

Board Office Use: <b>Legislative File Info.</b>	
File ID Number	24-0131
Introduction Date	2/14/2024
Enactment Number	24-0299
Enactment Date	2/14/2024 CJH



# Board Cover Memorandum

**To** Board of Education

**From** Kyla Johnson-Trammell, Superintendent  
Sondra Aguilera, Chief Academic Officer  
Kelleth Chinn, Coordinator, Instruction and Assessment Technology, Academics and Instruction Department

**Meeting Date** February 14, 2024

**Subject** Master Services Agreement – Seesaw Learning, Inc. – Academics and Instruction Department

**Ask of the Board** Approval by the Board of Education of a Master Agreement by and between the District and Seesaw Learning, Inc., San Francisco, CA, for the latter to provide online access to its Seesaw for Schools Learning Management System (LMS), which allow teachers to provide online activities and assignments to students. This platform will also allow students to use writing and multimedia tools to send work to their teacher; enable online rostering and single-sign-on access for OUSD teachers, students and staff, through Clever or any other portal website typically offered by the vendor to school districts; support resources through its helpdesk to support teachers and staff with technical issues and troubleshooting. Vendor will assign a Customer Success Manager (CSM) as the point person to support the OUSD Instructional Technology team with regular check-ins, via the Academics and Instruction Department, for the period of August 1, 2023 through July 31, 2024, in an amount not to exceed \$14,400.00.

**Background** Seesaw Learning provides the Seesaw Learning Management System, which is especially appropriate for younger students typically in kindergarten through 2nd grade. OUSD has been purchasing Seesaw licenses, available on request, since 2020.

**Discussion** While the original purchase during the 2020-21 school year was for 40,000 licenses, this purchase is for a reduced number of licenses (2,000) to address current needs.

**Fiscal Impact** The total cost of these 2000 licenses is \$14,400.00, which has previously been approved as part of the 2023-24 fiscal year budget.

**Attachment(s)**

- Master Services Agreement

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**OAKLAND UNIFIED  
SCHOOL DISTRICT**  
*Community Schools, Thriving Students*

## MASTER SERVICES AGREEMENT

This Master Services Agreement (“Agreement”) is a legally binding contract entered into between the Oakland Unified School District (“OUSD”) and the below named entity or individual (“VENDOR,” together with OUSD, Seesaw Learning, Inc.

“PARTIES”):

The PARTIES hereby agree as follows:

1. **Term.**

- a. This Agreement shall start on the below date (“Start Date”):  
8/1/2023

If no Start Date is entered, then the Start Date shall be the latest of the dates on which each of the PARTIES signed this Agreement.

- b. The work shall be completed no later than the below date (“End Date”):  
7/31/2024

If no End Date is entered, then the End Date shall be the first June 30 after the Start Date.

2. **Services.** VENDOR shall provide the services (“Services”) as described in #1A and #1B of **Exhibit A**, attached hereto and incorporated herein by reference, Seesaw’s Order Form-and “Seesaw Learning, Inc. Master Services Agreement” in the exact form and language of that agreement as it appears on Vendor’s website on December 4, 2023. See Exhibit A for Master Services Agreement to

be incorporated into the Agreement To the extent that there may be a school closure (e.g., due to poor air quality, planned loss of power, COVID-19) or similar event in which school sites and/or District offices may be closed or otherwise inaccessible, VENDOR shall describe in #1B of **Exhibit A** whether and how its services would be able to continue.

3. **Inspection and Approval.** VENDOR agrees that OUSD has the right and agrees to provide OUSD with the opportunity to inspect OUSD contracts, purchase orders, and/or payments of the Services.
  
4. **Confidentiality and Data Privacy.**
  - a. OUSD may share information with VENDOR pursuant to this Agreement in order to further the purposes thereof. VENDOR and all VENDOR's agents, personnel, employee(s), and/or subcontractor(s) shall maintain the confidentiality of all information received in the course of performing the Services,

provided such information is (i) marked or identified as “confidential” or “privileged,” or (ii) reasonably understood to be confidential or privileged.

