

SUBSCRIPTION AND LICENSE AGREEMENT

This Subscription and License Agreement (this “Agreement”) is a legally binding contract between Region 18 Education Service Center/Texas Center for Educator Excellence (TxCEE) (“Vendor”) and the entity executing this Agreement (“Subscriber”). This Agreement is effective as of the date set forth in Section 14 (the “Effective Date”). Subscriber’s use of and Vendor’s provision of Vendor’s Services (as defined below in Section 1.8) are governed by this Agreement.

1. DEFINITIONS. The following capitalized terms shall have the following meanings in this Agreement.

- 1.1. “AUP” means Vendor’s acceptable use policy currently posted at <https://teems.txcee.org>, as updated from time to time.
- 1.2. “Subscriber’s Clients” means any of Subscriber’s agents or employees or third parties to which Subscriber gives access to the Services.
- 1.3. “Client ToS” means such terms of service as Vendor may require for Subscriber’s Clients, as updated from time to time.
- 1.4. “Subscriber Data” means data in electronic form (including without limitation, text, images, photos, audio files, video files, or other forms of data or communication) that is input, submitted, posted, uploaded, transmitted, collected, displayed, reported or used in the Services by or from Subscriber, including without limitation by Subscriber’s Clients or by other Users.
- 1.5. “Documentation” means Vendor’s standard manual and training materials for Subscribers relating to use of the Services.
- 1.6. “Order” means a purchase order for access to the Services.
- 1.7. “Privacy Policy” means Vendor’s privacy policy, currently posted at <https://teems.txcee.org>, as updated from time to time
- 1.8. “Services” means Vendor’s services, including Vendor’s online educator human capital management platform currently available at the website (<https://teems.txcee.org>), and any other platforms, APIs, interfaces, related web sites, networks, downloadable software, and other services provided by Vendor.
- 1.9. “Term” is defined in Section 12.1 below.
- 1.10. “User” means any company or individual who uses the Services, whether authorized or not, including without limitation Subscriber’s Clients.

2. THE SERVICES.

- 2.1. Use of the Services. During the Term (as defined in Section 12 below), Subscriber and Subscriber’s Clients may access and use the Services pursuant to the terms of a then-current Order, including such features and functions as the then-current Order requires.
- 2.2. Service Levels. Vendor shall employ commercially reasonable efforts to provide the Services. Vendor

Exhibit B

shall not be required to issue refunds or to make payments to Subscriber for unavailability of the Services under any circumstances, including without limitation after termination of this Agreement.

- 2.3. Documentation: Subscriber may reproduce and use the Documentation solely as necessary to support Subscriber's Clients' use of the Services.
- 2.4. Subscriber's Clients. Subject to the provisions below of this Section 2.4, Subscriber may authorize Subscriber's Clients to access and use the Services in such numbers and according to such restrictions as are set forth in the applicable Order, solely for the purpose of facilitating human capital management of educators using the Services. Subscriber shall: (a) provide complete name and contact information for each proposed Subscriber's Client upon or before providing such access, and update such information as soon as it become aware of a change; and (b) require that each Subscriber's Client execute the then-standard Client ToS. Subscriber shall make no representations or warranties regarding the Services or any other matter, to Subscriber's Clients or Users or any other third party, from or on behalf of Vendor, and Subscriber shall not create or purport to create any obligations or liabilities for Vendor. Vendor may reject any proposed Subscriber's Client for any reason that does not violate applicable law, in its sole discretion. To the extent permitted by law, Subscriber shall be jointly and severally liable to Vendor for Subscriber's Client's compliance with the Client ToS. Vendor shall have no obligation to provide support or other services or other remedies to Subscriber's Clients.
- 2.5. Services Revisions. Vendor may revise the components, features, functions, and/or URL of the Services at any time.

