



This agreement for payment of fees for IB Services (the "**Agreement**") is entered into as of September 5, 2023 (the "**Effective Date**") and is between:

**International Baccalaureate Organization**, a Swiss foundation, with a registered address at Rue du Pré-de-la-Bichette 1, 1202 Geneva, Switzerland (the "**IB**"); and

**The School District of Flagler County**, the State of Florida, a body corporate and political subdivision formed and existing under the laws of the State of Florida, USA, having its registered address at 1769 East Moody Blvd Bldg #2 Bunnell, FL 32110, USA (the "**District**").

The IB and the District are hereinafter collectively referred to as the "**Parties**" or each individually as a "**Party**".

#### **WHEREAS:**

- (A) The aim of the IB is to develop inquiring, knowledgeable and caring young people who help create a better and more peaceful world through intercultural understanding and respect. To this end the IB works with schools, governments and international organizations to develop challenging programmes of international education and rigorous assessment. These programmes encourage students across the world to become active, compassionate and lifelong learners who understand that other people, with their differences, can also be right.
- (B) To achieve these purposes, the IB has developed and owns a Primary Years Programme, a Middle Years Programme, a Diploma Programme and an IB Career-related Programme (referred to collectively as the "**IB Programmes**") that the IB may offer to schools within the District's jurisdiction. The IB Programmes are governed by the IB's regulations, rules and other requirements with respect to the candidacy, authorization and implementation of, and professional development and training for, the IB Programmes as available on the IB's online programme resource centre ("**PRC**") and/or the IB's website, as may be amended from time to time (the "**IB Programme Requirements**").
- (C) The District desires to pay the fees to the IB as a sole source provider of IB Programmes on behalf of IB candidate and/or authorized schools within its jurisdiction (the "**District's Schools**").
- (D) The IB and the District desire to enter into an arrangement to set out a centralized billing and payment process to apply to the IB's exam and assessment and other services provided by the IB to District's Schools, and, for this purpose, the Parties agree to enter into this Agreement on the following terms and conditions.

**NOW, THEREFORE**, the Parties agree as follows:

#### **1. Term**

- 1.1 This Agreement will enter into force on the Effective Date and shall terminate on 31 July 2026 (the "**Term**"). The Term may be extended for a further period by written agreement by both Parties. This Agreement may be renewed under the same terms and conditions contained in this Agreement for up to two (2) additional twelve (12) month terms. The District shall give the IB written notice of the District's intention to extend the Agreement term not less than thirty (30) days prior to the end of the Agreement term then in effect.
- 1.2 This Agreement may be terminated, without cause, by either Party by providing a prior thirty (30) days' written notice to the other Party.

#### **2. The IB's Responsibilities**

- 2.1 The IB commits to provide the services set forth on **Schedule 1** hereto to the District Schools (the "**Services**") subject to the terms and conditions of this Agreement.
- 2.2 The District may from time to time request changes in the scope of Services and upon mutual agreement of the Parties, any such changes shall be documented in a written amendment to this Agreement.
- 2.3 *Background Checks:* The IB hereby agrees that all employees, contractors, agents and volunteers of the IB who will have direct contact with students, or access a District location during times that students are present, shall be subject to a security clearance procedure while performing the Services, and that it will comply with any requirements specified by District in writing to the IB with respect criminal history background record information review and reporting, including but not limited to, submitting a federal criminal history record information report for each such employee, contractor, agent or volunteer.
- 2.4 *Business Ethics:* During the performance of this Agreement, the IB will maintain business ethics standards aimed at avoiding real or apparent impropriety or conflicts of interest. No substantial gifts, entertainment,

payments, loans or other considerations beyond that which would be collectively categorized as incidental shall be made to any employees or officials of District, its authorized agents and representatives, or to family members of any of them. District hereby agrees this section shall not be considered violated to the extent that the IB engages and compensates any District employees as members of its network of professional educators as described at <http://www.ibo.org/jobs-and-careers/ib-educator-network/iben-roles/>.

- 2.5 **Grant Funding:** If the District pays for all or any portion of the Services with funds received by the District as grants, or under other terms and conditions from any source, then the IB shall comply with the terms of the applicable grant in carrying out the Services (and the District shall comply with the terms of said grant in making any payment or payments hereunder to the IB); provided, however, that District must provide IB with reasonable, advance written notice of the terms to be complied with and those that impact the Fees to be paid to the IB.
- 2.6 **School Official; Legitimate Educational Interest.** The District has determined that the IB constitutes a school official under 20 U.S.C. § 1232g(b)(1)(A), that has legitimate educational interests, including the educational interests of children in an IB Programme, in connection with the release of education records, or personally identifiable information contained therein other than directory information; accordingly the District shall release such information and directory information to the IB only in compliance with the other terms and conditions set forth in this Agreement for IB's use in the manner contemplated in this Agreement, with the understanding that IB may, pursuant to 34 CFR 99.33(b), make further disclosures on its behalf that comply with the requirements of 34 CFR §99.31, as described in this Agreement, the IB Programme Requirements or as are otherwise permitted under FERPA or other applicable law.
- 2.7 **Maintenance of Records.** IB shall maintain documentation for all charges under this Agreement. The books, records, and documents of IB, insofar as they relate to work performed or money received under this Agreement, will be subject to audit, at any reasonable time and upon reasonable written notice District or its duly appointed representatives.
- 2.8 **Liability/Insurance:** Notwithstanding any other provision of this Agreement, IB's maximum aggregate liability for any reason (except for personal injury, death or liability that cannot be excluded pursuant to applicable law) shall not exceed the fees paid to IB under this Agreement, and IB shall not be liable for any incidental, special or consequential damages, including loss of revenue, loss of use of equipment or facilities, loss of data, or economic damages based on strict liability, negligence or any other legal or equitable theory. IB shall carry insurance with responsible insurance carriers and with minimum limits of liability coverage, as stated below, against claims for damages caused by bodily injury, including death, and claims for property damage with minimum limits of liability coverage as stated below. IB shall furnish certificates of insurance to District indicating compliance with this paragraph upon District's written request.

Type of Coverage	Minimum Limits
1. Workers' Compensation and Employer's Liability	Statutory \$100,000 per accident
2. Commercial General Liability	\$1,000,000 per occurrence

### 3. The District's Responsibilities;

- 3.1 The District shall promptly pay the IB the fees for the Services in an amount as set forth on **Schedule 1** (the "Fees") in accordance with the billing and payment process **Schedule 2**. The District acknowledges and agrees that, while the Fees set forth on Schedule 1 are current at the time of executing this Agreement, they are not firm and may be adjusted by the IB during the term of this Agreement to be in accordance with IB's standard fees and prices as adopted and published by the IB during the term of this Agreement. The Fees shall be paid in accordance with and subject to any applicable prompt payment laws and regulations or substantially equivalent laws and regulations (including any interest permitted or required thereunder).
- 3.2 **Appropriation of Funds:** If the District will pay any portion of the Fees in any District fiscal year subsequent to the current fiscal year, then District represents and warrants that the portion of the Fees that may accrue hereunder in a subsequent fiscal year remains subject to legally mandated budget authorization or annual appropriation under applicable law. If for any reason funds for that portion of the Fees that may accrue hereunder in a subsequent fiscal year are not continued in any subsequent District fiscal year, District shall promptly notify the IB in writing and the District's liability under this Agreement shall automatically terminate

at the end of the fiscal year for which the District's budget authorization body authorized funds; provided, however, the District shall be liable to pay for Services rendered to or ordered by District or District Schools up to the date of such termination.

