth on Exhibit C. Gradient Learning does not control Specialized Services and, except as expressly set forth in the Agreement, is not liable for Specialized

Services.

- (b) Other Third-Party Services. In addition to Specialized Services, LEA may access and/or use third-party services, content (including Licensed Educational Material) or links to other web sites or services through the use of Services (collectively, “**Third-Party Services**”). Gradient Learning does not control Third-Party Services or make any representations or warranties with respect to Third-Party Services, and is not liable for Third-Party Services. LEA'S ACCESS AND USE OF THIRD-PARTY SERVICES, INCLUDING THE INFORMATION, MATERIALS, PRODUCTS, AND SERVICES ON OR AVAILABLE THROUGH THIRD-PARTY SERVICES SHALL BE SOLELY AT LEA'S RISK.

3. Responsibilities.

3.1. LEA Responsibilities.

- (a) As between Gradient Learning and LEA, LEA shall (i) be responsible for and assume the risks associated with all use of Services by Users and Legal Guardians; (ii) have sole responsibility for obtaining any legally required consents from Legal Guardians and for providing appropriate disclosures to Student Users and their Legal Guardians regarding the Student User's use of the Services, including compliance with any applicable laws, rules, or regulations related to the collection, use, and disclosure of personally identifiable information; and (iii) have sole responsibility, including without limitation, all liability for User Content. LEA shall use best efforts to ensure that Users and Legal Guardians comply with the User Agreement. In the event a User or Legal Guardian violates the Agreement, LEA and/or Participant School shall promptly notify Gradient Learning and shall take necessary steps (including, without limitation, suspending such Users' or Legal Guardian's access to the Services) to remediate such violation. In the event that such User or Legal Guardian fails to remedy such violation, Gradient Learning may terminate or suspend such Users' or Legal Guardian's access to Services. LEA acknowledges and agrees that if Participant School, its Users or Legal Guardian's violate the Agreement, LEA and, not Gradient Learning, shall be liable for any Claims resulting from or in connection with such actions.
- (b) LEA shall identify Participant Schools by listing each Participant School on Exhibit G. In the event that LEA requests that additional schools receive Services, and Gradient Learning approves such request, the Parties shall update Exhibit G (which may occur via email) to include each such additional school and associated information (“**Participant School Addition**”), and each such school shall be deemed a Participant School and shall be subject to the terms and conditions of the Agreement. Additionally, if LEA and Gradient Learning agree to discontinue Services for a Participant School, then such school shall no longer be a Participant School and shall be removed from Exhibit G (“**Participant School Removal**”). Notwithstanding any Participant School Addition or Participant School Removal, (collectively, “**Participant School Update**”) to Exhibit G, the Parties acknowledge and agree that the effective date of the Agreement shall be the Effective Date set forth on the Cover Page. Further, the Parties acknowledge and agree that Participant School Updates do not and shall not constitute an amendment or waiver of the Agreement or of any terms and conditions contained in the Agreement.
- (c) LEA shall, and hereby agrees, to perform and cooperate with Gradient Learning in all matters relating to the provision of Services to Users and receipt of Services by Users including, without limitation, the following:
 - i Provide access to and use of Services solely to Participant School Users, Student Users and Legal Guardians;
 - ii Ensure that all Participant Schools, Users and Legal Guardians comply with the Agreement;

- iii Provide current contact information and any other information and/or data, including platform data, requested by Gradient Learning for the provision of Services pursuant to the DPA;
 - iv Comply with the program, technical and professional development requirements posted on the Gradient Learning Website under the caption "Participant School Requirements," which are incorporated by reference into the Agreement;
 - v Provide information and training as needed to Participant Schools, Users and Legal Guardians;
 - vi Ensure that Participant Schools communicate regularly with the Gradient Learning designated Leader Coach (as defined in Exhibit B) and that Participant School Users attend meetings, trainings and other professional development events provided by, on behalf of, or with Gradient Learning;
 - vii Permit Gradient Learning's Research Service Providers to invite interested Participant School Users to participate in Innovation Hub Opportunities as further described in Section 4, provided that LEA has not Opted-Out of such Innovation Hub Opportunities;
 - viii Permit Gradient Learning to use LEA Marks as provided in Section 7.5; and
 - ix Permit Gradient Learning to send Participant Schools marketing communications including announcements about upcoming new products and services.
- (d) LEA further agrees to: (i) cooperate reasonably with respect to implementation, access, support, and maintenance of Services; (ii) obtain from Users and Legal Guardians any consents necessary to allow Gradient Learning to provide, and Users and Legal Guardians to use, Services, including as required in the Agreement; (iii) use commercially reasonable efforts to prevent unauthorized access to or use of Services, including as required in the DPA; (iv) notify Gradient Learning promptly of any such unauthorized access or use as required in the DPA; (v) maintain the confidentiality and security of passwords and abide by any commercially reasonable access protocols or credential requirements set by Gradient Learning, including as required in the DPA; and (vi) use reasonable efforts to ensure that a current email address is associated with each User's account.

3.2. **Gradient Learning Responsibilities.** Gradient Learning shall (i) operate and provide Services in accordance with these Terms and Conditions and (ii) implement the data privacy and security measures as set forth in Section 9 of the Agreement.

4. **Innovation Hub.** Upon executing the Agreement, LEA shall have the option to participate through its Participant Schools and their educators in opportunities to provide feedback to help improve Services, develop related products and services, and conduct general research consistent with Gradient Learning's educational mission ("**Innovation Hub Opportunities**") with selected group of Gradient Learning services providers ("**Research Service Providers**"), provided that LEA does not Opt-Out as set forth in Section 4.3. LEA's, Participant Schools', and their educators' engagement in Innovation Hub Opportunities with Research Service Providers shall be governed by a separate agreement as set forth in Section 4.1

4.1 Innovation Hub Opportunities. From time to time, Research Service Providers may contact Participant Schools and/or Participant Schools' educators to determine whether such Participant School or educator is interested in engaging in Innovation Hub Opportunities. Participant Schools and educators may accept or reject any Innovation Hub Opportunity presented to them by a Research Service Provider. A Participant School or educator that elects to participate in an Innovation Hub Opportunity presented by a Research

Service Provider (“**Innovation Hub Participant**”) shall enter a separate agreement with the Research Service Provider that will govern such Innovation Hub Opportunity (“**Information Hub Participation Agreement**”). Each Information Hub Participation Agreement will: (1) include substantially similar privacy and security obligations for the Research Service Provider as set forth herein for Gradient Learning; and (2) require notifications from the Research Service Provider to LEAs of Innovation Hub Participants’ engagement in Innovation Hub Opportunities, including (a) how any changes will be implemented to the Services based on the Innovation Hub Opportunities, and (b) complete details about any data that LEA will need to direct Gradient Learning to disclose to the Research Service Provider, specifically highlighting any Student Data. Gradient Learning shall not be a party to any Innovation Hub Participation Agreement. As a result, **LEA ACKNOWLEDGES AND AGREES THAT GRADIENT LEARNING SHALL NOT BE LIABLE TO LEA, PARTICIPANT SCHOOLS AND/OR INNOVATION HUB PARTICIPANTS FOR ANY ACTIONS, OMISSIONS OR OTHER ACTIVITIES BY ANY SUCH RESEARCH SERVICE PROVIDER.**

4.2 Sharing Participant Schools’ Educator Contact Data. In order to enable Participant Schools and/or Participant Schools’ educators to participate in Innovation Hub Opportunities, Gradient Learning may share the following Participant School data (but only to the extent Gradient Learning already has such data and in any case subject to the Opt-Out rights set forth in Section 4.3) (“**Innovation Hub Potential Participant Data**”) with Research Services Providers, solely for Research Service Providers to present and conduct Innovation Hub Opportunities directly to and with Participant Schools’ educators:

- (a) Participant School name;
- (b) educators’ title;
- (c) educators’ school email addresses;
- (d) educators’ Canvas ID;
- (e) subject matter that each educator instructs (if applicable); and
- (f) grade level that each educator instructs (if applicable).

For the avoidance of doubt, Innovation Hub Potential Participant Data will not include any Student Data.

4.3 Opt-Out.

- (a) In the event that LEA does not wish to participate and engage in Innovation Hub Opportunities, then LEA may opt-out (“**Opt-Out**”) by selecting “No” under Innovation Hub Opportunities on the Cover Page of the Agreement. If LEA has exercised its Opt-Out, then Gradient Learning shall not share any Participant Schools’ and/or Participant Schools’ educators’ data with Research Services Providers.
- (b) If LEA has not exercised its Opt-Out, then upon LEA’s completion of its first academic year in the Innovation Hub Opportunities, Innovation Hub Participants shall have the option to opt-out of all Innovation Hub Opportunities for the then-current academic year, and shall have such option to opt-out each successive academic year that LEA is engaged in the Innovation Hub.
- (c) Participant Schools and/or Participant Schools’ educators may opt-out of receiving future emails from Research Service Providers by [sending a reply message or using the “unsubscribe” link in any Research Service Provider email communication].

4.4 Innovation Hub Participant Usage Data. Gradient Learning will only share Innovation Hub Participant Usage Data with a Research Service Provider after Gradient Learning has De-Identified the data (as defined in Exhibit F - Data Processing Addendum) and/or aggregated it with other De-Identified Usage Data. Gradient Learning will not share any Innovation Hub Participant’s Usage Data that has not been De-Identified and/or aggregated without the prior verifiable consent of that Innovation Hub Participant. For the avoidance of doubt, Usage Data of Student Users is Student Data and must be addressed as set forth in Section 4.5.

4.5 Directions to Gradient Learning for Student Data. If an Innovation Hub Participant elects to participate in an Innovation Hub Opportunity presented by a Research Service Provider that involves sharing any Student Data (including Usage Data of Student Users), then LEA, as the data controller, is responsible for compliance with all Data Protection Laws applicable to that sharing of that Student Data. In addition, LEA (or Participant School on behalf of LEA) shall:

- (a) obtain prior written consent from Legal Guardians (and/or Users, as appropriate) for the disclosure by Gradient Learning of any Student Data to a Research Service Provider, including signature, date, specific records that may be disclosed, purpose of disclosure, and identification of parties to whom disclosure is to be made; and
- (b) provide Gradient Learning with prior written direction specifying the scope of disclosure of any Student Data pursuant to Section 4.4 of the DPA, which must clearly outline the nature, purpose, and duration of the processing for the Innovation Hub Opportunity, specify the categories of Student Data to be disclosed (e.g., using the taxonomy set forth in Schedule "A" to the DPA), and identifying the included Students.

5 Fees and Expenses.

5.1 Fees. Unless otherwise provided in a Service Order or Services exhibit, including any amendments thereto ("**Services Exhibit**"), Gradient Learning shall not charge or invoice LEA fees for Services. If a Service Order or Services Exhibit includes fees and/or expenses ("**Fees**") for Services, then LEA shall pay Gradient Learning all Fees thirty (30) days after receipt of an invoice unless otherwise provided in such Service Order or Services Exhibit. All Fees owed by LEA are exclusive of, and LEA shall pay, all applicable sales, use, excise, withholding, and other taxes that may be levied in connection with the Agreement. In the event that LEA fails to pay the Fees within such thirty (30) day period or as set forth in the applicable Service Order or Services Exhibit, Gradient Learning shall provide written notice to LEA of such failure to pay, and LEA shall have thirty (30) days to cure by paying the outstanding Fees. If LEA fails to pay the outstanding Fees during the 30-day cure period, then Gradient Learning reserves the right (in addition to any other rights or remedies Gradient Learning may have) to suspend all Users', Legal Guardians' and LEA's access to Services until such amounts are paid in full.

5.2 Expenses. Each Party shall bear its own expenses incurred in performing under the Agreement, except as otherwise provided in a Service Order or Services Exhibit.

6 Term and Termination.

6.1 Term. The term of this Agreement shall commence on the Effective Date and shall continue until terminated by a Party in accordance with this Section 6. All Service Orders shall commence on the start date set forth in the applicable Service Order ("**Start Date**") and shall continue for a period of a maximum of one (1) year or until July 30 immediately following the Start Date. All Service Orders shall renew automatically, except as set forth in this Section 6 or in the applicable Service Order. The renewal date for all Service Orders shall be July 31 of each calendar year ("**Renewal Date**").

6.2 Termination for Convenience. Either Party may terminate this Agreement upon the expiration of all active Service Orders, provided that such Party give the other Party at least ninety (90) days written notice prior to the Renewal Date for Services in such active Service Orders of such Party's intention not to renew such Service Orders. The expiry date of all such Service Orders shall be July 30 of the applicable calendar year.

6.3 Termination for Breach. Either Party may terminate the Agreement or a Service Order for material breach of any material provision of the Agreement or applicable Service Order, as the case may be, by the other Party if such material breach remains uncured for thirty (30) days after receipt of written notice from the non-breaching Party. If a Party or Participant School terminates a Service Order(s) for material breach, but such Party does not terminate the Agreement or other Service Orders not identified in the notice of breach, the Agreement and all other non-terminated Service Orders shall remain in full force and effect.

6.4 LEA Right to Terminate a Service Order. In the event that Gradient Learning makes a Significant Change to Services as provided in Section 2.5, LEA and/or applicable Participant School may terminate the affected Service Order effective thirty (30) days from the date of notice of termination; provided that LEA and/or applicable Participant School give Gradient Learning at least ninety (90) days written notice prior to the Renewal Date of such Service Order.

6.5 Gradient Learning Right to Terminate and Suspend.

- (a) Gradient Learning shall have the right to terminate the Agreement, Service Orders and/or suspend the Services immediately, if Gradient Learning determines that LEA, any of its Participant Schools, Users or Legal Guardians (i) fail to comply with the terms of the Agreement, (ii) elects not to accept a Significant Change, or (iii) violates Gradient Learning code of conduct set forth on the Gradient Learning website at <https://www.gradientlearning.org>.
- (b) Gradient Learning shall have the right to terminate the Agreement upon thirty (30) days prior written notice to LEA, if Gradient Learning receives notice of breach or of termination from a Gradient Learning Significant Service Provider.