- b. VENDOR understands that student data is confidential. If VENDOR will access or receive student data in connection with this Agreement, it agrees to do so only after executing the California Student Data Privacy Agreement (“CSDPA”), which shall be incorporated by reference into this Agreement upon execution. All confidentiality requirements, including in the CSDPA, extend beyond the termination of this Agreement.
5. **Compensation.** OUSD agrees to pay VENDOR in accordance with VENDOR’s Order Form, executed by the Parties .
- a. The compensation under this Agreement shall not exceed:

- b. OUSD shall not pay and shall not be liable to VENDOR for any costs or expenses paid or Incurred by VENDOR not described in **Exhibit A**.
- c. Payment for Services shall be prepaid and are non-refundable.
- d. VENDOR acknowledges and agrees not to expect or demand payment for any Services performed prior to the PARTIES, particularly OUSD, validly and properly executing this Agreement until this Agreement is validly and properly executed and shall not rely on verbal or written communication from any individual, other than the President of the OUSD Governing Board, the OUSD Superintendent, or the OUSD General Counsel, stating that OUSD has validly and properly executed this Agreement.

## **6. Invoicing.**

- a. All amounts paid by OUSD shall be subject to audit by OUSD. Invoices shall include, if available at time of invoicing : VENDOR name, VENDOR address, invoice date, invoice number, purchase order number, name of school or department to which Services were provided, name(s) of the person(s) performing Services, date(s) Services were rendered, brief description of Services provided on each date, the total invoice amount, and the basis for the total invoice amount (e.g., if hour rate, the number of hours on each date and the rate for those hours).
- b. To the extent that VENDOR has described how the Services may be provided both in-person and not in-person, VENDOR's invoices shall-in addition to any invoice requirement added or changed under subparagraph (c)-indicate whether the Services are provided In-person or not.
- c. All invoices furnished by VENDOR under this Agreement shall be delivered to OUSD via email unless OUSD requests, in writing, a different method of delivery.

## **7. Tenniferation.**

- a. For Convenience by OUSD. OUSD may at any time terminate this Agreement upon thirty (30) days prior written notice to VENDOR.
- b. For Cause. Either PARTY may terminate this Agreement by giving written notice of its intention to terminate for cause to the other PARTY; provided the purportedly breaching party has a reasonable opportunity to cure said breach upon receipt

of notice thereof. Written notice shall contain the reasons for such intention to terminate. Cause shall include (i) material violation

of this Agreement or (ii) if either PARTY is adjudged bankrupt, makes a general assignment for the benefit of creditors, or a receiver is appointed on account of its insolvency.

8. **Legal Notices.** All legal notices provided for under this Agreement shall be sent via email to the email address set forth below and shall be either (i) personally delivered during normal business hours or (ii) sent by U.S. Mail (certified, return receipt requested) with postage prepaid to the other PARTY at the address set forth below.

**OUSD**

Name: Jenine Lindsey  
Site/Dept: Office of General Counsel  
Address: 1101 Union Street, Site 946  
Email: ousdlegal@ousd.org

**VENDOR**

Name: Seesaw Learning, Inc.  
Title: Attn: Legal  
Address: 548 Market Street PMB 98963  
City, ST Zip: San Francisco, CA 94104  
Phone: 415-870-4468  
Email: legal@seesaw.me

Notice shall be effective when received if personally served or, if mailed, three days after mailing. Either PARTY must give written notice of a change of mailing address or email.

**9. Status.**

- a. This is not an employment contract. VENDOR, in the performance of this Agreement, shall be and act as an independent contractor. VENDOR understands and agrees that it and any and all of its employees shall not be considered employees of OUSD, and are not entitled to benefits of any kind or nature normally provided employees of OUSD and/or to which OUSD's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. VENDOR shall assume full responsibility for payment of all Federal, State, and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to VENDOR's employees.