- 3.3 The District hereby acknowledges and agrees that the IB Program Requirements apply to each of the District Schools receiving the Services. District shall perform its obligations and exercise its rights under this Agreement in a manner that ensures that District and each District Schools are in compliance with the IB Programme Requirements, which shall prevail in the event of any conflict with this Agreement. District acknowledges that any lack of payment (whether due to termination or otherwise) may impact the IB's ability to provide Services to District Schools and IB reserves all rights in the event of any lack of payment for Services.

#### **4. Intellectual Property Rights; Data Protection; and Confidentiality**

- 4.1 **No exchange of intellectual property rights is implied by this Agreement. The intellectual property rights of each Party will remain the intellectual property rights of that Party and neither Party will have the right to use the other Party's intellectual property rights, including trade-marks, logos or names in any promotional materials, without the prior written consent of that Party, except as otherwise specifically provided in this Agreement.** District acknowledges that the IB is the sole owner of all intellectual property rights in the IB Programmes; all IB Programme assessments and exams, including all papers, questions and other items contained therein; all IB logos and trademarks; and in all professional development, workshop and teacher training materials published by the IB (or its affiliates). For the duration of the Term, the IB hereby grants to District a non-exclusive, personal, non-transferable, royalty-free and worldwide license to reproduce the IB world school trilingual logo solely on the District's web pages related to IB authorized schools the same terms as is granted to the District Schools in accordance with IB branding guidelines (<https://ibo.org/globalassets/digital-toolkit/pdfs/brand-guidelines-en.pdf> ) and Rules for use of IB intellectual property (<http://ibo.org/copyyright>).
- 4.2 If personal data or personally identifiable information is to be transferred or exchanged under this Agreement, the Parties each agree to comply with any applicable data protection and privacy legislation (including, but not limited to, the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g, "FERPA" and the National School Lunch Act if applicable). Any such information will only be used by the IB for legitimate school purposes and educational interests by the IB as described in the IB's Privacy Policy (Purposes of Processing and Use of Personal Data) and the District hereby authorizes the IB to process personal data or personally identifiable information under this Agreement for such purposes. District, for itself and each of its participating or candidate schools, covenants and agrees that it shall only transmit, share, disclose, or otherwise transfer personally identifiable information protected under FERPA or information protected under other applicable law (including if applicable the National School Lunch Act) to the IB in conformity with the IB Programme Requirements, requirements of FERPA and/or other applicable law, including the National School Lunch Act and that none of the information is subject to the Health Insurance Portability and Accountability Act of 1996 (HIPPA).
- 4.3 District hereby acknowledges and agrees that all IB exams and assessments (including the papers, questions and other items contained there) are confidential and proprietary information of the IB. IB hereby acknowledges and agrees that any information it receives from District which concerns the financial or other affair of the District or concerns students in the District shall be confidential information. Each Party shall treat all confidential information as confidential; disclose it to only to its officers, employees and agents on a need-to-know basis for purposes of this Agreement; and shall not disclose it to any third party; provided however, that the IB may disclose District data to third-parties 1) authorized or permitted under FERPA, 2) providing business services to the IB that are (A) necessary for the IB to provide or improve the Services and (B) pursuant to agreements that have confidentiality, privacy and security protections substantially equivalent to this Agreement (in the categories described in the IB Privacy Policy under "III. Third Parties, Disclosure and Cross-Border Transfers"), or 3) who provide certain well-established media reviews of IB Programmes and schools offering the IB Programmes (e.g. US News & World Report's Best High School Rankings), in which case IB shall disclose only aggregated student data and no more than is necessary to meet the specific request.
- 4.4 Neither Party shall make any public announcement, advertising, or communication concerning this Agreement without the prior written consent of the other Party.

#### **5. Miscellaneous**

- 5.1 Each Party agrees to comply with all applicable laws in connection with this Agreement; and, in the case of IB, with the requirements of federal laws, executive orders, regulations, applicable guidelines, and policies as required by District in connection with the Services, including relating to non-discrimination.

- 5.2 Each Party represents and warrants to the other that the execution of this Agreement has been duly authorized, and that this Agreement constitutes a valid and enforceable obligation of such party according to its terms.
- 5.3 No waiver of a breach of any provision of this Agreement shall be construed to be a waiver of any breach of any other provision. No delay in acting with regard to any breach of any provision shall be construed to be a waiver of such breach.
- 5.4 The IB shall perform its duties hereunder as an independent contractor and not as an employee of the District. Neither the IB nor any agent or employee of the IB shall be or shall be deemed to be an agent or employee of the District by virtue of this Agreement.
- 5.5 This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof, and may only be amended or modified in writing. This Agreement may not be assigned by either Party without the prior written consent of the other Party.
- 5.6 This Agreement does not constitute either Party the agent of the other, or create a partnership, joint venture or similar relationship between the Parties, and no Party shall have the power to obligate or bind the other Party in any manner whatsoever.
- 5.7 Any notice hereunder shall be in writing and shall be deemed to have been duly given: (i) when delivered if delivered personally or sent by express courier service; or (ii) when transmitted via email, provided that the receiving Party acknowledges receipt by return email, and that the email clearly states in the subject line that it is intended to give notice hereunder. Any notice hereunder shall be sent to a Party at its address set forth below; either Party may change such address by notice to the other Party.


The IB	The District
<p>David Weiss, Head of US Public Schools International Baccalaureate Organization 3950 Wisconsin Avenue NW Washington, DC 20016</p> <p>With a copy to: Legal &amp; Compliance Department International Baccalaureate Organization Rue du Pré-de-la-Bichette 1 1202 Geneva, Switzerland OR email: legal@ibo.org</p>	<p>JEFF REAVES</p> <p>DIRECTOR OF TEACHING AND LEARNING</p> <p>1769 EAST MOODY BLVD BLDG #2 BUNNELL, FLORIDA 32110</p> <p>386-437-7526</p> <p>REAVESJ@FLAGLERSCHOOLS.COM</p>

- 5.8 This Agreement shall be governed by the laws of the state of Florida and any dispute under this Agreement shall be brought in a court of competent jurisdiction in Flagler County, Florida; provided, however that the IB may seek injunctive relief with respect to a violation of intellectual property rights or confidentiality obligations in any applicable jurisdiction.
- 5.9 This Agreement may be executed in counterparts, each of which shall be an original, but all of which together shall constitute one instrument. It is hereby agreed by each party that true and correct scanned copies of signatures shall have the same effect as, and shall be legally binding in the same manner as, original signatures.
- 5.10 This Agreement is amended through the Rider to this Agreement attached hereto as Amendment 1 (the "Amendment"). The Amendment and its attachments shall govern the treatment of student data in order to comply with the privacy protections including those found in FERPA and all applicable privacy statutes identified in the Amendment. In the event there is a conflict between the terms of this Agreement and the Amendment, the terms of the Amendment shall apply and take precedence.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date written above.

**International Baccalaureate Organization**

**The District**

By 

Name: ....Nicole Bien.....

Title: .....Chief Schools Officer

Date:..... 10/05/2023.....

By 

Name: Cheryl Massaro.....

Title: School Board Chairperson.....

Date:..... 10/17/23.....

By   
By.....

Name: David Weiss.....

Title: IBWS Head, US Public Schools ...

Date:.... 5 October 2023.....



Name: Jeff Reaves

Title: Director of Teaching and Learning

Date:..... 10/17/23.....