6.6 Effect of Termination.

- (a) In the event the Agreement is terminated, all Service Orders shall simultaneously terminate and LEA shall pay Gradient Learning unpaid Fees, if any, for Services performed prior to termination. Upon the termination or expiration of the Agreement (i) LEA, Participant Schools, all Users and Legal Guardians shall immediately cease accessing and using all Services; and (ii) in connection with certain aspects of Services that feature an export function, LEA and each Participant School may export the applicable Participant Schools Content by using the export feature within the Service for a period of thirty (30) days from termination, after which Gradient Learning shall have no obligation to maintain or provide any Participant School Content.
- (b) Upon termination of a Service Order, unless otherwise specifically provided in such Service Order: (i) Gradient Learning shall have no obligation to perform Services under such Service Order after the effective date of termination; and (ii) LEA shall pay to Gradient Learning Fees, if applicable, for Services performed prior to the effective date of termination.

6.7 Survival. The following provisions shall survive any expiration or termination of the Agreement: Sections 1 (Definitions), 5 (Fees and Expenses) to the extent any Fees are outstanding and owed, 7.2 (Participant School Content License Grant), 7.6 (Feedback), 8 (Proprietary Rights), 9 (Data Processing, Privacy and Security), 10 (Confidentiality), 11 (Representations and Warranties), 12 (Indemnification), 13 (Limitation of Liability), 14 (Dispute Resolution and Arbitration), and 15 (General Provisions) of these Terms and Conditions.

7 Licenses.

7.1 Access and Use Rights to Services. For the duration of the Agreement and subject to LEA, Participant Schools, Users and Legal Guardians compliance with the Agreement, Gradient Learning grants to LEA, Participant Schools, Users and Legal Guardians a limited, revocable, non-exclusive and non-transferable

right to access and use Services solely for non-commercial purposes and in accordance with the Documentation and in the manner described in one or more Service Orders.

7.2 Participant School Content License Grant. LEA and Participant School hereby grant to Gradient Learning a worldwide, transferable, assignable, fully paid-up, royalty-free right and license to use, reproduce, distribute, prepare derivative works of, make, have made, import, host, transfer, display, perform, and otherwise exploit Participant School Content and Modified Curriculum Material, in whole or in part, in any media formats and through any media channels (now known or hereafter developed), to the extent consistent with applicable laws. Such license is perpetual and irrevocable, except to the extent required to comply with Data Protection Laws relating to ownership and control of Participant School User Personal Data, including education records. **“Modified Curriculum Material”** means Gradient Learning Curriculum Material and other materials that have been modified by a Participant School.

7.3 Licensed Educational Material. Gradient Learning may provide in the Services certain educational content, exercises, and related supplementary materials that are owned by Gradient Learning or its third-party licensors (the **“Licensed Educational Material”**). For the duration of the Agreement or relevant Service Order and subject to LEA, Participant School and Users compliance with the Agreement, Gradient Learning shall grant to LEA a limited, revocable, non-exclusive, non-transferable license to access and use the Licensed Educational Material as made available on Services by Gradient Learning solely for LEA’s personal, non-commercial purposes. Unless expressly indicated on Services that a particular item of Licensed Educational Material is made available to Users under a Creative Commons License (as defined below), LEA may not sell, lease, modify, or otherwise provide access to the Licensed Educational Material to any third party.

7.4 Creative Commons License. Gradient Learning or its third-party licensors may make available Licensed Educational Material under the Creative Commons License, and LEA shall, and shall ensure that all Users shall, comply fully with all the terms and conditions for the following Creative Commons Licenses: CC BY 4.0, CC BY-NC 4.0, CC BY-NC-ND 4.0, CC BY-NC-SA 4.0, CC BY-SA 4.0 and any such other Creative Commons Licenses that Gradient Learning or its licensors make available (each a **“Creative Commons License”**); provided that Gradient Learning notify LEA of such additional Creative Commons Licenses.

7.5 License to LEA Marks. LEA hereby grants to Gradient Learning a limited, non-exclusive, royalty-free, fully paid-up, worldwide license to use LEA’s and Participant School’s name, logo and trademarks (**“LEA Marks”**) on Gradient Learning’s Web Site, press releases, event-related materials (including on a public event registration website or feedback survey), and other marketing materials.

7.6 Feedback. LEA hereby grants to Gradient Learning a worldwide, perpetual, irrevocable, royalty-free, fully paid-up, license to use, perform, display, modify and create or have created derivative works thereof, and distribute through multiple tiers and exercise any and all other rights in and to Feedback (as defined below) provided by LEA, Users, and Participant Schools related to Services or any other Gradient Learning products or services. The Parties agree that any suggestion or ideas for improving or otherwise modifying Services or any other Gradient Learning products or services (**“Feedback”**) provided by LEA, Users, or Participant Schools to Gradient Learning or Gradient Learning’s service providers shall not constitute Confidential Information or Intellectual Property Rights of LEA, Users, or Participant Schools. LEA hereby agrees that Gradient Learning may (but does not have to) use, share and otherwise exploit Feedback for any purpose without compensation or credits to LEA, Users, and/or Participant Schools.

8 Proprietary Rights.

8.1 Gradient Learning Proprietary Rights. As between Gradient Learning and LEA, Gradient Learning Confidential Information and Gradient Learning Intellectual Property is, and shall, at all times, remain, the

sole and exclusive property of Gradient Learning; and except as expressly granted in the Agreement, Gradient Learning reserves all rights therein and thereto. Gradient Learning shall have the right, in its sole discretion, to modify Gradient Learning Intellectual Property. “**Gradient Learning Intellectual Property**” means: (a) Services; (b) all Gradient Learning-developed improvements, changes, enhancements, translations and components thereof; (c) all other proprietary materials of Gradient Learning’s licensors; (d) all Deliverables; (e) all individual questions or surveys on any assessment developed by Gradient Learning or any Gradient Learning service provider, as well as all revisions, modifications, translations, or other adaptations or transformations thereof; (f) all Feedback; and (f) Gradient Learning Intellectual Property Rights. Gradient Learning Intellectual Property is protected by United States and international copyright, patent, and trademark laws, international conventions and other applicable laws governing intellectual property and proprietary rights (“**IP Laws**”).

8.2 **LEA Proprietary Rights.** As between Gradient Learning and LEA, LEA Confidential Information, Participant Schools Confidential Information, and LEA Intellectual Property is, and shall, at all times, remain, the sole and exclusive property of LEA; and except as expressly granted in the Agreement, LEA reserves all rights therein and thereto. “**LEA Intellectual Property**” means (a) User Content, and (b) LEA Intellectual Property Rights. LEA Intellectual Property is protected by IP Laws.

8.3 **Student Content.** The Parties agree that Student Content is, and shall, at all times, remain the property of the applicable Student. Such Student shall retain all ownership rights in and to such Student’s Student Content.

9 **Data Processing, Privacy and Security.** Gradient Learning shall (i) Process all Personal Data and (ii) adopt reasonable and appropriate (including organizational and technical) security measures designed to protect all Personal Data it Processes from unauthorized access, alteration or disclosure in accordance with the Data Privacy Addendum set forth on Exhibit F.

10 **Confidentiality.**

10.1 “**Confidential Information**” of a party means any and all non-public information disclosed by such party (“**Discloser**”) to the other party (“**Recipient**”) or accessed by Recipient from Discloser, in each case, prior to and/or during the term of the Agreement in oral, visual, written, electronic, or other tangible or intangible form. Gradient Learning Confidential Information may in addition to the foregoing consist of or include information that relates to Gradient Learning’s current, planned, or future business, initiatives, grants, investments, products, services, research, or development, such as (a) technical data, trade secrets, know-how, inventions, ideas, processes, algorithms, software in source or object code, works of authorship, improvements, strategy, unpublished financial (including pricing or cost) or investment information, or agreements and (b) information regarding actual or potential suppliers, customers, Users, other signatories to a Main Services Agreement and their Users, grantees, partners, employees, contractors, or other staff.

10.2 **Obligations.** Subject to Section 10.3, Recipient agrees to the following: Recipient shall: (i) not use Confidential Information for any purpose other than to perform its obligations or exercise rights under the Agreement or to comply with applicable laws; and (ii) hold in strict confidence and not disclose to any third party any Confidential Information (other than as approved in advance in writing by Discloser) except only to those Participant School Users, employees or contractors of Recipient that have a bona fide need to know or have access to such Confidential Information for such purposes and are under a duty of confidentiality no less restrictive than the Recipient’s duty hereunder. Recipient shall be responsible for any non-compliance by such Participant School User, employees or contractors of Recipient (as if Recipient had committed such non-compliance). Recipient shall also protect such Confidential Information with at least the same degree of care that Recipient uses to protect its own confidential information, but in no case, less than reasonable care. Recipient shall immediately notify Discloser in writing in the event of any misuse, misappropriation, loss, or unauthorized access to or disclosure of any

Confidential Information. Confidential Information shall not be reproduced except as required under the Agreement (any reproduction shall remain Discloser's property and be marked confidential and contain all confidentiality notices that appear on the original).

10.3 Exceptions. A Recipient's obligations under Section 10.2 with respect to any particular item of Confidential Information of Discloser shall terminate to the extent such Confidential Information: (a) was already known to Recipient at the time of disclosure by Discloser; (b) was disclosed to Recipient by a third party without any confidentiality obligations; (c) is, or through no fault of Recipient has become, part of the public domain, non-confidential or generally available to the public; or (d) is substantially the same as other information independently developed by Recipient without access to, or use of, such Confidential Information.

10.4 Return or Destruction of Confidential Information. Recipient shall return to Discloser or destroy all Confidential Information of Discloser in Recipient's possession or control promptly upon the termination or expiration of this Agreement or its receipt of the reasonable written request of Discloser; provided, however, that Recipient shall have no obligation to return or destroy copies of any Confidential Information if and to the extent retention or storage of such Confidential Information is required by applicable laws or internal policy. All such retained Confidential Information shall remain subject to the terms of this Section 10 as long as such Confidential Information remains in the possession of Recipient.

10.5 Equitable Relief. Each Party agrees that, due to the unique nature of the other Party's Confidential Information, the unauthorized disclosure or use of the other Party's Confidential Information or any other breach of any provision of this Section 10 may cause irreparable harm and significant injury to the other Party, the extent of which may be difficult to ascertain and for which there may be no adequate remedy at law. Accordingly, each Party agrees that the other Party, in addition to any other available remedies, shall have the right to seek an immediate injunction and other equitable relief enjoining any breach or threatened breach of this Section 10.

11 Representations and Warranties

11.1 Representations.

- (a) Each Party represents and warrants that (i) it has the power and authority to validly enter into the Agreement, (ii) the Agreement has been duly and validly authorized, executed and delivered by such Party, (iii) the execution and delivery of the Agreement does not violate or conflict with any other agreement, license, or obligation of such Party, and (iv) it is financially solvent and has the ability to perform its obligations hereunder.
- (b) LEA represents and warrants that (i) it possesses all rights necessary to provide Participant School Content, Personal Data, Student Content, Usage Data, User Content, Student Data, and Innovation Hub Potential Participant Data and grant Gradient Learning the licenses and rights provided in the Agreement; (ii) it acknowledges and agrees that as between Gradient Learning and LEA, LEA is solely responsible for providing notices and obtaining consents required by applicable laws and Data Protection Laws for (1) Users to use the Services and to provide User Content and Student Data, and (2) Participant Schools and/or Participant Schools' educators to provide their data; and (iii) User Content and Modified Curriculum Material does not and shall not infringe on or misappropriate any Intellectual Property Rights of any third party .
- (c) LEA represents and warrants that it shall not provide any User Content or any other materials to Gradient Learning or otherwise use the Services in a manner that (i) infringes, violates or misappropriates another's Intellectual Property Rights, rights of publicity or privacy, or other rights; (ii) is harmful, fraudulent, harassing, defamatory, obscene, libelous, or otherwise objectionable; or (iii) jeopardizes the security of the Services in any way, such as allowing

unauthorized access to a User's account or submitting User Content that contains viruses.

11.2 Legal Compliance. Each Party shall comply with all applicable laws and Data Protection Laws with respect to its activities under the Agreement and use of Services.

11.3 Gradient Learning Warranty. Gradient Learning warrants that, as of the Effective Date and for the duration of the Agreement that Services (i) shall conform to and operate substantially in accordance with associated Documentation; and (ii) shall be performed in a competent and professional manner consistent with generally accepted industry practices for non-profit K-12 distance learning service providers. In the event of a breach of either of these warranties, Gradient Learning, at its own expense, shall reperform Services or repair and redeliver the affected Deliverables. The preceding sentence, in conjunction with LEA's right to terminate the Agreement for breach, states LEA's sole remedy and Gradient Learning's entire liability for breach of the warranties in this Section 11.3.

11.4 Disclaimer. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 11 AND SECTION 13 (LIMITATION OF LIABILITY) AND TO THE MAXIMUM EXTENT OF THE LAW, THE PARTIES AND THEIR SERVICE PROVIDERS AND LICENSORS DISCLAIM ALL WARRANTIES, WHETHER WRITTEN, ORAL, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. WITHOUT LIMITING THE FOREGOING, GRADIENT LEARNING DOES NOT WARRANT: (A) THE RESULTS OR OUTCOMES FROM USE OF THE SERVICES OR THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE; OR (B) THE VALIDITY, FAIRNESS OR QUALITY OF ANY CONTENT PROVIDED BY GRADIENT LEARNING.

12 Indemnification.

12.1 Gradient Learning shall indemnify, defend and hold LEA harmless from and against, and shall pay all damages, losses, liabilities, costs, expenses and fees (including reasonable attorneys' fees) relating to any third-party claim, action, suit or other proceeding (a "**Claim**") to the extent arising from or relating to (i) gross negligence, willful misconduct, fraud or violation of applicable laws by Gradient Learning in connection with its provision and/or performance of Services; or (ii) any breach by Gradient Learning of any data privacy and security provision set forth on Section 9 (Data Processing, Privacy and Security) and the DPA.

