

JUNE 30 2020

AMENDMENT NO. 1

**CONTRACT TITLE:** Digital Content and Tools

**CONTRACTOR**

Explore Learning, LLC  
17855 Dallas Parkway, Suite 400  
Dallas, TX 75287

**SUPPLIER ID**

1000036093

**CONTRACT NO.**

4400009939


By mutual agreement, Contract 4400009939 is amended as follows:

1. Renew for one year effective July 1, 2020 through June 30, 2021. This is the first renewal option of five.
2. Attach the Student Record Confidentiality Addendum.

All other prices, terms and conditions remain the same.

**ACCEPTANCE:**

BY:

  
\_\_\_\_\_  
Signature

VP, FINANCE

\_\_\_\_\_  
Title

JULIA M. GIVEN

\_\_\_\_\_  
Printed Name

6/29/2020

\_\_\_\_\_  
Date



\_\_\_\_\_  
Michelle R. Pratt  
Director

MRP/lis

**DISTRIBUTION:**

Contractor  
FCPS –Instructional Services

## **CONFIDENTIALITY PROVISIONS STUDENT RECORDS**

**THIS AGREEMENT**, executed and effective as of the 1st day of JULY, 2020, by and between Explore Learning, LLC, a corporation organized and existing under the laws of DELAWARE (the "Company"), and the **FAIRFAX COUNTY SCHOOL BOARD**, a public body corporate and politic organized and existing under the laws of the Commonwealth of Virginia (the "School Board"), recites and provides as follows.

### **Recitals**

The Company and the School Board agree that the purpose of such terms and conditions is to ensure compliance with the Family Educational Rights and Privacy Act (FERPA), including but not limited to (i) the identification of Company as an entity acting for the School Board in its performance of functions that a School Board employee otherwise would perform; and (ii) the establishment of procedures for the protection of confidential student records, including procedures regarding security and security breaches.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is acknowledged hereby, the parties agree as follows.

### **Agreement**

The Agreement is amended hereby as follows:

1. The following provisions shall be deemed to be included in the Agreement:

**Confidentiality Obligations Applicable to Certain FCPS Student Records.** The Company hereby covenants and agrees that it shall maintain, in strict confidence and trust, all FCPS student records containing either (1) non-directory information of any kind, whether provided by or created for FCPS pursuant to this contract, or (2) directory information as to which the eligible student or his family has opted out of disclosure (collectively, "FCPS Confidential Student Records").

The Company shall cause each officer, director, employee and other representative who shall have access to FCPS Confidential Student Records during the term of the Agreement (collectively, the "Authorized Representatives") to maintain in strict confidence and trust all FCPS Confidential Student Records. The Company shall take all reasonable steps to insure that no FCPS Confidential Student Records are disclosed to any person or entity except those who (i) are Authorized Representatives of the Company performing functions for FCPS under the Agreement and have agreed to be bound by the terms of this Agreement or a Confidentiality Agreement (as defined below) executed pursuant hereto; (ii) are authorized representatives of FCPS, or (iii) are entitled to such FCPS Confidential Student Records from the Company pursuant to federal and/or Virginia law. The Company shall use FCPS Confidential Student Records, and shall take all reasonable steps necessary to ensure that its Authorized Representatives shall use such records, solely for purposes related to and in fulfillment of the performance by the Company of its obligations pursuant to the Agreement.

The Company shall: (i) designate one of its Authorized Representatives to be responsible for ensuring that the Company and its Authorized Representatives maintain the FCPS Confidential Student Records as confidential; (ii) train the other Authorized Representatives with regard to their confidentiality responsibilities hereunder and pursuant to federal and Virginia law; (iii) maintain at all times a list of Authorized Representatives with access to FCPS Confidential Student Records; (iv) cause each

Authorized Representative to execute a written covenant of confidentiality in substantially the form set forth on Attachment hereto (the "Confidentiality Agreement") prior to his or her performance of any services contemplated by the Agreement and shall deliver any and all such Confidentiality Agreements to the School Board upon request.

**Other Security Requirements.** The Company shall maintain all technologies, policies, procedures and practices necessary to secure and protect the confidentiality and integrity of FCPS Confidential Student Records, including procedures to (i) restrict access to such records as described in the "Confidentiality" provision of this Agreement; (ii) establish user IDs and passwords as necessary to protect such records; (iii) protect all such user passwords from detection and unauthorized use; (iv) prevent hostile or unauthorized intrusion that could compromise confidentiality, result in data corruption, or deny service; (v) prevent and detect computer viruses from spreading to disks, attachments to e-mail, downloaded files, and documents generated by word processing and spreadsheet programs; (vi) minimize system downtime; (vii) notify FCPS of planned system changes that may impact the security of FCPS Confidential Student Records; (viii) return or destroy FCPS Confidential Student Records that exceed specified retention schedules; (ix) permit periodic security audits by FCPS or designated third party using applicable regulations and industry best practice standards as benchmarks, and make commercially reasonable efforts to remediate the vulnerabilities discovered; (x) in the event of system failure, enable immediate recovery of FCPS records to the previous business day.

