

EDUCATION CODE SECTION 49073.1 AMENDMENT TO
TERMS & CONDITIONS OF USE AGREEMENT
BETWEEN
PALOS VERDES PENINSULA UNIFIED SCHOOL DISTRICT AND
EXPLORE LEARNING, LLC (Reflex Math)

This Amendment (“Amendment”) to the **TERMS & CONDITIONS OF USE AGREEMENT** 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 **EXPLORE LEARNING, LLC** (“Vendor”), dated **June 23, 2019** (“Agreement”) (a true and correct copy of which is attached hereto as Exhibit “A”), is hereby made and entered into as of June 23, 2019 (“Effective Date”) as follows:

WHEREAS, Vendor provides *licensing use agreement to access Explore Learning, LLC’s Reflex Math program*.

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

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 cloud-based 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.

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 ***Account 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 ***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.

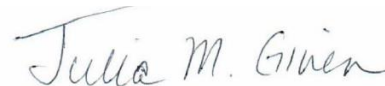
6. Breach Notification Process. Vendor, within one (1) business day of discovery, shall report to District any use or disclosure of pupil records not authorized by this Amendment and the Agreement or in writing by the District. Vendor's report shall identify: (i) the nature of the unauthorized use or 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.
10. Insurance and Indemnity. Vendor shall obtain and maintain for the duration of the Agreement One Million Dollars (\$1,000,000.00) in Cyber Liability Insurance to cover Security, Privacy, Business Interruption, Cyber Extortion, and Denial of Service. Vendor shall indemnify, defend and hold the District harmless from all claims, liabilities, damages or judgments involving a third party, including District's costs and attorney's fees, which arise as a result of such unauthorized disclosures or misuse of pupil records, excluding those claims, liabilities, damages or judgments arising from the sole active negligence or willful misconduct of District.
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.
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 23th day of June, 2019.

Linsey Gotanda, Ed.D.
Assistant Superintendent, Educational Services

Palos Verdes Peninsula Unified School District



Explore Learning
Julia Given

Authorized Representative

EXHIBIT “A”

Agreement is on the following pages.

Terms & Conditions of Use Agreement

THIS AGREEMENT is made and entered into as of the June 23, 2019 ("Effective Date") by and between the ExploreLearning, LLC ("ExploreLearning"), and Palos Verdes Peninsula USD. ("You," "Palos Verdes," or "District").

WHEREAS, Palos Verdes desires to purchase certain software licenses from ExploreLearning.

NOW THEREFORE, in consideration of the terms and conditions set forth below and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agrees as follows:

PLEASE READ THESE TERMS AND CONDITIONS CAREFULLY BEFORE ACTIVATING YOUR EXPLORELEARNING GIZMOS ACCOUNT.

By creating an account or subscribing to ExploreLearning.com, you agree to the terms and conditions of use set forth below. This Agreement is a legal document that governs the terms and conditions of your subscription to ExploreLearning.com. Please read this Agreement carefully. By activating your account, you acknowledge your agreement with these terms and conditions, as such terms and conditions may be amended from time to time. You are also agreeing to accept a non-exclusive, non-assignable right and license to use ExploreLearning Gizmos. ExploreLearning reserves the right to change these terms and conditions at any time. ExploreLearning Gizmos are offered and sold on a subscription basis; however certain areas are available to visitors without cost on a trial or demonstration basis.

REGISTERING AND USING EXPLORELEARNING

As part of the registration process, each User will select a password and user name ("User Name"). You agree to provide us with accurate, complete, and updated Account information. Failure to do so will constitute a breach of this Agreement, which may result in immediate termination of your rights to use the Account. You may not (a) select or use a User Name of another person with the intent to impersonate that person, (b) use a name subject to the rights of any other person without authorization, or (c) use a User Name that we, in our sole discretion, deem inappropriate or offensive. You are responsible for maintaining the confidentiality of your User Name and password, and you will be responsible for all uses of your User Name and password, whether or not authorized by you. In order to use the Website, you need to obtain a pass code (consisting of a username and a password. Pass codes are issued only to individual subscribers and learning institutions or teachers (collectively, "Users") who have registered. Pass codes that have been issued to learning institutions or teachers may not be shared. They may only be used by the administrators, teachers and students to whom they are assigned. Users remain at all times solely and fully responsible for the proper use of pass codes issued hereunder. Individual subscribers may share their access codes with their, spouse, children or grandchildren ("Immediate Family") only. Users remain at all times solely and fully responsible for the proper use of pass codes issued hereunder. Individual subscribers who intend to share their pass codes with Users of their Immediate Family under 13 years of age agree to supervise the minors' use of the Website.

