DATA PRIVACY AGREEMENT

This Data Privacy Agreement ("DPA") is entered into by and between the Elko County School District (the "District") and _____ (the "Contractor") on _____, 20____. The parties agree to the terms as stated herein.

RECITALS

WHEREAS, the Contractor has agreed to provide the District with certain digital educational products and services ("Services") pursuant to a contract dated _____, 20____ ("Service Agreement"); and

WHEREAS, in order to provide the Services described in the Service Agreement, the Contractor may receive or create, and the District may provide documents or data that are covered by several federal and state statutes and student privacy laws, among them, the Family Educational Rights and Privacy Act ("FERPA") at 20 U.S.C. 1232g (34 CFR Part 99), Children's Online Privacy Protection Act ("COPPA"), 15 U.S.C. 6501-6506; Protection of Pupil Rights Amendment ("PPRA") 20 U.S.C. 1232h; and NRS 388.281 through 388.296, inclusive; and

WHEREAS, for the purposes of this DPA, Contractor is a school official with legitimate educational interests in accessing Education Records pursuant to the Service Agreement for the limited purposes of this DPA; and

WHEREAS, the Parties wish to enter into this DPA to ensure that the Service Agreement conforms to the requirements of the privacy laws referred to above and to establish implementing procedures and duties.

NOW THEREFORE, for good and valuable consideration, the parties agree as follows:

ARTICLE I: PURPOSE, SCOPE AND DEFINITIONS

1. **Purpose of DPA.** The purpose of this DPA is to describe the duties and responsibilities to protect student data transmitted to Contractor from the District pursuant to the Service Agreement, including compliance with all applicable statutes, including the FERPA, COPPA, PPRA and other applicable Nevada State laws, all as may be amended from time to time. In performing these services, the Contractor shall be considered a school official with a legitimate educational interest, and performing services otherwise provided by the District. With respect to the use and maintenance of Student Data, the Contractor shall be under the direct control and supervision of the District.

2. **Services.** The Contractor agrees that the Services meet the definition of "school service" described in NRS 388.283.

3. **Contractor.** For purposes of the Service Agreement, the term "Contractor" means Contractor of digital educational software or services, including cloud-based services, for the digital storage, management, and retrieval of pupil records. Within this DPA, the term "Contractor" includes the terms "Operator" as used in the COPPA and "school service provider" as defined by NRS 388.284.

4. **De-Identified Information (DII).** De-Identification refers to the process by which the Contractor removes or obscures any Personally Identifiable Information (see definition below) from Education Records (see definition below) in a way that removes or minimizes the risk of disclosure of the identity of the individual and information about them.

5. **Education Records.** Education Records are official records, files and data directly related to a student and maintained by the school or local education agency, 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. For purposes of this DPA, Education Records are referred to as Student Data.

6. **Personally Identifiable Information ("PII").** "Personally Identifiable Information" has the meaning ascribed to it in 34 C.F.R. § 99.3, and includes both direct identifiers (such as a student's or other family member's name, address, student number, or biometric number) and indirect identifiers (such as a student's date of birth, place of birth, or mother's maiden name). Indirect identifiers that constitute PII also include metadata or other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty.

7. **Student-Generated Content.** The term "student-generated content" means materials or content created by a student during and for the purpose of education 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.

8. **Service Agreement.** Refers to the Contract or Purchase Order to which this DPA supplements and modifies.

9. **School Official.** For the purposes of this DPA and pursuant to 34 CFR 99.31(a)(1)(i)(B), a School Official is a contractor that: (1) Performs an institutional service or function for which the District would otherwise use employees; (2) Is under the direct control of the District with respect to the use and maintenance of education records; and (3) Is subject to 34 CFR 99.33(a) governing the use and re-disclosure of PII from Education Records.

10. **Student Data.** Student Data means PII, whether gathered by Contractor or provided by the District or its users, students, or students' parents/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, home address, telephone number, email address, or other information allowing 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, food purchases, political affiliations, religious information text messages, documents, student identifies, search activity, photos, voice recordings or geolocation information. Student Data shall constitute Education Records for the purposes of this DPA, and for the purposes of Nevada and federal laws and regulations. Student Data shall not constitute that information that has been anonymized or de-identified, or anonymous usage data regarding a student's use of Contractor's services.

11. **Subprocessor.** For the purposes of this DPA, the term "Subprocessor" (sometimes referred to as the "Subcontractor") includes third-party services providers and means a party other than the District or the Contractor, who the Contractor uses for data collection, analytics, storage, or other service to operate and/or improve its software, and who has access to PII.

12. **Targeted Advertising.** "Targeted advertising" means presenting advertisements to a pupil where the advertisement is selected based on information obtained or inferred from the online behavior of a pupil, the use of applications by a pupil or PII concerning a pupil. The term does not include advertising to a pupil at an online location based upon the current visit to the location by the pupil or a single search query without the collection and retention of the online activities of a pupil over time.