- b. If **VENDOR** is a business entity, **VENDOR** verifies all of the following:
- (i) **VENDOR** is free from the control and direction of OUSD in connection with the performance of the work;
  - (ii) **VENDOR** is providing services directly to OUSD rather than to customers of OUSD;
  - (iii) the contract between OUSD and **VENDOR** is in writing;
  - (iv) **VENDOR** has the required business license or business tax registration, if the work is performed in a jurisdiction that requires **VENDOR** to have a business license or business tax registration;
  - (v) **VENDOR** maintains a business location that is separate from the business or work location of OUSD;
  - (vi) **VENDOR** is customarily engaged in an independently established business of the same nature as that involved in the work performed;
  - (vii) **VENDOR** actually contracts with other businesses to provide the same or similar services and maintains a clientele without restrictions from OUSD;
  - (viii) **VENDOR** advertises and holds itself out to the public as available to provide the same or similar services;
  - (ix) **VENDOR** provides its own tools, vehicles, and equipment to perform the services;
  - (x) **VENDOR** can negotiate its own rates;
  - (xi) **VENDOR** can set its own hours and location of work; and
  - (xii) **VENDOR** is not performing the type of work for which a license from the Contractor's State License Board is required, pursuant to Chapter 9 (commencing with section 7000) of Division 3 of the Business and Professions Code.

10. **Qualifications and Training.**

- a. VENDOR represents and warrants that VENDOR has the qualifications and ability to perform the Services in a professional manner, without the advice, control or supervision of OUSD. VENDOR will perform the Services in accordance with generally and currently accepted principles and practices of its profession for services to California school districts and in accordance with applicable State and federal and local laws. All VENDOR employees and agents shall have sufficient skill and experience to perform the work assigned to them.

11. **Certificates/Permits/Licenses/Registration.** VENDOR's employees or agents shall secure and maintain in force such certificates, permits, licenses and registration as are required by law in connection with the furnishing of Services pursuant to this Agreement.

12. **Insurance.**

- a. Commercial General Liability Insurance. Unless specifically waived by OUSD as noted in **Exhibit A**, VENDOR shall maintain Commercial General Liability Insurance, including automobile coverage, with limits of at least one million dollars (\$1,000,000) per occurrence for corporal punishment, sexual misconduct, harassment, bodily injury and property damage. The coverage shall name OUSD as an additional insured with the additional Insured endorsement provided to OUSD upon request. Evidence of insurance shall be attached to this Agreement. Endorsement of OUSD as an additional Insured shall not affect OUSD's rights to any claim,

demand, suit or judgment made, brought or recovered against  
VENDOR.

- b. Workers' Compensation Insurance. Unless specifically waived by OUSD as noted in **Exhibit A**, VENDOR shall procure and maintain at all times during the performance of such work, Workers' Compensation Insurance in conformance with the laws of the State of California (including, but not limited to, Labor Code section 3700) and Federal laws when applicable. Employers' Liability Insurance shall not be less than one million dollars (\$1,000,000) per accident or disease.

13. **Testing and Screening.**

- a. Tuberculosis Screening. Unless specifically waived by OUSD as noted in **Exhibit A**, VENDOR is required to screen employees who will be working at OUSD sites for more than six hours. VENDOR agents who work with students must submit to a tuberculosis risk assessment as required by Education Code section 49406 within the prior 60 days. If tuberculosis risk factors are identified, VENDOR agents must submit to an intradermal or other approved tuberculosis examination to determine that he/she is free of infectious tuberculosis. If the results of the examination are positive, VENDOR shall obtain an x-ray of the lungs. VENDOR, at its discretion, may choose to submit the agent to the examination instead of the risk assessment.
- b. Fingerprinting/Criminal Background Investigation. Unless specifically waived by OUSD as noted in **Exhibit A**, VENDOR is required to fingerprint and conduct a criminal background investigation in accordance with Education Code section 45125.1 and, through its execution of this Agreement, VENDOR certifies its compliance with these provisions as follows:

*To the best of Vendor's knowledge, VENDOR has complied with the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 with respect to all VENDOR's employees, subcontractors, agents, and subcontractors' employees or agents ("Workers") regardless of whether those Workers*

*are paid or unpaid, concurrently employed by OUSD, or acting as independent contractors of VENDOR, who may have contact with OUSD pupils in the course of providing Services pursuant to this Agreement, and the California Department of Justice has determined that none of those Workers has been convicted of a felony, as that term is defined in Education Code section 45122.1. VENDOR has also received and reviewed fingerprint results for each Worker and VENDOR has requested and reviewed subsequent arrest records for all Workers who may come into contact with OUSD pupils in providing services to OUSD under this Agreement.*

Notwithstanding this certification, VENDOR agrees to immediately remove or cause the removal of any employee, representative, agent, or person under VENDOR's control person from OUSD property upon receiving notice from OUSD of such desire. OUSD is not required to provide VENDOR with a basis or explanation for the removal request.