USING YOUR ACCOUNT

All Users are entirely liable for all activities conducted through that Account, and are responsible for ensuring that any other person who uses the Account is aware of, and complies with, the terms of this Agreement. Each person who uses the Account agrees to be bound by the terms of this Agreement, whether or not such person is a Member. You will notify us of any known or suspected unauthorized use(s) of your Account, or any known or suspected breach of security, including loss, theft, or unauthorized disclosure of your User Name and password. We will have no liability for any circumstances arising from the unauthorized use of a User Name, Member's password or your Account. Any fraudulent, abusive, or otherwise illegal activity on your Account may be reported to appropriate law-enforcement agencies by us.

If you have reason to believe that your Account is no longer secure (for example, in the event of a loss, theft, or unauthorized disclosure or use of your User Name, password, or any credit, debit, or charge card number stored on the Service), you must promptly change your password and notify us of the problem by sending an email to support@ExploreLearning.com.

Browsers, Equipment and Accessibility

Users are solely responsible for obtaining and maintaining equipment and software, including without limitation operating system and browser software, that conforms to ExploreLearning's specifications in effect, as revised from time to time, in order to connect to, communicate with and use the ExploreLearning website.

ExploreLearning shall use commercially reasonable efforts to maintain the accessibility of the Website at all times, but may discontinue some or all of the Website features or services at any time, with or without notice, in order to perform hardware or software maintenance and/or upgrades or problem resolution. Additionally, to the extent that use of the Website is prevented, hindered, delayed or made

impracticable by reason of force majeure (including any cause that cannot be overcome by reasonable diligence and without unreasonable expense) or due to ExploreLearning's compliance with its commercially reasonable standard operating procedures or with any laws, rules, policies, practices or regulations of any industry association or organization, or any jurisdiction or governmental authority, ExploreLearning and its affiliates will be excused from such delay or performance.

Communications Authorities

Use of the Website is subject to the requirements, rules, regulations, operations and procedures of any relevant public communications authorities and/or private communications carriers. ExploreLearning (and its affiliates) shall not be liable for any losses, costs, liabilities, damages, expenses and/or claims arising from or relating to the delay, alteration or interruption of telecommunications between Users and ExploreLearning caused by the failure for any reason of any communications facilities which User or ExploreLearning (or any of affiliate) has contracted from any public communications authority or private communications carrier.

BILLING POLICIES

1. All subscriptions must be pre-paid annually.
 2. Payment Options: You must pay in US Dollars via Purchase Order, Credit Card (Visa or MasterCard), check or money order, or wire transfer.
 - i. Purchase Orders (US Residents Only): Mail (payable to ExploreLearning) to ExploreLearning, 110 Avon Street, Charlottesville, VA 22902 or FAX to (877) 829-3039.
 - ii. Credit Card Billing: ExploreLearning will bill your designated credit card (Visa or MasterCard only) and is subject to any restrictions imposed by your credit card issuer. If payment cannot be charged to your credit card or your charge is returned to ExploreLearning for any reason, including charge back, ExploreLearning reserves the right to either suspend or terminate your access and account, thereby terminating this Agreement and all obligations of ExploreLearning hereunder, and thereafter to collect any amount due.
 - iii. Checks or Money Orders: Mail (payable to ExploreLearning) to ExploreLearning, 110 Avon Street, Charlottesville, VA 22902.
 - iv. Wire Transfers: Call (866) 882-4141 option 2 or e-mail support@ExploreLearning.com for more information
- Revision of Subscription Fees. ExploreLearning reserves the right to change the amount of, or basis for determining, any fees or charges for the ExploreLearning service, and to institute new fees or charges effective upon prior notice, by posting such changes on the ExploreLearning site, and by sending e-mails to Users.
- Account Termination. Purchasers may terminate accounts at any time by sending a signed request to ExploreLearning via e-mail sales@ExploreLearning.com, fax to (877) 829-3039 or mail to ExploreLearning Customer Service, 110 Avon Street, Charlottesville, VA 22902.
- Refund Policy. We take great pride in supplying a quality product at a reasonable price. In general, it is our policy to provide a refund for anyone who has been unable to use the site. A refund must be requested in writing within 30 days of purchase of your account and the account cannot have been accessed numerous times. Email a refund request to sales@ExploreLearning.com or fax a request to (877) 829-3039. Please include the username, full name of subscriber, product, and reason you are requesting a refund. We will not be able to refund a license after 30 days, or for an account with heavy usage, except for problems accessing the service. Refunds will be issued according to the original payment method.