### **Schedule 1 – Services**

#### **Services**

<b>Item</b>	<b>Currency and Amount</b>
Annual School Fees	
- Diploma Programme	\$40,000
- Career-related Programme	___ N/A ___
- Middle Years Programme	___ N/A ___
- Primary Years Programme	
Assessment (\$119 per test)	\$15,000
Candidate School Fees	___ N/A ___
<b>TOTAL</b>	<b>\$55,000</b>

#### **Fees**

The School District will pay the IB a total annual amount not to exceed \$65,000. All payments for services provided by the IB shall be due within 30 days after the School District's receipt of the IB's invoice.

**SCHEDULE 2**  
**BILLING PROCEDURES and REQUIREMENTS**

1. **Fees.** The District shall pay the IB within 30 days of receipt of an invoice from IB for Services rendered and/or Services for which District Schools have registered, applied or ordered.
2. **Purchase Orders:** District and each District School shall raise any purchase orders, if required by its internal processes and procedures, for the Services in a manner to meet its obligations to timely pay the Fees under this Agreement.
3. **Invoicing:** IB shall raise invoices for the Services in the following manner:
  - a. For each District School that properly and timely completes its registration of students for IB exams and assessment with the IB in accordance with the IB Programme Requirements by November 15<sup>th</sup> (the 1<sup>st</sup> deadline for exam registration), IB shall generate individual invoices for each District School "Initial School Invoices") and summarize them in BILL TO invoice and send such BILL TO invoice to District at the contact and address specified below in accordance with its standard billing cycle for exam registrations (the "Initial Consolidated Invoice").
  - b. For each District School that properly makes changes or identifies withdrawals of students from registration for IB exams and assessment in accordance with the Rules by January 15<sup>th</sup>; IB will adjust each Initial School Invoice to reflect any non-fee based changes and update final numbers;
  - c. After each District School enters internal assessment grades and administer the IB examinations for the May session, IB will invoice individual District Schools directly, rather than District, for any Fees incurred for Services for which such District Schools registered or changed or withdrew registration between the November session registration deadline and the final May exams for late registrations or other applicable Fees.
  - d. IBO will also invoice District Schools directly, and not District, for any students assigned to grade of N because of failure to complete a course component
  - e. District is responsible for ensuring that the District Schools are aware that their invoice shall be paid by the District so that duplicate payments are not made. In the event of a duplicate payment, the IB will refund the duplicate amount upon receiving appropriate documentation.
  - f. The Board will pay the IB the fees, charges or other amounts specified in this Agreement on Schedule 1 within thirty (30) days of date of receipt of an invoice; provided, however, that the Board hereby agrees that the IB will send invoices to each individual school applying for, registering for or receiving the IB services or materials in accordance with the IB's regular invoicing schedule and standard billing procedures as set out in the Programme Requirements (Fees and Billing Information document updated yearly) and shall be paid timely by such schools. The Board is responsible for ensuring that its schools are aware that their invoice shall be paid by the District so that duplicate payments are not made. In the event of a duplicate payment, the IB will fund the duplicate amount upon receiving appropriate documentation.
4. **District Procurement and/or Vendor Registration Requirements**
  - a. District represents and warrants that Annex A contains a current, complete list of any and all additional documentation or vendor registrations required by District or District Schools in order for its procurement office or contract management department, or similar office or department, to timely process invoices received by District or any of the District Schools, from the IB and to meet its obligation to pay for Services within 30 days of receipt of such invoices. District shall present any requests for such documentation to process invoices sufficiently in advance to permit IB to review and execute such additional documentation. The parties hereby agree that any requests by District or District schools not listed below as of the date of this Agreement and required later from the IB shall not be considered reasonable documentation or otherwise required for purposes any applicable prompt payment or substantially equivalent laws or regulations.
  - b. Also attached to Annex A is the
    - i. Form of any additional affidavits, e-Verify certification, vendor disclosure forms, or other documentation or account registrations of a similar nature required by District in order to process payments of up to the Maximum Compensation Amount; and
    - ii. Name, title, contact phone number, and contact email of the procurement officer or contract administrator at District responsible for this Agreement.

**AMENDMENT BETWEEN THE SCHOOL BOARD OF FLAGLER COUNTY, FLORIDA AN  
International Baccalaureate Organization (IB) FOR ONLINE EDUCATION SERVICES**

**Additional Terms and Condition Rider to Agreement between International  
Baccalaureate Organization and Flagler County School District**

**Academic Year 2023-2026**

**(Required by Florida Law – Rule 6A-1.0955)**

This Amendment (“Rider”) is entered into by and between The School Board of Flagler County, Florida, a political subdivision of the State of Florida and a body corporate pursuant to §1001.40, Florida Statutes, whose address is 1769 E. Moody Blvd., Bldg. 2, Bunnell, FL 32110, hereinafter referred to as “FCSB” or “School Board” and International Baccalaureate Organization, a Swiss foundation, whose principal US address is 3950 Wisconsin Avenue NW Washington, DC 20016, hereinafter referred to as “Contractor” (each a “Party” and collectively referred to as the “Parties”).

**RECITALS**

A. The Parties entered into the Agreement between International Baccalaureate Organization and Flagler County School District Academic Year 2023-2028, dated August 3, 2023 (the “Original Agreement”), to develop inquiring, knowledgeable and caring young people who help create a better and more peaceful world through intercultural understanding and respect.

B. Florida Administrative Rule 6A-1.0955 went into effect on November 22, 2022, requiring additional terms and conditions related to contracts for online education technology in the collection, use and disclosure of students’ personally identifiable information (“PII”).

C. The Original Agreement relates to an online educational service that contains student PII, subject to Rule 6A-1.0955, F.A.C.,

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. The above Recitals are true and correct and are incorporated herein by reference.
2. Pursuant to Rule 6A-1.0955, Attachment A is hereby incorporated into the Original Agreement and made a part thereof.
3. Pursuant to Rule 6A-1.0955, Exhibit B of the Attachment A shall be maintained and Provider to notify the School Board and update Exhibit B if there are any changes to the system that impacts students’ PII to ensure proper notification is provided in accordance with applicable law.



4. Failure to notify the School Board shall constitute default and a material breach of the Original Agreement which may result in immediate termination without penalty to the School Board.

5. The effective date of this Amendment shall be the date of complete execution by the Parties.

6. This Amendment may be executed in counterparts, whether signed physically or electronically, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

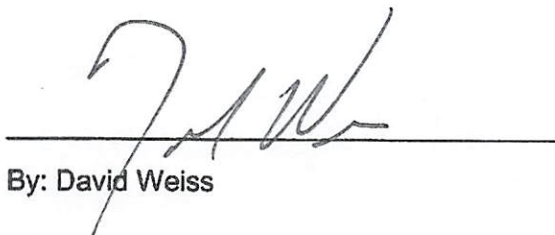
**IN WITNESS WHEREOF**, the Parties hereto have made and executed this Agreement on the date first above written.

Flagler County School Board:

Contractor: International Baccalaureate  
Organization



Cheryl Massaro, Chairperson

  
By: David Weiss

Title: Head of US Public Schools International  
Baccalaureate Organization

Date: 10/17/23

Date: 5 October 2023

**Attachments:** (list all attachments with the exact title of the document)

Attachment A, Data Sharing and Privacy Agreement

Attachment N/A, Statement of Work or Proposal #, [Title]

Contractor Contact Name: David Weiss

Phone Number: (301) 202-3155

Email Address: David.Weiss@ibo.org

**AMENDMENT BETWEEN THE SCHOOL BOARD OF FLAGLER COUNTY, FLORIDA AND  
International Baccalaureate Organization FOR ONLINE EDUCATION SERVICES**

**ATTACHMENT A  
STANDARD STUDENT DATA PRIVACY AGREEMENT**

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This Student Data Privacy Agreement (“DPA”), as developed by the Student Data Privacy Consortium (“SDPC”) and as modified by The School Board of Flagler County, Florida is entered into on the date of full execution (the “Effective Date”) and is entered into by and between:

The School Board of Flagler County, Florida, located at 1769 E. Moody Blvd.,  
Bldg. 2, Bunnell, FL 32110

and

International Baccalaureate Organization, located at 3950 Wisconsin Avenue  
NW Washington, DC 20016 (the “Provider”).