In the event of a security breach, the Company shall (i) immediately take action to close the breach; (ii) notify FCPS within 24 hours of Company's first knowledge of the breach, the reasons for or cause of the breach, actions taken to close the breach, and identify the FCPS Confidential Student Records compromised by the breach; (iii) return compromised FCPS Confidential Student Records for review; (iv) provide communications on the breach to be shared with affected parties and cooperate with FCPS efforts to communicate to affected parties by providing FCPS with prior review of press releases and any communications to be sent to affected parties; (v) take all legally required, reasonable, and customary measures in working with FCPS to remediate the breach which may include toll free telephone support with informed customer services staff to address questions by affected parties and/or provide monitoring services if necessary given the nature and scope of the disclosure; (vi) cooperate with FCPS by providing information, records and witnesses needed to respond to any government investigation into the disclosure of such records or litigation concerning the breach; and (vii) provide FCPS with notice within 24 hours of notice or service on Company, whichever occurs first, of any lawsuits resulting from, or government investigations of, the Company's handling of FCPS records of any kind, failure to follow security requirements and/or failure to safeguard confidential information. The Company shall provide satisfactory documentation of its compliance with the security requirements of this provision prior to performing services under the Agreement. The Company's compliance with the standards of this provision is subject to verification by FCPS personnel or its agent at any time during the term of the Agreement.

**Applicability of Confidentiality and Security Provisions to Non-Confidential Records**

To the extent that FCPS provides non-confidential information to Company under this Agreement, such as student records containing only directory information as to which no opt-out has been filed, de-identified student information, and FCPS records not pertaining to students, the Confidentiality and Security paragraphs shall not apply, *provided that* the notice obligation under subsection (vii) shall apply to lawsuits and investigations involving FCPS records of any kind.

### **Disposition of FCPS Confidential Student Records Upon Termination of Agreement**

Upon expiration of the term of the Agreement, or upon the earlier termination of the Agreement for any reason, the Company covenants and agrees that it promptly shall deliver to the School Board, and shall take all reasonable steps necessary to cause each of its Authorized Representatives promptly to deliver to the School Board, all FCPS Confidential Student Records. The Company hereby acknowledges and agrees that, solely for purposes of receiving access to FCPS Confidential Student Records and of fulfilling its obligations pursuant to this provision and for no other purpose (including without limitation, entitlement to compensation and other employee benefits), the Company and its Authorized Representatives shall be deemed to be school officials of the School Board, and shall maintain FCPS Confidential Student Records in accordance with all federal state and local laws, rules and regulations regarding the confidentiality of such records. The non-disclosure obligations of the Company and its Authorized Representatives regarding the information contained in FCPS Confidential Student Records shall survive termination of the Agreement. The Company shall indemnify and hold harmless the School Board from and against any loss, claim, cost (including attorneys' fees) or damage of any nature arising from or in connection with the breach by the Company or any of its officers, directors, employees, agents or representatives of the obligations of the Company or its Authorized Representatives under this provision or under a Confidentiality Agreement, as the case may be.


**Certain Representations and Warranties.** The Company hereby represents and warrants as follows: (i) the Company has full power and authority to execute the Agreement and to perform its obligations hereunder and thereunder; (ii) the Agreement constitute the valid and binding obligations of the Company, enforceable in accordance with their respective terms, except as such enforceability may be limited by bankruptcy or similar laws affecting the rights of creditors and general principles of equity; and (iii) the Company's execution and delivery of the Agreement and compliance with their respective terms will not violate or constitute a default under, or require the consent of any third party to, any agreement or court order to which the Company is a party or by which it may be bound.

**Governing Law; Venue.** Notwithstanding any provision contained in the Agreement to the contrary, (i) the Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia, without reference to conflict of laws principles; and (ii) any dispute hereunder which is not otherwise resolved by the parties hereto shall be decided by a court of competent jurisdiction located in the Commonwealth of Virginia.

**Termination.** This agreement shall remain in force until notification to terminate is issued by FCPS. At time of termination, vendor is to follow regulations for Disposition of FCPS Confidential Student Records Upon Termination of Agreement as stated above.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their duly authorized officers effective as of the date first written above.

**Explore Learning, LLC**

By:   
**JULIA M. GIVEN**  
**VP, FINANCE**

**FAIRFAX COUNTY SCHOOL BOARD**

By:   
Michelle R. Pratt  
Director, Office of Procurement

**Attachment**  
**Covenant of Confidentiality**

In connection with the performance by Explore Learning, LLC (the "Company") of its obligations under that certain agreement with the Fairfax County School Board dated JULY 1, 2020 as the same shall have been amended by that certain Agreement of even date therewith (the "Agreement"), the undersigned authorized representative of the Company (the "Authorized Representative"), for good and valuable consideration, the receipt and sufficiency of which is acknowledged, hereby covenants and agrees as follows, with knowledge that the Fairfax County School Board is relying upon the statements set forth herein.

The Authorized Representative hereby covenants and agrees that he or she: (i) shall maintain in strict confidence and trust all records, reports and other documents or materials of any nature relating to the operations, students, families and employees of Fairfax County Public Schools (collectively, the "FCPS Confidential Student Records"); (ii) shall not disclose any FCPS Confidential Student Records to any person or entity who has not agreed to be bound by the terms of the Agreement, or a sworn statement executed pursuant thereto, unless the person or entity is an Authorized Representative of FCPS or is otherwise entitled to access to such FCPS Confidential Student Records pursuant to federal and/or Virginia law; (iii) shall use the FCPS Confidential Student Records solely for purposes related to and in furtherance of the performance by the Company of its obligations pursuant to the Agreement; (iv), upon expiration of the term of the Agreement, or upon the earlier termination of the Agreement for any reason, promptly shall deliver all FCPS Confidential Student Records to Fairfax County Public Schools; (v) shall continue to maintain as confidential all information obtained from FCPS Confidential Student Records after the expiration or termination of the Agreement.

**IN WITNESS WHEREOF**, the Authorized Representative has executed this Covenant of Confidentiality as of the 1st day of JULY, 2020



JULIA M. GIVEN  
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[Telephone No.]