

# Henderson ISD | TX | LASO 4 LIFT PLC Add On for Middle School | 26-27

A Contract For Henderson Ind School District

Prepared: 2026-02-25



This contract is submitted upon request of Henderson Ind School District and details a plan for Henderson ISD | TX | LASO 4 LIFT PLC Add On | 26-27, that can be further customized in collaboration between Henderson Ind School District and Engage! Learning, LLC., dba engage2learn (e2L).

## Project Details

### Deliverables

#### Additional Middle School PLC Support

- Internalization
- Lesson Rehearsal
- Coaching
- Observation and Feedback
- Workshops
- Data Analysis

## Fees and Expenses

Product Name	Package Total
e2L PLC Coaching	\$60,000.00
<b>Total</b>	<b>\$60,000.00</b>

The project will be billed based on the below schedule. these billing terms are not dependent on specific services being completed and all invoices are sent with net 30 payment terms.

- 50% billed in June 2026
- 50% billed in January 2027

*\*Any increase in the scope of services will be addressed in a separate contract agreement. Fees and expenses will be invoiced monthly and payment terms are on a Net 30 basis. Prices are subject to increase on an annual basis by the greater of 5% or the Consumer Price Index (CPI). The CPI will be based on the most recently published update prior to the annual contract renewal.*



<b>Accounts Payable (Name, email, telephone)</b>	
<b>Project Lead Contact (Name, email, telephone)</b>	
<b>GroweLab© Lead Contact (Name, title, email)</b>	
<b>Funding Source</b>	
<b>Fiscal Year End Date:</b>	
<b>PO#:</b> Please include Contract #Q-00716 on your PO.	
<b>Address of Licensor:</b> Engage! Learning, LLC. dba engage2learn P.O. Box 695 Portland TX 78374	<b>Address of Licensee:</b>



# SERVICES AGREEMENT

This Services Agreement, including any attached exhibits, and any ordering document (“**Order**”) or statement of work (“**SOW**”) attached hereto or referencing this Services Agreement (collectively, this “**Agreement**”) is between Engage! Learning, LLC, d/b/a Engage2Learn, together with its subsidiaries and affiliates (collectively, “**Engage**”) and the customer identified below (“**Customer**”) for Engage’s provision of certain software and related services to Customer. This Agreement is effective as of the date of last signature below (the “**Effective Date**”). Engage and Customer may each be referred to herein as a “**Party**” and collectively as the “**Parties.**”

This Agreement is the complete agreement between the Parties and replaces any prior or contemporaneous oral or written communications between the Parties concerning the subject matter of the relevant Order or SOW(s). There are no conditions, understandings, agreements, representations or warranties, express or implied, which are not specified herein. This Agreement may only be modified by a written document expressly stated for such purpose and executed by the Parties.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed. Each Party warrants and represents that its respective signatories whose signatures appear below have been and are on the date of signature duly authorized to execute this Agreement.

\_\_\_\_\_  
("Customer")

\_\_\_\_\_  
Engage! Learning, LLC, d/b/a engage2learn  
("Engage")

\_\_\_\_\_  
Name/Title

\_\_\_\_\_  
Matt Bachman, CFO, engage2learn  
Name/Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**PLEASE READ THESE STANDARD TERMS (THE “TERMS”) CAREFULLY. THIS WEBSITE, SOFTWARE SOLUTION, PLATFORM OR PORTAL AND ANY OTHER SIMILAR OFFERING OF ENGAGE, ITS AFFILIATES OR AGENTS (COLLECTIVELY, THE “PLATFORM”) AND THE INFORMATION ON IT ARE CONTROLLED BY ENGAGE. THESE TERMS GOVERN THE USE OF THE PLATFORM AND APPLY TO ALL USERS VISITING OR ACCESSING THE PLATFORM.**