Billing Security.

All communication between our servers, the acquiring bank, and the issuing bank are encrypted to assure server authenticity and invulnerability to man-in-the-middle attacks.

ADMINISTERING THE SERVICE

ExploreLearning may change, modify, suspend, or discontinue any aspect of the Website at any time, including, without limitation, access policies, the availability of any Website feature, hours of availability, content, data, or software or equipment needed to access the Website. We may also impose limits on certain features or restrict your access to parts or all of the Website without notice or liability. We reserve the right to change prospectively the amount of, or basis for determining, any fees or charges for the Website, and to institute new fees or charges for access to portions of the Website effective upon prior notice to Users by posting such changes on its web site or by sending e-mails to Users. You hereby agree to pay all charges to your account, including applicable taxes, in accordance with billing terms in effect at the time the fee or charge becomes payable.

We may, from time to time, have special events, software or content available on the Service, which will be subject to additional terms and conditions that will be made available for your review. You agree that if you or any User uses or accesses such special events, software or other content, such additional terms and conditions will be binding.

We reserve the right, at our sole discretion, to change, modify, add, supplement or delete any of the terms and conditions of this Agreement at any time. We will post notification of any such changes on the Service, or give notice of them to you via e-mail, postal mail or by pop-up screen, at our sole discretion. If any future changes to this Agreement are unacceptable to you or cause you to no

longer be in compliance with this Agreement, you may terminate your Account. The continued use of the Service by you following your receiving a notice of changes to this Agreement will mean you accept any and all such changes.

POSTING MATERIAL BY USERS

ExploreLearning may permit its Users to post materials on the Website. Users shall not upload to, distribute through or otherwise publish, via e-mail, message boards or otherwise, any content which is libelous, defamatory, obscene, threatening, invasive of privacy or publicity rights, abusive, illegal or otherwise objectionable, that would constitute a criminal offense, violate the rights of any third party, or that would give rise to liability or violate any law. ExploreLearning reserves the right to suspend or terminate any screen name it reasonably believes is being used by an adult, is being used for commercial purposes, or is otherwise in violation of this Agreement. By uploading materials to any message boards, lesson plans or other posting areas, or otherwise submitting any materials to us, you automatically grant (or warrant that the owner of such rights has expressly granted) us a perpetual, royalty-free, irrevocable, non-exclusive right and license to use, reproduce, modify, adapt, publish, translate or create derivative works from and distribute such materials or incorporate such materials into any form, medium, or technology now known or later developed throughout the World. In addition, you warrant that all so-called "moral rights" in those materials have been waived.

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Users should be aware that the Internet contains content, goods and services that you may find obscene, improper, hurtful or otherwise offensive and that may not be suitable for certain users of the Website. Because of the nature of the Internet, we cannot control where children may go while using the Website. Parents, guardians or teachers should supervise children when using the Website and the Internet at all times.

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DISCLAIMERS

DISCLAIMER OF WARRANTIES

YOU EXPRESSLY UNDERSTAND AND AGREE THAT:

YOUR USE OF THE SERVICE IS AT YOUR SOLE RISK. THE SERVICE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. EXPLORELEARNING EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

EXPLORELEARNING MAKES NO WARRANTY THAT (I) THE SERVICE WILL MEET YOUR REQUIREMENTS, (II) THE SERVICE WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE, (III) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICE WILL BE ACCURATE OR RELIABLE, (IV) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY YOU THROUGH THE SERVICE WILL MEET YOUR EXPECTATIONS, (V) ANY ERRORS IN THE SOFTWARE WILL BE CORRECTED.

NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM EXPLORELEARNING OR THROUGH, OR FROM, THE SERVICE SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THE TOS.

INFORMATION CREATED BY THIRD PARTIES THAT YOU MAY ACCESS ON THE WEBSITE OR THROUGH LINKS IS NOT ADOPTED OR ENDORSED BY EXPLORELEARNING AND REMAINS THE RESPONSIBILITY OF SUCH THIRD PARTIES.