ARTICLE II: DATA OWNERSHIP AND AUTHORIZED ACCESS

1. **Student Data Property of the District.** All Student Data transmitted to the Contractor pursuant to the Service Agreement is and will continue to be the property of the student and/or the District.

2. **Access to and Correction of Student Data.** In accordance with NRS 388.291(4), the Contractor shall allow a pupil who is at least 18 years of age and the parent or legal guardian of any pupil to review PII concerning the pupil that is maintained by the Contractor. The Contractor shall establish a process, in accordance with the Service Agreement and Nevada law, for the correction of such information upon the request of:

   a. A pupil who is at least 18 years of age;
   b. The parent or legal guardian of any pupil;
   c. A pupil's teacher; or
   d. The District.

3. **Third Party Request.** Should a Third Party, including law enforcement and government entities, request data held by the Contractor pursuant to the Services Agreement, the Contractor shall redirect the Third Party to request the data directly from the District. Contractor shall notify the District in advance of a compelled disclosure to a Third Party. Contractor shall share Student Data with law enforcement if required by law or court order.

4. **Transfer of Student Data to Subprocessors.** Contractor shall enter into written agreements with all Subprocessors performing functions pursuant to the Service Agreement, whereby the Subprocessors agree to protect Student Data in a manner consistent with the terms of this DPA. In addition to any disclosures required by NRS 388.292(2), Contractor shall provide the Distsrict with a description of the subprocessors or types of subprocessors who have access to the District's student data and shall update the list as new subprocessors are added.

ARTICLE III: DUTIES OF CONTRACTOR

1. **Privacy Compliance.** The Contractor shall comply with all applicable state and federal laws and regulations pertaining to data privacy and security, including FERPA, COPPA, PPRA and all other Nevada privacy statutes as they relate to the collection, use, storage, or sharing of student data including, but not limited to NRS 388.281 through 388.296, inclusive.

2. **Mandatory Disclosure.** In accordance with NRS 388.291(1), prior to implementation and use of the Services, the Contractor will provide a written disclosure to the District, in language that is easy to understand, which includes, without limitation:

   a. The types of Student Data collected by the Contractor and the manner in which such Student Data will be used; and
   b. A description of the plan for the security of Student Data which has been established by the Contractor pursuant to NRS 388.293.

   The written disclosure described above may be contained within the Service Agreement.

3. **Collection and Authorized Use.** Student Data, including persistent unique identifiers, shall be collected and used only in the manner and for the purposes stated in the Service Agreement and NRS 388.292(1), whichever is *most restrictive.* Contractor also acknowledges and agrees that it shall not re-disclose, sell, use or retain Student Data in contravention of NRS 388.292(5).

4. **Employee Obligation.** Contractor shall require all employees and subprocessors who have access to Student Data to comply with all applicable provisions of this DPA with respect to the data shared under the Service Agreement.

5. **Use of De-identified information.** De-identified information may be used by the Contractor for the purposes of development, research, and improvement of educational sites, services, or applications, as any other member of the public or party would be able to use de-identified data pursuant to 34 CFR 99.31(b). Contractor agrees not to attempt to re-identify de-identified Student Data.

6. **Disposition of Data.** Contractor shall dispose or delete all Student Data obtained under the Service Agreement when it is no longer needed for the purpose for which it was obtained. The duty to dispose of Student Data shall not extend to data that has been de-identified. Per NRS 388.292(3), upon receipt of a request from the District, the Contractor will immediately delete all Student Data and PII under its control within thirty (30) days of receipt of said request.

7. **Targeted Advertising.** Contractor shall not use Student Data to engage in targeted advertising within the Services or on any other internet website,

online service or mobile application if the targeted advertising is based upon any information acquired from use of the Services.

8. **Additional Acceptable Uses of Student Data.** Per NRS 388.292(6), Contractor is prohibited from using Student Data for any secondary use not described in this DPA, *except* for the purposes of:

    a. Adaptive learning or providing personalized or customized education;
    b. Maintaining or improving the Services;
    c. Recommending additional content or services within the Services;
    d. Responding to a request for information by a pupil;
    e. Soliciting feedback regarding the Services;
    f. Performing required or authorized research;
    g. Allowing an authorized pupil or parent/guardian to download, transfer, or otherwise maintain Student Data; and
    h. For advertising, marketing and development in accordance with NRS 388.295.