3. DOWNLOADABLE APPLICATION.

- 3.1. License. Vendor may, at its option, additionally make the Services accessible to Subscriber's Clients via a downloadable application (the "App"). The App is a component of the Services and is included in references thereto, except in this Section 3 and in any other provision that separately addresses the App. If Vendor makes the Services accessible to Subscriber's Clients via the App, Vendor hereby grants each Subscriber's Client a nonexclusive license to download and use a single copy of the App, solely as a component of the Services, provided Subscriber's Client complies with the restrictions set forth below in Section 3.2 (*Restrictions on Software Rights*). The license in the preceding sentence does not include any download, distribution, copying, or use of the App by any third party, and Subscriber and Subscriber's Clients shall not permit or facilitate any such download, distribution, copying, or use by any third party.
- 3.2. Restrictions on Software Rights. Copies of the App created or transferred pursuant to this Agreement are licensed, not sold, and Subscriber and Users receive no title to or ownership of any copy or of the App itself. Furthermore, Subscriber and Users receive no rights to the App other than those specifically granted in Section 3.1 above. Without limiting the generality of the foregoing, Subscriber and Subscriber's Clients shall not: (a) modify, create derivative works from, distribute, publicly display, publicly perform, or sublicense the App; (b) use the App in any way forbidden by the AUP; or (c) reverse engineer, decompile, disassemble, or otherwise attempt to derive any of the App's source code.

Exhibit B

4. SUBSCRIPTION FEES. Subscriber shall pay Vendor the fee (the “Subscription Fee”), if any, set forth in the Interlocal Agreement upfront and in full. Vendor will not be required to refund any portion of a Subscription Fee under any circumstances. Vendor’s invoices are due within 30 days of issuance.

5. SUBSCRIBER DATA & PRIVACY.

- 5.1. Permission from Subscriber. Subscriber, on its own behalf and on behalf of each Subscriber Client, grants Vendor permission to access, process, and otherwise use Subscriber Data in order to provide Vendor’s products and/or services to Subscriber, to track and analyze Subscriber use of the Services, and make Subscriber Data available to other users of the Services and other third parties. To the extent that Subscriber has intellectual property rights in Subscriber Data, Subscriber grants Vendor a worldwide, perpetual, non-exclusive, royalty-free, sublicensable, transferable license to use and prepare derivative works from Subscriber Data for the purposes outlined in this Agreement.
- 5.2. Rights in Subscriber Data. Subscriber represents and warrants that Subscriber and/or Subscriber’s Clients own all Subscriber Data or have received a valid license to Subscriber Data and that submitting or transmitting Subscriber Data to or through the Services will not violate the rights of any third party, including intellectual property rights, privacy rights, publicity rights, rights protected by the Family Educational Rights and Privacy Act of 1974 (“FERPA”), or rights protected by an applicable federal or state law, including without limitation the Texas Education Code (“TEC”) and the Texas Government Code. Vendor is under no obligation to review or screen Subscriber Data or other Users’ data. If Subscriber believes that any User has violated Subscriber’s or another party’s intellectual property rights, privacy rights, publicity rights, or rights of non-disclosure, Subscriber may contact Vendor for resolution via the contact information provided in Vendor’s Privacy Policy.
- 5.3. Privacy Policy. Vendor may manage any of Subscriber Data containing personally identifiable information as set forth in Vendor’s Privacy Policy. The Privacy Policy applies only to the Services and does not apply to any third party website or service linked to the Services or recommended or referred to through the Services by Vendor or other Users.
- 5.4. Risk of Exposure. **SUBSCRIBER UNDERSTANDS AND AGREES THAT SHARING AND HOSTING CONTENT ONLINE INVOLVES RISKS OF UNAUTHORIZED DISCLOSURE OR EXPOSURE AND THAT, IN SUBMITTING SUBSCRIBER DATA, TRANSMITTING SUBSCRIBER DATA THROUGH THE SERVICES, AND ACCESSING AND USING THE SERVICES, SUBSCRIBER ASSUMES THESE RISKS.** Vendor offers no representation, warranty, or guarantee that Subscriber Data will not be exposed or disclosed through errors or the actions of Subscriber, Subscriber’s Clients, or third parties.
- 5.5. Data Accuracy and System Configuration.
 - (a) Vendor shall have no responsibility or liability for the accuracy of data uploaded to the Services, including without limitation Subscriber Data and any other data uploaded by other Users. Subscriber is solely responsible for any errors, losses, or damages to the Services that may result from Subscriber’s actions, Users’ actions, or the actions of a third-party on behalf of Subscriber or Users, to upload such Services.
 - (b) Vendor shall have no responsibility or liability for the accuracy of any system set up or configuration to the Services, including without limitation Subscriber Data and any other data set up or configured by other Users. Subscriber is solely responsible for any errors, losses, or

Exhibit B

damages to the Services that may result from Subscriber's actions, Users' actions, or the actions of a third-party on behalf of Subscriber or Users, to set up and configure Services.