LIMITATION OF LIABILITY

YOU EXPRESSLY UNDERSTAND AND AGREE THAT EXPLORELEARNING SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES (EVEN IF EXPLORELEARNING HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), RESULTING FROM: (I) THE USE OR THE INABILITY TO USE THE SERVICE; (II) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS AND SERVICES RESULTING FROM ANY GOODS, DATA, INFORMATION OR SERVICES PURCHASED OR OBTAINED OR MESSAGES RECEIVED OR TRANSACTIONS ENTERED INTO THROUGH OR FROM THE SERVICE; (III) UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS OR DATA; (IV) STATEMENTS OR CONDUCT OF ANY THIRD PARTY ON THE SERVICE; OR (V) ANY OTHER MATTER RELATING TO THE SERVICE..

INDEMNIFICATION AND INSURANCE

ExploreLearning 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 ExploreLearning, its officers, employees, agents, or subcontractors related to ExploreLearning's performance under this Contract. ExploreLearning'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. ExploreLearning'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 ExploreLearning in writing of any such claim or demand to indemnify and shall cooperate with ExploreLearning in a reasonable manner to defend such claim.

ExploreLearning 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 ExploreLearning 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. Workers Compensation insurance in accordance with California state law.

- D. Cyber Liability insurance with limits of no less than \$1,000,000 per occurrence to cover damages sustained by a third party from the unauthorized access to or theft of data, the unauthorized disclosure or use of personally identifiable information, Business Interruption, Cyber Extortion, and Denial of Services in connection with this Agreement. Such cyber liability policy shall cover consumer notification expenses, credit monitoring costs and any other liability, loss or expense of any nature whatsoever arising out of or related to the unauthorized access to or theft of data and the unauthorized disclosure or use of personally identifiable information connected, in whole or part, to this Agreement.
- E. Additional Insured Endorsement: The liability policies referenced in (A) and (D) shall be endorsed to name the District, its Board, officers, agents and employees as an additional insured. ExploreLearning shall furnish a Certificate of Insurance and endorsements needed to evidence compliance with all listed insurance requirements upon execution of this Agreement.

LINKS TO THIRD PARTY SITES

ExploreLearning may contain links to other websites operated by parties that are not affiliated with it. These links will let you leave ExploreLearning to visit websites not under ExploreLearning's control. ExploreLearning is not responsible for the contents of any linked website or any link contained in a linked website. We provide these links to you only as a convenience, and the inclusion of any link does not imply endorsement of the linked site by ExploreLearning.

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REMEDIES FOR BREACH

In the event that ExploreLearning determines, in its sole discretion, that a User has breached any portion of these terms and conditions, or has otherwise demonstrated inappropriate conduct, we reserve the right to (i) warn the User via e-mail that she or he has violated this Agreement; (ii) delete any content provided by the User (or anyone accessing User's account); (iii) discontinue the User's account and/or any other ExploreLearning service; (iv) notify and/or send content to and/or fully cooperate with the proper law enforcement authorities for further action; and/or (vi) take any other action that ExploreLearning deems appropriate.

MISCELLANEOUS

In the event any provision of this Agreement conflicts with the law or if any such provisions are held invalid by a court with jurisdiction over the parties to this Agreement, such provision will be deemed to be restated to reflect as nearly as possible the original intentions of the parties in accordance with applicable law, and the remainder of this Agreement will remain in full force and effect.

The laws of the State of California will govern this Agreement. The laws of the State of California will govern any dispute arising from the terms of this agreement or breach of this agreement and you agree to personal jurisdiction by the state and federal courts in Los Angeles, California.. ExploreLearning makes no representation that materials on ExploreLearning are appropriate or available for use in all locations. Those who choose to access ExploreLearning do so on their own initiative and are responsible for compliance with local laws, if and to the extent local laws are applicable. Materials from ExploreLearning are further subject to United States export controls. No materials from ExploreLearning may be downloaded or otherwise exported or re-exported (i) into (or to a national or resident of) Cuba, Iran, Iraq, Libya, North Korea, Syria or any other country to which the United States has embargoed goods; or (ii) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's Table of Deny Orders. By downloading or using the materials, you represent and warrant that you are not located in, under the control of, or a national or resident of any such country or on any such list.

The failure of either party to insist upon or enforce strict performance by the other party of any provision of this Agreement or to exercise any right under this Agreement will not be construed as a waiver or relinquishment to any extent of such party's right to assert or rely upon any such provision or right in that or any other instance, rather, the same will be and remain in full force and effect.

ExploreLearning may assign its rights and obligations under this Agreement and upon such assignment ExploreLearning may be relieved of any further obligation hereunder. You represent to ExploreLearning that you have the authority to subscribe to and/or use ExploreLearning according to the terms and conditions of this Agreement. The section titles in this Agreement are for convenience only and have no legal or contractual effect.

