

EDUCATION CODE SECTION 49073.1 AMENDMENT TO
PURCHASING AGREEMENT
BETWEEN
PALOS VERDES PENINSULA UNIFIED SCHOOL DISTRICT
AND
MobyMax.COM

This Amendment ("Amendment") to the Purchasing Agreement by and between PALOS VERDES PENINSULA UNIFIED SCHOOL DISTRICT, a public school district duly organized and existing under Chapter 1 of Division 3 of Title 2 of the Education Code of the State of California ("District") and MobyMax.COM ("Vendor"), is hereby made and entered into as of July 18, 2018 ("Effective Date") as follows:

WHEREAS, Vendor provides online digital instructional software for vocabulary, spelling, phonics, writing, and language arts;

Code;

WHEREAS, as a California public school district, the District is subject to the Education

WHEREAS, Vendor is a "third party" under Education Code section 49073.1(6), which defines "third party" as a provider of digital educational software or services, including cloudbased services, for the digital storage, management, and retrieval of pupil records;

WHEREAS, Education Code section 49073.1 requires that any contract for the provision of services entered into between District and Vendor contain provisions specified in sections (b)(1) through (b)(9) of Education Code section 49073.1;

WHEREAS, the District and Vendor desire to amend the terms in their Agreement that will satisfy the requirements of Education Code section 49073.1.

NOW THEREFORE, DISTRICT AND VENDOR AGREE TO THESE TERMS IN COMPLIANCE WITH EDUCATION CODE SECTION 49073.1:

1. Ownership and Control of Pupil Records. Pupil records shall continue to be the property of and under the control of the District. For purposes of this Amendment and the Agreement, "pupil records" means both any information directly related to a pupil that is maintained by the District and information acquired directly from the pupil through the use of instructional software or applications assigned to the pupil by a teacher or other District employee. For purposes of this Amendment and the Agreement, "pupil records" does not mean deidentified information, including aggregated deidentified information, used by Vendor to improve educational products for adaptive learning purposes and for customizing pupil learning; to demonstrate the effectiveness of Vendor's products in the marketing of those products; or for the development and improvement of educational sites, services, or applications. For purposes of this Amendment and the Agreement, "deidentified

information” means information that cannot be used to identify an individual pupil.

1. 2. Ownership and Control of Pupil-Generated Content. Pupils may retain possession and control of their own pupil-generated content, or may transfer pupil-generated content to a personal account by notifying the District’s **Assistant Superintendent, Educational Services/Designee** in writing of such request. The District will provide a written request to Vendor’s authorized representative and Vendor shall return the pupil-generated content in a format acceptable to the District within five (5) days of receiving the District’s request. For purposes of this Amendment and the Agreement, “Pupil generated content” includes essays, research reports, portfolios, creative writing, music or other audio files, photographs, but does not include pupil responses to a standardized assessment where pupil possession and control would jeopardize the validity and reliability of that assessment.
3. Use of Pupil Records. Vendor shall not use any information in the pupil records for any purpose other than those required or specifically permitted by this Amendment and the Agreement.
4. Review of Pupil Records. A parent, legal guardian, or pupil who has reached the age of 18 may review personally identifiable information in the pupil’s records and correct erroneous information by notifying the District’s **Assistant Superintendent, Educational Services/Designee** in writing of such request. The District will meet with parent, legal guardian, or pupil who has reached the age of 18 to review and correct any information in the pupil’s records. The District will notify Vendor of the need to review pupil records and or make corrections to any pupil records in writing. Vendor shall provide such records and/or correct such errors within five (5) days of receipt of written notice. Vendor shall cooperate with the District to review and/or correct pupil records.
5. Security and Confidentiality of Pupil Records. Vendor agrees to hold pupil records in strict confidence. Vendor shall not use or disclose pupil records received from or on behalf of District except as permitted or required by this Amendment and the Agreement, as required by law, or as otherwise authorized in writing by District. Vendor agrees that it will protect the pupil records it receives from or on behalf of District according to commercially acceptable standards and no less rigorously than it protects its own confidential information. Vendor will designate and train responsible individuals, to ensure the security and confidentiality of pupil records. Vendor shall develop, implement, maintain and use appropriate administrative, technical and physical security measures to preserve the confidentiality, integrity and availability of all electronically maintained or transmitted pupil records received from or on behalf of District. Pupil records shall not be stored or transmitted outside of the United States.
These measures shall be extended by contract to all subcontractors used by Vendor.
6. Breach Notification Process. Vendor, within one (1) business day of discovery, shall report to District any use or disclosure of pupil records not authorized by this Amendment and the Agreement or in writing by the District. Vendor’s report shall