- 5.6. Right to Retain, Delete or Suspend Access. Subscriber agrees that Subscriber shall not rely on the Services for backup or storage of Subscriber Data. Vendor may retain Subscriber Data even if Subscriber is no longer using the Services or has terminated this Agreement, but is not required to provide copies of Subscriber Data to Subscriber. Vendor may permanently delete or erase Subscriber Data or suspend Subscriber access to Subscriber Data through the Services if Subscriber's account is delinquent or suspended for 30 days or more, or terminated.
- 5.7. Excluded Data. Subscriber represents and warrants that Subscriber Data does not and will not include, and Subscriber has not and shall not upload or transmit to Vendor's computers or other media, any data ("Excluded Data") regulated pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") (the "Excluded Data Laws"). SUBSCRIBER RECOGNIZES AND AGREES THAT: (a) VENDOR HAS NO LIABILITY FOR ANY FAILURE TO PROVIDE PROTECTIONS SET FORTH IN THE EXCLUDED DATA LAWS OR OTHERWISE TO PROTECT EXCLUDED DATA; AND (b) VENDOR'S SERVICES ARE NOT INTENDED FOR MANAGEMENT OR PROTECTION OF EXCLUDED DATA AND MAY NOT PROVIDE ADEQUATE OR LEGALLY REQUIRED SECURITY FOR EXCLUDED DATA.
- 5.8. Aggregate & De-Identified Data. Notwithstanding the provisions above of this Section 5, Vendor may use, reproduce, sell, publicize, or otherwise exploit Aggregate Data and De-Identified Data in any way, in its sole discretion. ("Aggregate Data" refers to summaries of Subscriber Data, or of data that includes Subscriber Data, that do not include personally identifiable information or the names or addresses of Subscriber and any of its Users. "De-Identified Data" refers to Subscriber Data with the following removed: personally identifiable information and the names and addresses of Subscriber and any of its Users.)

6. SUBSCRIBER'S RESPONSIBILITIES & RESTRICTIONS.

- 6.1. Acceptable Use. Subscriber and each of Subscriber's Clients shall comply with the AUP. Subscriber shall not: (a) in any way allow third parties to exploit the Services, except Subscriber's Clients as specifically authorized by this Agreement; (b) provide Services passwords or other log-in information to any third party, except Subscriber's Clients as specifically authorized by this Agreement; (c) share non-public features or content of the Services with any third party, except Subscriber's Clients as specifically authorized by this Agreement; (d) access the Services in order to build a competitive product or service, to build a product using similar ideas, features, functions, or graphics, or to copy any ideas, features, functions, or graphics of the Services; or (e) engage in web scraping or data scraping on or related to the Services, including without limitation collection of information through any software that simulates human activity or any bot or web crawler. In the event that Vendor suspects any breach of the requirements of this Section 6.1, including without limitation by Subscriber's Clients, Vendor may suspend Subscriber's and all Subscriber's Clients' access to the Services without advanced notice, in addition to such other remedies as Vendor may have. Neither this Agreement nor the AUP requires that Vendor take any action against Subscriber or any User or other third party for violating the AUP, this Section 6.1, or this Agreement, but Vendor is free to take any such action at its sole discretion.
- 6.2. Unauthorized Access. Subscriber and Subscriber's Clients shall take reasonable steps to prevent unauthorized access to the Services, including without limitation by protecting passwords and other

Exhibit B

log-in information. Subscriber and Subscriber's Clients shall notify Vendor immediately of any known or suspected unauthorized use of the Services or breach of Subscriber's security and shall use best efforts to stop said breach.