ACCEPTANCE

By using and/or subscribing to the Service, you hereby acknowledge that you have read and understand the foregoing Agreement, as may be amended or modified from time to time according to its terms, and agree to be bound by all of the terms and conditions hereof. You further specifically permit ExploreLearning to use the email entered during the registration process to deliver support, sales, and product information related to your Free Trial or paid subscription.

Privacy Policy

This site provides you with access to ExploreLearning's Data Management System. This system is an integral component of ExploreLearning's curriculum products and provides valuable reporting, instructional recommendations, and other resources used by teachers and other instructional leaders in conjunction with ExploreLearning's curriculum with the goal of improving student performance.

This statement describes the privacy and security practices ExploreLearning employs for this site. We have adopted these practices to protect you, the students, and the school district, and to enable each of us to comply with applicable legal requirements. Use of this site requires district acceptance of the practices outlined in this statement.

Two types of personally identifiable information are used on this site: your **personal data** and **student data**.

Your Personal Data

Collection: ExploreLearning collects information from you as you use this site. For example, you must enter certain personally identifiable information, including your name, e-mail address, and phone number. We use this information to verify your identity and prevent unauthorized access to your account and to contact you in connection with your use of this site.

In addition to the information you provide, ExploreLearning collects information about your use of this site through tracking, cookies, and log files, as described in our general [Terms of Use](#) statement.

Protection: Because you enter your personal data, you control its accuracy. If you discover that your personal data is inaccurate or if it changes, you may make corrections by notifying us at support@ExploreLearning.com or 888-399-1995. We will not share your personal data collected through this site with third persons without your consent. However, your personal data will be available to authorized users from your school district who have permission from the school district to access it. We will not use your personal data collected through this site for any purpose other than providing you with access to this site and the associated services. We will use the same security to protect your personal data that we use to protect student data collected through this site.

Student Data

As you use this site, you will enter student data or interact with student data that has already been entered. Federal law (the Family Educational Rights and Privacy Act, "FERPA") allows a school district to release student records to an organization that is "conducting studies for, or on behalf of, educational agencies or institutions for the purpose of developing, validating, or administering predictive tests... [or] improving instruction."

However, FERPA requires limitations on disclosure of those records and implementation of appropriate security measures to protect those records. To help your school district comply with FERPA, ExploreLearning has adopted certain practices, and requires that educators using this site fulfill certain responsibilities to safeguard student data. The following statement explains our practices and your responsibilities regarding the student data you enter on this site.

Additionally, ExploreLearning operates in compliance with the Children's Online Privacy Protection Act ("COPPA"). ExploreLearning will not knowingly collect or use personally identifiable information from anyone under 13 years of age.

Student Data Security and Confidentiality Statement

Purposes of Data Entry: You control what student data is entered on this site. Student data entered on this site should be limited to information that is relevant to the legitimate educational purpose of improving student performance. We will not ask you to enter, and you are instructed not to enter, data about students that is not relevant to this legitimate educational purpose.

Therefore, only a minimum amount of personally identifiable student data required for the setup of the system is requested. We require student first name, student last name, and student identification number. Additional data, not specific to the student, is also required to complete system setup, including the teacher first and last name, class name, grade level, and school name. Student demographic data, for the purposes of optional disaggregated reporting, is requested separately from the initial setup data and is obtained only with written permission from your district.

Use, Disclosure, and Storage: We will use the student data to provide the services to your school district. We will not keep the student data after you or the school district instructs us to delete it. You may not disclose or otherwise use the student data entered on this site for any unauthorized purposes.

We will only disclose student data to authorized employees or representatives of the school district, and will not knowingly disclose the student data to any third person without express written authorization. When, at the request of the district, we acquire assessment or other information, including personally identifiable student data, from a third party source we treat that information with the same confidentiality and security safeguards as though it were provided directly by the district. Additional agreements may be required by the third party to authorize transmission of data to ExploreLearning.

Your district may from time to time request that ExploreLearning provide student data to third parties of its choosing. We will do so with written authorization, which acknowledges that ExploreLearning is providing that data as your district's agent and that once the data is received by the third party, ExploreLearning no longer has any control over the use or disposition of the data.

We may also use aggregated data in our research, product development, and marketing. That aggregated, non-personally identifiable data (e.g., summary or statistical data) may be shared with third parties. However, we do not use personally identifiable student data to market any products or services directly to students or their parents.