**WHEREAS**, the Provider is providing educational or digital services to LEA.

**WHEREAS**, the Provider and LEA recognize the need to protect personally identifiable student information and other regulated data exchanged between them as required by applicable laws and regulations, such as the Family Educational Rights and Privacy Act (“FERPA”) at 20 U.S.C. § 1232g (34 CFR Part 99); the Children’s Online Privacy Protection Act (“COPPA”) at 15 U.S.C. § 6501-6506 (16 CFR Part 312), and applicable state privacy laws and regulations and

**WHEREAS**, the Provider and LEA desire to enter into this DPA for the purpose of establishing their respective obligations and duties in order to comply with applicable laws and regulations.

**NOW THEREFORE**, for good and valuable consideration, LEA and Provider agree as follows:

1. A description of the Services to be provided, the categories of Student Data that may be provided by LEA to Provider, and other information specific to this DPA are contained in the Standard Clauses hereto.

**2. Special Provisions. Check if Required**

- ✓ If checked, the Supplemental State Terms and attached hereto as **Exhibit "G"** are hereby incorporated by reference into this DPA in their entirety.
  - ✓ If checked, LEA and Provider agree to the additional terms or modifications set forth in **Exhibit "H"**.
  - ✓ If Checked, the Provider, has signed **Exhibit "E"** to the Standard Clauses, otherwise known as General Offer of Privacy Terms
3. In the event of a conflict between the SDPC Standard Clauses, the State or Special Provisions will control. In the event there is conflict between the terms of the DPA and any other writing, including, but not limited to the Service Agreement and Provider Terms of Service or Privacy Policy the terms of this DPA shall control.
4. This DPA shall stay in effect for three (3) years. **Exhibit "E"** will expire three (3) years from the date the original DPA was signed.
5. The services to be provided by Provider to LEA pursuant to this DPA are detailed in **Exhibit "A"** (the "**Services**").
6. **Notices**. All notices or other communication required or permitted to be given hereunder may be given via e-mail transmission, or first-class mail, sent to the designated representatives below.

The designated representative for the LEA for this DPA is:

Name: Jeff Reaves

Title: Director of Teaching and Learning

Address: 1769 East Moody Blvd Bldg 2 Bunnell, FL 32110

Phone: 386-427-7526

Email: reavesj@flaglerschools.com

The designated representative for the Provider for this DPA is:

Name: David Wiess

Title: Head of US Public Schools International Baccalaureate Organization

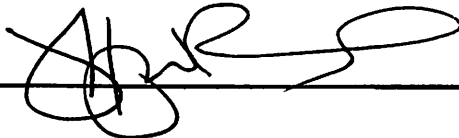
Address: 3950 Wisconsin Avenue NW Washington, DC 20016

Phone: 302-202-3155

Email: David.Weiss@ibo.org

**IN WITNESS WHEREOF**, LEA and Provider execute this DPA as of the Effective Date.

**LEA: The School Board of Flagler County, Florida**

By:  \_\_\_\_\_

Date: 10/17/23

**Printed Name: Jeff Reaves Title/Position: Director of Teaching and Learning**

**Provider: International Baccalaureate Organization**

By:  \_\_\_\_\_

Date: 5 October 2023

**Printed Name: David Weiss**

**Title/Position: Head of US Public Schools International Baccalaureate Organization**

## STANDARD CLAUSES

Version 1.0

### ARTICLE I: PURPOSE AND SCOPE

1. **Purpose of DPA.** The purpose of this DPA is to describe the duties and responsibilities to protect Student Data including compliance with all applicable federal, state, and local privacy laws, rules, and regulations, all as may be amended from time to time. In performing the Services, the Provider shall be considered a School Official with a legitimate educational interest, and performing services otherwise provided by the LEA. Provider shall be under the direct control and supervision of the LEA, with respect to its use of Student Data
2. **Student Data to Be Provided.** In order to perform the Services described above, LEA shall provide Student Data as identified in the Schedule of Data, attached hereto as **Exhibit “B”**.
3. **DPA Definitions.** The definition of terms used in this DPA is found in **Exhibit “C”**. In the event of a conflict, definitions used in this DPA shall prevail over terms used in any other writing, including, but not limited to the Service Agreement, Terms of Service, Privacy Policies etc.

### ARTICLE II: DATA OWNERSHIP AND AUTHORIZED ACCESS

1. **Student Data Property of LEA.** All Student Data transmitted to the Provider pursuant to the Service Agreement is and will continue to be the property of and under the control of the LEA. The Provider further acknowledges and agrees that all copies of such Student Data transmitted to the Provider, including any modifications or additions or any portion thereof from any source, are subject to the provisions of this DPA in the same manner as the original Student Data. The Parties agree that as between them, all rights, including all intellectual property rights in and to Student Data contemplated per the Service Agreement, shall remain the exclusive property of the LEA. For the purposes of FERPA, the Provider shall be considered a School Official, under the control and direction of the LEA as it pertains to the use of Student Data, notwithstanding the above.
2. **Parent Access.** To the extent required by law the LEA shall establish reasonable procedures by which a parent, legal guardian, or eligible student may review Education Records and/or Student Data correct erroneous information, and procedures for the transfer of student-generated content to a personal account, consistent with the functionality of services. Provider shall respond in a reasonably timely manner (and no later than forty-five (45) days

from the date of the request or pursuant to the time frame required under state law for an LEA to respond to a parent or student, whichever is sooner) to the LEA's request for Student Data in a student's records held by the Provider to view or correct as necessary. In the event that a parent of a student or other individual contacts the Provider to review any of the Student Data accessed pursuant to the Services, the Provider shall refer the parent or individual to the LEA, who will follow the necessary and proper procedures regarding the requested information.

3. **Separate Account.** If Student-Generated Content is stored or maintained by the Provider, Provider shall, at the request of the LEA, transfer, or provide a mechanism for the LEA to transfer, said Student-Generated Content to a separate account created by the student.
4. **Law Enforcement Requests.** Should law enforcement or other government entities ("Requesting Party(ies)") contact Provider with a request for Student Data held by the Provider pursuant to the Services, the Provider shall notify the LEA in advance of a compelled disclosure to the Requesting Party, unless lawfully directed by the Requesting Party not to inform the LEA of the request.
5. **Subprocessors.** Provider shall enter into written agreements with all Subprocessors performing functions for the Provider in order for the Provider to provide the Services pursuant to the Service Agreement, whereby the Subprocessors agree to protect Student Data in a manner no less stringent than the terms of this DPA.

### ARTICLE III: DUTIES OF LEA

1. **Provide Data in Compliance with Applicable Laws.** LEA shall provide Student Data for the purposes of obtaining the Services in compliance with all applicable federal, state, and local privacy laws, rules, and regulations, all as may be amended from time to time.
2. **Annual Notification of Rights.** If the LEA has a policy of disclosing Education Records and/or Student Data under FERPA (34 CFR § 99.31(a)(1)), LEA shall include a specification of criteria for determining who constitutes a school official and what constitutes a legitimate educational interest in its annual notification of rights.
3. **Reasonable Precautions.** LEA shall take reasonable precautions to secure usernames, passwords, and any other means of gaining access to the services and hosted Student Data.