- 6.3. Compliance with Laws. In using the Services, Subscriber and Subscriber's Clients shall comply with all applicable laws, including without limitation laws governing the protection of personally identifiable information and other laws applicable to the protection of Subscriber Data, including without limitation FERPA, the Government Code, and the TEC.
- 6.4. Subscriber's Clients & Other Users; Services Access. Subscriber is responsible and, to the extent permitted by law, liable for: (a) Subscriber's Clients' use of the Services, including without limitation unauthorized User conduct and any User conduct that would violate the AUP, the Subscriber's Clients Terms of Service, or the requirements of this Agreement applicable to Subscriber; and (b) any use of the Services through Subscriber's account, whether authorized or unauthorized.
- 6.5. Communications from Vendor. Subscriber and each of Subscriber's Clients consent to receive electronic communication (e.g., email and/or text messages) from Vendor in connection with use of the Services at Subscriber's sole cost.

7. INTELLECTUAL PROPERTY ("IP") & FEEDBACK.

- 7.1. IP Rights to the Services. Vendor retains all right, title, and interest in and to the Services, including without limitation the App and all other all software used to provide the Services and all graphics, user interfaces, logos, trademarks reproduced through the Services, as well as all Subscriber Data input, reported, transmitted, or stored using the Services. This Agreement does not grant Subscriber any intellectual property license or rights in or to the Services or any of its components, except to the limited extent that this Agreement specifically sets forth Subscriber license rights to the App or the Documentation. Subscriber recognizes and acknowledges that the Services and its components are proprietary and protected by trademark, copyright, trade secret, and other laws.
- 7.2. Feedback. Vendor has not agreed to and does not agree to treat as confidential any Feedback (as defined below) that Subscriber, Subscriber's Clients, or other Users provide to Vendor, and nothing in this Agreement or in the parties' dealings arising out of or related to this Agreement will restrict Vendor's right to use, profit from, disclose, publish, keep secret, or otherwise exploit Feedback, without compensating or crediting Subscriber or the Subscriber's Client or other User in question. Feedback will not constitute Subscriber's confidential information. Subscriber, on its own behalf and on behalf of its end users, hereby grants Vendor a perpetual, irrevocable, royalty-free right and license to exploit Feedback in any and every way. ("Feedback" refers to any suggestion or idea for improving or otherwise modifying any of Vendor's products or services.)

8. CONFIDENTIAL INFORMATION. "Confidential Information" refers to the following items Vendor discloses to Subscriber or Subscriber's Clients: (a) any document Vendor marks "Confidential"; (b) any information Vendor orally designates as "Confidential" at the time of disclosure, provided Vendor confirms such designation to Subscriber in writing within five (5) business days; (c) the Documentation, whether or not marked or designated confidential; and (d) any other nonpublic, sensitive information Subscriber or Subscriber's Clients should reasonably consider a trade secret or otherwise confidential. Notwithstanding the foregoing, Confidential Information does not include information that: (i) is in Subscriber's possession at the time of disclosure; (ii) is independently developed by Subscriber without

Exhibit B

use of or reference to Confidential Information; (iii) becomes known publicly, before or after disclosure, other than as a result of Subscriber's improper action or inaction; or (iv) is approved for release in writing by Vendor.