1. identify: (i) the nature of the unauthorized use or disclosure; (ii) the pupil records used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure, (iv) what Vendor has done or shall do to mitigate any effect of the unauthorized use or disclosure, and (v) what corrective action Vendor has taken or shall take to prevent future similar unauthorized use or disclosure. Vendor shall provide such other information, including a written report, requested by District. In the event of an unauthorized disclosure of a pupil's records, affected parents, legal guardians, or pupils who have reached the age of 18 will be notified in writing and provided with details and next steps to address the specific breach. Compliance with these requirements shall not, in itself, absolve Vendor of liability in the event of an unauthorized disclosure of pupil records.
7. Retention and Destruction of Pupil Records. Vendor certifies that a pupil's records shall not be retained or available to Vendor upon completion of the term of the Agreement. At the termination of the Agreement, pupil records in the possession of Vendor shall be returned and/or destroyed. Upon termination, cancellation, expiration or other conclusion of the Agreement, Vendor shall return all pupil records to District in a format acceptable to District, or if return is not feasible as determined by District in written notice to Vendor, destroy any and all pupil records. Vendor shall not destroy any pupil records without express written permission of District. Vendor shall comply with any litigation hold or order to preserve pupil records.
8. Compliance with Applicable Laws. The District and Vendor will jointly ensure compliance with the federal Family Educational Rights and Privacy Act (20 U.S.C. Sec. 1232g) through following the confidentiality provisions as set forth in this Amendment and the Agreement, as well as applicable District Board policies. The parties acknowledge and agree that the District is subject to federal and local laws relating to the protection of personally identifiable information of students ("PII"), including FERPA, and that Vendor is obtaining such PII as a "school official" under Section 99.31 of FERPA for the purpose of providing the services hereunder. In addition to FERPA, Vendor shall comply with all federal, State and local laws, rules, regulations and ordinances that are now or may in the future become applicable to Vendor; the services being provided by Vendor; Vendor's business, equipment and personnel engaged in operations covered by this Amendment and/or the Agreement; and the protection of pupil records and PII, including but not limited to Education Code section 49060 *et seq.*, the Children's Online Privacy Protection Act (COPPA) and the Student Online Personal Information Protection Act (SOPIPA). Vendor certifies that it is familiar with these laws, as well as any other applicable requirements for the storage and transmission of pupil records and Vendor will comply with all such requirements.
9. Prohibition on Targeted Advertising. Vendor shall not use PII in pupil records to engage in targeted advertising.
1. 10. Insurance and Indemnity. Vendor shall defend, indemnify, and hold

harmless ("Indemnify") the District, its trustees, officials, directors, officers, employees, and agents from and against all liabilities, losses, expenses, claims, actions, or judgments (including attorney fees) recovered or made against the District for any damage, injury, or death to persons or damage to property caused by the negligent or intentional acts or omissions of Vendor, its officers, employees, agents, or subcontractors related to Vendor's performance under this Contract. Vendor's Indemnification extends to conditions created by this Contract or based upon violation of any statute, ordinance, or regulation. This provision is in addition to any common law or statutory liability and indemnification rights available to the District. Vendor's Indemnification of the District shall not apply to damage, injury, or death caused by the sole negligence or willful misconduct of the District, its officers, directors, employees, or agents. The District will promptly notify Vendor in writing of any such claim or demand to indemnify and shall cooperate with Vendor in a reasonable manner to defend such claim.