4. **Unauthorized Access Notification.** LEA shall notify Provider promptly of any known unauthorized access. LEA will assist Provider in any efforts by Provider to investigate and respond to any unauthorized access.

#### ARTICLE IV: DUTIES OF PROVIDER

1. **Privacy Compliance.** The Provider shall comply with all applicable federal, state, and local laws, rules, and regulations pertaining to Student Data privacy and security, all as may be amended from time to time.
2. **Authorized Use.** The Student Data shared pursuant to the Service Agreement, including persistent unique identifiers, shall be used for no purpose other than the Services outlined in **Exhibit "A"** or stated in the Service Agreement and/or otherwise authorized under the statutes referred to herein this DPA.
3. **Provider Employee Obligation.** Provider shall require all of Provider's employees and agents who have access to Student Data to comply with all applicable provisions of this DPA with respect to the Student Data shared under the Service Agreement. Provider agrees to require and maintain an appropriate confidentiality agreement from each employee or agent with access to Student Data pursuant to the Service Agreement.
4. **No Disclosure.** Provider acknowledges and agrees that it shall not make any re-disclosure of any Student Data or any portion thereof, including without limitation, user content or other non- public information and/or personally identifiable information contained in the Student Data other than as directed or permitted by the LEA or this DPA or the Service Agreement. This prohibition against disclosure shall not apply to aggregate summaries of De-Identified information, Student Data disclosed pursuant to a lawfully issued subpoena or other legal process, or to Subprocessors performing services on behalf of the Provider pursuant to this DPA. Provider will not Sell Student Data to any third party.
  - (a) **De-Identified Data:** Provider agrees not to attempt to re-identify De-Identified Student Data. De- Identified Data may be used by the Provider for those purposes allowed under FERPA and the following purposes: (1) assisting the LEA or other governmental agencies in conducting research and other studies; and (2) research and development of the Provider's educational sites, services, or applications, and to demonstrate the effectiveness of the Services; and (3) for adaptive learning purpose and for customized student learning. Provider's use of De-Identified Data shall survive termination of this DPA or any request by LEA to return or destroy Student Data. Except for Subprocessors or

as otherwise permitted under this clause, Provider agrees not to transfer de-identified Student Data to any party unless that party agrees in writing not to attempt re-identification, and (b) prior written notice has been given to the LEA who has provided prior written consent for such transfer. Prior to publishing any document that names the LEA explicitly or indirectly, the Provider shall obtain the LEA's written approval of the manner in which De-Identified Data is presented.

5. **Disposition of Data.** Upon written request from the LEA, Provider shall dispose of or provide a mechanism for the LEA to transfer Student Data obtained under the Service Agreement, within sixty (60) days of the date of said request and according to a schedule and procedure as the Parties may reasonably agree. Upon termination of this DPA, if no written request from the LEA is received, Provider shall dispose of all Student Data after providing the LEA with reasonable prior notice. The duty to dispose of Student Data shall not extend to Student Data that had been De-Identified or placed in a separate student account pursuant to section II 3. The LEA may employ a **"Directive for Disposition of Data"** form, a copy of which is attached hereto as **Exhibit "D"**. If the LEA and Provider employ **Exhibit "D"**, no further written request or notice is required on the part of either party prior to the disposition of Student Data described in **Exhibit "D"**. Notwithstanding the foregoing, Provider may retain copies of Student Data which it is required by law or regulation to retain, which shall be retained in encrypted format.
6. **Advertising Limitations.** Provider is prohibited from using, disclosing, or selling Student Data to
  - (a) inform, influence, or enable Targeted Advertising; or (b) develop a profile of a student, family member/guardian or group, for any purpose other than providing the Service to LEA. This section does not prohibit Provider from using Student Data (i) for adaptive learning or customized student learning (including generating personalized learning recommendations); or (ii) to make product recommendations to teachers or LEA employees; or (iii) to notify account holders about new education product updates, features, or services or from otherwise using Student Data as permitted in this DPA and its accompanying exhibits.

## ARTICLE V: DATA PROVISIONS

1. **Data Storage.** Upon request of the LEA, Provider will provide a list of the locations where Student Data is stored.
2. **Audits.** No more than once a year, or following unauthorized access, upon



receipt of a written request from the LEA with at least ten (10) business days' notice and upon the execution of an appropriate confidentiality agreement, the Provider will allow the LEA to audit the security and privacy measures that are in place to ensure protection of Student Data or any portion thereof as it pertains to the delivery of services to the LEA. The Provider will cooperate reasonably with the LEA and any local, state, or federal agency with oversight authority or jurisdiction in connection with any audit or investigation of the Provider and/or delivery of Services to students and/or LEA, and shall provide reasonable access to the Provider's facilities, staff, agents and LEA's Student Data and all records pertaining to the Provider, LEA and delivery of Services to the LEA. Failure to reasonably cooperate shall be deemed a material breach of the DPA.

3. **Data Security.** The Provider agrees to utilize administrative, physical, and technical safeguards designed to protect Student Data from unauthorized access, disclosure, acquisition, destruction, use, or modification. The Provider shall adhere to any applicable law relating to data security. The provider shall implement an adequate Cybersecurity Framework based on one of the nationally recognized standards set forth in **Exhibit "F"**. Exclusions, variations, or exemptions to the identified Cybersecurity Framework must be detailed in an attachment to **Exhibit "H"**. Additionally, Provider may choose to further detail its security programs and measures that augment or are in addition to the Cybersecurity Framework in **Exhibit "F"**. Provider shall provide, in the Standard Schedule to the DPA, contact information of an employee who LEA may contact if there are any data security concerns or questions.
4. **Data Breach.** In the event of an unauthorized release, disclosure or acquisition of Student Data that compromises the security, confidentiality or integrity of the Student Data maintained by the Provider the Provider shall provide notification to LEA within seventy-two (72) hours of confirmation of the incident, unless notification within this time limit would disrupt investigation of the incident by law enforcement. In such an event, notification shall be made within a reasonable time after the incident. Provider shall follow the following process:
  - (1) The security breach notification described above shall include, at a minimum, the following information to the extent known by the Provider and as it becomes available:
    - i. The name and contact information of the reporting LEA subject to this section.
    - ii. A list of the types of personal information that were or are reasonably believed to have been the subject of a breach.
    - iii. If the information is possible to determine at the time the notice is

- provided, then either (1) the date of the breach, (2) the estimated date of the breach, or (3) the date range within which the breach occurred. The notification shall also include the date of the notice. Whether the notification was delayed as a result of a law enforcement investigation, if that information is possible to determine at the time the notice is provided; and
- iv. A general description of the breach incident, if that information is possible to determine at the time the notice is provided.
- (2) Provider agrees to adhere to all federal and state requirements with respect to a data breach related to the Student Data, including, when appropriate or required, the required responsibilities and procedures for notification and mitigation of any such data breach.
- (3) Provider further acknowledges and agrees to have a written incident response plan that reflects best practices and is consistent with industry standards and federal and state law for responding to a data breach, breach of security, privacy incident or unauthorized acquisition or use of Student Data or any portion thereof, including personally identifiable information and agrees to provide LEA, upon request, with a summary of said written incident response plan.
- (4) LEA shall provide notice and facts surrounding the breach to the affected students, parents or guardians.
- (5) In the event of a breach originating from LEA's use of the Service, Provider shall cooperate with LEA to the extent necessary to expeditiously secure Student Data.