- 8.1. Nondisclosure. Subscriber shall not use Confidential Information for any purpose other than facilitating human capital management of educators using the Services (the "Purpose"). Subscriber: (a) shall not disclose Confidential Information to any employee or contractor of Subscriber unless such person needs access in order to facilitate the Purpose and executes a nondisclosure agreement with Subscriber with terms no less restrictive than those of this Section 8; and (b) shall not disclose Confidential Information to any other third party without Vendor's prior written consent. Without limiting the generality of the foregoing, Subscriber shall protect Confidential Information with the same degree of care it uses to protect its own confidential information of similar nature and importance, but with no less than reasonable care. Subscriber shall promptly notify Vendor of any misuse or misappropriation of Confidential Information that comes to Subscriber's attention. Notwithstanding the foregoing, Subscriber may disclose Confidential Information as required by applicable law or by proper legal or governmental authority. Subscriber shall give Vendor prompt notice of any such legal or governmental demand and reasonably cooperate with Vendor in any effort to seek a protective order or otherwise to contest such required disclosure, at Vendor's expense.
- 8.2. Injunction. Subscriber agrees that breach of this Section 8 would cause Vendor irreparable injury, for which monetary damages would not provide adequate compensation, and that in addition to any other remedy, Vendor will be entitled to injunctive relief against such breach or threatened breach, without proving actual damage or posting a bond or other security.
- 8.3. Termination & Return. With respect to each item of Confidential Information, the obligations of Section 8.1 above (*Nondisclosure*) will terminate five (5) years after termination of this Agreement; provided that such obligations related to Confidential Information constituting Vendor's trade secrets shall continue so long as such information remains subject to trade secret protection pursuant to applicable law. Upon termination of this Agreement, Subscriber shall return all copies of Confidential Information to Vendor or certify, in writing, the destruction thereof.
- 8.4. Retention of Rights. This Agreement does not transfer ownership of Confidential Information or grant a license thereto. Vendor will retain all right, title, and interest in and to all Confidential Information.
- 8.5. Exception & Immunity. Pursuant to the Defend Trade Secrets Act of 2016, 18 USC Section 1833(b), Subscriber is on notice and acknowledges that, notwithstanding the foregoing or any other provision of this Agreement:
 - (a) *IMMUNITY*. An individual shall not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of a trade secret that- (A) is made- (i) in confidence to a Federal, State, or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (B) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.
 - (b) *USE OF TRADE SECRET INFORMATION IN ANTI-RETALIATION LAWSUIT*. An individual who files

Exhibit B

a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding, if the individual- (A) files any document containing the trade secret under seal; and (B) does not disclose the trade secret, except pursuant to court order.

- (c) *NO WAIVER OF IMMUNITY.* Vendor is a governmental entity of the State of Texas, and, as such, enjoys certain privileges and immunities under state and federal law. Nothing contained herein shall be considered as a limitation or waiver of any such privilege or immunity.

9. REPRESENTATIONS & WARRANTIES.

9.1. From Vendor. Vendor represents and warrants that it is the owner of the Services and of each and every component thereof, or the recipient of a valid license thereto, and that it has and will maintain the full power and authority to grant the rights granted in this Agreement without the further consent of any third party. Vendor's representations and warranties in the preceding sentence do not apply to use of the Services in combination with hardware or software not provided by Vendor. In the event of a breach of the warranty in this Section 9.1, Vendor, at its own expense, will promptly take the following actions: (a) secure for Subscriber the right to continue using the Services; (b) replace or modify the Services to make it non-infringing; or (c) terminate the infringing features of the Services and refund to Subscriber any prepaid fees for such features, in proportion to the portion of the Term left after such termination. In conjunction with Subscriber's right to terminate for breach where applicable, the preceding sentence states Vendor's sole obligation and liability, and Subscriber's sole remedy, for breach of the warranty in this Section 9.1 and for potential or actual intellectual property infringement by the Services.

9.2. From Subscriber.

- (a) *Regarding Subscriber.* Subscriber represents and warrants that: (i) it has the full right and authority to enter into, execute, and perform its obligations under this Agreement and that no pending or threatened claim or litigation known to it would have a material adverse impact on its ability to perform as required by this Agreement; (ii) it has accurately identified itself and it has not provided any inaccurate information about itself to or through the Services; and (iii) it is an entity authorized to do business pursuant to applicable law.
- (b) *Regarding Subscriber's Clients.* Subscriber represents and warrants that, to the best of its knowledge: (i) each Subscriber's Client will have the full right and authority to enter into, execute, and perform its obligations as required under this Agreement and the Client ToS, with no pending or threatened claim or litigation that would have a material adverse impact on its ability so to perform; (ii) Subscriber will accurately identify each Subscriber's Client and will not provide any inaccurate information about a Subscriber's Client or other User to or through the Services; and (iii) each Subscriber's Client is an individual human person 18 years old or older.