12.2 LEA shall indemnify, defend and hold Gradient Learning harmless from and against, and shall pay all damages, losses, liabilities, costs, expenses and fees (including reasonable attorneys' fees) relating to any Claim to the extent arising from or relating to: (i) gross negligence, willful misconduct, fraud or violation of applicable laws by LEA, Participant Schools or Users; (ii) any breach by LEA, Participant Schools or Users of (a) any representation or warranty or other term in Sections 11.1 and 11.2 (Representations and Warranties); or (b) any data privacy and security provision set forth on Section 9 (Data Processing, Privacy and Security) and the DPA; or (iii) use of the Services by LEA, Participant Schools or Users in violation of the Agreement or the User Agreement.

12.3 The party seeking indemnification (the "**Indemnified Party**") shall provide the other party (the "**Indemnifying Party**") with prompt written notice upon becoming aware of any claim subject to indemnification hereunder and shall provide reasonable cooperation to the Indemnifying Party in the defense or investigation of any claim, suit or proceeding. The Indemnifying Party, at its option, shall have sole control of such defense, provided that the Indemnified Party is entitled to participate in its own defense at the Indemnified Party's sole expense. The Indemnifying Party shall not enter into any settlement or compromise of any such claim, suit, or proceeding without the Indemnified Party's prior written consent, which consent shall not be unreasonably withheld, except that the Indemnifying Party may without such consent enter into any settlement of a claim that resolves the claim without liability to the Indemnified Party and without impairment to any of the Indemnified Party's rights or requiring the

Indemnified Party to make any admission of liability.

13 Limitation of Liability.

13.1 IN NO EVENT SHALL: (A) EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY LOSS PROFITS, INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING FROM OR RELATED TO THE AGREEMENT REGARDLESS OF THE CAUSE OF ACTION, EVEN IF THE PARTIES HAVE BEEN APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES; AND (B) EITHER PARTY'S AGGREGATE LIABILITY UNDER THE AGREEMENT EXCEED THE GREATER OF (I) THE AGGREGATE OF ALL FEES PAID OR PAYABLE TO GRADIENT LEARNING BY LEA UNDER THE AGREEMENT; AND (II) TEN THOUSAND DOLLARS (\$10,000.00).

14 Dispute Resolution and Arbitration

14.1 Upon receipt of written notice of a Dispute (as defined below) from the other Party, an executive of each Party, including the Party receiving such notice, shall (in good faith and confidentially) meet and attempt to resolve the Dispute within thirty (30) days. If the Dispute is not resolved during such time period, then an executive of each Party shall (in good faith and confidentially) meet and attempt to resolve the Dispute through non-binding confidential mediation with a mutually agreed upon mediator within thirty (30) additional days. If the Dispute is not resolved within such time period, then the Dispute shall be resolved per the confidential arbitration terms below.

14.2 ANY DISPUTE, CLAIM, OR CONTROVERSY ARISING OUT OF OR RELATING TO THE AGREEMENT, THIS ARBITRATION SECTION (INCLUDING REGARDING THE SCOPE, APPLICABILITY, OR ENFORCEABILITY OF THIS ARBITRATION SECTION), OR ANY RELATED AGREEMENT, OR ANY OTHER DISPUTE, CLAIM, OR CONTROVERSY BETWEEN THE PARTIES (EACH, A "DISPUTE"), SHALL BE DETERMINED EXCLUSIVELY BY NEUTRAL, FINAL, BINDING AND CONFIDENTIAL ARBITRATION, UNDER THE U.S. FEDERAL ARBITRATION ACT. Arbitration uses a neutral arbitrator instead of a judge or jury, allows for more limited discovery than in court, and is subject to very limited review by courts. Arbitrators can award the same damages and relief that a court can award and nothing in this Arbitration Section shall be interpreted as limiting any non-waivable statutory rights. **EACH PARTY IRREVOCABLY WAIVES THE RIGHT TO A TRIAL BY JURY FOR ANY DISPUTE.**

14.3 The arbitration shall be administered by Judicial Arbitration & Mediation Services, Inc. ("**JAMS**") before a single arbitrator in San Mateo County, California and shall be initiated and conducted according to the JAMS Rules (to the extent not inconsistent with the terms of this Arbitration Section). Each of the Parties shall maintain the confidential nature of any such arbitration and shall not (without the prior written consent of the other Party) disclose to any third party the fact, existence, content, award, or other result of the arbitration, except as may be necessary to enforce, enter, or challenge such award in a court of competent jurisdiction or as otherwise required by Applicable Laws. Discovery shall be limited to an exchange of relevant documents, unless the arbitrator determines that additional discovery is necessary, consistent with the expedited nature of arbitration. The arbitrator shall issue a written statement setting forth the award, which shall be final and binding, and the basis therefore. The arbitrator shall have the power to award any type of relief that would be available in a court of competent jurisdiction.

14.4 EACH PARTY AGREES THAT IT MAY BRING CLAIMS AGAINST THE OTHER PARTY ONLY IN ITS INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING.

14.5 Notwithstanding anything to the contrary, either Party may seek remedies outside of informal dispute resolution, mediation, and arbitration for: (i) claims that qualify for small claims court; (ii) provisional or preliminary injunctive or other equitable relief; or (iii) trademark and other Intellectual Property Rights.

14.6Breach of Section 10 (Confidentiality), Section 8 (Proprietary Rights), and Section 9 (Data Processing, Privacy and Security) of these Terms and Conditions may cause irreparable damage to the non-breaching Party for which damages would be inadequate. All remedies are cumulative. Any Dispute that is not subject to arbitration (e.g., if arbitration is deemed unenforceable or inapplicable) shall be, and any judgment on any arbitration award may be, brought in the U.S. District Court for the Northern District of California or a state court located in San Mateo County, California and the Parties hereby consent to and waive any objections to the exclusive personal jurisdiction and venue of such courts.

15 **General Provisions**

15.1**Relationship of the Parties.** The Parties are independent contractors. Nothing contained herein or done in pursuance of the Agreement will constitute either Party as the agent of the other Party for any purpose or in any sense whatsoever or constitute the Parties as partners or joint venturers. There are no third-party beneficiaries to the Agreement.

15.2**Notices.** Any legal notice required or permitted under the Agreement shall be in writing and must be sent to the Party's address set forth on the Cover Page (or such other address as designated by the Party via notice). Any notices regarding indemnification, termination, or formal disputes under the Agreement must also be sent by certified mail return receipt requested, to the address of the Party receiving notice as it appears on the Cover Page (or such other address as designated by the Party via notice) and will be deemed given upon the date received. Either Party may change its notice address by giving the other Party notice of the change in accordance with this Section.

15.3**Assignment.** LEA shall not assign any rights or duties under the Agreement, without the prior written consent of Gradient Learning. Any attempted assignment or transfer in violation of the foregoing will be null and void. Subject to the restriction on assignment by LEA, the Agreement shall be binding upon and inure to the benefit of each Party's permitted heirs, successors and assigns.

15.4**No Waiver.** A waiver of any provision or any breach of the Agreement may only be made in a writing executed by an authorized representative of the waiving Party. Neither Party will, by mere lapse of time without giving notice or taking other action, be deemed to have waived any provision or any breach by the other Party of any provision of the Agreement. Further, the waiver by a Party of a particular provision or breach of the Agreement by the other Party may not be construed as, or constitute, a continuing waiver of such provision or breach, or of other breaches of the same or other provisions of the Agreement.

15.5**Severability.** If any provision of the Agreement is held illegal, unenforceable, or in conflict with any law of a federal, state, or local government having jurisdiction over the Agreement, such provision will be stricken and replaced with the provision designed to carry out the initial intent of the Parties. The validity of the remaining portions or provisions of the Agreement will not be affected thereby.

15.6**Amendment.** The Agreement may not be amended except through a written agreement signed by authorized representatives of each Party.

15.7**Governing Law.** The Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to conflict of law principle.

15.8**Entire Agreement; Order of Precedence.** The Agreement (including the Cover Page, these Terms and Conditions, Exhibits, DPA, User Agreement and Service Orders) is the final, complete and exclusive agreement of the Parties with respect to the subject matters hereof, and supersedes all prior discussions between the Parties with respect to such matters. In the event of a conflict or inconsistency between or among these Terms and Conditions, an Exhibit, or Service Order, then the order of precedence is as follows: (i) these Terms and Conditions; (ii) the applicable Exhibit, and (iii) the Service Order, in each case

unless such conflicting or inconsistent term is expressly amended by, and reference to this Section 15.8 is made in such attachment. Notwithstanding the foregoing, the provisions of the DPA shall govern the Processing and security of Personal Data.

15.9 Execution. The Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together constitute one and the same instrument.

[END OF PAGE]

EXHIBIT B

PROFESSIONAL SERVICES

This Exhibit B Professional Services (“**Professional Services Exhibit**”), which is incorporated into and made a part of the Agreement, is governed by the Terms and Conditions. This Professional Services Exhibit provides: (a) a description of the Professional Services that Participant Schools may request from Gradient Learning; and (b) additional terms that govern such Professional Services. Capitalized terms used but not defined in this Professional Services Exhibit have the meaning given elsewhere in the Agreement.

A. Description of Professional Services

Pursuant to a Service Order, Gradient Learning may provide Participant Schools the following Professional Services:

- Access to a Leader Coach. If deemed necessary by the Participant Schools and Gradient Learning, the Leader Coach may conduct school visits to support the Participant School.
- Access to relevant resources in Gradient Learning’s professional development library.
- Access to professional development opportunities where Participant Users can obtain training and share best practices.
- Other services as determined by Gradient Learning.

“**Leader Coach**” means the Gradient Learning designated point of contact for a Participant School that will (i) serve as the conduit for defining and delivering Services to such Participant School; and (ii) provide **Coaching Services** and mentoring for such Participant School’s leadership, instructional coaches and/or teachers.

“**Coaching Services**” means certain services provided by a Leader Coach, including instruction, feedback, document access and review, to assist leaders with utilizing industry established best practices and maximize the efficacy of Gradient Learning Services.

B. Fees for Professional Services

Unless otherwise provided in this Professional Services Exhibit or a Service Order, Gradient Learning shall not charge Fees for Professional Services. Gradient Learning reserves the right to charge Fees for Professional Services, commencing on the Renewal Date of the applicable Service Order; provided that Gradient Learning give LEA notice of such Fees at least 120 days prior to the Renewal Date. The invoicing and payment terms shall be as provided in Section 5 of the Terms and Conditions.

C. Additional Terms for Professional Services

1. Obligations of the Parties

- 1.1. Leader Coach shall contact the Participant School to initiate the process for providing Professional Services. Neither LEA's signature nor prior authorization shall be required for Participant Schools to obtain Professional Services offered under this Exhibit B.
- 1.2. Participant School and Leader Coach, unless otherwise agreed by the Parties, shall provide the following details regarding the Professional Services in a Service Order:
 - (a) a description of Services;
 - (b) Start Date for Services;
 - (c) any Deliverables;
 - (d) a description of any goods, services or input to be provided by Participant School and/or LEA;
 - (e) the timing of delivery of Services, Deliverables and of any goods, services or input from Participant School; and
 - (f) Fees, if any.
- 1.3. The Participant School point of contact listed on Exhibit G shall meet regularly with Leader Coach as determined by Gradient Learning. Participant School shall provide Gradient Learning access to and use of its facilities, systems, documentation, personnel and other resources reasonably required by Gradient Learning to provide Professional Services. Gradient Learning shall not be responsible for any delays in Professional Services due to Participant School's failure to provide such resources in a timely and effective manner.
- 1.4. Participant School shall have the option to terminate the receipt and use of Professional Services by either: (a) timely responding by email to the Gradient Learning spring questionnaire; or (b) providing email notice to Gradient Learning at least 90 days prior to the Renewal Date. Such termination of Professional Services shall not require LEA authorization and shall be effective the last day of the then-current academic year. Notwithstanding the foregoing, Participant School shall not have such option to terminate Professional Services if Participant School receives Cloud-Based Services.
- 1.5. Any Participant Schools that receive Cloud-Based Services set forth on Exhibit C to the Agreement must also obtain Professional Services for the duration of such Participant School's receipt of Cloud-Based Services.
- 1.6. Gradient Learning shall provide Professional Services remotely or at such other location as the Participant School and Gradient Learning may mutually agree.
- 1.7. From time to time, Gradient Learning may engage a subcontractor to perform certain Professional Services.
- 1.8. Gradient Learning shall have the right to provide professional services to third parties. Nothing in this Professional Services Exhibit shall limit Gradient Learning's rights to use, provide or otherwise make available any professional services or Deliverables to third parties.
- 1.9. The Deliverables are Gradient Learning Intellectual Property.

EXHIBIT C

CLOUD-BASED SERVICES

This Exhibit C Cloud-Based Services (“**Cloud-Based Services Exhibit**”), which is incorporated into and made a part of the Agreement, is governed by the Terms and Conditions. This Cloud-Based Services Exhibit provides (a) a description of the Cloud-Based Services that Participant Schools may request from Gradient Learning; and (b) additional terms that govern such Cloud-Based Services. Capitalized terms used but not defined in this Cloud-Based Services Exhibit have the meaning provided elsewhere in the Agreement.

A. Description of Cloud-Based Services

Pursuant to a Service Order, Gradient Learning may provide the following Cloud-Based Services to Participant Schools (“**Cloud-Based Services**”):

- Access to a learning management platform for Participant School Users
- Access to curriculum in core subjects (English Language Arts, mathematics, science, and social studies) pre-loaded onto the learning management platform.
- Access to a mentoring experience for Student Users.
- Access to whole student assessments (aligned to Gradient Learning’s whole student approach) pre-loaded onto the learning platform.
- Access to a custom-built whole student metrics dashboard that combines academic and non-academic student information in one place.
- Access to a curated set of asynchronous trainings, tools, and resources.
- Access to certain Professional Services.
- Other services as determined by Gradient Learning.

