IDAHO DEPARTMENT OF EDUCATION SPECIAL TERMS AND CONDITIONS FOR CLOUD SERVICES

1.   Subscription. During the term of the Agreement, the IDE may access and use the Contractor's service described in the functional and technical specifications set forth in the Agreement and the service's documentation (the "Specifications"), including without limitation all software included in and used to provide the service (the "Service").

2.   Definitions. Unless the context clearly requires otherwise, the definitions set forth in the IDE General Terms and Conditions shall apply to terms used in these IDE Special Terms and Conditions for Cloud Services. In addition, the following terms shall have the following meanings when used in these IDE Special Terms and Conditions for Cloud Services:

2.1.   "Anonymize" means removal of Personal Information and any information reasonably likely to identify a company or other business entity; provided such revised data does not include and is not subject to any key.

2.2.   "Personal Information" means information that identifies, relates to, describes, is reasonably capable of being associated with, could reasonably be used to infer information about, or could reasonably be linked, directly or indirectly, with an individual person or household.

2.3.   "IDE Data" means all information processed or stored through the Service by IDE or on IDE's behalf. IDE Data includes, without limitation, information provided by the IDE's employees and other users and by other third parties, other information generated through use of the Service by or on the IDE's behalf, and copies of all such information rendered onto paper or other non-electronic media. The Contractor recognizes and agrees that IDE Data may contain Personal Information and Student Data as defined in the IDE General Terms and Conditions, even if the presence of such information or data is not disclosed and even if such information or data is not labeled or otherwise identified.

2.4.   "Update" means an enhancement, repair, patch, or fix to the Service.

3.   Data Ownership and License. The Contractor recognizes and agrees that the IDE possesses and retains all rights, title, and interest in and to IDE Data, and the Contractor's use and possession thereof is solely on the IDE's behalf. The IDE hereby grants the Contractor a limited license to reproduce and otherwise manage IDE Data during the Term solely as specifically authorized below in these IDE Special Terms and Conditions for Cloud Services.

4.   Service Failure or Damage. In the event of failure of or damage to the Service caused by the Contractor, the Contractor shall restore the Service within twenty-four (24) hours after the failure or damage is sustained, unless otherwise specified in the Agreement, or agreed to in writing by the IDE.

5.   Uptime Guarantee. The Service shall be available twenty-four (24) hours per day, seven (7) days per week, and three hundred sixty-five (365) days per year (excepting reasonable downtime for maintenance).

6.   Updates. The Contractor shall give a minimum twenty-four (24) hour advance written notice (or as otherwise identified in the Agreement) to the IDE of any Updates that may impact availability or performance of the Service. The Contractor must provide Updates to the IDE at no additional cost when Contractor makes such Updates generally available to its users. No Update or other change to the Service may decrease or otherwise negatively impact the Service's functionality or adversely affect the IDE's use of or access to the Service.

7.   Use and Disclosure of Data. The Contractor may access and use IDE Data solely as necessary to provide the Service to the IDE, and unless it receives the IDE's prior written consent, the Contractor: (1) shall not access or use IDE Data for any purpose other than to provide the Service; and (2) shall not give any third party access to IDE Data, except subcontractors subject to section 17 (Employees and Subcontractors) of these IDE Special Terms and Conditions for Cloud Services. Notwithstanding the provisions above of this section, the Contractor may disclose IDE Data as required by applicable law or by proper legal or governmental authority. The Contractor shall give the IDE prompt notice of any such legal or governmental demand and reasonably cooperate with the IDE in any effort to seek a protective order or otherwise to contest such required disclosure, at the IDE's expense. No revision of the Contractor's privacy policy will alter the IDE's rights and remedies in these IDE Special Terms and Conditions for Cloud Services.

8.   Aggregate/Anonymized Data. Notwithstanding section 7 (Use and Disclosure of Data) of these IDE Special Terms and Conditions for Cloud Services, the IDE hereby authorizes the Contractor: (1) to Anonymize IDE Data and to combine it with data from other customers into a new aggregate dataset; and (2) to use such Anonymized IDE Data as a component of such new aggregate dataset for any legal business purpose, including without limitation for distribution to third parties. Without limiting the generality of the requirements for Anonymized data below, the Contractor shall: (a) implement technical safeguards that prohibit reversal of Anonymization of IDE Data; (b) implement business processes that specifically prohibit such reversal or recreation; (c) make no attempt to achieve such reversal; and (d) implement reasonable business processes to prevent inadvertent release of Anonymized IDE Data.