**BY ACCESSING OR USING THE PLATFORM IN ANY WAY, INCLUDING USING THE SERVICES AND RESOURCES AVAILABLE OR ENABLED VIA THE PLATFORM (EACH A “SERVICE” AND COLLECTIVELY, THE “SERVICES”), BY CLICKING ON THE “I ACCEPT” BUTTON, COMPLETING THE REGISTRATION PROCESS, AND/OR BROWSING THE PLATFORM OR DOWNLOADING THE MOBILE APPLICATION (THE “APPLICATION”), YOU, “COMPANY,” REPRESENT THAT (1) YOU HAVE READ, UNDERSTAND, AND AGREE TO BE BOUND BY THE TERMS OF USE, AND (2) YOU HAVE THE AUTHORITY TO ENTER INTO THE TERMS PERSONALLY OR ON BEHALF OF THE ENTITY YOU HAVE NAMED AS THE USER, AND TO BIND THAT ENTITY TO THESE TERMS. IF YOU DO NOT AGREE TO BE BOUND BY THE TERMS OF USE, YOU MAY NOT ACCESS OR USE THE PLATFORM OR THE SERVICES.**

# Standard Terms and Conditions

## 1. Engage Responsibilities

- 1.1. Provision of the Service.** Subject to the terms and conditions of this Agreement and during the Term, Engage grants Customer a non-exclusive, non-transferrable and non-sublicensable right for its Authorized Users to access and use the Service solely for the benefit of Customer and its Authorized Users. Engage agrees to use commercially reasonable efforts to make the Service available 24 hours a day, 7 days a week, except for downtime which is not under Engage's control or planned downtime which Engage will use reasonable efforts to give Customer advanced notice of.
- 1.2. Updates and Upgrades.** The terms of this Agreement will also apply to updates and upgrades of the Service subsequently made available by Engage. Engage may update the functionality, user interfaces, usability, and Documentation from time to time in its sole discretion as part of its ongoing mission to improve the Service.
- 1.3. Protection of Customer Data; PHI.** Engage will maintain commercially reasonable administrative, physical, and technical safeguards designed to prevent unauthorized access to or use of Customer Data, in accordance with the our Privacy Policy which can be found on our website at <https://www.growelab.app/legal/privacy-policy>. The Parties agree that, if required by law, they will enter into Engage's Data Processing Agreement which can be found at attached to this Agreement.
- 1.4. Compliance with Laws.** Engage will comply with all laws applicable to Engage's provisioning of the Service generally (i.e., without regard to the specific nature of the Customer Data or Customer's particular use of the Service).
- 1.5. Support.** As part of the Service, Engage will provide Customer with Engage's standard maintenance and support, Documentation, and other online resources to assist Customer in its use of the Service.
- 1.6. Professional Services.** Engage will provide the Professional Services as set forth in detail in a SOW. Additional terms regarding Professional Services can be found attached to this Agreement.
- 1.7. Authorized Users.** Customer acknowledges that this Agreement, Customer, and its Authorized Users are subject to Engage's Terms of Use which can be found on our website at <https://www.growelab.app/legal/terms>. In the event of a conflict between this Agreement and the Terms of Use, the terms of this Agreement will prevail.

## 2. Access to and Use of the Service

- 2.1. Authorized Users.** Authorized User accounts cannot be shared or used by more than one Authorized User. Customer is responsible for maintaining the confidentiality of its logins, passwords, and accounts and for all activities that occur under Authorized User accounts.
- 2.2. Customer Responsibilities.** Customer will: (a) obtain any permissions and consents required for Engage to access Customer Data in connection with the Service; (b) be responsible for Authorized Users' compliance with this Agreement; (c) be responsible for the accuracy, appropriateness, and legality of Customer Data; (d) use commercially reasonable efforts to prevent unauthorized access to or use of the Service, and promptly notify Engage of any such unauthorized access or use; and (e) use the Services only in accordance with applicable laws and government regulations.
- 2.3. Usage Restrictions.** Customer may not: (a) make the Service available to, or use the Service for the benefit of, anyone other than Customer and the Authorized Users; (b) upload, post, transmit, or otherwise make available to the Service any content that (i) is unlawful or tortious, or (ii) Customer does not have a right to make available under any applicable law or under contractual or fiduciary relationships, or that infringes, misappropriates, or otherwise violates any intellectual property, privacy, publicity, or other proprietary rights of any person; (c) sublicense, resell, time share, or similarly exploit the Service; (d) upload, post, transmit, or otherwise make available any content or information designed to interrupt, interfere with, destroy or limit the functionality of any computer software or hardware or telecommunications equipment; (e) reverse engineer, modify, adapt, or

hack the Service, or otherwise attempt to gain unauthorized access to the Service or its related systems or networks; or (f) access the Service to build a competitive product or service.