9.3. Warranty Disclaimers. Except to the extent set forth in in Section 9.1 above, SUBSCRIBER AGREES THAT SUBSCRIBER ACCEPTS THE SERVICES "AS IS" AND AS AVAILABLE, WITH NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS, OR ANY IMPLIED WARRANTY ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE. WITHOUT

Exhibit B

LIMITING THE GENERALITY OF THE FOREGOING: (a) VENDOR HAS NO OBLIGATION TO INDEMNIFY OR DEFEND SUBSCRIBER AGAINST CLAIMS RELATED TO INFRINGEMENT OF INTELLECTUAL PROPERTY; (b) VENDOR DOES NOT REPRESENT OR WARRANT THAT THE SERVICES WILL PERFORM WITHOUT INTERRUPTION OR ERROR; (c) VENDOR DOES NOT REPRESENT OR WARRANT THAT THE SERVICES ARE SECURE FROM HACKING OR OTHER UNAUTHORIZED INTRUSION OR THAT SUBSCRIBER DATA WILL REMAIN PRIVATE OR SECURE; (d) VENDOR DISCLAIMS ANY REPRESENTATION OR WARRANTY CONCERNING PRODUCTS OR SERVICES PROVIDED BY OTHER USERS OF THE SERVICES OR OTHER THIRD PARTIES; AND (e) VENDOR DISCLAIMS ANY REPRESENTATION OR WARRANTY CONCERNING ACCURACY, SET-UP, AND CONFIGURATION OF SERVICES, INCLUDING WITHOUT LIMITATION, SUBSCRIBER DATA.

10. INDEMNIFICATION. To the extent permitted by law, Subscriber shall defend, indemnify, and hold harmless Vendor and the Vendor Associates (as defined below) against any "Indemnified Claim," meaning any claim, suit, or proceeding arising out of or related to Subscriber's alleged or actual use of, misuse of, or failure to use the Services, including without limitation: (a) claims by Subscriber's Clients or other Users or by Subscriber's employees; (b) claims related to unauthorized disclosure or exposure of personally identifiable information or other private information, including Subscriber Data; (c) claims related to infringement or violation of a copyright, trademark, trade secret, or privacy or confidentiality right by written material, images, logos or other content uploaded to the Services through Subscriber's account, including without limitation by Subscriber Data; (d) claims that use of the Services through Subscriber's account, including by Subscriber's Clients or other Users, harasses, defames, or defrauds a third party or violates the CAN-Spam Act of 2003 or any other law or restriction on electronic advertising; and (e) claims that use of the Services through Subscriber's account, including by Subscriber's Clients or other Users, violates FERPA or the TEC. Indemnified Claims include, without limitation, claims arising out of or related to Vendor's negligence. Subscriber's obligations set forth in this Section 10 include retention and payment of attorneys and payment of court costs, as well as settlement at Subscriber's expense and payment of judgments. Vendor will have the right, not to be exercised unreasonably, to reject any settlement or compromise that requires that it admit wrongdoing or liability or subjects it to any ongoing affirmative obligations. (The "Vendor Associates" are Vendor's officers, directors, shareholders, parents, subsidiaries, agents, successors, and assigns.)

11. LIMITATION OF LIABILITY.

11.1. Dollar Cap. VENDOR'S LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL NOT EXCEED THE SUBSCRIPTION FEE PAID BY SUBSCRIBER FOR ANY TWELVE-MONTH PERIOD.

11.2. Exclusion of Consequential Damages. IN NO EVENT WILL VENDOR BE LIABLE TO SUBSCRIBER FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES ARISING OUT OF OR RELATED TO USE OF THE SERVICES OR THIS AGREEMENT.

11.3. Clarifications & Disclaimers. THE LIABILITIES LIMITED BY THIS SECTION 11 APPLY: (a) TO LIABILITY FOR NEGLIGENCE; (b) TO LIABILITY FOR BREACH OF WARRANTIES; (c) REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, STRICT PRODUCT LIABILITY, OR OTHERWISE; (d) EVEN IF VENDOR IS ADVISED IN ADVANCE OF THE POSSIBILITY OF THE DAMAGES IN QUESTION AND EVEN IF SUCH DAMAGES WERE FORESEEABLE; AND (e) EVEN IF SUBSCRIBER'S REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE. If applicable law limits the application of the provisions of this Section 11, Vendor's liability will be limited to the maximum extent permissible. For the avoidance of doubt, Vendor's liability limits and other rights set forth in this Section 11 apply likewise to Vendor's

Exhibit B

affiliates, licensors, suppliers, advertisers, agents, sponsors, directors, officers, employees, consultants, and other representatives.