9.   Injunction and Enforcement. The Contractor agrees that: (1) no adequate remedy exists at law if it fails to perform or breaches any of its obligations in these IDE Special Terms

and Conditions for Cloud Services; (2) it would be difficult to determine the damages resulting from its breach of these IDE Special Terms and Conditions for Cloud Services, and such breach would cause irreparable harm to the IDE; and (3) a grant of injunctive relief provides the best remedy for any such breach, without any requirement that the IDE prove actual damage or post a bond or other security. The Contractor waives any opposition to such injunctive relief or any right to such proof, bond, or other security. The Contractor's obligations in these IDE Special Terms and Conditions for Cloud Services (without limitation) apply likewise to the Contractor's successors, including without limitation to any trustee in bankruptcy. (This section does not limit either party's right to injunctive relief from breaches not listed.)

10.   Privacy and Security Law Compliance. The Contractor shall comply with all applicable laws and regulations governing the Contractor's access to, use of, and handling of IDE Data.

11.   Approved Region and Data Centers. The Contractor shall not transfer IDE Data (or allow its subcontractors to transfer IDE Data): outside the United States unless it receives the IDE's prior written consent.

12.   IDE Access. The IDE may access and copy any IDE Data in the Contractor's possession at any time. The Contractor shall reasonably facilitate such access and copying promptly after the IDE's request, provided the Contractor may charge its reasonable then-standard fees for any such access and copying or for any related deconversion of data.

13.   Legal Requests. The Contractor shall notify the IDE upon receipt of any electronic discovery, litigation holds, discovery searches, or expert testimony related to IDE Data or which in any way might reasonably require access to IDE Data. The Contractor shall not respond to subpoenas, service of process, or other legal requests related to the IDE without first notifying and obtaining the approval of the IDE, unless prohibited by law from providing such notice.

14.   Deletion. Except as required by applicable law, the Contractor shall not erase IDE Data or any copy thereof without the IDE's prior written consent. Further, the Contractor shall: (1) halt IDE Data deletion promptly if the IDE informs the Contractor that any IDE Data is subject to electronic discovery or otherwise relevant to potential litigation; (2) at such times as the IDE may request (including without limitation as a result of Consumer Requests made mandatory by applicable law), promptly erase all IDE Data from all systems under the Contractor's control and direct and ensure erasure by any and all of its subcontractors that have access to IDE Data; and (3) within thirty (30) days of termination (including without limitation expiration) of the Agreement, erase all IDE Data in the Contractor's possession or control, including without limitation in the possession or control of its subcontractors, subject to the Contractor's rights above (if any) in section 8 (Aggregate/Anonymized Data) of these IDE Special Terms and Conditions for Cloud Services. In erasing IDE Data as required

by the Agreement, the Contractor shall leave no data readable, decipherable, or recoverable on its computers or other media or those of its subcontractors, using the best erasure methods commercially feasible. Promptly after any erasure of IDE Data or any part of it, the Contractor shall certify such erasure to the IDE in writing.

15.   General Security. Without limiting the generality of its obligations elsewhere in these IDE Special Terms and Conditions for Cloud Services, the Contractor shall exercise commercially reasonable efforts to prevent unauthorized exposure or disclosure of IDE Data.