**2.4. Third Party Products and Content.** If Customer enables Third Party Products and Content for use with the Service: (a) any use by Customer or its Authorized Users of such Third Party Products and Content is solely the responsibility of Customer and the applicable provider; (b) Engage does not guarantee, warrant, or offer support for any such Third Party Products and Content; (c) Customer acknowledges that the providers of those Third Party Products and Content may have access to Customer Data in connection with the interoperation of the Third Party Products and Content with the Service, and Engage will not be responsible for any use, disclosure, modification or deletion of such Customer Data.

### 3. Fees

- 3.1. Fees, Invoicing, and Payment.** Customer will pay all fees specified in the Order. Payment obligations are non-cancelable and, except as expressly set forth herein, fees paid are non-refundable and payable in United States dollars. All fees will be invoiced by Engage in accordance with the terms set forth in the Order. Except as set forth in the Order, full payment for invoices issued must be received within 30 days from Customer's receipt of the invoice. If any fees owed by Customer (excluding amounts disputed in reasonable and good faith) have not been paid by the applicable due date, Engage reserves the right to apply a finance charge of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is lower, and be reimbursed for all expenses of collection.
- 3.2. Taxes.** The fees are exclusive of, and Customer will be solely responsible for, all applicable taxes in connection with this Agreement, including any sales, use, excise, value-added, goods and services, consumption, and other similar taxes or duties (but excluding taxes based on Engage's net income). Should any payment for the services provided by Engage be subject to withholding tax by any taxing authority, Customer will reimburse Engage for such withholding tax.

### 4. Proprietary Rights

- 4.1. Engage Property.** Subject to the limited rights expressly granted to Customer hereunder, Engage reserves and retains, and as between Engage and Customer, Engage exclusively owns, all rights, title, and interest in and to the Service, including all modifications, derivative works, upgrades, and updates thereto, and all related intellectual property rights therein. No rights are granted by Engage hereunder other than as expressly set forth herein. If Customer or any Authorized User provides Engage any feedback or suggestions regarding the Service, then Customer grants Engage an unlimited, irrevocable, perpetual, sublicensable, royalty-free license to use any such feedback or suggestions for any purpose without any obligation or compensation to Customer or any Authorized User. Unless otherwise set forth in the Order, Engage retains exclusive ownership of all work product created by Engage in connection with its performance of Professional Services.
- 4.2. Customer Data.** Customer grants to Engage and its Affiliates a worldwide, non-exclusive, limited term license to access, use, copy, distribute, perform, and display Customer Data, and provide necessary access to third party service providers acting on Engage's behalf, such as Engage's hosting services provider, only: (a) to provide, maintain, and update the Service for Customer and Authorized Users; (b) to prevent or address service or technical problems or at Customer's request in connection with support matters; (c) as compelled by law; or (d) as expressly permitted in writing by Customer. Subject to the limited licenses granted herein, Engage acquires no right, title, or interest under this Agreement in or to any Customer Data.
- 4.3. De-identified Data.** Customer acknowledges and agrees that Engage may, during and after the Term, collect, use and analyze any de-identified information derived from the Customer Data (collectively, the "**De-identified Data**") for Engage's lawful business purposes, including to improve and enhance the Service and for other development, diagnostic, and corrective purposes in connection with the Service. Engage may disclose De-identified Data solely in aggregate form in connection with its business.

### 5. Confidentiality

- 5.1. Definition.** "Confidential Information" means all confidential information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure, including all copies thereof. Confidential Information of Customer includes Customer Data, Confidential Information of Engage includes the Service (including its software and content, other than Customer Data) and the work product created from its performance of any Professional Services, and Confidential Information of each Party includes the terms of this Agreement. However, Confidential Information will not include any information that: (a) is or becomes generally available to the public without breach of any obligation owed to the Disclosing Party; (b) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party; (c) is received from a third party without breach of any obligation owed to the Disclosing Party; or (d) was independently developed by the Receiving Party without use of or reliance on the Confidential Information of the Disclosing Party.

**5.2. Protection.** The Receiving Party will: (a) use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care); (b) not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement; and (c) except as otherwise authorized by the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to those of the Receiving Party's and its Affiliates' employees, contractors, and agents who need such access for purposes consistent with this Agreement and who are subject to confidentiality obligations at least as restrictive as those herein. The Receiving Party will provide prompt written notice to the Disclosing Party of any unauthorized use or disclosure of the Disclosing Party's Confidential Information. Upon request of the Disclosing Party during the Term, the Receiving Party will promptly return, or at the Disclosing Party's option destroy, any or all Confidential Information of the Disclosing Party in the Receiving Party's possession or under its control.