B. Fees for Cloud-Based Services

Unless otherwise provided in this Cloud-Based Services Exhibit or a Service Order, Gradient Learning shall not charge Fees for Cloud-Based Services. Gradient Learning reserves the right to charge Fees for Cloud-Based Services, commencing on the Renewal Date of the applicable Service Order; provided that Gradient Learning provide LEA notice of such Fees at least 120 days prior to the Renewal Date. The invoicing and payment terms shall be as provided in Section 5 of the Terms and Conditions.

C. Additional Terms for Cloud-Based Services

1. Participant Schools Use Restrictions. Participant Schools shall not (and shall not authorize Users to): (i) sell, resell, rent, lease, lend, sublicense, distribute, assign, timeshare, or otherwise transfer or provide access to the Cloud-Based Services to any third party except as expressly authorized under the Agreement; (ii) use or access the Cloud-Based Services for competitive purposes; (iii) copy, modify, adapt, or create derivative works from any feature, function, interface, or graphic in the Cloud-Based Services; (iv) remove or modify Cloud-Based Service Provider’s policies or proprietary markings displayed within the Cloud-Based Services; (v) use, interfere with, disrupt or circumvent the integrity, security or performance of the Cloud-Based Services, including by probing, scanning, or testing any Cloud-Based Service Provider system or network or its security or authentication measures; (vi) store or transmit any malicious code; (vii) knowingly permit direct or indirect access to or use of any Specialized Services or User Content in a way that circumvents a contractual usage limit; (viii) attempt to gain unauthorized access to the Specialized Services, its related systems or networks or Cloud-Based Service Provider’s third-party services; (ix) use the Specialized Services or any Cloud-Based Service Provider’s third-party services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights; or (x) use the Specialized Services to distribute software or tools that gather information, distribute advertisements, or

engage in conduct that may result in retaliation against Cloud-Based Service Provider or its data, systems, or networks.

2. Obligations of the Parties.

- 2.1. In order to receive Cloud-Based Services, Participant School is required to receive Professional Services for the duration of Participant School's receipt of Cloud-Based Services.
- 2.2. Neither LEA's signature nor prior authorization shall be required for Participant School to obtain Cloud-Based Services. Leader Coach shall contact the Participant School to initiate the process for providing Professional Services.
- 2.3. The Participant School point of contact listed on Exhibit G shall meet regularly with Leader Coach as determined by Gradient Learning. Participant School shall provide Gradient Learning access to and use of its facilities, systems, documentation, personnel and other resources reasonably required by Gradient Learning to provide Professional Services. Gradient Learning shall not be responsible for any delays in Professional Services due to Participant School's failure to provide such resources in a timely and effective manner.
- 2.4. Participant School shall have the option to terminate the receipt and use of Cloud-Based Services by either: (a) timely responding by email to the Gradient Learning spring questionnaire; or (b) providing email notice to Gradient Learning at least 90 days prior to the Renewal Date. Such termination of Cloud-Based Services shall not require LEA authorization and shall be effective the last day of the then-current academic year ("**Cloud-Based Services Termination**"). Gradient Learning shall have the right to delete all data relating to Participant School ninety (90) days after Cloud-Based Services Termination. Notwithstanding the foregoing, in the event the Agreement is terminated, Gradient Learning shall have the right to delete all such data sixty (60) days after Cloud-Based Services Termination.

EXHIBIT D

FUTURE SERVICES

(THIS EXHIBIT IS INTENTIONALLY LEFT BLANK)

EXHIBIT E USER AGREEMENT

Please be advised that this User Agreement contains an arbitration provision in Section 11 (Arbitration Agreement and Class Action Waiver) below that affects your rights under this User Agreement. Except for certain types of disputes mentioned in the arbitration provision, you and Gradient Learning agree that (1) disputes between us will be resolved by individual binding arbitration, and (2) you and Gradient Learning waive any right to participate in a class-action lawsuit, class-wide arbitration, or any other representative action.

Introduction

Gradient Learning (formerly T.L.P. Education) (“**Gradient Learning**”, “**we**”, “**us**” and “**our**”), a California nonprofit public benefit organization and 501(c)(3) nonprofit organization, is dedicated to bringing communities, schools, and families together in pursuit of meeting the needs of every student. The learning management platform, curriculum, features, and related services (the “**Services**”) have been developed for educators to equip students with academic skills and knowledge.

Use of the Services is governed by this User Agreement (the “User Agreement”) including our Privacy Policy, which identifies the personal information that we collect and how we use and share it, and our Code of Conduct, which has rules that helps keep the Services safe for Users (defined below).

1. Contract.

1.1 Contract Acceptance; Users

When you use our Services you agree to act consistently with all of the terms in this User Agreement, including the Privacy Policy and Code of Conduct which are incorporated into this User Agreement. The User Agreement covers your access to and use of the Services and the Privacy Policy explains how we collect and use your information.

This User Agreement applies to (a) teachers, principals, school leaders, aides and other similar school personnel (“**Participant School Personnel**”) who are provided access to and use of the Services from their schools (“**Participant Schools**”), and (b) students of Participant School Personnel who are provided access and use of the Services as part of their academic curriculum (“**Student Users**”) and parents, caregivers, or legal guardians of Student Users who are provided accounts through their children’s schools (“**Legal Guardians**”). Participant School Personnel, Student Users and Legal Guardians are collectively referred to as “**Users**”.

If you do not agree to the terms in this User Agreement, do not select “I Agree”, or access or use any of the Services.

1.2 Contract Changes

We may modify this User Agreement (including our Privacy Policy and Code of Conduct) from time to time. Except as otherwise provided in this User Agreement, if we make material changes to this User Agreement, including changes that impair your rights, we will provide you at least thirty (30) days prior notice except in urgent situations, such as preventing ongoing abuse or responding to legal requirements. If we make material changes to the Privacy Policy, including changes that impair your rights or change how your information will be used under the Privacy Policy, we will provide you at least thirty (30) days prior notice. We will seek to provide you notice through our Services, or by other means, to provide you the opportunity to review the changes before they become effective. We agree that changes cannot be retroactive. The notice will indicate which sections contain material modifications and what choices you may have. Unless we state otherwise, the amended User Agreement will be

effective immediately and your continued use of our Services after we publish or send a notice about our changes to these terms will confirm your acceptance of the changes. If you object to any changes, you must stop using or accessing the Services. If we make any changes to this User Agreement, you can request a copy of the prior versions by contacting us at privacy@gradientlearning.org.

2. Services.

2.1 Services. This User Agreement applies to the Services; our provision of the Services; and your access to and use of the Services.

2.2 Third-Party Services and Content. The Services may include services from Gradient Learning service providers. You may access and use third-party services, content or links to other websites or services through the use of the Services ("**Third-Party Services**"). Gradient Learning does not control Third-Party Services and is not responsible or liable for Third-Party Services. YOUR USE AND ACCESS OF THIRD-PARTY SERVICES, INCLUDING THE INFORMATION, MATERIALS, PRODUCTS AND SERVICES ON OR AVAILABLE THROUGH THIRD-PARTY SERVICES SHALL BE SOLELY AT YOUR RISK.

All rights in and to such services not expressly granted in this User Agreement are reserved by such service providers.

2.3 Limitations on Use. The Services are provided to you for educational purposes as part of the Participant School curriculum only. You are responsible for determining (and confirming) that your use of the Services is permitted by your Participant School and any applicable policies, including any school district and Participant School policies. We reserve the right to limit your use of the Services. If we believe that you may be in breach of this User Agreement or law or are misusing the Services (e.g., violating the Code of Conduct), we reserve the right to temporarily or permanently restrict, suspend, or terminate your access to the Services.

2.4 Modifications to Services. Gradient Learning may, at any time and for any or no reason, limit, restrict or terminate Users access to a feature or functionality of the Services. Such modifications may include updating, adding or removing functionalities, features or the look of the Services. To the extent allowed under law, the changes will be effective without notice, but if the changes are material, we will provide you notice.

3. User Eligibility and Access.

3.1 Eligibility. Only Participant School Personnel, Student Users and Legal Guardians are allowed to access the Services. Creating an account with false information is a violation of our terms.

3.2 Conditions to Access the Services. By clicking the "I Agree" button, you represent that (i) you are a US resident at least 13 years of age, or (ii) your use of the Services has been approved by your school or teacher for school use. You also represent that your use of the Services is in compliance with any and all Applicable Laws. The right to access and use the Services is not granted in jurisdictions outside the United States. You agree to limit access to the Services to yourself and to any Student Users you enroll.

3.3 Accounts and Passwords

If you are Participating School Personnel, you may establish and manage accounts for Student Users ("**Student Accounts**") and invite Student Users to access the Services using Student Accounts. You are responsible for the proper use of the Services by any Student Users you invite, and you agree to protect the personal information of such students according to the terms of the Data Privacy Addendum.

You may be asked to provide a password in connection with your account. You agree to choose a strong and secure password. You are solely responsible for maintaining the confidentiality of your account and password, and you agree to accept responsibility for all activities that occur under your account or password. You agree that the information you provide to Gradient Learning will be true, accurate, current, and complete. You also agree that you will ensure that this information is kept accurate and up-to-date at all times. If you have reason to believe that your account is no longer secure (e.g., in the event of a loss, theft, or unauthorized disclosure or use of your account ID or password), then you agree to immediately notify your school's information technology & security team and support@gradientlearning.org. You may be liable for the losses incurred by Gradient Learning, our service providers or others due to any unauthorized use of your Services account.

4. Your Obligations.

4.1 Participant School Responsibility for Parental Consent and Notices. You and/or the Participant School (and not Gradient Learning) assume responsibility for obtaining any consents required from Legal Guardians ("**Parental Consents**"), and for providing appropriate disclosures to Student Users and their Legal Guardians regarding the Student Users' use of the Services and this User Agreement. IF YOU ARE PARTICIPANT SCHOOL PERSONNEL AND YOU ENROLL A STUDENT USER IN THE SERVICES, YOU REPRESENT AND WARRANT THAT YOU HAVE EITHER RECEIVED EXPRESS CONSENT FROM SUCH STUDENT USER'S LEGAL GUARDIAN FOR REGISTRATION OF THE STUDENT USER AND DISCLOSURE OF RELATED INFORMATION TO GRADIENT LEARNING OR THAT YOU (OR YOUR SCHOOL) HAVE COMPLIED AND WILL COMPLY WITH ALL APPLICABLE REQUIREMENTS OF AN EXEMPTION FROM OR EXCEPTION TO PARENTAL CONSENT REQUIREMENTS, (IF ONE IS AVAILABLE), NECESSARY FOR YOU TO REGISTER THE STUDENT USER FOR THE SERVICES AND PROVIDE TO GRADIENT LEARNING THE INFORMATION YOU DISCLOSE IN CONNECTION WITH THE REGISTRATION OF SUCH STUDENT USER. Gradient Learning reserves the right to request, at any time, that Participant School Personnel (or the Participant School) provide records of notice provided to, and consent provided by, Legal Guardians. Provided, however, Gradient Learning is not obligated to request or review such records of notice. You hereby agree that Gradient Learning is not responsible for obtaining Parental Consents and shall not be liable for your or the Participant School's failure to obtain such Parental Consents.

4.2 Participant School Responsibility for Compliance with U.S Laws. You agree, individually and on behalf of the Participant School, that:

- a. You are responsible for compliance with the Family Educational Rights and Privacy Act and the US Department of Education's implementing regulations at 34 CFR Part 99 (collectively, "**FERPA**"), the Children's Online Privacy Protection Act ("**COPPA**"), California Consumer Privacy Act, as amended ("**CCPA**"), and all other applicable laws, rules or regulations, including those concerning the collection, use, and disclosure of personally identifiable information about Users in your Participant School (collectively, "**Data Protection Laws**").
- b. You are responsible (and hereby agree that Gradient Learning is not responsible for) for providing appropriate notices and disclosures to Student Users and their Legal Guardians regarding Student Users use of the Services, this User Agreement, and the Privacy Policy, including any notices required under Applicable Laws.
- c. You are responsible (and hereby agree that Gradient Learning is not responsible) for obtaining any Parental Consents to the extent required under COPPA, FERPA or other Applicable Laws, in connection with the Services, and the disclosure of personally identifiable information to Gradient Learning. You represent and warrant to Gradient Learning that, prior to Student Users accessing or using the Services, you have either obtained all Parental Consents, or have complied and will comply with all applicable requirements of an exemption from or exception to Parental Consent requirements, (if any) under Applicable Laws. In the event that a Legal Guardian does not consent or rescinds Parental Consent, you or the Participant School shall immediately notify Gradient Learning to terminate such Student User's access to the Services and ensure that such Student User's information is no longer accessible through the Services. Gradient Learning shall not be liable for the Participant School Personnel's or the Participant School's failure to obtain a Student User's Parental Consent.