ARTICLE IV: DATA PROVISIONS

1. **Data Security.** The Contractor agrees to abide by and maintain adequate data security measures, consistent with standards and best practices within the educational technology industry, and to protect Student Data from unauthorized disclosure or acquisition by an unauthorized person. These measures shall include, but are not limited to:

    a. **Passwords and Employee Access.** Contractor shall secure usernames, passwords, and any other means of gaining access to the Services or to Student Data. The Contractor shall only provide access to Student Data to employees or contractors that are performing the Services.
    b. **Security Protocols.** Both parties agree to maintain security protocols that meet industry standards in the transfer or transmission of any data, including ensuring that data may only be viewed or accessed by parties legally allowed to do so. The Contractor shall maintain all data obtained or generated pursuant to the Service Agreement in a secure digital environment and not copy, reproduce, or transmit data obtained pursuant to the Service Agreement, except as necessary to fulfill the purpose of data requests by the District.
    c. **Security Technology.** Contractor shall employ internet industry standard measures to protect data from unauthorized access while the data is stationary or in transit. The service security measures shall

include server authentication and data encryption. Contractor shall host data pursuant to the Service Agreement in an environment using a firewall that is updated according to industry standards.

   d. **Audit Rights.** Upon reasonable notice, and at the request of the District, the District or the District's designee may audit the Contractor to verify compliance with the Service Agreement and/or this DPA.

2. **Data Breach.** In the event that the Contractor discovers that Student Data has been accessed or obtained by an unauthorized individual, Contractor shall provide notification to the District within a reasonable amount of time of the incident, not to exceed seventy-two (72) hours.

ARTICLE V: MISCELLANEOUS

1. **Term.** The Contractor shall be bound by this DPA for the duration of the Service Agreement or so long as the Contractor maintains any Student Data.

2. **Termination.** In the event that either party seeks to terminate this DPA, they may do so by mutual written consent so long as the Service Agreement has lapsed or has been terminated. The District shall have the right to terminate the DPA and the Service Agreement in the event of a material breach of the terms of this DPA.

3. **Effect of Termination.** If the Service Agreement is terminated, the Contractor shall destroy all of the District's data pursuant to Article III, Section 6 above.

4. **Priority of Agreements.** This DPA shall govern the treatment of Student Data in order to comply with privacy protections, including those found in FERPA and all applicable privacy statutes identified in this DPA. In the event there is conflict between the DPA and the Service Agreement, the DPA shall apply and take precedence. Except as described in this paragraph, all other provisions of the Service Agreement shall remain in effect.

5. **Notice.** All notices or other communication required or permitted to be given hereunder must be in writing and given by personal delivery, e-mail transmission (if contact information is provided for the specific mode of delivery), or first-class mail, postage prepaid, sent to the designated representatives below:

The designated representative for the District for this DPA is:

    Name: Mack Robinson

    Title: Director of Information Technology

    Contact Information:

        Elko County School District

        850 Elm Street

        Elko, Nevada 89801

        775-738-5196

        mrobinson@ecsdnv.net

The designated representative for the Contractor for this DPA is:

    Name: _____

    Title: _____

    Contact Information:

        _____

        _____

        _____

6. **Entire Agreement.** This DPA constitutes 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.

7. **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.

8. **Governing Law, Venue and Jurisdiction.** THIS DPA WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEVADA, WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES. EACH PARTY CONSENTS AND SUBMITS TO THE SOLE AND EXCLUSIVE JURISDICTION TO THE STATE AND FEDERAL COURTS OF NEVADA FOR ANY DISPUTE ARISING OUT OF OR RELATING TO THIS DPA, THE SERVICE AGREEMENT OR THE TRANSACTIONS CONTEMPLATED THEREBY.

9. **Authority.** Contractor represents that it is authorized to bind itself to the terms of this DPA, including confidentiality and destruction of Student Data and any portion thereof contained herein, all related or associated institutions, individuals, employees or contractors who may have access to the Student Data and/or any portion thereof, or may own, lease or control equipment or facilities of any kind where the Student Data and portion thereof stored, maintained or used in any way. Contractor agrees that any purchaser of the Contractor shall also be bound to this DPA.

10. **Waiver.** No delay or omission of the District to exercise any right hereunder shall be construed as a waiver of any such right and the District reserves the right to exercise any such right from time to time, as often as may be deemed expedient.

11. **Successors Bound.** This DPA is and shall be binding upon the respective successors in interest to Contractor 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.

12. **Waiver or Modification Prohibited.** A person or governmental entity may not waive or modify any right, obligation or liability set forth in NRS 388.281 to 388.296, inclusive. Any condition, stipulation or provision in the Service Agreement or this DPA which seeks to do so or which in any way conflicts with the provisions of NRS 388.281 to 388.296, inclusive, is against public policy and is void and unenforceable.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

[ATTACHED TO DATA PRIVACY AGREEMENT DATED _____, 20___]

IN WITNESS WHEREOF, the parties have executed this Data Privacy Agreement as of the last day noted below.

	District:	**Contractor:**
SIGN:	_____	_____
PRINT:	_____	_____
TITLE:	_____	_____
DATE:	_____	_____