Vendor and its subcontractors shall insure its activities in relation to this agreement and keep in force and maintain the following:

- A. Commercial General Liability insurance with limits of no less than \$1,000,000 per occurrence covering against bodily injury, property damage, and personal and advertising injury liability arising out of the alleged or actual omission, act or negligence of Vendor in the performance of the obligations under this Agreement.
- B. Professional Liability insurance with limits of no less than \$1,000,000 per occurrence insuring against liability connected with the performance of "professional services" as defined by this Agreement.
- C. Additional Insured Endorsement: The liability policies referenced in (A) shall be endorsed to name the District, its Board, officers, agents and employees as an additional insured. Vendor shall furnish a Certificate of Insurance and endorsements needed to evidence compliance with all listed insurance requirements upon execution of this Agreement.

11. Termination. If District reasonably determines in good faith that Vendor has materially breached any of its obligations under this Amendment or the Agreement, District, in its sole discretion, shall have the right to provide Vendor with written notice of a fifteen (15) day period to cure the breach. If Vendor fails to cure a breach within that period of time, District may terminate the Agreement immediately. If, in its sole discretion, District determines that cure is not possible, District may provide written notice of immediate termination of the Agreement.

1. 12. Effect of Amendment. If any provisions of this Amendment to the Agreement conflict or are otherwise contrary to the original terms of the Agreement, the terms of this Amendment prevail.

Except as specifically modified herein, all other terms and conditions contained in the Agreement between the District and Vendor shall remain unchanged and in full force and effect.

Dated this 18th day of July, 2018.

Kimberly Fricker, Ed.D
Assistant Superintendent Educational Services
Palos Verdes Peninsula U S D



MobyMax.com
Authorized Representative

Date: _____

Date: June 12, 2018

Exhibit “A”

Terms of Service & Privacy Policy

Terms of Use

1. Introduction

LoginWizard will be referred to as “us,” “we,” or “our” in the following terms of use. This page describes the terms on which **LoginWizard.com** offers you access to the information we have included on our website.

By using our website, you are essentially agreeing to comply with the Terms of Service set forth below, as well as any additional terms and conditions set forth in our [Privacy Policy](#). You additionally agree to follow all applicable domestic and international laws, statutes, ordinances, and regulations. “You” in this agreement includes any user of our website, in all capacities.

2. Terms

You agree to provide us with a valid email address and full name whenever you leave a comment on our website or send us a message. You also agree to the use of your personally identifiable information in accordance with our Privacy Policy. Please note that you may not collect or harvest any personally identifiable information from LoginWizard.com. You must be above the legal age of 21 to navigate this website, or at least of legal age in your country of residence.

You are prohibited from violating any law, statute, ordinance, or regulation. You shall not create liability for us or cause us to lose any of the services of our ISPs.

You shall not hack LoginWizard.com, nor perform any other activity that may damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data, or personal information. You must not perform any action to interrupt, destroy, or limit the functionality of any computer software, hardware, or telecommunications equipment related to the functioning of this website.

You are allowed to link the home page or posts from LoginWizard.com to any website you own or control, provided that it does not compete commercially with LoginWizard.com, and it does not maliciously criticize or otherwise injure us, and is in compliance with all applicable laws and intellectual property and other legal rights.

Such a link may not be an endorsement of any other site(s) by us. You shall not link directly or indirectly to any materials to which you do not have a right to link or include, nor may you modify another website so as to falsely imply that it is associated with LoginWizard.com.

You understand and agree that you download or otherwise obtain material or data through the use of LoginWizard.com at your own discretion and risk, and that you will be solely responsible for any damages to your computer system or loss of data that results from the download of such

material or data.

You must not use, copy, collect, reproduce, alter, distribute, create derivative works based upon, publish, sell, publicly display, or otherwise exploit any information or content displayed on our website for any commercial purposes or to the extent that such action(s) would constitute copyright infringement, injure, or otherwise violate the intellectual property or proprietary rights of the Website or any other third party, except with the prior written consent of the Login Wizard Team or the appropriate third party.