4.3 Code of Conduct. You are responsible for your conduct and agree to follow our Code of Conduct when using the Services. You also agree to use the Services responsibly and to not misuse the Services or help anyone else to do so. This includes, but is not limited to, not doing or trying any of the following in connection with the Services:

- a. storing, posting, uploading, transmitting or creating libelous, obscene, deceptive, defamatory, pornographic, racist, sexual, hateful, unlawful, tortious or otherwise objectionable content (except as necessary for legitimate instructional purposes, but in all cases in compliance with Applicable Laws and regulations);
- b. modifying, translating, adapting, merging, making derivative works of, disassembling, decompiling, reverse compiling or reverse engineering any part of the Services except to the extent the foregoing restrictions are expressly prohibited by Applicable Law or this User Agreement;
- c. harming, harassing, threatening, or impersonating any person or violating the rights of any third party;
- d. probing, scanning, or testing the vulnerability of any system or network;
- e. interfering with or disrupting the integrity or performance of the Service;
- f. attempting to gain unauthorized access to the Services or its related systems or networks;
- g. introducing viruses, Trojan horses, worms, spyware, or other such malicious code into the Service;
- h. breaching or otherwise circumventing any security or authentication measures;
- i. accessing, tampering with, or using non-public areas or parts of the Service, or shared areas of the Services in which a User hasn't been enrolled;
- j. accessing, searching, or creating accounts for the Services by any means other than as authorized by Gradient Learning (for example, "scraping" or creating accounts in bulk);
- k. sending unsolicited communications, promotions or advertisements, or spam;
- l. sending altered, deceptive or false source-identifying information, including "spoofing" or "phishing";
- m. promoting or advertising products or other services without appropriate authorization;
- n. renting, leasing, loaning, selling or re-selling the Services unless specifically authorized to do so;
- o. copying, reproducing, distributing, republishing, downloading, displaying, posting or transmitting in any form or by any means any part of the Services unless specifically authorized to do so;
- p. removing or destroying any copyright notices or other proprietary markings contained on or in the Service;
- q. using the Services for commercial use or purposes, unless expressly permitted by Gradient Learning to do so;
- r. using the Services in any manner that is harmful to minors or in any matter that violates the Code of Conduct; or
- s. using the Services for any illegal purposes.

Gradient Learning has the right to suspend your access to the Services for any such violation. We may refer any suspected illegal, fraudulent or abusive activity to legal authorities. We may review your conduct and Your Content (defined below) for compliance with this User Agreement and remove Your Content from the Services at any time and without notice. With that said, we have no obligation to do so. We are not responsible for Your Content or the content other Users post and share via the Services.

4.4 Your Content. In using the Services, you may upload, post, share or otherwise provide notes, questions, comments, data, results, plans, text, files, images, videos, or other materials ("**Your Content**"). You agree, represent and warrant that you have all necessary rights, power and authority to share Your Content and will comply with all applicable laws when doing so. You agree to only provide content or information that does not violate the law. You agree and represent that Your Content does not and will not: (i) infringe, violate or misappropriate another's intellectual property rights, rights of publicity or privacy, or other rights; (ii) be

harmful, fraudulent, harassing, defamatory, obscene, libelous, or otherwise objectionable; or (iii) jeopardize the security of the Services in any way, such as allowing unauthorized access to a User's account or submitting Your Content that contains viruses.

5. Licenses

5.1 Gradient Learning's License to You. Subject to your compliance with this User Agreement (including the Privacy Policy and Code of Conduct), Gradient Learning grants to you a personal, revocable, limited, non-exclusive and non-transferable license to access and use the Services solely for your personal, non-commercial purposes.

5.2 License to Educational Material. Gradient Learning may provide in the Services certain educational content, exercises, and related supplementary materials that are owned by Gradient Learning or its third-party licensors (the "**Educational Material**"). Subject to your compliance with this User Agreement, Gradient Learning grants to you a non-exclusive, non-transferable license to access and use the Educational Material as made available on the Services by Gradient Learning solely for your personal, non-commercial purposes. Unless expressly indicated on Services that a particular item of Educational Material is made available to you under a Creative Commons License (as defined below), you may not sell, lease, modify, or otherwise provide access to the Educational Material to any third party.

5.3 Creative Commons License. If specified on the Services, Gradient Learning or its third-party licensors may make available Educational Material under the Creative Commons License, and you shall comply fully with all the terms and conditions for the following Creative Commons licenses: CC BY 4.0, CC BY-NC 4.0, CC BY-NC-ND 4.0, CC BY-NC-SA 4.0, CC BY-SA 4.0 and any such other Creative Commons licenses that Gradient Learning or its licensors make available (the "**Creative Commons License**").

5.4 Your License to Gradient Learning. Without any further consent, notice and/or compensation, you hereby grant Gradient Learning a non-exclusive, worldwide, transferable and sublicensable (through multiple tiers), fully paid-up, royalty-free right and license to use, reproduce, modify, publish, distribute, prepared derivative works of, make, have made, import, host, transfer, display, perform and otherwise exploit Your Content in whole or in part, in any media formats and through any media channels to the extent consistent with Applicable Laws.

6. Proprietary Rights.

6.1 Gradient Learning Proprietary Rights. The Services and all elements of the Services, including educational videos and exercises, content, design, computer code, software, and other materials (collectively, "**Services Materials**") are owned and operated by Gradient Learning and its licensors. The Services and Services Materials are protected by United States and international copyright, patent, and trademark laws, international conventions, and other applicable laws governing intellectual property and proprietary rights. Except for Your Content and except as otherwise set forth in this User Agreement, the Services, and all Services Materials, and all trademarks, service marks, and trade names, contained on or available through the Services are owned by or licensed to Gradient Learning, and Gradient Learning reserves all rights therein not expressly granted in Section 5 (Licenses).

Using the Services does not give you any right, title, or interest in or to the Services or the content or information made available through the Services that is not Your Content. Third-party trademarks and logos used in connection with the Services are the trademarks of their respective owners. Our logos and other trademarks, service marks, graphics, and logos used for the Services are trademarks or registered trademarks of ours or our licensors.

6.2 Your Proprietary Rights. As between you and Gradient Learning, you retain all ownership rights in and to Your Content, and Gradient Learning does not have any ownership rights in or to Your Content.

7. Term and Termination.

7.1 Term. This User Agreement shall remain in full force and effect for the duration of your use of the Services, unless Gradient Learning terminates your access and use of the Services as provided in this User Agreement.

7.2 Termination by Gradient Learning. Gradient Learning, in its sole discretion, for any or no reason, and without penalty, may (a) restrict, suspend or terminate your use of the Services; and (b) at any time discontinue providing access to the Services, or any part thereof, with or without notice. We may remove Your Content if you are not complying with this User Agreement. You agree that any termination of your access to the Services and/or removal of Your Content may be affected without prior notice, and you agree that Gradient Learning will not be liable to you or any third party for any such termination.

7.3 Termination by Participant School/Participant School Personnel. Participant School, in its sole discretion, for any or no reason, and with or without notice, may restrict, suspend or terminate its Participant School Personnel's and/or its Student Users' access and/or use of the Services. Participant School Personnel, in its sole discretion, for any or no reason, and with or without notice, may restrict, suspend or terminate its Student Users' access and/or use of the Services.

7.4 Survival. Upon termination or expiration of this User Agreement, any provision which by its nature should survive, will survive such termination or expiration, including your representations in Sections 4.4 (Your Content), 5.4 (Your License to Gradient Learning), 6 (Proprietary Rights), 8 (Indemnification), 9 (No Warranties; Disclaimers), 10 (Limitation of Liability), 11 (Arbitration Agreement and Class Action Waiver); 12 (Privacy and Security); and 13 (General Provisions).

8. **Indemnification**. You agree, to the extent permissible under your state's laws, to indemnify, defend, and hold harmless Gradient Learning, from and against, and shall pay, all damages, losses, liabilities, demands, judgments, settlements, costs and expenses of any kind (including attorneys' fees and expenses), relating to any third-party claim, action, suit or other proceeding (a "**Claim**") to the extent arising from or related to (i) your access to, use or misuse of the Services; (ii) your breach, alleged breach or violation of this User Agreement; (iii) any breach of the representations, warranties, and covenants made in this User Agreement; or (iv) your failure to comply with Applicable Laws. You agree not to settle any Claim without the prior written consent of Gradient Learning. Gradient Learning shall have the right, at your expense, to defend and control any Claim for which you are required to indemnify Gradient Learning. You agree to cooperate with such defense.

9. No Warranties; Disclaimers.

9.1 No Warranties. THE SERVICES, AND ALL DATA, INFORMATION, SOFTWARE, EDUCATIONAL MATERIALS, CONTENT (WHETHER OWNED OR LICENSED), MADE AVAILABLE THROUGH THE WEBSITE (THE "**GRADIENT LEARNING OFFERINGS**"), ARE PROVIDED ON AN "AS IS," AND "AS AVAILABLE," BASIS. TO THE MAXIMUM EXTENT OF THE LAW, GRADIENT LEARNING AND OUR SERVICE PROVIDERS AND LICENSORS DISCLAIM ANY AND ALL WARRANTIES AND CONDITIONS OF ANY KIND, WHETHER STATUTORY, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE. GRADIENT LEARNING DOES NOT WARRANT THAT (1) THE SERVICES AND THE GRADIENT LEARNING OFFERINGS WILL (A) MEET YOUR REQUIREMENTS OR EXPECTATIONS OR (B) WILL BE ACCURATE, FREE FROM ERRORS OR LOSS, OR UNINTERRUPTED, (2) THE SERVICES AND THE GRADIENT LEARNING OFFERINGS ARE FREE FROM VIRUSES OR OTHER HARMFUL COMPONENTS, OR (3) ANY DEFECTS OR ERRORS WILL BE CORRECTED.

9.2. Limitations. SOME STATES DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES, SO THE ABOVE WARRANTY DISCLAIMERS MAY NOT APPLY TO YOU.

10. **Limitation of Liability.**

10.1 Disclaimer. UNDER NO CIRCUMSTANCES, INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE, WILL GRADIENT LEARNING, OUR SERVICE PROVIDERS OR LICENSORS BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES, EVEN IF GRADIENT LEARNING, OUR SERVICE PROVIDERS OR LICENSORS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, ARISING OUT OF OR RELATING TO (i) THIS USER AGREEMENT; (ii) YOUR USE OF (OR INABILITY TO USE) THE GRADIENT LEARNING OFFERINGS, OR (iii) ANY OTHER INTERACTIONS WITH GRADIENT LEARNING OR ANY THIRD-PARTY THROUGH OR IN CONNECTION WITH THE GRADIENT LEARNING OFFERINGS. IF UNDER APPLICABLE LAWS, THE ABOVE LIMITATION OR EXCLUSION DOES NOT APPLY TO YOU, THEN, GRADIENT LEARNING'S LIABILITY WILL BE LIMITED TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAWS.

10.2 Limitation of Liability. TO THE EXTENT PERMITTED UNDER LAW, IN NO EVENT WILL GRADIENT LEARNING OR OUR SERVICE PROVIDERS OR LICENSORS' TOTAL LIABILITY TO YOU FOR ALL DAMAGES (INCLUDING DIRECT DAMAGES), LOSSES, AND CAUSES OF ACTION ARISING OUT OF OR RELATING TO THIS USER AGREEMENT, THE SERVICES OR YOUR USE OF THE GRADIENT LEARNING OFFERINGS OR YOUR INTERACTION WITH GRADIENT LEARNING OR THIRD-PARTIES IN CONNECTION WITH THE SERVICES OR GRADIENT LEARNING OFFERINGS REGARDLESS OF THE CAUSE OF ACTION, EVEN IF THE PARTIES HAVE BEEN APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES, EXCEED THE GREATER OF (i) THE AMOUNT PAID BY YOU TO GRADIENT, IF ANY, FOR USING THE SERVICES DURING THE TWELVE MONTHS IMMEDIATELY PRECEDING THE DATE OF THE CLAIM OR, (ii) ONE HUNDRED DOLLARS (\$100).

THIS LIMITATION OF LIABILITY IS PART OF THE BASIS OF THE BARGAIN BETWEEN YOU AND GRADIENT LEARNING AND SHALL APPLY TO ALL CLAIMS OF LIABILITY EVEN IF WE AND OUR SERVICE PROVIDERS AND/OR LICENSORS HAVE BEEN TOLD OF THE POSSIBILITY OF ANY SUCH DAMAGE, AND EVEN IF THESE REMEDIES FAIL THEIR ESSENTIAL PURPOSE. YOU ACKNOWLEDGE AND AGREE THAT GRADIENT LEARNING HAS OFFERED THE SERVICES AND ENTERED INTO THE TERMS IN RELIANCE UPON THE DISCLAIMERS AND THE LIMITATIONS OF LIABILITY, AND THAT THE DISCLAIMERS AND THE LIMITATIONS OF LIABILITY REFLECT A REASONABLE AND FAIR ALLOCATION OF RISK BETWEEN YOU AND GRADIENT LEARNING.

11. **Arbitration Agreement and Class Action Waiver.**

THIS SECTION CONSTITUTES AN ARBITRATION AGREEMENT ("Arbitration Agreement"); IT REQUIRES YOU AND GRADIENT LEARNING TO AGREE TO RESOLVE ALL DISPUTES BETWEEN US THROUGH BINDING INDIVIDUAL ARBITRATION, SO PLEASE READ IT CAREFULLY.

11.1 Definitions. The following terms have the meanings set forth below:

- A "**Dispute**" means a dispute, claim or controversy arising out of or relating to the Services Gradient Learning Offerings, or this User Agreement; or whether that dispute is (1) based on past, present or future events; and (2) in tort, contract, warranty, state, regulation, or other legal or equitable basis.
- An "**Enforceability Dispute**" means a Dispute relating to the interpretation, applicability, or enforceability of this Arbitration Agreement, including the formation of the contract, the arbitrability of any Dispute, and any claim that all or any part of this agreement is void or voidable.

- An “IP Dispute” means a Dispute relating to the ownership or enforcement of intellectual property rights.

11.2 Applicability

In the event we have a legal dispute, you and Gradient Learning agree that all Disputes, including Enforceability Disputes, will be resolved exclusively in binding arbitration on an individual basis, except that you and Gradient Learning are not required to arbitrate IP Disputes. Notwithstanding the foregoing, either you or Gradient Learning may seek remedies outside of informal dispute resolution, mediation, and arbitration for: (i) claims that qualify for small claims court; (ii) provisional or preliminary injunctive or other equitable relief; or (iii) an IP Dispute.