**5.3. Compelled Disclosure.** The Receiving Party may access or disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled access or disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's expense, if the Disclosing Party wishes to contest the access or disclosure.

## 6. Representations, Warranties, and Disclaimers

**6.1. Mutual Representations.** Each Party represents that: (a) it is duly organized, validly existing, and in good standing under its jurisdiction of organization and has the right to enter into this Agreement; and (b) the execution, delivery, and performance of this Agreement are within the corporate powers of such Party and have been duly authorized by all necessary corporate action on the part of such Party, and constitutes a valid and binding agreement of such Party.

**6.2. Engage Warranties.** Engage warrants that the Service will perform materially in accordance with the applicable Documentation.

**6.3. Customer Warranty.** Customer warrants that: (a) it has obtained and will maintain all rights, consents, and permissions necessary for Customer to make available the Customer Data to Engage for its use as contemplated herein; and (b) Customer will not share with Engage (whether through Professional Services or through the cloud-based platform Services) any personally identifiable information (as that term is defined in various privacy laws) of students and/or minors.

**6.4. Disclaimer.** EXCEPT FOR THE EXPRESS WARRANTIES PROVIDED IN SECTION 6.2, THE SERVICE AND ALL RELATED COMPONENTS AND INFORMATION ARE PROVIDED ON AN "AS IS" BASIS WITHOUT ANY WARRANTIES OF ANY KIND, AND ENGAGE EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. ENGAGE DOES NOT WARRANT THAT THE SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE.

## 7. Indemnification

**7.1. Engage Indemnification.** Engage will defend Customer and its Affiliates from and against any lawsuit or proceeding brought by a third party to the extent alleging that Customer's use of the Service as permitted hereunder infringes or misappropriates such third party's intellectual property rights, and Engage will indemnify Customer and its Affiliates for any damages and any reasonable attorneys' fees finally awarded against them arising from such lawsuit or proceeding; provided, however, that Engage will have no liability under this Section to the extent any such lawsuit or proceeding arises from: (a) Customer Data or Third Party Products and Content; (b) Customer's or any of its Affiliates' or Authorized Users' negligence, misconduct, or breach of this Agreement; or (c) any modification or combination of the Service that is not performed or approved by Engage or specifically set out in the Documentation.

**7.2. Customer Indemnification.** Unless prohibited by law, Customer will defend Engage and its Affiliates from and against any lawsuit or proceeding brought by a third party to the extent alleging that any Customer Data infringes, misappropriates, or otherwise violates the rights, including privacy and publicity rights, of any other party, or that Customer's or any Authorized User's particular use of the Service violates applicable law, and Customer will indemnify Engage and its Affiliates for any damages and any reasonable attorneys' fees finally awarded against them arising from such lawsuit or proceeding; provided, however, that Customer will have no

liability under this Section to the extent any such lawsuit or proceeding arises from Engage's or any of its Affiliates' negligence, misconduct, or breach of this Agreement.

- 7.3. Procedures.** The indemnified party will provide the indemnifying party with: (a) prompt written notice of any matter that is subject to indemnification hereunder; (b) the right to assume the exclusive defense and control of any such matter (provided that the indemnified party may participate in the defense at its own expense); and (c) cooperation with any reasonable requests assisting the indemnifying party's defense of such matter. The indemnifying party may not settle any such lawsuit or proceeding without the indemnified party's prior written consent.
- 7.4. Exclusive Remedy.** This Section states the indemnifying party's sole liability, and the indemnified party's exclusive remedy, for any type of claim described in this Section.