12. Term & Termination.

12.1. Term. The term of this Agreement (the “Term”) shall commence on the Effective Date and continue until August 31, 2024. Thereafter, the Term will automatically renew for successive twelve (12) month periods, unless either party provides written notice of termination sixty (60) or more days before the anniversary of the Effective Date. Subscriber shall pay the then-applicable Subscription Fee for any such renewal pursuant to an additional Order.

12.2. Termination for Cause. Either party may terminate this Agreement for the other’s material breach by written notice specifying in detail the nature of the breach, effective in 30 days unless the other party first cures such breach, or effective immediately if the breach is not subject to cure. Without limiting Vendor’s other rights and remedies, Vendor may suspend or terminate a Subscriber’s Client’s or other User’s access to the Services at any time, without advanced notice, if Vendor reasonably concludes such Subscriber’s Client or other User has conducted itself in a way that is not consistent with the requirements of the AUP, the Client ToS, or the other requirements of this Agreement or in a way that subjects Vendor to potential liability.

12.3. Effects of Termination. Upon termination of this Agreement, Subscriber shall cease all use of the Services and delete, destroy, or return all copies of the Documentation in its or Subscriber’s Clients’ possession or control. The following provisions will survive termination or expiration of this Agreement: (a) any obligation of Subscriber to pay Subscription Fees incurred before termination; (b) Sections 7 (*Intellectual Property & Feedback*), 8 (*Confidential Information*), 9.2 (*Warranty Disclaimers*), 10 (*Indemnification*), 11 (*Limitation of Liability*), and 13 (*Miscellaneous*); and (c) any other provision of this Agreement that must survive to fulfill its essential purpose.

13.MISCELLANEOUS.

13.1. Independent Contractors. Vendor and Subscriber are independent contractors and will so represent themselves in all regards. Neither Vendor nor Subscriber is the agent of the other, and neither may contract on the other’s behalf. The parties agree that no Vendor employee or contractor shall be at the same time an employee of Subscriber.

13.2. Notices. Vendor and Subscriber may send any notices hereunder by USPS 1st class mail with carbon copy by email at the contact addresses set forth below and as updated by either party from time to time. Such notices will be deemed received 3 business days after they are mailed or transmitted.

VENDOR

SUBSCRIBER

<p>Texas Center for Educator Excellence (TxCEE) 1705 S Capital of Texas Hwy, Ste 400 Austin, TX 78746</p> <p>cc: Underwood Law Firm Attn: David P. Backus P.O. 16197</p>	<p>Tornillo ISD 19200 Cobb Ave. Tornillo, Tx 79853</p>
--	--

Exhibit B

Lubbock, Texas 79490	
Email: Claude Pardue, claude.pardue@txcee.org Daniel Moses, dmoses@txcee.org	Email:
Phone: Claude Pardue, (512) 538-0648 Daniel Moses, (512) 537-4369	District Phone: (915)765-3000

- 13.3. Assignment & Successors. Subscriber may not assign this Agreement or any of its rights or obligations hereunder without Vendor's express written consent. Except to the extent forbidden in this Section 13.3, this Agreement will be binding upon and inure to the benefit of the parties' respective successors and assigns.
- 13.4. Force Majeure. No delay, failure, or default, other than a failure to pay Subscription Fees when due, will constitute a breach of this Agreement to the extent caused by acts of war, terrorism, hurricanes, earthquakes, other acts of God or of nature, strikes or other labor disputes, riots or other acts of civil disorder, embargoes, or other causes beyond the performing party's reasonable control.
- 13.5. Severability. To the extent permitted by applicable law, the parties hereby waive any provision of law that would render any clause of this Agreement invalid or otherwise unenforceable in any respect. In the event that a provision of this Agreement is held to be invalid or otherwise unenforceable, such provision will be interpreted to fulfill its intended purpose to the maximum extent permitted by applicable law, and the remaining provisions of this Agreement will continue in full force and effect.
- 13.6. No Waiver. Neither party will be deemed to have waived any of its rights under this Agreement by lapse of time or by any statement or representation other than by an authorized representative in an explicit written waiver. No waiver of a breach of this Agreement will constitute a waiver of any other breach of this Agreement.
- 13.7. Choice of Law & Jurisdiction: This Agreement will be governed solely by the internal laws of the State of Texas, including without limitation applicable federal law, without reference to: (a) any conflicts of law principle that would apply the substantive laws of another jurisdiction to the parties' rights or duties; (b) the 1980 United Nations Convention on Contracts for the International Sale of Goods; or (c) other international laws. The parties consent to the personal and exclusive jurisdiction of the federal and state courts of Travis County, Texas. This Section 13.7 governs all claims arising out of or related to this Agreement, including without limitation tort claims.
- 13.8. Conflicts. In the event of any conflict between this Agreement and any Vendor policy posted online, including without limitation the AUP, Client ToS, or Privacy Policy, the terms of this Agreement will govern.
- 13.9. Construction. The parties agree that the terms of this Agreement result from negotiations between them. This Agreement will not be construed in favor of or against either party by reason of authorship.