11.3 Waivers

- a. Waiver of Jury Right. YOU AND GRADIENT LEARNING ARE EXPRESSLY GIVING UP ALL RIGHTS TO A JURY TRIAL OR COURT TRIAL BEFORE A JUDGE, EXCEPT AS EXPRESSLY PROVIDED IN THIS ARBITRATION AGREEMENT. The arbitrator’s decision will be final and binding on both you and us, subject to review solely on the grounds set forth in the Federal Arbitration Act (“FAA”).
- b. Waiver of Class or Consolidated Actions. YOU AND GRADIENT LEARNING AGREE THAT ALL DISPUTES MUST BE ARBITRATED OR LITIGATED ON AN INDIVIDUAL BASIS AND NOT ON A CLASS, COLLECTIVE ACTION, OR REPRESENTATIVE BASIS. The validity of this waiver – and whether an action may proceed as a class, collective, or representative action – must be decided by a court.

11.4 Initiating a Dispute.

To initiate a Dispute, a party must send to the other party written notice of that Dispute containing: (a) the name, address, and contact information of the party giving notice; (b) the facts giving rise to the Dispute; and (c) the relief requested. Notices sent to Gradient Learning must be sent by mail to the address provided in Section 9 of this User Agreement.

You and we agree that the parties shall (in good faith) meet and attempt to resolve the Dispute within 30 days. If the Dispute is not resolved during that time period, then you and a representative of Gradient Learning shall (in good faith) meet and attempt to resolve the Dispute through non-binding mediation with a mutually agreed-upon mediator within 30 additional days. If you and we do not reach an agreement to resolve the dispute within that 60-day period, you or we may commence an arbitration proceeding or file a claim in small claims court.

11.5 Arbitration Rules and Procedure.

- a. Rules. The Federal Arbitration Act governs the interpretation and enforcement of this Arbitration Agreement. Judicial Arbitration & Mediation Services, Inc. (“JAMS”) will administer the arbitration before a single arbitrator, and the arbitration will be initiated and conducted according to the Streamlined Arbitration Rules and Procedures (the “JAMS Rules”), to the extent they are not inconsistent with the terms of this Arbitration Agreement. The JAMS Rules and instructions about how to initiate an arbitration are available at <https://www.jamsadr.com/rules-streamlined-arbitration> (as of the date of this agreement) or 1-800-352-5267.
- b. Fees. Pursuant to the JAMS Consumer Arbitration Minimum Standards, Gradient Learning will bear all costs of the arbitration (including any JAMS Case Management Fee and all professional fees for the arbitrator’s services), except for the filing fee if you are the party initiating the arbitration.
- c. Manner and Location of Arbitration. You may choose to have the arbitration conducted by telephone, in writing, online, or in person. If in person, you may choose to have the arbitration conducted (a) in San Mateo County, California, (b) in the county where you live, or (c) at another location that you and we agree upon.

11.6 Opt-Out.

You may opt out of this Arbitration Agreement by notifying us no later than 30 days after first becoming subject to it. Your notice must include your name, address, and a clear statement that you want to opt out of this Arbitration Agreement. Notices sent to Gradient Learning must be sent by mail to the address provided in Section 13.7 of this User Agreement.

11.7 Arbitration Agreement Severability.

If any portion of this Arbitration Agreement is found to be unlawful, void or for any reason unenforceable, then that portion shall be severed and the remainder of this Arbitration Agreement shall be given full force and effect.

12. Privacy and Security. Your privacy is extremely important to us, and we limit what we collect and how we use it. Please read our Privacy Policy and Data Privacy Addendum which explains how we treat and protect personal information when you use the Services.

13. **General Provisions.**

13.1 Governing Law. This User Agreement and any Dispute between you and Gradient Learning will be governed by California law and/or applicable federal law (including the Federal Arbitration Act) without regard to its choice of law or conflicts of law principles, unless the School is a United States public and accredited educational institution, then any Disputes will be resolved using the laws of the state (within the United States) in which the School is domiciled and/or applicable federal law (including the Federal Arbitration Act), excluding conflicts of law rules.

13.2 Jurisdiction and Venue. Subject to and without waiver of the arbitration provisions in Section 11, you agree that any judicial proceedings (other than small claims actions) will be brought in and you hereby consent to the exclusive jurisdiction and venue in the state courts in the city and county of San Mateo, California, or federal court for the Northern District of California.

13.3 Severability. If any portion of this User Agreement is found to be unenforceable, you and we agree that the terms will be modified to make that part enforceable while still achieving its intent. If that is not possible, then the unenforceable part will be severed and the rest of this User Agreement enforced.

13.4 Entire Agreement. This User Agreement (including the Privacy Policy and Code of Conduct) constitutes the entire agreement between you and Gradient Learning regarding the Services and supersedes all other related oral or written agreements or policies. Except as provided in Section 1.3 (Modifications) or in a writing signed by both parties, this User Agreement will not be modified.

13.5 No Waiver. Gradient Learning's failure to exercise or enforce any right or provision of this User Agreement will not constitute a waiver of such right or provision. Any waiver of any provision of the User Agreement will be effective only if in writing and signed by Gradient Learning.

13.6 Assignment. You may not assign or transfer this User Agreement (or your use of the Services) to anyone without our consent. However, you agree that Gradient Learning may assign this User Agreement in connection with a reorganization, or to a successor or assign or affiliate that agrees to assume our obligations under this User Agreement (and Privacy Policy) without your consent.

13.7 Notices. You agree that we can provide notices and messages to you and your School related to the Services in the following ways: (1) within the Services, or (2) sent to the contact information you provided us (e.g.,

email, mobile number, physical address). You agree to keep your contact information up to date. Please see our [Privacy Policy](#) for more information on how we may contact you and how you may unsubscribe from these communications.

You agree that the only way to provide us legal notice is at Gradient Learning at 818 W. Seventh Street, Suite 930, Los Angeles, CA 90017.

13.8. [Complaints Regarding Content \(DMCA\)](#). We respect the intellectual property rights of others. We require that content posted by Users does not violate the intellectual property rights of third parties. Please see our [Digital Millennium Copyright Act \(DMCA\) Notification Guidelines](#) for more information. If you believe your intellectual property rights have been violated through the Services, information on how to contact us is available in our DMCA Guidelines.

13.9. [How To Contact Us](#). If you have any questions about this User Agreement, our [Privacy Policy](#), [Code of Conduct](#), or our practices, please contact info@gradientlearning.org. To report misuse of your account, please contact your school's information technology & security team and support@gradientlearning.org.

You can learn more about Gradient Learning on our website, <https://gradientlearning.org/>.

You can also reach us by email at info@gradientlearning.org.

EXHIBIT F
DATA PRIVACY ADDENDUM

(Based on the NDPA Standard Version 1r7)

This Data Privacy Addendum ("DPA") is entered into by and between

- Gradient Learning (formerly T.L.P. Education) ("**Gradient Learning**"), a California nonprofit public benefit corporation, having an address at 818 W. Seventh Street, Suite 930, Los Angeles, CA 90017
- Local Education Agency ("**LEA**") (as defined in the related Main Services Agreement) (each of Gradient Learning and LEA, a "Party" and together the "Parties")

in connection with the Main Services Agreement ("**MSA**"), Exhibits, Service Orders (together constitute the "**Agreement**"), and this DPA is effective on the Effective Date of the Agreement. By signing the Agreement, LEA and Gradient Learning are also deemed to have executed this DPA and agree to the terms as stated herein.

WHEREAS, Gradient Learning is providing educational or digital services to LEA under the Agreement;

WHEREAS, Gradient Learning and LEA recognize the need to protect personally identifiable student information and other regulated data exchanged between them as required by applicable federal, state, and local laws and regulations, such as the Family Educational Rights and Privacy Act ("FERPA") at 20 U.S.C. § 1232g (34 CFR Part 99); the Children's Online Privacy Protection Act ("COPPA") at 15 U.S.C. § 6501-6506 (16 CFR Part 312); the California Consumer Privacy Act as amended ("CCPA") at Cal. Civ. Code § 1798.100-1798.199.100 (Cal. Code Regs. Tit. 11 § 7000-7304) and

WHEREAS, Gradient Learning and LEA desire to enter into this DPA for the purpose of establishing their respective obligations and duties in order to comply with applicable laws and regulations.

NOW THEREFORE, for good and valuable consideration, LEA and Gradient Learning agree as follows:

1. A description of the Services to be provided, the categories of Student Data that may be provided by LEA to Gradient Learning, and other information specific to this DPA are contained in the Standard Clauses hereto.
2. Special Provisions. LEA and Gradient Learning agree to the additional terms or modifications set forth in Schedule "E".
3. In the event there is conflict between the terms of the DPA and any other writing, including, but not limited to the Agreement, the terms of this DPA shall control.
4. This DPA shall stay in effect for the term of the Agreement.
5. The Services to be provided by Gradient Learning to LEA pursuant to this DPA are detailed in the Agreement (the "**Services**").
6. Notices. All notices or other communication required or permitted to be given hereunder may be given via e-mail transmission, first-class mail, or as specified in the Agreement and sent to the designated representatives specified in the Agreement.

STANDARD CLAUSES

1. PURPOSE AND SCOPE

1.1 Purpose of DPA.

The purpose of this DPA is to describe the duties and responsibilities to protect Student Data including compliance with all applicable federal, state, and local privacy laws, rules, and regulations, all as may be amended from time to time. In performing the Services, Gradient Learning shall be considered a School Official with a legitimate educational interest, and performing services otherwise provided by LEA. Gradient Learning shall be under the direct control and supervision of LEA, with respect to its use of Student Data

1.2 Student Data to Be Provided.

In order to perform the Services described above, LEA shall provide Student Data as identified in the Schedule of Data, attached hereto as Schedule "A".

1.3 DPA Definitions.

The definition of terms used in this DPA is found inline in the text or in Schedule "B". Terms defined in the Agreement will have the same meaning in this DPA, except that in the event of a conflict, definitions provided in this DPA shall prevail over terms used in any other writing, including, but not limited to the Agreement, Privacy Policy, etc.

2. DATA OWNERSHIP AND AUTHORIZED ACCESS

2.1 Student Data Property of LEA.

All Student Data transmitted to Gradient Learning pursuant to the Agreement is and will continue to be the property of and under the control of LEA. Gradient Learning further acknowledges and agrees that all copies of such Student Data transmitted to Gradient Learning, including any modifications or additions or any portion thereof from any source, are subject to the provisions of this DPA in the same manner as the original Student Data. The Parties agree that as between them, all rights, including all intellectual property rights in and to Student Data contemplated per the Agreement, shall remain the exclusive property of LEA. For the purposes of FERPA, Gradient Learning shall be considered a School Official, under the control and direction of LEA as it pertains to the use of Student Data, notwithstanding the above.

2.2 Legal Guardian Access.

To the extent required by law LEA shall establish reasonable procedures by which a Legal Guardian or Student may review Educational Records and/or Student Data and correct erroneous information, and procedures for the transfer of Student Generated Content to a personal account, consistent with the functionality of Services. Gradient Learning shall respond in a reasonably timely manner (and no later than forty five (45) days from the date of the request or pursuant to the time frame required under state law for LEA to respond to a Legal Guardian or Student, whichever is sooner) to LEA's request for Student Data in a Student's records held by Gradient Learning to view or correct as necessary. In the event that a Legal Guardian or other individual contacts Gradient Learning to review any of the Student Data accessed pursuant to the Services, Gradient Learning shall refer the Legal Guardian or individual to LEA, who will follow the necessary and proper procedures regarding the requested information.

2.3 Separate Account.

If Student-Generated Content is stored or maintained by Gradient Learning, Gradient Learning shall, at the request of LEA, transfer, or provide a mechanism for LEA to transfer, said Student-Generated Content to a separate account created by the Student.

2.4 Law Enforcement Requests.

Should law enforcement or other government entities ("**Requesting Party(ies)**") contact Gradient Learning with a request for Student Data held by Gradient Learning pursuant to the Services, Gradient Learning shall notify LEA in advance of a compelled disclosure to the Requesting Party, unless lawfully directed by the Requesting Party not to inform LEA of the request.

2.5 Subprocessors.

Gradient Learning shall enter into written agreements with all Subprocessors performing functions for Gradient Learning in order for Gradient Learning to provide the Services pursuant to the Agreement, whereby the Subprocessors agree to protect Student Data in a manner no less stringent than the terms of this DPA.

3. DUTIES OF LEA

3.1 Provide Data in Compliance with Applicable Laws.

LEA shall provide Student Data for the purposes of obtaining the Services in compliance with all applicable federal, state, and local privacy laws, rules, and regulations, all as may be amended from time to time.

3.2 Annual Notification of Rights.

If LEA has a policy of disclosing Educational Records and/or Student Data under FERPA, LEA shall include a specification of criteria for determining who constitutes a school official and what constitutes a legitimate educational interest in its annual notification of rights.

3.3 Reasonable Precautions.

LEA shall take reasonable precautions to secure usernames, passwords, and any other means of gaining access to the services and hosted Student Data.

3.4 Unauthorized Access Notification.

LEA shall notify Gradient Learning promptly of any known unauthorized access. LEA will assist Gradient Learning in any efforts by Gradient Learning to investigate and respond to any unauthorized access.

4. DUTIES OF GRADIENT LEARNING

4.1 Privacy Compliance.

Gradient Learning shall comply with all applicable federal, state, and local laws, rules, and regulations pertaining to Student Data privacy and security, all as may be amended from time to time.

4.2 Authorized Use.

The Student Data shared pursuant to the Agreement, including persistent unique identifiers, shall be used for no purpose other than the Services outlined in Agreement, as otherwise stated in the Agreement, and/or otherwise authorized under the statutes referred to herein this DPA.

4.3 Gradient Learning Employee Obligation.

Gradient Learning shall require all of Gradient Learning's employees and agents who have access to Student Data to comply with all applicable provisions of this DPA with respect to the Student Data shared under the Agreement. Gradient Learning agrees to require and maintain an appropriate confidentiality agreement from each employee or agent with access to Student Data pursuant to the Agreement.