## 8. Limitation of Liability

- 8.1. Exclusion of Certain Damages.** IN NO EVENT WILL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY OR TO ANY OTHER PARTY FOR ANY LOST PROFITS OR REVENUES, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER, OR PUNITIVE DAMAGES, WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.
- 8.2. Liability Cap.** EXCEPT FOR CUSTOMER'S LIABILITY FOR ITS PAYMENT OBLIGATIONS OR A PARTY'S LIABILITY FOR ITS INDEMNIFICATION OBLIGATIONS, ITS BREACH OF ITS CONFIDENTIALITY OBLIGATIONS, OR FOR ITS WILLFUL MISCONDUCT (COLLECTIVELY, THE "**EXCLUDED CLAIMS**"), IN NO EVENT WILL EITHER PARTY'S AGGREGATE LIABILITY RELATING TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT ACTUALLY PAID BY CUSTOMER TO ENGAGE HEREUNDER IN THE 12 MONTHS PRECEDING THE DATE ON WHICH THE FIRST CLAIM GIVING RISE TO LIABILITY AROSE (THE "**GENERAL LIABILITY CAP**").
- 8.3. Excluded Claims.** Notwithstanding Section 8.2, in no event will Engage's aggregate liability for all Excluded Claims exceed three times (3x) the General Liability Cap.
- 8.4. Scope.** For the avoidance of doubt, the exclusions and limitations set forth in Section 8 will apply with respect to all legal theories of liability, whether in contract, tort, or otherwise. The Parties agree that the exclusions and limitations set forth in Section 8 allocate the risks between the Parties under this Agreement, and that they have relied on these exclusions and limitations in determining whether to enter into this Agreement.

## 9. Term, Termination, and Suspension

- 9.1. Term of the Agreement.** The term of this Agreement commences on the Effective Date and, unless earlier terminated in accordance with the terms of this Agreement, will continue for the "Initial Term" specified in the Order (the "**Initial Term**"). For Services only, unless otherwise indicated in the Order, this Agreement will automatically renew for successive additional periods of 1 year each (each, a "**Renewal Term**") unless either Party provides the other with written notice of non-renewal at least 30 days prior to the expiration of the Initial Term or the then-current Renewal Term. Professional Services will not be subject to automatic renewal. Customer agrees that Engage may modify the fees for each Renewal Term by providing Customer with written notice of such modification at least 60 days prior to the expiration of the Initial Term or the then-current Renewal Term, as applicable. The Initial Term and each Renewal Term, if any, are collectively referred to herein as the "**Term**."
- 9.2. Suspension.** Engage may suspend Customer's or any or all Authorized Users' access to the Service, in whole in part, if: (a) Customer or any Authorized User is using the Service in violation of this Agreement or any applicable law; (b) suspension of the Service is necessary, in Engage's reasonable discretion, to protect the security of the Service or the infrastructure of Engage or its Affiliates; (c) suspension is required by applicable law; or (d) any fees owed by Customer (excluding amounts disputed in reasonable and good faith) are 30 days or more overdue, provided Engage has given Customer 10 or more days' prior notice.
- 9.3. Termination for Cause.** Either Party may terminate this Agreement effective after 30 days' written notice if the other Party materially breaches this Agreement and such breach is not cured within such 30-day period. Upon any termination for cause by Customer, Engage will promptly refund Customer any prepaid fees covering the period remaining in the Term after the effective date of such termination. Upon any termination for cause by

Engage, Customer will promptly pay Engage any unpaid fees covering the period remaining in the Term after the effective date of such termination.

- 9.4. Effects of Termination.** Upon termination of this Agreement for any reason, (a) any amounts owed to Engage prior to such termination and all completed but unpaid Professional Services fees will be immediately due and payable, and (b) all rights granted to access and use the Service will immediately cease to exist. For a period of 30 days following any termination of this Agreement, Engage will, upon Customer's request, provide Customer with an export of all current Customer Data in the format agreed by the Parties. After such 30-day period, Engage will have no obligation to maintain or provide any Customer Data and Engage will, unless prohibited by applicable law, delete all Customer Data in its systems or otherwise in its possession or under its control in accordance with Engage's then-current data retention and deletion policies. Subject to this Section, upon any termination of this Agreement and the Disclosing Party's request, the Receiving Party will promptly return, or at the Disclosing Party's option destroy, any or all Confidential Information of the Disclosing Party in the Receiving Party's possession or under its control.
- 9.5. Survival.** The sections titled "Protection of Customer Data," "Fees," "Proprietary Rights," "Confidentiality," "Indemnification," "Limitation of Liability," "Termination for Cause," "Effects of Termination," "Survival," and "General Provisions" will survive any termination of this Agreement.