Exhibit B

- 13.10. Technology Export. Subscriber shall not: (a) permit any third party to access or use the Services in violation of any U.S. law or regulation; or (b) export any software provided by Vendor or otherwise remove it from the United States except in compliance with all applicable U.S. laws and regulations. Without limiting the generality of the foregoing, Subscriber shall not permit any third party to access or use the Services in, or export such software to, a country subject to a United States embargo.
- 13.11. Entire Agreement. This Agreement sets forth the entire agreement of the parties and supersedes all prior or contemporaneous writings, negotiations, and discussions with respect to its subject matter. Neither party has relied upon any such prior or contemporaneous communications.
- 13.12. Amendment. Vendor may amend this Agreement from time to time by posting an amended version at its Website <https://teems.txcee.org>, and sending Subscriber written notice thereof. Such amendment will be deemed accepted and become effective 30 days after such notice (the "Proposed Amendment Date") unless Subscriber first gives Vendor written notice of rejection of the amendment. In the event of such rejection, this Agreement will continue under its original provisions, and the amendment will become effective at the start of Subscriber's next Term following the Proposed Amendment Date (unless Subscriber first terminates this Agreement pursuant to Section 12 (*Term & Termination*)). Subscriber's continued use of the Services following the effective date of an amendment will confirm Subscriber's consent thereto. This Agreement may not be amended in any other way except through a written agreement by authorized representatives of each party. Notwithstanding the foregoing provisions of this Section 13.12, Vendor may revise the Privacy Policy, Client ToS, and AUP at any time by posting a new version of either at the Website, and such new version will become effective on the date it is posted.
- 13.13. Authority. EACH PARTY ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS, AND THAT THE PERSON SIGNING ON ITS BEHALF HAS BEEN AUTHORIZED TO DO SO. THE PERSON EXECUTING THIS AGREEMENT ON SUBSCRIBER'S BEHALF REPRESENTS THAT HE OR SHE HAS THE AUTHORITY TO BIND SUBSCRIBER TO THESE TERMS AND CONDITIONS.
- 13.14. No Israel Boycott Verification. By execution of this Agreement, Subscriber certifies that it does not boycott Israel and will not boycott Israel during the term of this Agreement. "Boycott" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.
- 13.15. Companies Engaged in Business with Iran, Sudan, Or A Foreign Terrorist Organization. In accordance with Texas Government Code, Chapter 2252, Subchapter F, Vendor is prohibited from entering into a contract with a company that is identified on a list prepared and maintained by the Texas Comptroller or the State Pension Review Board under Texas Government Code Sections 806.051, 807.051, or 2252.153. By execution of this Agreement, Subscriber certifies to Vendor that it is not a listed company under any of those Texas Government Code provisions. Subscriber hereby voluntarily and knowingly acknowledges and agrees that this Agreement shall be null and void should facts arise leading Vendor to believe that Subscriber was a listed company at the time of this procurement.

Exhibit B

14.ACCEPTANCE.

ACCEPTED AND AGREED:

VENDOR	SUBSCRIBER
Texas Center for Educator Excellence (TxCEE) By: _____ Title: Chief TxCEE Officer Printed Name: Joann Taylor	Tornillo ISD By: _____ Title: Superintendent Printed Name: Rosy Vega-Barrio
Date:	Date:

The Effective Date of this Agreement is November 4, 2024.