4.4 No Disclosure.

Gradient Learning acknowledges and agrees that it shall not make any re-disclosure of any Student Data or any portion thereof, including without limitation, user content or other nonpublic information and/or personally

identifiable information contained in the Student Data other than as directed or permitted by LEA, this Agreement, or this DPA. This prohibition against disclosure shall not apply to aggregate summaries of De-Identified Data, Student Data disclosed pursuant to a lawfully issued subpoena or other legal process, or to Subprocessors performing services on behalf of Gradient Learning pursuant to this DPA. Gradient Learning will not sell Student Data to any third party.

4.5 De-Identified Data:

Gradient Learning agrees not to attempt to re-identify De-Identified Student Data. De-Identified Data may be used by Gradient Learning for those purposes allowed under FERPA and the following purposes: (1) assisting LEA or other governmental agencies in conducting research and other studies; and (2) research and development of Gradient Learning's educational sites, services, or applications, and to demonstrate the effectiveness of the Services; and (3) for adaptive learning purpose and for customized student learning. Gradient Learning's use of De-Identified Data shall survive termination of this DPA or any request by LEA to return or destroy Student Data. Except for Subprocessors, Gradient Learning agrees not to transfer De-Identified Student Data to any third party unless (a) that third party agrees in writing not to attempt re-identification, and (b) prior written notice has been given to LEA who has provided prior written consent for such transfer. Prior to publishing any document that names LEA explicitly or indirectly, Gradient Learning shall obtain LEA's written approval of the manner in which De-Identified Data is presented.

4.6 Disposition of Data.

Upon written request from LEA, Gradient Learning shall dispose of or provide a mechanism for LEA to transfer Student Data obtained under the Agreement, within sixty (60) days of the date of said request and according to a schedule and procedure as the Parties may reasonably agree. Upon termination of this DPA, if no written request from LEA is received, Gradient Learning shall dispose of all Student Data after providing LEA with reasonable prior notice. The duty to dispose of Student Data shall not extend to Student Data that had been De-Identified or placed in a separate student account pursuant to Section 2.3. LEA may employ a "Directive for Disposition of Data" form, a copy of which is included below as Schedule "C". If LEA and Gradient Learning employ Schedule "C", no further written request or notice is required on the part of either Party prior to the disposition of Student Data described in Schedule "C".

4.7 Advertising Limitations.

Gradient Learning is prohibited from using, disclosing, or selling Student Data to: (a) inform, influence, or enable Targeted Advertising; or (b) develop a profile of a Student, family member/guardian or group, for any purpose other than providing the Service to LEA. This section does not prohibit Gradient Learning from using Student Data: (i) for adaptive learning or customized student learning (including generating personalized learning recommendations); or (ii) to make product recommendations to educators or LEA employees; or (iii) to notify account holders about new education product updates, features, or services or from otherwise using Student Data as permitted in this DPA and its accompanying exhibits.

5. DATA PROVISIONS

5.1 Data Storage.

Where required by applicable law, Student Data shall be stored within the United States. Upon request of LEA, Gradient Learning will provide a list of the locations where Student Data is stored.

5.2 Audits.

No more than once a year, or following unauthorized access, upon receipt of a written request from LEA with at least ten (10) business days' notice and upon the execution of an appropriate confidentiality agreement,

Gradient Learning will allow LEA to audit the security and privacy measures that are in place to ensure protection of Student Data or any portion thereof as it pertains to the delivery of services to LEA. Gradient Learning will cooperate reasonably with LEA and any local, state, or federal agency with oversight authority or jurisdiction in connection with any audit or investigation of Gradient Learning and/or delivery of Services to Students and/or LEA, and shall provide reasonable access to Gradient Learning's facilities, staff, agents and LEA's Student Data and all records pertaining to Gradient Learning, LEA, and delivery of Services to LEA. Failure to reasonably cooperate shall be deemed a material breach of the DPA.

5.3 Data Security.

Gradient Learning agrees to utilize administrative, physical, and technical safeguards designed to protect Student Data from unauthorized access, disclosure, acquisition, destruction, use, or modification. Gradient Learning shall adhere to any applicable law relating to data security. Gradient Learning shall implement an adequate Cybersecurity Framework based on one of the nationally recognized standards set forth in Schedule "D". Exclusions, variations, or exemptions to the identified Cybersecurity Framework must be detailed in an attachment to Schedule "E". Additionally, Gradient Learning may choose to further detail its security programs and measures that augment or are in addition to the Cybersecurity Framework in Schedule "D". In the event LEA has questions regarding Data Privacy or Security, they may contact Gradient Learning's team at privacy@gradientlearning.org. Vulnerabilities can be responsibly disclosed by contacting security@gradientlearning.org.

5.4 Data Breach.

In the event of an unauthorized release, disclosure or acquisition of Student Data that compromises the security, confidentiality or integrity of the Student Data maintained by Gradient Learning, Gradient Learning shall provide notification to LEA within seventy-two (72) hours of confirmation of the incident, unless notification within this time limit would disrupt investigation of the incident by law enforcement. In such an event, notification shall be made within a reasonable time after the incident. Gradient Learning shall follow the following process:

- (1) The security breach notification described above shall include, at a minimum, the following information to the extent known by Gradient Learning and as it becomes available:
 - i. The name and contact information of the reporting LEA subject to this section;
 - ii. A list of the types of personal information that were or are reasonably believed to have been the subject of a breach;
 - iii. If the information is possible to determine at the time the notice is provided, then either (1) the date of the breach, (2) the estimated date of the breach, or (3) the date range within which the breach occurred. The notification shall also include the date of the notice;
 - iv. Whether the notification was delayed as a result of a law enforcement investigation, if that information is possible to determine at the time the notice is provided; and
 - v. A general description of the breach incident, if that information is possible to determine at the time the notice is provided.
- (2) Gradient Learning agrees to adhere to all federal and state requirements with respect to a data breach related to the Student Data, including, when appropriate or required, the required responsibilities and procedures for notification and mitigation of any such data breach.
- (3) Gradient Learning further acknowledges and agrees to have a written incident response plan that reflects best practices and is consistent with industry standards and federal and state law for responding to a data breach, breach of security, privacy incident or unauthorized acquisition or use of Student Data or any portion thereof, including personally identifiable information and agrees to provide LEA, upon request, with a summary of said written incident response plan.
- (4) LEA shall provide notice and facts surrounding the breach to the affected Students or Legal Guardians.

- (5) In the event of a breach originating from LEA's use of the Service, Gradient Learning shall cooperate with LEA to the extent necessary to expeditiously secure Student Data.

6. MISCELLANEOUS

6.1 Termination.

In the event that either Party seeks to terminate this DPA, they may do so by mutual written consent so long as the Agreement has lapsed or has been terminated. Either Party may terminate this DPA and the Agreement if the other Party breaches any terms of this DPA.

6.2 Effect of Termination Survival.

If the Agreement is terminated, Gradient Learning shall destroy all of LEA's Student Data pursuant to Section 4.6.

6.3 Priority of Agreements.

This DPA shall govern the treatment of Student Data in order to comply with the privacy protections, including those found in FERPA and all applicable privacy statutes identified in this DPA. In the event there is conflict between the terms of the DPA and the Agreement, or with any other writing, the terms of this DPA shall apply and take precedence. In the event of a conflict between Schedule "E" and these Standard Clauses, Schedule "E" will control. Except as described in this paragraph herein, all other provisions of the Agreement shall remain in effect.

6.4 Entire Agreement.

This DPA and the Agreement constitute the entire agreement of the Parties relating to the subject matter hereof and supersedes all prior communications, representations, or agreements, oral or written, by the Parties relating thereto. This DPA may be amended and the observance of any provision of this DPA may be waived (either generally or in any particular instance and either retroactively or prospectively) only with the signed written consent of both Parties. Neither failure nor delay on the part of any Party in exercising any right, power, or privilege hereunder shall operate as a waiver of such right, nor shall any single or partial exercise of any such right, power, or privilege preclude any further exercise thereof or the exercise of any other right, power, or privilege.

6.5 Severability.

Any provision of this DPA that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this DPA, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Notwithstanding the foregoing, if such provision could be more narrowly drawn so as not to be prohibited or unenforceable in such jurisdiction while, at the same time, maintaining the intent of the Parties, it shall, as to such jurisdiction, be so narrowly drawn without invalidating the remaining provisions of this DPA or affecting the validity or enforceability of such provision in any other jurisdiction.

6.6 Governing Law; Venue and Jurisdiction.

THIS DPA WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF LEA, WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES. EACH PARTY CONSENTS AND SUBMITS TO THE SOLE AND EXCLUSIVE JURISDICTION TO THE STATE AND FEDERAL COURTS FOR THE COUNTY OF LEA FOR ANY DISPUTE ARISING OUT OF OR RELATING TO THIS DPA OR THE TRANSACTIONS CONTEMPLATED HEREBY.

6.7 Successors Bound:

This DPA is and shall be binding upon the respective successors in interest to Gradient Learning in the event of a merger, acquisition, consolidation or other business reorganization or sale of all or substantially all of the assets of such business. In the event that Gradient Learning sells, merges, or otherwise disposes of its business to a successor during the term of this DPA, Gradient Learning shall provide written notice to LEA no later than sixty (60) days after the closing date of sale, merger, or disposal. Such notice shall include a written, signed assurance that the successor will assume the obligations of the DPA and any obligations with respect to Student Data within the Agreement. LEA has the authority to terminate the DPA if it disapproves of the successor to whom Gradient Learning is selling, merging, or otherwise disposing of its business.

6.8 Authority.

Each Party represents that it is authorized to bind to the terms of this DPA, including confidentiality and destruction of Student Data and any portion thereof contained therein, all related or associated institutions, individuals, employees or contractors who may have access to the Student Data and/or any portion thereof.

6.9 Waiver.

No delay or omission by either Party to exercise any right hereunder shall be construed as a waiver of any such right and both parties reserve the right to exercise any such right from time to time, as often as may be deemed expedient.

SCHEDULE "A"

SCHEDULE OF DATA

Category of Data	Elements	Check if Used by Gradient Learning
Application Technology Metadata	IP Addresses of users, Use of cookies, etc.	X
	Other application technology metadata-Please specify:	
Application Use Statistics	Metadata on user interaction with application	X
Assessment	Standardized test scores	X
	Observation data	X
	Other assessment data-Please specify:	
Attendance	Student school (daily) attendance data	X
	Student class attendance data	X
	Other attendance: Suspensions/expulsions	X
Communications	Online communications captured (emails, blog entries)	
Conduct	Conduct or behavioral data	
Demographics	Date of Birth	X
	Place of Birth	
	Gender	X
	Ethnicity or race	X
	Language information (native, or primary language spoken by student)	X
	Other demographic information-Please specify: Socioeconomic status	X
Enrollment	Student school enrollment	X
	Student grade level	X
	Homeroom	X

Category of Data	Elements	Check if Used by Gradient Learning
	Guidance counselor	X
	Specific curriculum programs	X
	Year of graduation	X
	Other enrollment information-Please specify: Clever ID#, SIS ID#	X
Legal Guardian Contact Information	Address	
	Email	X
	Phone	X
Legal Guardian ID	Legal Guardian ID number (created to link Legal Guardians to students)	X
Legal Guardian Name	First and/or Last	X
Schedule	Student scheduled courses	X
	Teacher names	X
Special Indicator	English language learner information	X
	Low income status	X
	Medical alerts / health data	
	Student disability information	X
	Specialized education services (IEP or 504)	X
	Living situations (homeless/foster care)	
	Other indicator information-Please specify:	
Student Contact Information	Address	
	Email	X
	Phone	
Student Identifiers	Local (School district) ID number	X

Category of Data	Elements	Check if Used by Gradient Learning
	State ID number	X
	Gradient Learning/App assigned student ID number	X
	Student app username	
	Student app passwords	
Student Name	First and/or Last	X
Student In App Performance	Program/application performance (reading program-student reads below grade level)	X
Student Program Membership	Academic or extracurricular activities a student may belong to or participate in	X
Student Survey Responses	Student responses to surveys or questionnaires	X
Student work	Student generated content; writing, pictures, etc.	X
	Other student work data -Please specify:	
Student Outcome Information	Student outcome information (grade level promotion and matriculation, AP and IB test information, college admission test scores, college eligibility and acceptance, and employment)	X
Transcript	Student course grades	X
	Student course data	X
	Student course grades/ performance scores	X
	Other transcript data - Please specify:	
Transportation	Student bus assignment	
	Student pick up and/or drop off location	
	Student bus card ID number	
	Other transportation data – Please specify:	

Category of Data	Elements	Check if Used by Gradient Learning
Other	<p>Please list each additional data element used, stored, or collected by your application:</p> <ul style="list-style-type: none"> ● teacher feedback on coursework ● teacher curricula and notes and feedback to or about students ● Teacher and Legal Guardian answers to surveys about the Services or curricula; and feedback, suggestions, questions, and ideas submitted to Gradient Learning from Legal Guardians, teachers or school administrators or officials ● mentor observations 	X

SCHEDULE "B"

DEFINITIONS

De-Identified Data and De-Identification: Records and information are considered to be De-Identified when all personally identifiable information has been removed or obscured, such that the remaining information does not reasonably identify a specific individual, including, but not limited to, any information that, alone or in combination is linkable to a specific Student and provided that LEA or Gradient Learning has made a reasonable determination that a Student's identity is not personally identifiable, taking into account reasonable available information.

Educational Records: Educational Records are records, files, documents, and other materials directly related to a Student and maintained by the school or LEA, or by a person acting for such school or LEA, including but not limited to, records encompassing all the material kept in the Student's cumulative folder, such as general identifying data, records of attendance and of academic work completed, records of achievement, and results of evaluative tests, health data, disciplinary status, test protocols and individualized education programs.

Metadata: means information that provides meaning and context to other data being collected; including, but not limited to: date and time records and purpose of creation. Metadata that have been stripped of all direct and indirect identifiers are not considered Personally Identifiable Information.