16.   InfoSec Program. the Contractor shall maintain, implement, and comply with a written data and information security program (the "InfoSec Program") that requires administrative, technical, and physical safeguards appropriate: (1) to protect the security and confidentiality of IDE Data; (2) to protect against anticipated threats or hazards to the security or integrity of IDE Data; and (3) to protect against unauthorized access to or use of IDE Data. The Contractor shall likewise ensure that the InfoSec Program includes and requires compliance with the following (without limitation): (4) guidelines on the proper disposal of IDE Data after it is no longer needed to carry out the purposes of the Agreement, consistent with the requirements section 14 (Deletion) of these IDE Special Terms and Conditions for Cloud Services; (5) access controls on electronic systems used to maintain, access, or transmit IDE Data; (6) access restrictions at physical locations containing IDE Data; (7) encryption of electronic IDE Data consistent with then-current nationally recognized encryption standards; (8) least privilege principles for access to IDE Data, supplemented either by dual control procedures or segregation of duties; (9) regular testing and monitoring of electronic systems accessing or storing IDE Data; and (10) procedures to detect actual and attempted attacks on or intrusions into the systems containing or accessing IDE Data. The Contractor shall review the InfoSec Program and all other IDE Data security precautions regularly, but no less than annually, and update them to comply with applicable laws, regulations, technology changes, and best practices.

17.   Employees and Subcontractors. The Contractor shall not permit any of its employees, subcontractors, or subcontractor employees to access IDE Data except to the extent that such individual or company needs access to facilitate the Service and is subject to a reasonable written agreement with the Contractor, or in case of employees, a reasonable written employment policy protecting such data, with terms consistent with those of these IDE Special Terms and Conditions for Cloud Services. Further, the Contractor shall not allow any individual to access IDE Data except to the extent that he or she has received a clean report with regard to each of the following:

17.1.   Verifications of education and work history;

17.2.   A seven (7)-year all residence criminal offender record information check; and

17.3.   A seven (7)-year federal criminal offender record information check. (A clean

report refers to a report with no discrepancies in education or work history and no criminal investigations or convictions related to felonies or to crimes involving identity theft or other misuse of sensitive information.)

However, subsections 17.2 and 17.3 do not apply to the extent that applicable law forbids the required record information check, provided the Contractor notifies the IDE of such restriction. Without limiting the generality of the Contractor's obligations related to subcontractors and their employees, the Contractor shall exercise reasonable efforts to ensure that each subcontractor complies with the terms of the Agreement related to IDE Data. As between the Contractor and the IDE, the Contractor shall pay any fees or costs related to each subcontractor's compliance with such terms.

18.   Audits. The Contractor shall retain a certified public accounting firm to perform an annual audit of the Service's data protection features and to provide a SOC 2 Type II report, pursuant to the then-current standards of the American Institute of Certified Public Accountants (the "AICPA"). If the AICPA revises its relevant reporting standards, the Contractor shall retain such accounting firm to provide the report that then most resembles a SOC 2 Type II report. In addition, the Contractor shall annually conduct its own internal security audit and address security gaps. The Contractor shall give the IDE a copy of the most current report from each audit listed above in this section within thirty (30) calendar days of the effective date of the Agreement and thereafter annually within thirty (30) business days of completion of thereof.

19.   IDE Testing. If requested by the IDE, the Contractor shall, on a quarterly basis: (1) permit security reviews by the IDE on systems storing or processing IDE Data and on the Contractor policies and procedures relating to the foregoing, including without limitation the InfoSec Program; and (2) permit testing of all security processes and procedures during the term of the Agreement, including without limitation penetration tests. Notwithstanding the foregoing, the Contractor is not required to permit any review or inspection that may compromise the security of the Contractor's other customers' data.

20.   Audit and Test Results. Any report or other result generated through the tests or audits required by section 18 (Audits) or 19 (IDE Testing) of these IDE Special Terms and Conditions for Cloud Services will be the Contractor's Confidential Information pursuant to section 5 (Confidentiality) of the IDE General Terms and Conditions. If any audit or test referenced above uncovers deficiencies or identifies suggested changes in the Contractor's provision of the Service, the Contractor shall exercise reasonable efforts promptly to address such deficiencies and changes, including without limitation by revising the InfoSec Program.