#### ARTICLE VI: GENERAL OFFER OF TERMS

Provider may, by signing the attached form of "General Offer of Privacy Terms" (General Offer, attached hereto as **Exhibit "E"**), be bound by the terms of **Exhibit "E"** to any other LEA who signs the acceptance on said Exhibit. The form is limited by the terms and conditions described therein.

#### ARTICLE VII: MISCELLANEOUS

1. **Termination**. In the event that either Party seeks to terminate this DPA, they may do so by mutual written consent so long as the Service Agreement has lapsed or has been terminated. Either party may terminate this DPA and any service agreement or contract if the other party breaches any terms of this DPA.

2. **Effect of Termination Survival.** If the Service Agreement is terminated, the Provider shall destroy all of LEA's Student Data pursuant to Article IV, section 6. Notwithstanding the foregoing, Provider may retain copies of Student Data which it is required by law or regulation to retain, which shall be retained in encrypted format.
3. **Priority of Agreements.** This DPA shall govern the treatment of Student Data in order to comply with the privacy protections, including those found in FERPA and all applicable privacy statutes identified in this DPA. In the event there is conflict between the terms of the DPA and the Service Agreement, Terms of Service, Privacy Policies, or with any other bid/RFP, license agreement, or writing, the terms of this DPA shall apply and take precedence. In the event of a conflict between **Exhibit "H"**, the SDPC Standard Clauses, and/or the Supplemental State Terms, **Exhibit "H"** will control, followed by the Supplemental State Terms. Except as described in this paragraph herein, all other provisions of the Service Agreement shall remain in effect.
4. **Entire Agreement.** This DPA and the Service Agreement constitute the entire agreement of the Parties relating to the subject matter hereof and supersedes all prior communications, representations, or agreements, oral or written, by the Parties relating thereto. This DPA may be amended and the observance of any provision of this DPA may be waived (either generally or in any particular instance and either retroactively or prospectively) only with the signed written consent of both Parties. Neither failure nor delay on the part of any Party in exercising any right, power, or privilege hereunder shall operate as a waiver of such right, nor shall any single or partial exercise of any such right, power, or privilege preclude any further exercise thereof or the exercise of any other right, power, or privilege.
5. **Severability.** Any provision of this DPA that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this DPA, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Notwithstanding the foregoing, if such provision could be more narrowly drawn so as not to be prohibited or unenforceable in such jurisdiction while, at the same time, maintaining the intent of the Parties, it shall, as to such jurisdiction, be so narrowly drawn without invalidating the remaining provisions of this DPA or affecting the validity or enforceability of such provision in any other jurisdiction.
6. **Governing Law; Venue and Jurisdiction.** THIS DPA WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE

OF THE LEA, WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES. EACH PARTY CONSENTS AND SUBMITS TO THE SOLE AND EXCLUSIVE JURISDICTION TO THE STATE AND FEDERAL COURTS FOR THE COUNTY OF THE LEA FOR ANY DISPUTE ARISING OUT OF OR RELATING TO THIS DPA OR THE TRANSACTIONS CONTEMPLATED HEREBY.

7. **Successors Bound**: This DPA is and shall be binding upon the respective successors in interest to Provider in the event of a merger, acquisition, consolidation or other business reorganization or sale of all or substantially all of the assets of such business. In the event that the Provider sells, merges, or otherwise disposes of its business to a successor during the term of this DPA, the Provider shall provide written notice to the LEA no later than sixty (60) days after the closing date of sale, merger, or disposal. Such notice shall include a written, signed assurance that the successor will assume the obligations of the DPA and any obligations with respect to Student Data within the Service Agreement. The LEA has the authority to terminate the DPA if it disapproves of the successor to whom the Provider is selling, merging, or otherwise disposing of its business.
8. **Authority**. Each party represents that it is authorized to bind to the terms of this DPA, including confidentiality and destruction of Student Data and any portion thereof contained therein, all related or associated institutions, individuals, employees or contractors who may have access to the Student Data and/or any portion thereof.
9. **Waiver**. No delay or omission by either party to exercise any right hereunder shall be construed as a waiver of any such right and both parties reserve the right to exercise any such right from time to time, as often as may be deemed expedient.

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## **EXHIBIT "A"**

### **DESCRIPTION OF SERVICE**

The aim of the IB is to develop inquiring, knowledgeable and caring young people who help create a better and more peaceful world through intercultural understanding and respect. To this end the IB works with schools, governments and international organizations to develop challenging programmes of international education and rigorous assessment. These programmes encourage students across the world to become active, compassionate and lifelong learners who understand that other people, with their differences, can also be right.

To achieve these purposes, the IB has developed and owns a Primary Years Programme, a Middle Years Programme, a Diploma Programme and an IB Career-related Programme that the IB may offer to schools within the District's jurisdiction. The IB Programmes are governed by the IB's regulations, rules and other requirements with respect to the candidacy, authorization and implementation of, and professional development and training for, the IB Programmes as available on the IB's online programme resource centre and/or the IB's website, as may be amended from time to time.

## **EXHIBIT "B"**

### **SCHEDULE OF DATA**

- first name
- last name
- grade
- classroom
- teacher
- school
- exam/assessment results
- language and language proficiency
- age and date of birth
- education records
- free and reduced-cost lunch eligibility status
- gender
- race/ethnic origin
- medical or other information regarding disabilities or other conditions requiring assessment accommodations
- student work product

## **EXHIBIT “C”**

### **DEFINITIONS**

**De-Identified Data and De-Identification:** Records and information are considered to be De-Identified when all personally identifiable information has been removed or obscured, such that the remaining information does not reasonably identify a specific individual, including, but not limited to, any information that, alone or in combination is linkable to a specific student and provided that the educational agency, or other party, has made a reasonable determination that a student’s identity is not personally identifiable, taking into account reasonable available information.

**Educational Records:** Educational Records are records, files, documents, and other materials directly related to a student and maintained by the school or local education agency, or by a person acting for such school or local education agency, including but not limited to, records encompassing all the material kept in the student’s cumulative folder, such as general identifying data, records of attendance and of academic work completed, records of achievement, and results of evaluative tests, health data, disciplinary status, test protocols and individualized education programs.

**Metadata:** means information that provides meaning and context to other data being collected; including, but not limited to: date and time records and purpose of creation Metadata that have been stripped of all direct and indirect identifiers are not considered Personally Identifiable Information.

**Operator:** means the operator of an internet website, online service, online application, or mobile application with actual knowledge that the site, service, or application is used for K–12 school purposes. Any entity that operates an internet website, online service, online application, or mobile application that has entered into a signed, written agreement with an LEA to provide a service to that LEA shall be considered an “operator” for the purposes of this section.

**Originating LEA:** An LEA who originally executes the DPA in its entirety with the Provider.

**Provider:** For purposes of the DPA, the term “Provider” means provider of digital educational software or services, including cloud-based services, for the digital storage, management, and retrieval of Student Data. Within the DPA the term “Provider” includes the term “Third Party” and the term “Operator” as used in applicable state statutes.

**Student Generated Content:** The term “Student-Generated Content” means materials or content created by a student in the services including, but not limited to, essays, research reports, portfolios, creative writing, music or other audio files, photographs, videos, and account information that enables ongoing ownership of student content.