## 10. General Provisions

- 10.1. Attribution.** Customer agrees that Engage may use Customer's name and logo to indicate that Customer is a customer of Engage for the Service on Engage's website, marketing materials, and in communications with existing or prospective Engage customers. Any such attribution will be consistent with Customer's style guidelines or requirements as communicated to Engage by Customer.
- 10.2. Force Majeure.** Except for payment obligations, neither Party will be liable hereunder by reason of any failure or delay in the performance of its obligations due to events beyond the reasonable control of such Party, which may include natural disasters, fires, epidemics, pandemics, riots, war, terrorism, denial of service attacks, internet outages, labor shortages, and judicial or government action (each, a "**Force Majeure Event**"). If either Party's nonperformance hereunder due to a Force Majeure Event persists for more than 30 days, either Party may immediately terminate this Agreement without charge or penalty upon notice to the other Party.
- 10.3. Assignment.** Neither Party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other Party. Notwithstanding the foregoing, either Party may assign or transfer this Agreement in its entirety, without the consent of the other Party, in connection with a merger or sale of all or substantially all of its assets, so long as the assigning Party provides 30-days' prior written notice thereof to the other Party. Any purported assignment in violation of this Section will be null and void. This Agreement will bind and inure to the benefit of the Parties, their respective successors, and permitted assigns.
- 10.4. Governing Law.** This Agreement, and any disputes arising out of or related hereto, will be governed exclusively by the internal laws of the state in which Customer resides, without regard to its conflicts of laws rules or the United Nations Convention on the International Sale of Goods. Each Party hereby waives any right to jury trial in connection with any action or litigation in any way arising out of or related to this Agreement.
- 10.5. Notices.** All notices under this Agreement will be in writing addressed to the points of contacts of each of the Parties listed on the Order at the addresses set forth on the Order and will be deemed to have been duly given: (a) upon receipt if personally delivered or sent by certified or registered mail with return receipt requested; and (b) the first business day after sending by email or by next day delivery by a recognized overnight delivery service.
- 10.6. Insurance.** Each Party shall carry and maintain insurance in the amounts and for the occurrences for which insurance is typically carried by entities in the same or similar business.
- 10.7. Relationship of the Parties.** The Parties are independent contractors and this Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the Parties. There are no third party beneficiaries to this Agreement.

**10.8. Waiver.** No failure or delay by either Party in exercising any right under this Agreement will constitute a waiver of that right.

**10.9. Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, such provision will be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement will remain in full force and effect.

**10.10. Entire Agreement.** This Agreement, including all exhibits hereto and all Orders, constitutes the entire agreement between the Parties and supersedes all prior and contemporaneous agreements, proposals, or representations, written or oral, concerning Customer's purchase and use of the Service. No modification, amendment, or waiver of any provision of this Agreement will be effective unless in writing and signed by each of the Parties. To the extent of any conflict or inconsistency between the provisions in the body of this Agreement and any exhibit hereto or any Order, the terms of such exhibit or Order will prevail. Notwithstanding any language to the contrary therein, no terms or conditions stated in any Customer purchase order or other Customer ordering documentation (excluding Orders) will be incorporated into or form any part of this Agreement, and all such terms or conditions will be null and void.

## 11. Definitions.

**"Affiliate"** of a Party means: (a) any entity that such Party controls; (b) any entity that controls such Party; or (c) any entity under common control with such Party. To "control," for purposes of this definition, means owning or otherwise controlling more than 50% of the voting interests of an entity.

**"Authorized User"** means independent contractors, employees, vendors, partners or any other affiliated third party to Customer who are authorized by Customer to access and use the Service, and who has been issued a Service account by Customer and/or Engage that is associated to a unique email address with a domain name owned or controlled by Customer and/or Engage.

**"Customer Data"** means all data, content, and information submitted by Authorized Users into the Service and the Customer-specific output that is generated by Authorized Users' use of the Service. Customer Data shall not contain personally identifiable information of students and minors.

**"Documentation"** means the user manuals, specifications, and policies, as may be updated from time to time, that describe the functionality, features, operation, or use of the Service and that are made available by Engage to Customer.

**"Service"** means Engage's software-as-a-service platform, user interfaces and software within a device, as further set forth in an Order. References to the "Service" in this Agreement include the Documentation.

**"Professional Services"** means any professional services related to Customer's use of the Service, such as consulting, implementation, or training services, provided by Engage to Customer as expressly identified in the Order.