21.   Data Incidents. The Contractor shall implement and maintain a program for managing unauthorized disclosure of, access to, or use of IDE Data (a "Data Incident"). In case of a Data Incident, or if the Contractor suspects a Data Incident, the Contractor shall: (1) promptly, and in any case within twenty-four (24) hours, notify the IDE by telephone, in person, or by other

real-time, in-person communication; (2) cooperate with the IDE and law enforcement agencies, where applicable, to investigate and resolve the Data Incident, including without limitation by providing reasonable assistance to the IDE in notifying injured third parties; and (3) otherwise comply with applicable laws governing data breach notification and response, including Idaho Code section 28-51-105. In addition, if the Data Incident results from the Contractor's breach of the Agreement or negligent or unauthorized act or omission, including without limitation those of its subcontractors or other agents, the Contractor shall (a) compensate the IDE for any reasonable expense related to notification of consumers and (b) provide one (1) year of credit monitoring service to any affected individual. The Contractor shall give the IDE prompt access to such records related to a Data Incident as the IDE may reasonably request, and such records will be the Contractor's Confidential Information pursuant to section 5 (Confidentiality) of the IDE General Terms and Conditions; provided the Contractor is not required to give the IDE access to records that might compromising the security of the Contractor's other customers. This section does not limit the IDE's other rights or remedies, if any, resulting from a Data Incident.

22.   <u>Warranties</u>. The Contractor warrants that:

22.1.   During the term of the Agreement, the Service will perform materially as described in the Specifications;

22.2.   The Contractor is the owner of the Service and of each and every component thereof, or the recipient of a valid license thereto;

22.3.   The Contractor has and will maintain the full power and authority to provide the Service described in the Agreement (a) without the further consent of any third party and (b) without conditions or requirements not set forth in the Agreement;

22.4.   The Service is the Contractor's own original work, without incorporation of text, images, software, or other assets created by third parties, except to the extent that the IDE consents in writing;

22.5.   The Contractor employs and will employ industry standard or better protections to prevent unauthorized disclosure of or access to personally identifiable information the IDE provides to the Service;

22.6.   The Contractor will comply with those laws governing the privacy and security of such information and generally applicable to data processors in the jurisdictions in which the Contractor does business;

22.7.   The Contractor will perform professional services in a professional and workmanlike manner;

22.8. The Contractor has the full right and authority to enter into, execute, and perform its obligations under the Agreement and no pending or threatened claim or litigation known to the Contractor would have a material adverse impact on its ability to perform as required by the Agreement;

22.9. The Service and any media used to distribute it contain no viruses or other computer instructions or technological means intended to disrupt, damage, or interfere with the use of computers or related systems;

22.10. The Service will comply with all applicable laws, including without limitation federal, national, state, provincial, and local; and

22.11. The Service does not infringe, misappropriate, or otherwise violate any intellectual property right or other right of any third party.

23. <u>Breach of Warranty of Function</u>. In case of breach of the warranty in subsection 22.1, the Contractor shall: (a) repair the Service; (b) replace the Service with a software or service of substantially similar functionality; or (c) if such attempts do not succeed after thirty (30) days, refund all amounts paid by the IDE for the Software, in which case the IDE shall promptly cease all use of the Service. The preceding sentence, in conjunction with the IDE's right to terminate the Agreement where applicable, states the IDE's sole remedy and the Contractor's entire liability for breach of the warranty in subsection 22.1.

24. <u>Breach of Intellectual Property Warranties</u>. In case of breach of the warranties in subsection 22.2 or 22.3, the Contractor, at its own expense, shall promptly:

24.1. Secure for the IDE the right to continue using the Service;

24.2. Replace or modify the Service to make it non-infringing, provided such modification or replacement does not materially degrade any functionality listed in the Specifications; or

24.3. If such remedies are not commercially practical in the Contractor's reasonable opinion, refund the fee paid for the Service for every month remaining in the term of the Agreement following the date after which the IDE ceases using the Service.

If the Contractor exercises its rights pursuant to subsection 24.3, the IDE shall promptly cease all use of the Service. This section, in conjunction with the IDE's right to terminate the Agreement where applicable, states the IDE's sole remedy and the Contractor's entire liability for breach of the warranties in subsections 22.2 and 22.3.

25.   <u>Breach of Professional Services Warranty</u>. In case of breach of the warranty in subsection 22.7, the Contractor, at its own expense, shall promptly re-perform the professional services in question. The preceding sentence, in conjunction with the IDE's right to terminate the Agreement where applicable, states the IDE's sole remedy and the Contractor's entire liability for breach of the warranty in subsection 22.7.