**School Official:** For the purposes of this DPA and pursuant to 34 CFR § 99.31(b), a School Official is a contractor that: (1) Performs an institutional service or function for which the agency or institution would otherwise use employees; (2) Is under the direct control of the agency or institution with respect to the use and maintenance of Student Data including Education Records; and (3) Is subject to 34 CFR § 99.33(a) governing the use and re-disclosure of Personally Identifiable Information from Education Records.

**Service Agreement:** Refers to the Contract, Purchase Order or Terms of Service or Terms of Use.

**Student Data:** Student Data includes any data, whether gathered by Provider or provided by LEA or its users, students, or students’ parents/guardians, that is descriptive of the student including, but not limited to, information in the student’s educational record or email, first and last name, birthdate, home or other physical address, telephone number, email address, or other information allowing physical or online contact, discipline records, videos, test results, special education data, juvenile dependency records, grades, evaluations, criminal records, medical records, health records, social security numbers, biometric information, disabilities, socioeconomic information, individual purchasing behavior or preferences, food purchases, political affiliations, religious information, text messages, documents, student identifiers, search activity, photos, voice recordings, geolocation information, parents’ names, or any other information or identification number that would provide information about a specific student. Student Data includes Meta Data. Student Data further includes “Personally Identifiable Information (PII),” as defined in 34 C.F.R. § 99.3 and as defined under any applicable state law. Student Data shall constitute Education Records for the purposes of this DPA, and for the purposes of federal, state, and local laws and regulations. Student Data as specified in **Exhibit “B”** is confirmed to be collected or processed by the Provider pursuant to the Services. Student Data shall not constitute that information that has been anonymized or De-Identified, or anonymous usage data regarding a student’s use of Provider’s services.

**Subprocessor:** For the purposes of this DPA, the term “Subprocessor” (sometimes referred to as the “Subcontractor”) means a party other than LEA or Provider, who Provider uses for data collection, analytics, storage, or other service to operate and/or improve its service, and who has access to Student Data.



**Subscribing LEA:** An LEA that was not party to the original Service Agreement and who accepts the Provider's General Offer of Privacy Terms.

**Targeted Advertising:** means presenting an advertisement to a student where the selection of the advertisement is based on Student Data or inferred over time from the usage of the operator's Internet web site, online service or mobile application by such student or the retention of such student's online activities or requests over time for the purpose of targeting subsequent advertisements. "Targeted Advertising" does not include any advertising to a student on an Internet web site based on the content of the web page or in response to a student's response or request for information or feedback.

**Third Party:** The term "Third Party" means a provider of digital educational software or services, including cloud-based services, for the digital storage, management, and retrieval of Education Records and/or Student Data, as that term is used in some state statutes. However, for the purpose of this DPA, the term "Third Party" when used to indicate the provider of digital educational software or services is replaced by the term "Provider."

## **EXHIBIT "D"**

### **DIRECTIVE FOR DISPOSITION OF DATA**

**[Insert Name of District or LEA] Provider to dispose of data obtained by Provider pursuant to the terms of the Service Agreement between LEA and Provider. The terms of the Disposition are set forth below:**

#### **1. Extent of Disposition**

\_\_\_\_\_Disposition is partial. The categories of data to be disposed of are set forth below or are found in an attachment to this Directive:

**X**\_\_\_\_\_Disposition is Complete. Disposition extends to all categories of data.

#### **2. Nature of Disposition**

\_\_\_\_\_Disposition shall be by destruction or deletion of data.

\_\_\_\_\_Disposition shall be by a transfer of data. The data shall be transferred to the following site as follows:

[Insert or attach special instructions]

#### **3. Schedule of Disposition**

Data shall be disposed of by the following date:

\_\_\_\_\_As soon as commercially practicable.

\_\_\_\_\_By [Insert Date]

#### **4. Signature**

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Authorized Representative of LEA

---

Date

#### **5. Verification of Disposition of Data**

---

Authorized Representative of Provider

---

Date

## EXHIBIT "E"

### GENERAL OFFER OF TERMS

#### 1. OFFER OF TERMS

Provider offers the same privacy protections found in this DPA between it and **[Insert Name of Originating LEA]** ("Originating LEA") which is dated **[Insert Date]**, to any other LEA ("Subscribing LEA") who accepts this General Offer of Privacy Terms ("General Offer") through its signature below. This General Offer shall extend only to privacy protections, and Provider's signature shall not necessarily bind Provider to other terms, such as price, term, or schedule of services, or to any other provision not addressed in this DPA. The Provider and the Subscribing LEA may also agree to change the data provided by Subscribing LEA to the Provider to suit the unique needs of the Subscribing LEA. The Provider may withdraw the General Offer in the event of: (1) a material change in the applicable privacy statutes; (2) a material change in the services and products listed in the originating Service Agreement; or three (3) years after the date of Provider's signature to this Form. Subscribing LEAs should send the signed **Exhibit "E"** to Provider at the following email address:

BY: David Weiss

Date: 10/23/2023

Printed Name: David Weiss

Title/Position: Head of US Public Schools International Baccalaureate

#### 1. Subscribing LEA

A Subscribing LEA, by signing a separate Service Agreement with Provider, and by its signature below, accepts the General Offer of Privacy Terms. The Subscribing LEA and the Provider shall therefore be bound by the same terms of this DPA for the term of the DPA between the **[Insert Name of Originating LEA]** and the Provider. **\*\*PRIOR TO ITS EFFECTIVENESS, SUBSCRIBING LEA MUST DELIVER NOTICE OF ACCEPTANCE TO PROVIDER PURSUANT TO ARTICLE VII, SECTION 5. \*\***

The School Board of Flagler County, Florida

BY: 

Date: 10/17/23

Printed Name: Cheryl Massaro

Title/Position: School Board Chairperson

SCHOOL DISTRICT NAME: THE SCHOOL BOARD OF FLAGLER COUNTY,  
FLORIDA

DESIGNATED REPRESENTATIVE OF LEA:

Name: Jeff Reaves

Title: Director of Teaching and Learning

Address: 1769 East Moody Blvd Bld 2 Bunnell, FL 32110

Telephone Number: 386-437-7526

Email: reavesj@flaglerschools.com

## **EXHIBIT “F”**

### **DATA SECURITY REQUIREMENTS**

#### **Adequate Cybersecurity**

#### **Frameworks 2/24/2020**

The Education Security and Privacy Exchange (“Edspex”) works in partnership with the Student Data Privacy Consortium and industry leaders to maintain a list of known and credible cybersecurity frameworks which can protect digital learning ecosystems chosen based on a set of guiding cybersecurity principles\* (“Cybersecurity Frameworks”) that may be utilized by Provider.

#### **Cybersecurity Frameworks**

	<b>MAINTAINING ORGANIZATION/GROUP</b>	<b>FRAMEWORK(S)</b>
	National Institute of Standards and Technology (NIST)	NIST Cybersecurity Framework Version 1.1
	National Institute of Standards and Technology (NIST)	NIST SP 800-53, Cybersecurity Framework for Improving Critical Infrastructure Cybersecurity (CSF), Special Publication 800-171
	International Standards Organization (ISO)	Information technology — Security techniques — Information security management systems (ISO 27000 series)
	Secure Controls Framework Council, LLC	Security Controls Framework (SCF)
	Center for Internet Security (CIS)	CIS Critical Security Controls (CSC, CIS Top 20)
	Office of the Under Secretary of Defense for Acquisition and Sustainment (OUSD(A&S))	Cybersecurity Maturity Model Certification (CMMC, ~FAR/DFAR)

*Please visit <http://www.edspex.org> for further details about the noted frameworks.*

*\*Cybersecurity Principles used to choose the Cybersecurity Frameworks are located here*

## **EXHIBIT “G”**

### **Supplemental SDPC State Terms for [State]**

Version \_\_\_\_\_

[The State Supplement is an ***optional*** set of terms that will be generated on an as-needed basis in collaboration between the national SDPC legal working group and the State Consortia. The scope of these State Supplements will be to address any state specific data privacy statutes and their requirements to the extent that they require terms in addition to or different from the National Standard Clauses. The State Supplements will be written in a manner such that they will not be edited/updated by individual parties and will be posted on the SDPC website to provide the authoritative version of the terms. Any changes by LEAs or Providers will be made in amendment form in an Exhibit (**Exhibit “H”** in this proposed structure).]