**"Third Party Products and Content"** means any applications, products, services, or content that interoperate with the Service and that are provided by Customer or a third party.

# Data Processing Agreement

This Data Processing Addendum (“DPA”) is supplemental to the Agreement and sets out the terms that apply when Personal Information is Processed by Engage under the Agreement. The purpose of the DPA is to ensure such Processing is conducted in accordance with Applicable Laws (as defined below).

## 1. Definitions.

- 1.1. **“Applicable Laws”** means all applicable United States federal or state privacy and data protection laws, including without limitation, the California Consumer Privacy Act of 2018 as amended by the California Privacy Rights Act, and any implementing regulations relating to the same.
- 1.2. **“Processing”** or **“Processed”** means any operation or set of operations that are performed on Personal Information or on sets of Personal Information, whether or not by automated means, to provide the Services set forth in the Agreement. This includes the converting of raw data to machine-readable or otherwise usable and desired form and its subsequent processing (such as collection, organization, structuring, adaptation or alteration, storage, sorting, dissemination, analyzing and presentation).
- 1.3. **“Personal Information”** means information owned, controlled, or maintained by Customer and processed by Engage that identifies, relates to, describes, is capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular consumer or household.
- 1.4. **“Security Breach”** means the actual or reasonably suspected unauthorized disclosure, release, access, or acquisition of Personal Information that compromises the security, confidentiality, or integrity of the Personal Information.

## 2. Details of Processing.

- 2.1. **Processing of Personal Information.** Personal Information is being provided to Engage for a limited and specified purpose, and Engage is prohibited from Processing Personal Information for any purpose other than the specific purpose of performing the Services specified in the Agreement. Engage hereby certifies that it understands the foregoing restrictions and will comply with them.
- 2.2. **Restrictions on Use of Personal Information.** Customer and Engage hereby acknowledge and agree that in no event shall the transfer of Personal Information from Customer to Engage pursuant to the Agreement constitute a sale of Personal Information or transfer of Personal Information for valuable consideration to Engage, and that nothing in the Agreement shall be construed as providing for the sale or transfer for valuable consideration of Personal Information to Engage. Engage shall not (and will require that its subcontractors do not): (i) retain, use, or disclose Personal Information received from or on behalf of Customer, for a commercial purpose that is not necessary to provide the Services under the Agreement; or (ii) sell, rent, disclose, release, transfer, or make available, or otherwise communicate Personal Information to any third party for monetary or other valuable consideration. Customer shall take reasonable steps to stop or remediate Engage’s unauthorized use of Personal Information and shall ensure that Engage’s use of Personal Information is consistent with the Agreement and foregoing restrictions. Except as otherwise provided by Applicable Law and authorized by Customer, Engage may not combine Personal Information with personal information it receives from or on behalf of another business or person, or that it collects from its own interactions with data subjects.
- 2.3. **Assistance.** Engage will assist Customer with any data subject access, deletion, opt-out requests, objections, and any other right exercised by an individual pursuant to any Applicable Law. If Engage receives any request from data subjects, regulators, or others relating to its Processing, Engage will promptly inform Customer and assist Customer with developing a response (but Engage will not itself respond, except per instructions from Customer). Engage will also assist Customer with the resolution of any request or inquiries that Customer receives from data protection regulators relating to Engage and, if and to the extent requested by Customer, cooperate with any regulators’ requests.
- 2.4. **Subprocessors.** In the event Engage engages a subprocessor, Engage shall promptly notify Customer and shall:
  - (i) enter into a written agreement with each subprocessor containing data protection obligations that provide at

least the same level of protection for Personal Information as those in this DPA, to the extent applicable to the nature of the service provided by such subprocessor; and (ii) remain responsible for such subprocessor's compliance with the obligations of this DPA and for any acts or omissions of such subprocessor that cause Engage to breach any of its obligations under this DPA. Engage shall notify Customer via email prior to engaging any new subprocessors that Process Personal Information and allow Customer thirty (30) days to object. If Customer has objections to the appointment of any new subprocessor, the Parties will work together in good faith to resolve the grounds for the objection for no less than thirty (30) days, and failing any such resolution, Customer may terminate the part of the Services performed under the Agreement that cannot be performed by Engage without use of the objectionable subprocessor. Engage shall promptly notify Customer if it can no longer meet the foregoing obligations.

