

EDUCATION CODE SECTION 49073.1 AMENDMENT TO PURCHASE AGREEMENT
BETWEEN
PALOS VERDES PENINSULA UNIFIED SCHOOL DISTRICT AND
FLOCABULARY, INC

This Amendment ("Amendment") to the Purchase 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 **FLOCABULARY, INC.** ("Vendor"), dated **01/22/2020** ("Agreement") (a true and correct copy of which is attached hereto as Exhibit "A"), is hereby made and entered into as of **01/22**, 2020 ("Effective Date") as follows:

WHEREAS, Vendor provides *Flocabulary platform licenses*;

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 **Deputy Superintendent** in writing of such request. The District will provide a written request to Vendor's ***legal counsel, by sending an email to privacy@nearpod.com*** 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 **Deputy Superintendent** 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 (3) business days 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 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. Cyber Liability insurance with limits of no less than \$3,000,000 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.
- C. 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. 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.

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 23rd day of January, 2020.

Dr. Linsey Gotanda
Assistant Superintendent
Palos Verdes Peninsula Unified School District



Name: Emiliano Abramzon
Title: Co-CEO
Authorized Representative

EXHIBIT “A”

AGREEMENT



55 Washington Street
Suite 606
Brooklyn, NY 11201

(718) 852-0105
info@flocabulary.com

Flocabulary Lite Subscription Official Quote/Invoice

Date: 12/11/2019

Name: Christina Cocca

Email: nenas@pvpusd.net

Item Name	Cost	Quantity	Total
1 Year Flocabulary Classroom Access	\$120	1	\$120
Total Cost	\$120		

This quote expires on 3/11/2020. Please note that as of April 1, 2017, we no longer accept checks or purchase orders for Lite/individual subscriptions.

Any orders made after April 1, 2017, should be purchased individually online at www.flocabulary.com with a credit card or p-card.

Also note, the Flocabulary Lite Subscription does not include student access. Please don't hesitate to reach out with any questions!

All online subscriptions automatically renew for customer convenience. This can be canceled at any time within the account, or by contacting info@flocabulary.com.

By purchasing a Flocabulary license, you agree to the Flocabulary Terms of Use at <https://www.flocabulary.com/terms-of-use/> and Privacy Policy at <https://www.flocabulary.com/privacy-policy/> and you agree that no other terms shall apply unless you enter into a separate written agreement with Flocabulary.