In some instances, LoginWizard.com may allow you to download or print content from the site. In such instances, you may utilize such content for your personal use as instructed, as long as it is for non-commercial use only. By doing so, you essentially acknowledge that you do not acquire any ownership rights.

You are strictly prohibited from harassing any user or post any obscene, insulting, or pornographic content on the website, through the comment system or in any other ways.

You agree to notify the Login Wizard team of any unauthorized or improper use of LoginWizard.com, or any other known or suspected breach of security. You agree to fully cooperate with the Login Wizard Team to investigate any suspected or unusual activity that is in breach of these Terms of Use.

3. Conditions

We reserve the right to update this Agreement at any time. Please note that any updated version will supersede all of its preceding versions. It is entirely up to you to keep track of the most recent version of this document. You need to be aware of the fact that continued use of LoginWizard.com directly implies that you accept and agree to all such changes.

We reserve the right, at any time, to remove, modify, or discontinue, temporarily or permanently, any content or portion of LoginWizard.com, for any reason, with or without notice. We shall not be liable to you or any third party for any modification, suspension, or termination of the site. We have no responsibility or liability to you or any third party for the storage or deletion of, or the failure to store or delete, any of the content you provide.

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Login Wizard and the team which operates the website will not be required to treat any submissions to LoginWizard.com as confidential, and will not be required to provide any compensation or consideration, or be liable for any copying, reproduction, modification, adaptation, translation, collection, compilation, recompilation, derivative works or materials, or any publication, distribution, display, disclosure, sale, licensing, or other use or commercial exploitation, of any ideas or other content submissions, or any tangible or intangible subject matter similar to, or using, incorporating, derived from, or based on, any submission, in whole or in part.

We reserve the right to suspend, terminate, or refuse your use of this website at any time, for any reason. We additionally reserve the right to establish and periodically change general practices and

limits concerning the use of our site.

Occasionally, we may choose to provide links to other websites or resources. However, please note that this does not imply that we have any relationship or connection to these websites, their operators, nor any of their affiliates. Because we have no control over such websites or resources, we are not responsible for the availability of such websites or resources, and are also not responsible or liable for any content, advertising, products or other materials available from such websites or resources.

Login Wizard shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by, or in connection with the use of or reliance on any such content, goods or services available on or through any such websites and resources, or as the result of the presence of such websites and resources, including marketing partners, on our website or located through its use.

Our site is provided to you “as is” and on an “as available” basis. You may not rely on any information and opinions expressed on LoginWizard.com for any purpose. It is your responsibility at all times to evaluate the accuracy, timeliness, completeness, or usefulness of any content on Login Wizard. Under no circumstances will we be liable for any loss or damage caused by your reliance on any website content. We specifically disclaim all warranties and conditions of any kind, whether express, implied, or statutory, including but not limited to the implied warranties of merchantability, fitness for a particular purpose, and non-infringement.

We disclaim any warranties regarding the security, reliability, timeliness, and performance of our website. We disclaim any warranties for any information or advice obtained through our website. We disclaim any warranties for services or goods received through or advertised on our website, or received through any links provided on our website, as well as for any information or advice received through any links provided through our website. In addition, no advice or information (written or oral) obtained by you from us shall create any warranty.

4. Intellectual Property and Proprietary Rights

You acknowledge that LoginWizard.com and all content herein, including any derivative works and confidential or proprietary information, is protected by copyrights, trademarks, service marks, patents, trade secrets, proprietary rights, and other intellectual properties owned by Login Wizard, its affiliates, and other parties that have licensed their material to LoginWizard.com and the team operating it.

Any use or display of LoginWizard.com and/or any of its content in any manner other than what is expressly permitted by these Terms of Use and other applicable laws is strictly prohibited without our written permission or the permission of the appropriate intellectual property owner. Except for the limited use that is granted to you in these Terms of Service, you do not acquire any right, title, or interest in LoginWizard.com or any of its content. Any rights not expressly granted in these Terms of Service are expressly reserved.