In the event that ExploreLearning wishes, from time to time, to release aggregated data that identifies your school or school district by name, ExploreLearning will enter into a separate agreement with you to authorize release and publication.

Data Quality: You are responsible for keeping the student data that you enter accurate, complete and up-to-date. If you recognize that student data is inaccurate, incomplete, or out-of-date, you are responsible for correcting it. If you experience problems making corrections to student data, please notify us at support@ExploreLearning.com and we will assist you with making corrections.

Notification in the Event of Unauthorized Disclosure: ExploreLearning and the individual reporting the incident work with one another to determine if there is reasonable cause to believe that a security incident has occurred. In the event that there is evidence to suspect the occurrence of the incident, ExploreLearning will assemble a team of experts (the team), with an understanding of the related system design, architecture, and security to investigate and report on the incident. During the investigation, the team will gather reference data including logs, backups to better understand the impact of the incident as well as the vulnerabilities that may have been exploited.

Concurrently, ExploreLearning will notify the customer contact to inform them of the security issue and remediation efforts.

Security Safeguards: We are committed to protecting student data against unauthorized access, destruction, use, modification or disclosure. Protecting student data requires efforts from us and from you. We will implement reasonable and appropriate safeguards when collecting student data from you and when storing that student data in our database and you will observe our security safeguards and exercise reasonable caution when using this site.

Specific institutional and technological security safeguards include:

1. Only ExploreLearning employees who are authorized to handle student data are able to access the Data Management System. Key aspects of employee data security training include Designation of key leadership of product operations. Our operations leads are responsible for ensuring the maintenance of privacy measures consistent with corporate technical guidance. All Cambium employees are subject to corporate non-disclosure agreements, which include provisions to ensure that all employees and contractors agree that any confidential information we possess (including reference information) shall remain private to the company. Regular ethics training that includes continued emphasis on adhering to our business code of conduct that reinforces the agreements that have been made in the employment and/or work contracts.
2. Only school district employees and representatives that the district authorizes as school officials are permitted to access the system. It has a hierarchical permissions system. This means:
 - a. A teacher will only be able to see data for his/her class.
 - b. A Principal, Coach, or other authorized School User will be able to view all data at a given school.
 - c. An authorized district-level employee, such as an Instructional Coordinator or Superintendent, will be able to see all data across the district.
3. Each authorized school official is given a User Name and Password valid only for the duration of the academic year, including a summer program if applicable. You must safeguard your User Name and Password, and not permit any unauthorized access to student data entered or kept in ExploreLearning's system.
4. Upon written request by the district, ExploreLearning will destroy any student data for districts who no longer participate in an ExploreLearning program. ExploreLearning will provide written verification that the data has been destroyed as requested.
5. If a district has not used any ExploreLearning product for a period of ten years, ExploreLearning will provide written notice that the student data pertaining to their district will be destroyed, unless the district requests the records be kept. Upon destruction, ExploreLearning will provide written verification that the data has been destroyed.
6. ExploreLearning uses industry standard server and network hardware and software to ensure that data is protected from unauthorized access or disclosure.

When you use this site, you consent to our privacy practices and agree to accept the responsibilities outlined in this statement.

IN WITNESS WHEREOF, the parties acknowledge that each has fully read and understood this Agreement, and, intending to be legally bound thereby, executed this Agreement on the date set forth above.

EXPLORE LEARNING, LLC



PALOS VERDES PENINSULA USD

Linsey Gotanda, Ed.D.

Assistant Superintendent, Educational Services

June 23, 2019

Alignment with CA AB-1584 Regarding Pupil Records

- (a) A local educational agency may, pursuant to a policy adopted by its governing board or, in the case of a charter school, its governing body, enter into a contract with a third party for either or both of the following purposes:**
- (1) To provide services, including cloud-based services, for the digital storage, management, and retrieval of pupil records.**
 - (2) To provide digital educational software that authorizes a third-party provider of digital educational software to access, store, and use pupil records in accordance with the contractual provisions listed in subdivision (b).**

ExploreLearning (contracted third party of local educational agency) provides web-based educational learning software. In doing so, we access certain pupil records, and we follow the provisions as identified in subdivision b (outlined below).

- (b) A local educational agency that enters into a contract with a third party for purposes of subdivision (a) shall ensure the contract contains all of the following:**
- (1) A statement that pupil records continue to be the property of and under the control of the local educational agency.**

Two types of personally identifiable information are used on ExploreLearning's site: student data and licensee personal data. Both forms of data are the property of and controlled by (including the accuracy of data) the local education agency (LEA).