- 2.5. **Deletion of Personal Information.** At the end of the Agreement or at the request of Customer, Engage shall promptly either return or delete all Personal Information (whichever is requested by Customer). Notwithstanding the foregoing, if Engage is required by Applicable Law to retain any such Personal Information, Engage may retain the minimal amount of Personal Information required to comply with such Applicable Law. In the event that Engage is required to retain any Personal Information after termination or expiration of the Agreement, Engage will continue to safeguard such Personal Information in accordance with Applicable Law and the terms of this DPA.
- 2.6. **Confidentiality.** Engage shall ensure that all persons Processing Personal Information on its behalf, including Engage's and its subprocessors' employees, agents, and contractors, are subject to a duty of confidence or are under an appropriate statutory obligation of confidentiality.
- 2.7. **Training.** Engage shall ensure all employees receive appropriate training relating to Engage's and obligations with respect to the Processing, protection, and confidential treatment of Personal Information under this DPA and the Agreement.
- 2.8. **Data Security.** In addition to any data security provisions in the Agreement, Engage represents and covenants that it has and will maintain commercially reasonable and appropriate physical, technical, and administrative safeguards to maintain the confidentiality, security, accuracy, integrity, availability, and authenticity of the Personal Information.
- 2.9. **Security Incidents.** In the event of a Security Incident, Engage shall notify Customer promptly but no later than 72 hours after Engage becomes aware of such Security Incident. Such notifications shall include, at a minimum, the following information to the extent known by Engage and as it becomes available: (a) detailed description of the Security Incident, (b) the date or estimated date of the Security Incident, (c) the date range within which the Security Incident occurred, (d) the type of Personal Information that was the subject of the Security Incident, whether the notification was delayed as a result of a law enforcement investigation, and (f) the identity of each impacted data subject. Engage shall take immediate action to investigate the breach and shall use industry standard, commercially reasonable efforts to mitigate the effects of any such Security Incident in accordance with its obligations hereunder. Engage shall also provide Customer with reasonable assistance to satisfy any legal obligations (including obligations to notify data subjects and any state or federal regulators) of Customer in relation to such Security Incident.
- 2.10. **Audit.** Engage will make available to Customer all information requested by Customer to demonstrate Engage's compliance with the obligations set out in this DPA. Furthermore, unless otherwise required by Applicable Law, upon at least thirty (30) days prior written notice, at a time that minimizes business interruptions to Engage, and no more than once per year, Engage shall allow for and contribute to audits and inspections by Customer or its designated agents as required for Customer to establish both Customer's and Engage's compliance with this DPA and Applicable Law.

## Professional Services

These additional terms and conditions only apply if Engage provides Customer with Professional Services as set forth in an Order or a SOW.

1. **Professional Services.** Engage shall perform the services and provide any Deliverables as specified in a SOW ("**Professional Services**"). If a change in project scope is mutually agreed by the Parties, the change(s) and any associated fees therefor shall be described in a document signed by the parties (a "**Change Order**").
2. **Proprietary Rights.** As between Engage and Customer, all Customer Confidential Information, and all Customer Data supplied by Customer, its Employees or Authorized Parties, shall be, and remain, the property of Customer. Excluding the Engage intellectual property contained therein, all right, title and interest in any deliverables that are labeled as "Work Product" in the SOW shall vest in Customer. Engage grants Customer a royalty-free, non-exclusive, non-sublicensable, non-transferable license to use the Engage intellectual property incorporated into the Work Product (solely for the internal business purposes of Customer and its Affiliates in connection with their authorized use of the Service as set forth in the Agreement.
3. **Warranty.** Engage warrants that: (a) it shall perform the Professional Services with reasonable skill and care, and (b) the professional staff it assigns to perform Professional Services are, and at all times shall be, competent and properly qualified to perform the Professional Services as required hereunder.
4. **Remedies.** If Engage breaches these warranties, Engage shall correct deficiencies at no additional charge to Customer, provided Customer gives Engage written notice of any deficiencies within thirty (30) days of delivery by Engage. If Engage is unable to correct the deficiencies after good-faith efforts and at a commercially reasonable cost, Engage shall refund Customer prorated amounts paid for the defective portion. The remedies set forth above shall be Customer's sole remedy and Engage's sole liability for breach of these warranties unless the breach of warranty constitutes a material breach of the Agreement and Customer elects to terminate the Agreement for material breach.