Login Wizard respects the intellectual property of others, and we ask our users to do the same. We may, in appropriate circumstances and at our discretion, remove, or disable access to, material that infringes on the rights of others, and terminate access to our website. If you believe that your work

has been copied in a way that constitutes copyright infringement, or your intellectual property rights have been otherwise violated, please contact us at info@LoginWizard.com or via our [Contact](#) page. We will promptly respond to any claims of copyright infringement.

For more information about our collection of personal information, please view our [Privacy Policy](#) as well.

Privacy Policy

/Privacy Policy

The Login Wizard team greatly values the trust and the safety of all our website visitors, and therefore, we are committed to keeping your personal and non-personal data safe, in accordance with the current laws and regulations. Please note that we only gather data which is absolutely necessary to the website's good functioning, and we guard it carefully against all misuse.

We would like our readers to know that the Login Wizard team that owns and operates this platform takes the privacy and protection of your personal information very seriously. We know that the manner in which your personal information is used and shared is extremely important, and that you trust us to exercise the utmost care with it.

This Privacy Policy explains exactly how the personal information you provide us with, or which is collected in connection with your use of LoginWizard.com, is collected and used. Please feel free to contact us at info@LoginWizard.com if you have any comments, questions, or feedback, about this or any other matter, at any time. You can also get in touch with us via our [Contact](#) page.

1. Personally Identifiable Information

We would like to clarify that personally identifiable information is collected every time a website visitor (user) contacts us through our main, contact page, or comments on our posts. The personal details you will be asked to share with us in the above-mentioned circumstances are your full name and e-mail address. If you do not feel comfortable disclosing your real name and e-mail address, you can use an alias.

If you want us to remove any of your previous comments, as well as delete your personal information altogether, send us an e-mail at info@LoginWizard.com, and this will be done in no longer than 30 days.

Please note that Login Wizard uses personal information to respond to messages, questions, and requests from users. We do not use your contact details for advertising or promotional purposes, unless we have your consent.

2. Non-personally Identifiable Information

All non-personally identifiable information we store is used for one or both of the following purposes:

- To personalize and develop your experience on our site, as the information we collect helps us respond to your individual needs better.
- To improve our website based on the feedback we receive from you.

We do not share the information we collect with third party websites, and we respect the users' legal rights, using their information in accordance with current laws and regulations.

3. Browser and IP Information; Cookies

Each time you visit LoginWizard.com, we may indirectly collect some information regarding your browser type and Internet Protocol (“IP”) address, and store such information through the use of “cookies”. A “cookie” is a piece of data stored on your computer that is tied to virtual information about you. The type of information collected includes the URL you came from and the URL you then go to, your browser information, and your IP address.

Cookies enable LoginWizard.com to confirm that a user is online, to provide easier browsing, and to improve the Website. We do NOT use cookies to collect information that could be used to identify you personally, such as your e-mail address. If you wish, you can set your browser, by editing its options, to accept or reject all cookies, or to notify you each time a cookie is set. However, this may interfere with the quality of your browsing experience.

4. Other Websites; Third Parties

This privacy policy applies only to LoginWizard.com. We may include links to other websites in our articles, which we do not control. These other websites may place their own cookies or other files on your computer, collect data, or solicit personally identifiable information from you.

The LoginWizard.com Team expressly disclaims responsibility for the privacy practices of such other websites. When you leave our Website and enter other sites and hubs, we encourage you to read their privacy practices as well, especially if you have any security concerns.

5. Changes to This Privacy Policy

LoginWizard.com may update its privacy policy from time to time, at our sole discretion. Any such minor changes will be posted on this page. In order to make sure you are up to date with any changes, we recommend revisiting this Privacy Policy as often as possible.

We will use any information collected directly or indirectly only in accordance with the Privacy Policy under which the information was collected (in the case in which it will change due to external factors such as new laws or legal updates).

6. Questions

Should you have any questions or suggestions regarding our Privacy Policy, please don’t hesitate to contact us at info@LoginWizard.com.

This Privacy Policy is governed by the terms of the Login Wizard [Terms of Use](#) Agreement, which we encourage you to read as well.