- (2) Notwithstanding paragraph (1), a description of the means by which pupils may retain possession and control of their own pupil-generated content, if applicable, including options by which a pupil may transfer pupil-generated content to a personal account.**

ExploreLearning will use student data to provide the services to the licensee's LEA. ExploreLearning will not keep the student data after licensee or the LEA instructs us to delete it. Licensee may not disclose or otherwise use the student data entered on this site for any unauthorized purposes. An LEA may, from time to time, request that ExploreLearning provide student data to third parties of its choosing. ExploreLearning will do so with written authorization, which acknowledges that ExploreLearning is providing that data as the LEA's agent and that once the data is received by the third party, ExploreLearning no longer has any control over the use or disposition of the data.

- (3) A prohibition against the third party using any information in the pupil record for any purpose other than those required or specifically permitted by the contract.**

Our privacy policy (that is accepted by each licensee prior to use) states that student data entered on the site should be limited to information that is relevant to the legitimate educational purpose of improving student performance. ExploreLearning will not ask licensee to enter, and licensee is instructed not to enter, data about students that is not relevant to this legitimate educational purpose.

We will only disclose student data to authorized employees or representatives of the LEA and will not knowingly disclose the student data to any third person without express written authorization. When, at the request of the LEA, ExploreLearning acquires assessment or other information, including personally identifiable student data, from a third party source ExploreLearning treats that information with the same confidentiality and security safeguards as though it were provided directly by the LEA. Additional agreements may be required by the third party to authorize transmission of data to ExploreLearning.

Alignment with CA AB-1584 Regarding Pupil Records

(4) A description of the procedures by which a parent, legal guardian, or eligible pupil may review personally identifiable information in the pupil's records and correct erroneous information.

Licensee controls what student data is entered on the site, and as such, licensees are responsible for reviewing student information with eligible pupils, parents, and legal guardians. Student data entered on the site should be limited to information that is relevant to the legitimate educational purpose of improving student performance. We will not ask licensee to enter, and licensee is instructed not to enter, data about students that is not relevant to this legitimate educational purpose.

(5) A description of the actions the third party will take, including the designation and training of responsible individuals, to ensure the security and confidentiality of pupil records. Compliance with this requirement shall not, in itself, absolve the third party of liability in the event of an unauthorized disclosure of pupil records.

ExploreLearning's approach to ensure the provisions of (5) include the following:

- ExploreLearning designates key leadership roles for product management and operations. These leaders are responsible for ensuring the maintenance of privacy measures consistent with corporate technical guidance.
- All ExploreLearning employees are subject to corporate non-disclosure agreements, which include provisions to ensure that all employees (and contractors) agree that any confidential information (including reference information) shall remain private to ExploreLearning.
- ExploreLearning employees participate in regular ethics training that includes continued emphasis on adhering to our business code of conduct that reinforces the agreements that have been made in the employment and/or work contracts.

(6) A description of the procedures for notifying the affected parent, legal guardian, or eligible pupil in the event of an unauthorized disclosure of the pupil's records.

ExploreLearning's practice, should a breach of privacy occur, would be to contact the LEA to inform it of the particular situation. ExploreLearning would then rely upon the LEA to inform eligible pupils, parents, or legal guardians in accordance with their LEA's policies.

(7) (A) A certification that a pupil's records shall not be retained or available to the third party upon completion of the terms of the contract and a description of how that certification will be enforced.

(B) The requirements provided in subparagraph (A) shall not apply to pupil-generated content if the pupil chooses to establish or maintain an account with the third party for the purpose of storing that content pursuant to paragraph (2).

ExploreLearning will use student data to provide the services to the licensee's LEA. ExploreLearning will not keep the student data after licensee or the LEA instructs us to delete it. Licensee may not disclose or otherwise use the student data entered on this site for any unauthorized purposes. An LEA may from time to time request that ExploreLearning provide student data to third parties of its choosing. We will do so with written authorization, which acknowledges that ExploreLearning is providing that data as the LEA's agent and that once the data is received by the third party, ExploreLearning no longer has any control over the use or disposition of the data.

Alignment with CA AB-1584 Regarding Pupil Records

(8) A description of how the local educational agency and the third party will jointly ensure compliance with the federal Family Educational Rights and Privacy Act (20 U.S.C. Sec. 1232g).