Operator: means the operator of an internet website, online service, online application, or mobile application with actual knowledge that the site, service, or application is used for K-12 school purposes. Any entity that operates an internet website, online service, online application, or mobile application that has entered into a signed, written agreement with LEA to provide a service to LEA shall be considered an "Operator" for the purposes of this DPA.

Gradient Learning: For purposes of the DPA, the term "Gradient Learning" means provider of digital educational software or services, including cloud-based services, for the digital storage, management, and retrieval of Student Data. Within the DPA the term "Gradient Learning" includes the term "Third Party" and the term "Operator" as used in applicable state statutes.

Student Generated Content: The term "Student-Generated Content" means materials or content created by a Student in the Services including, but not limited to, essays, research reports, portfolios, creative writing, music or other audio files, photographs, videos, and account information that enables ongoing ownership of student content.

School Official: For the purposes of this DPA and pursuant to 34 CFR § 99.31(b), a School Official is a contractor that: (1) Performs an institutional service or function for which the agency or institution would otherwise use employees; (2) Is under the direct control of the agency or institution with respect to the use and maintenance of Student Data including Educational Records; and (3) Is subject to 34 CFR § 99.33(a) governing the use and re-disclosure of Personally Identifiable Information from Educational Records.

Agreement: Refers to the Main Services Agreement, including the Cover Page, the following Exhibits: Master Terms and Conditions, Professional Services, Cloud-Based Services, Future Services, User Agreement, and Data Privacy Addendum, and Service Orders.

Student Data: Student Data includes any data, whether gathered by Gradient Learning or provided by LEA or its Users, Students, or Students' Legal Guardians, that is descriptive of the Student including, but not limited to, information in the Student's Educational Record or email, first and last name, birthdate, home or other physical address, telephone number, email address, or other information allowing physical or online contact, discipline records, videos, test results, special education data, juvenile dependency records, grades, evaluations, criminal

records, medical records, health records, social security numbers, biometric information, disabilities, socioeconomic information, individual purchasing behavior or preferences, food purchases, political affiliations, religious information, text messages, documents, student identifiers, search activity, photos, voice recordings, geolocation information, Legal Guardians' names, or any other information or identification number that would provide information about a specific Student. Student Data includes Metadata and Usage Data (as defined in the related Main Services Agreement). Student Data further includes "Personally Identifiable Information (PII)," as defined in 34 C.F.R. § 99.3 and as defined under any applicable state law. Student Data shall constitute Educational Records for the purposes of this DPA, and for the purposes of federal, state, and local laws and regulations. Student Data as specified in Schedule "A" is confirmed to be collected or processed by Gradient Learning pursuant to the Services. Student Data shall not constitute that information that has been anonymized or De-Identified, or anonymous usage data regarding a Student's use of Gradient Learning's Services.

Subprocessor: For the purposes of this DPA, the term "Subprocessor" (sometimes referred to as the "Subcontractor") means a third party (other than LEA or Gradient Learning), who Gradient Learning uses for data collection, analytics, storage, or other service to operate and/or improve its service, and who has access to Student Data.

Targeted Advertising: means presenting an advertisement to a Student where the selection of the advertisement is based on Student Data or inferred over time from the usage of the Operator's Internet web site, online service or mobile application by such Student or the retention of such Student's online activities or requests over time for the purpose of targeting subsequent advertisements. "Targeted Advertising" does not include any advertising to a Student on an Internet web site based on the content of the web page or in response to a Student's response or request for information or feedback.

Third Party: The term "Third Party" means a provider of digital educational software or services, including cloud-based services, for the digital storage, management, and retrieval of Educational Records and/or Student Data, as that term is used in some state statutes. However, for the purpose of this DPA, the term "Third Party" when used to indicate the provider of digital educational software or services is replaced by the term "Gradient Learning."

SCHEDULE "C"

DIRECTIVE FOR DISPOSITION OF DATA

LEA

Gradient Learning to dispose of data obtained by Gradient Learning pursuant to the terms of the Agreement between LEA and Gradient Learning. The terms of the Disposition are set forth below:

1. Extent of Disposition

_____ Disposition is partial. The categories of data (which are listed in Schedule "A") to be disposed of are set forth below or are found in an attachment to this Directive:

[Insert categories of data here]

_____ Disposition is Complete. Disposition extends to all categories of data.

2. Nature of Disposition

_____ Disposition shall be by destruction or deletion of data.

_____ Disposition shall be by a transfer of data. The data shall be transferred to the following site as follows:

[Insert or attach special instructions]

3. Schedule of Disposition

Data shall be disposed of by the following date:

_____ As soon as commercially practicable.

_____ By **[Insert Date]**

4. Signature

_____	_____
Authorized Representative of LEA	Date

5. Verification of Disposition of Data

_____	_____
Authorized Representative of Gradient Learning	Date

SCHEDULE “D”

DATA SECURITY REQUIREMENTS

Adequate Cybersecurity Frameworks

2/24/2020

The Education Security and Privacy Exchange (“Edspex”) works in partnership with the Student Data Privacy Consortium and industry leaders to maintain a list of known and credible cybersecurity frameworks which can protect digital learning ecosystems chosen based on a set of guiding cybersecurity principles (“Cybersecurity Frameworks”) that may be utilized by Gradient Learning.

Cybersecurity Frameworks

MAINTAINING ORGANIZATION/GROUP	FRAMEWORK(S)
National Institute of Standards and Technology (NIST)	NIST Cybersecurity Framework Version 1.1
National Institute of Standards and Technology (NIST)	NIST SP 800-53, Cybersecurity Framework for Improving Critical Infrastructure Cybersecurity (CSF), Special Publication 800-171
International Organization (ISO)	Standards
	Information technology — Security techniques — Information security management systems (ISO 27000 series)
Secure Controls Framework Council, LLC	Security Controls Framework (SCF)
Center for Internet Security (CIS)	CIS Critical Security Controls (CSC, CIS Top 20)
Office of the Under Secretary of Defense for Acquisition and Sustainment (OUSD(A&S))	Cybersecurity Maturity Model Certification (CMMC, ~FAR/DFAR)

SCHEDULE “E”

Additional Terms or Modifications

Last Updated [February 1, 2024]

LEA and Gradient Learning agree to the following additional terms and modifications:

Gradient Learning agrees to store and process data by employing administrative, physical, and technical safeguards designed to protect Student Data from unauthorized access, disclosure, and use or acquisition by an unauthorized person, including when transmitting and storing such information. These security measures shall include, but are not limited to:

- (a) Gradient Learning shall implement strong authentication methods including multi-factor authentication (MFA) with strong password complexity for all employees and contractors. These methods meet or exceed Article 4.3 of NIST 800-63-3.
- (b) Gradient Learning shall limit access to Student Data to employees, agents, staff, and Service Providers who need access in order for Gradient Learning to provide the Services. To the extent permissible by law, Gradient Learning shall conduct criminal background checks of employees prior to providing access to Student Data and prohibit access to Student Data by any person with criminal or other relevant unsatisfactory information that presents an unreasonable risk to LEA or its Users.
- (c) Gradient Learning shall destroy or delete all personally identifiable information contained in Student Data obtained under the Agreement as set forth in Section 4.6 hereof.
- (d) Gradient Learning shall employ a strong modern encryption technology designed to securely transmit (encryption in transit) and store all Student Data (encryption at rest). Gradient Learning shall maintain all Student Data obtained or generated pursuant to the Agreement in a secure computing environment and shall not copy, reproduce, or transmit data obtained pursuant to the Agreement, except as necessary to fulfill the purpose of data requests by LEA or as otherwise set forth in the Agreement.
- (e) Gradient Learning shall create a secured data backup and recovery capability that is designed to help ensure an effective, timely and accurate restoration of all Student Data. The capability will be designed to minimize the amount of Student Data loss in the event of some form of catastrophic failure. For further protection, those backups will be encrypted and are stored in a different region.
- (f) Gradient Learning shall adopt and maintain a secure software development lifecycle which will incorporate industry standard security practices such as penetration testing, code reviews and architecture analysis as essential functions of the development effort. Any identified security vulnerability will be remediated in a timely manner.
- (g) Gradient Learning shall provide periodic security training to those of its employees and staff who have access to Student Data.
- (h) Gradient Learning shall enter into written agreements whereby service providers and Subprocessors agree to prevent unauthorized access and use of Student Data in a manner consistent with the terms of this section. Gradient Learning shall periodically conduct or review such compliance of Service Providers and Subprocessors.

This Schedule “E” defines the base level of security. Gradient Learning regularly evaluates its policies and practices to improve the security of its network and systems and to respond to evolving best practices.

EXHIBIT G

PARTICIPANT SCHOOLS

As provided in Section 3.1(b) of the Terms and Conditions, the Participant Schools are listed below. As further provided in Section 3.1(b) of the Terms and Conditions, Gradient Learning and LEA may make Participant School Updates to this Exhibit G. The Parties acknowledge and agree that (i) Participant School Updates do not and shall not constitute an amendment or waiver of the Agreement or of any terms and conditions contained in the Agreement; and (ii) the effective date of the Agreement (including this Exhibit G) shall be the Effective Date set forth on the Cover Page.

Effective _____, 2024, the schools listed below shall receive the Services provided under the Agreement and shall be deemed Participant Schools. Such Participant Schools shall complete the table below and ensure that the School Leader Contact and School Leader Email Address are accurate and current.

School Name	School Leader Contact	School Leader Email	School Address
Phoenix School Of Discovery	Ken Moeller	ken.moeller@jefferson.k yschools.us	502 Wood Rd Louisville, KY 40222 United States

AMENDMENT TO
MAIN SERVICES
AGREEMENT

THIS AMENDMENT (“Amendment”) is entered into and made effective as of the last signature date below, and pertains to and is made part of the Main Services Agreement dated as of _____, as amended (collectively, the “Agreement”) by and between Gradient Learning, a California nonprofit public benefit corporation (“Gradient Learning”) and _____ (“LEA”). All capitalized terms not defined herein shall have the same meaning as defined in the Agreement.

The Parties hereby agree to amend the Agreement as follows:

1. **Gradient Responsibilities: Insurance.** Section 3.2 of the Terms and Conditions is amended and replaced in its entirety with the following:

“3.2 Gradient Learning Responsibilities

- (a) Gradient Learning shall (i) operate and provide Services in accordance with these Terms and Conditions and (ii) implement the data privacy and security measures as set forth in Section 9 of the Agreement.
- (b) Gradient Learning shall maintain, during the Term of this Agreement, a cyber-insurance liability policy, in the minimum amount of \$5M. Upon request, Gradient Learning shall furnish the certificate of insurance evidencing this coverage. The certificate of insurance shall name the LEA 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

2. **Indemnification.** Section 12.2 of the Terms and Conditions is hereby deleted and replaced in its entirety with the following:

“12.2 To the extent permissible under applicable state law, LEA shall indemnify, defend and hold Gradient Learning harmless from and against, and shall pay all damages, losses, liabilities, costs, expenses and fees (including reasonable attorneys' fees) relating to any Claim to the extent arising from or relating to: (i) gross negligence, willful misconduct, fraud or violation of applicable laws by LEA, Participant Schools or Users; (ii) any breach by LEA, Participant Schools or Users of (a) any representation or warranty or other term in Sections 11.1 and 11.2 (Representations and Warranties); or (b) any data privacy and security provision set forth on Section 9 (Data Processing, Privacy and Security) and the DPA; or (iii) use of the Services by LEA, Participant Schools or Users in violation of the Agreement or the User Agreement.”

3. **Dispute Resolution.** Section 14 of the Terms and Conditions (Dispute Resolution and Arbitration) is hereby deleted and replaced in its entirety with the following:

“14. Dispute Resolution and Applicable Law

14.1 Upon receipt of written notice of a Dispute (as defined below) from the other Party, an executive of each Party, including the Party receiving such notice, shall (in good faith and confidentially) meet and attempt to resolve the Dispute within thirty (30) days. If the Dispute is not resolved during such time period, then an executive of each Party shall (in good faith and confidentially) meet and attempt to resolve the Dispute through non-binding confidential mediation with a mutually agreed upon mediator within thirty (30) additional days. If the Dispute is not resolved within such time period, then the Dispute shall be resolved per the terms below in Section 14.2.

14.2 Notwithstanding Section 15.7 of the Terms and Conditions (Governing Law), these Terms and Conditions will be governed by and construed in accordance with the laws of the state of LEA, without regard to conflicts of law principles. Each Party consents and submits to the sole and exclusive jurisdiction to the state and federal courts for the county of LEA (or as otherwise may be legally required the laws of the state in which the LEA is domiciled) for any dispute arising out of or relating to these Terms and Conditions.”

4. **Privacy Compliance.** The following Section 4.1 of the DPA is amended and replaced in its entirety with the following:

“4.1 Gradient Learning shall comply with all applicable federal, state, and local laws, rules, and regulations pertaining to Student Data privacy and security, all as may be amended from time to time, 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.” **Participant School Responsibility for Compliance with U.S. Laws.** Section 4.2 of Exhibit E (“User Agreement”) is amended to remove all references to the Children’s Online Privacy Protection Act (“COPPA”).

5. **Participant School Responsibility for Compliance with U.S. Laws.** Section 4.2 of Exhibit E (“User Agreement”) is amended to remove all references to the Children’s Online Privacy Protection Act (“COPPA”).
6. **Ratification.** All other terms and conditions set forth in the Agreement remain unchanged and in full force and effect, and the parties hereby ratify and affirm the Agreement as amended by this Amendment.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

WITH INTENT TO BE BOUND, Gradient Learning and LEA, by signature of their authorized representatives, have executed this Amendment as of the Amendment Effective Date.

Accepted and Agreed:

<p><u>Gradient Learning</u></p> <p>(“Gradient Learning”)</p> <p>By:</p> <p>Name:</p> <p>Title:</p> <p>Date:</p>	<p>_____</p> <p>(“Local Education Agency” or “LEA”)</p> <p>By:</p> <p>Name:</p> <p>Title:</p> <p>Date:</p>
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