## **EXHIBIT "H"**

### **Additional Terms or Modifications**

**THIS EXHIBIT "H"** effective simultaneously with attached Student Data Privacy Agreement ("DPA") between The School Board of Flagler County, Florida, (the "Local Education Agency" or "LEA") and \_\_\_\_\_, (the "Provider") is incorporated in the attached DPA and amends the DPA (and all supplemental terms and conditions and policies applicable to the DPA) as follows:

1. The second WHEREAS CLAUSE is amended to add "the Protection of Pupil Rights Amendment ("PPRA") at 20 U.S.C. 1232h (34 CFR Part 98)" after "15 U.S.C. § 6501-6506 (16 CFR Part 312)".
2. Paragraph 3 on page 1 is deleted in its entirety and replaced with the following: In the event of a conflict between the DPA Standard Clauses, the State or Special Provisions will control. In the event there is conflict between the terms of the DPA and any other writing, including Provider Terms of Service or Privacy Policy, the terms of the Service Agreement, and then this DPA shall control.
3. The last sentence of Article II, Paragraph 1 is amended as follows: Provider agrees that for purposes of this Agreement, it will be designated a "School Official," under the control and direction of the LEA as it pertains to the use of Student Data, with "legitimate educational interests" as those terms have been interpreted and defined under FERPA. Provider may transfer student-generated content to a separate account, according to the procedures set forth below. Provider agrees to abide by FERPA and Fla. Stat. 1002.22 while performing its service for the LEA.
4. Article I, Paragraph 2 is amended to add the following: Indemnification. Provider shall indemnify, hold harmless, and defend the SB and all of SB's current, past, and future officers, agents, and employees (collectively, "Indemnified Party") from and against any and all causes of action, demands, claims, losses, liabilities, and expenditures of any kind, including attorneys' fees, court costs, and expenses, including through the conclusion of any appellate proceedings, raised or asserted by any person or entity not a party to this Agreement, and caused or alleged to be caused, in whole or in part, by any breach of this Agreement by Provider, third-parties, or subprocessor(s) related to Attachment A, Exhibit B (Schedule of Data), including but not limited to, failure to notify the SB of any additional students' PII collected and not updated by Provider in

**Exhibit B.**

- 5. Article II, Paragraph 5 is deleted in its entirety and replaced with the following: Provider shall enter into written agreements with all Subprocessors performing functions for the Provider in order for the Provider to provide the Services pursuant to the Service Agreement, whereby the Subprocessors agree to protect Student Data in a manner consistent with the terms of this DPA. Provider agrees to share the Subprocessors names and agreements with LEA upon LEA's request.**
- 6. Article III, Paragraph 1 is amended to add the following sentence: LEA will allow Provider access to Student Data necessary to perform the Services and pursuant to the terms of this DPA and in compliance with FERPA, COPPA, PPRA, and all other privacy statutes cited in this DPA.**
- 7. Article IV, Paragraph 1 is amended to add the following sentence: The Parties expect and anticipate that Provider may receive personally identifiable information in education records from the District only as an incident of service or training that Provider provides to the LEA pursuant to this Agreement. The Provider shall comply with all applicable State and Federal laws and regulations pertaining to Student Data privacy and security, including FERPA, COPPA, PPRA, Florida Statutes Sections 1001.41 and 1002.22, and all other privacy statutes cited in this DPA. The Parties agree that Provider is a "school official" under FERPA and has a legitimate educational interest in personally identifiable information from education records because for purposes of the contract, Provider: (1) provides a service or function for which the LEA would otherwise use employees; (2) is under the direct control of the LEA with respect to the use and maintenance of education records; and (3) is subject to the requirements of FERPA governing the use and redisclosure of personally identifiable information from education records**
- 8. Article IV, Paragraph 2 is amended to add the following sentence: Provider also acknowledges and agrees that it shall not make any re-disclosure of any Student Data or any portion thereof, including without limitation, meta Student Data, user content or other non-public information and/or personally identifiable information contained in the Student Data, without the express written consent of the LEA or as permitted by this DPA or the Service Agreement.**
- 9. Article IV, Paragraph 7 is deleted in its entirety and replaced with the following:**



Provider is prohibited from using or selling Student Data to (a) market or advertise to students or families/guardians; (b) inform, influence, or enable marketing, targeted advertising, or other commercial efforts by Provider; (c) develop a profile of a student, family member/guardian or group, for any commercial purpose other than providing the Service to LEA; or (d) use the Student Data for the development of commercial products or services, other than as necessary to provide the Service to LEA. This section does not prohibit Provider from generating legitimate personalized learning recommendations.

10. Article VII, is hereby amended to add Paragraph 10 as follows: **Assignment.** None of the parties to this DPA may assign their rights, duties, or obligations under this DPA, either in whole or in part, without the prior written consent of the other party to this DPA.

11. Article VII, is hereby amended to add Paragraph 11 as follows: **Click through.** Any "click through" terms and conditions or terms of use are superseded by the Service Agreement and this DPA, and acceptance of the terms and conditions or terms of use through the "click through" do not indicate acceptance by the entity.

12. Article VII, is hereby amended to add Paragraph 12 as follows: **Security Controls.** Security Controls. Provider represents and warrants that any software licensed hereunder shall not contain any virus, worm, Trojan Horse, tracking software or be capable of identifying non-approved users or tracking any approved user, or any undocumented software locks or drop dead devices that would render inaccessible or impair in any way the operation of the software or any other hardware, software or data for which the software is designed to work with.

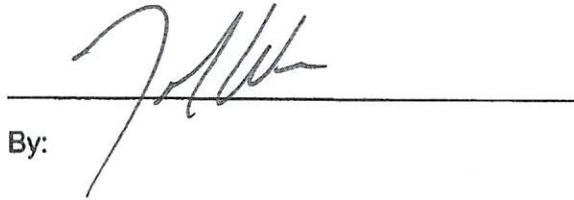
**THE PARTIES REPRESENT THAT THEY HAVE THOROUGHLY DISCUSSED ALL ASPECTS OF THE AGREEMENT AND ADDENDUM WITH THEIR RESPECTIVE ATTORNEY(S), THAT THEY FULLY UNDERSTAND ALL OF ITS PROVISIONS, AND THAT THEY ARE VOLUNTARILY ENTERING INTO THE AGREEMENT AND ADDENDUM WITH THE FULL KNOWLEDGE OF ITS LEGAL SIGNIFICANCE AND WITH THE INTENT TO BE LEGALLY BOUND BY ITS TERMS.**

Local Education Agency:  
**Flagler County School Board**



Cheryl Massero, Chairperson

Provider: **International Baccalaureate  
Organization**



By:

Title: Head of US Public Schools International  
Baccalaureate Organization

Date: 10/16/23

Date: 5 October 2023