FERPA requires limitations on disclosure of records and implementation of appropriate security measures to protect those records. To help LEAs comply with FERPA, ExploreLearning has adopted certain practices and requires that educators using this site fulfill certain responsibilities to safeguard student data:

- Only a minimum amount of personally identifiable student data required for the setup of the system is requested. ExploreLearning requires student first name, student last name, and student identification number. Additional data, not specific to the student, is also required to complete system setup, including the teacher first and last name, class name, grade level, and school name. Student demographic data, for the purposes of optional disaggregated reporting, is requested separately from the initial setup data and is obtained only with written permission from the licensee's LEA.
- Data Quality: Licensee is responsible for keeping student data that he/she enters accurate, complete and up-to-date. If he/she recognizes that student data is inaccurate, incomplete, or out-of-date, he/she is responsible for correcting it. If he/she experiences problems making corrections to student data, he/she is requested to notify ExploreLearning, and ExploreLearning will assist with making corrections.
- Security Safeguards: We are committed to protecting student data against unauthorized access, destruction, use, modification or disclosure. Protecting student data requires efforts from us and from licensees. We will implement reasonable and appropriate safeguards when collecting student data from licensee and when storing that student data in our database, and licensee will observe our security safeguards and exercise reasonable caution when using ExploreLearning's site.

Other FERPA-compliant measures are identified in 1–7 above.

Additionally, ExploreLearning operates in compliance with the Children's Online Privacy Protection Act ("COPPA"). ExploreLearning will not knowingly collect or use personally identifiable information from anyone under 13 years of age.

(9) A prohibition against the third party using personally identifiable information in pupil records to engage in targeted advertising.

In the event that ExploreLearning wishes to release aggregated data that identifies the licensee's school or LEA by name, ExploreLearning will enter into a separate agreement with the LEA or licensee to authorize release and publication. ExploreLearning may also use aggregated data in its research, product development, and marketing. That aggregated, non-personally identifiable data (e.g., summary or statistical data) may be shared with third parties. However, we do not use personally identifiable student data to market any products or services directly to students or their parents.

- (c) In addition to any other penalties, a contract that fails to comply with the requirements of this section shall be rendered void if, upon notice and a reasonable opportunity to cure, the noncompliant party fails to come into compliance and cure any defect. Written notice of noncompliance may be provided by any party to the contract. All parties subject to a contract voided under this subdivision shall return all pupil records in their possession to the local educational agency.**

ExploreLearning acknowledges and accepts this statement.

Alignment with CA AB-1584 Regarding Pupil Records

(d) For purposes of this section, the following terms have the following meanings:

- (1) **“Deidentified information”** means information that cannot be used to identify an individual pupil.
- (2) **“Eligible pupil”** means a pupil who has reached 18 years of age.
- (3) **“Local educational agency”** includes school districts, county offices of education, and charter schools.
- (4) **“Pupil-generated content”** means materials created by a pupil, including, but not limited to, essays, research reports, portfolios, creative writing, music or other audio files, photographs, and account information that enables ongoing ownership of pupil content. “Pupil-generated content” does not include pupil responses to a standardized assessment where pupil possession and control would jeopardize the validity and reliability of that assessment.
- (5) (A) **“Pupil records”** means both of the following:
 - (i) Any information directly related to a pupil that is maintained by the local educational agency.
 - (ii) Any information acquired directly from the pupil through the use of instructional software or applications assigned to the pupil by a teacher or other local educational agency employee.(B) **“Pupil records”** does not mean any of the following:
 - (i) Deidentified information, including aggregated deidentified information, used by the third party to improve educational products for adaptive learning purposes and for customizing pupil learning
 - (ii) Deidentified information, including aggregated deidentified information, used to demonstrate the effectiveness of the operator’s products in the marketing of those products.
 - (iii) Deidentified information, including aggregated deidentified information, used for the development and improvement of educational sites, services, or applications.
- (6) **“Third party”** refers to a provider of digital educational software or services, including cloud-based services, for the digital storage, management, and retrieval of pupil records.

ExploreLearning acknowledges and accepts these definitions.

- (e) If the provisions of this section are in conflict with the terms of a contract in effect before January 1, 2015, the provisions of this section shall not apply to the local educational agency or the third party subject to that agreement until the expiration, amendment, or renewal of the agreement.

ExploreLearning acknowledges and accepts this statement.

- (f) Nothing in this section shall be construed to impose liability on a third party for content provided by any other third party.

ExploreLearning acknowledges and accepts this statement.