14. **Incident/Accident/Mandated Reporting.**
15. **Coronavirus/COVID-19.**
  - a. Through its execution of this Agreement, VENDOR declares that

- it is able to meet its obligations and perform the Services required pursuant to this Agreement in accordance with any shelter-in-place (or similar) order or curfew (or similar) order ("Orders") issued by local or state authorities and with any social distancing/hygiene (or similar) requirements.
- b. Consistent with the requirements of Paragraph 18 (Incident/Accident/Mandated Reporting), VENDOR agrees to notify OUSD, via email pursuant to Paragraph 12 (Legal Notices), within twelve (12) hours if VENDOR or any employee, subcontractor, agent, or representative of VENDOR tests positive for COVID-19, shows or reports symptoms consistent with COVID-19, or reports to VENDOR possible COVID-19 exposure.
  - c. VENDOR agrees to immediately adhere to and follow any OUSD directives regards health and safety protocols including, but not limited to, providing OUSD with information regarding possible exposure of OUSD employees to VENDOR or any employee, subcontractor, agent, or representative of VENDOR and information necessary to perform contact tracing.
  - d. VENDOR shall bear all costs of compliance with this Paragraph, including but not limited to those imposed by this Agreement.
16. **Assignment.** The obligations of VENDOR under this Agreement shall not be assigned by VENDOR without the express prior written consent of OUSD. Notwithstanding the prohibition contained herein this section, VENDOR may assign this Agreement in relation to a sale, merger, acquisition, or similar corporate transaction if notice is provided to OUSD at least thirty days prior to said assignment. Upon proper notice, OUSD shall have the option to opt out of the agreement before date upon which assignment will occur. Any assignment not following the criteria stated in this clause shall be null and void.
17. **Non-Discrimination.** VENDOR shall not engage in unlawful discrimination in employment on the basis of actual or perceived; race, color, national origin, ancestry, religion, age, marital status, pregnancy, physical or mental disability, medical condition, veteran status, gender, sex, sexual orientation, or other legally protected class.
18. **Drug-Free/Smoke Free Policy.** No drugs, alcohol, and/or smoking are allowed at any time in any buildings and/or grounds on OUSD

property. No students, staff, visitors, VENDORS, or subcontractors are to use controlled substances, alcohol or tobacco on these sites.

19. **Waiver.** No delay or omission by either PARTY in exercising any right under this Agreement shall operate as a waiver of that or any other right or prevent a similar subsequent act from constituting a violation of this Agreement.
20. **No Rights in Third Parties.** This Agreement does not create any rights in, or inure to the benefit of, any third party except as expressly provided herein.
21. **Conflict of Interest.**
  - a. VENDOR shall abide by and be subject to all applicable, regulations, statutes, or other laws regarding conflict of interest. VENDOR shall not hire any officer or employee of OUSD to perform any service by this Agreement without the prior approval of OUSD Human Resources.
  - b. VENDOR affirms to the best of his/her/its knowledge, there exists no actual or potential conflict of interest between VENDOR's family, business or financial interest and the services provided under this Agreement, and in the event of change in either private interest or services under this Agreement, any question regarding possible conflict of interest which may arise as a result of such change will be brought to OUSD's attention in writing.
  - c. Through its execution of this Agreement, VENDOR acknowledges that it is familiar with the provisions of section 1090 *et seq.* and section 87100 *et seq.* of the Government Code, and certifies that it does not know of any facts which constitute a violation of said provisions. In the event VENDOR receives any

information subsequent to execution of this Agreement which might constitute a violation of said provisions, VENDOR agrees it shall notify OUSD in writing.

22. **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion.** Through its execution of this Agreement, VENDOR certifies to the best of its knowledge and belief, that it and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency according to Federal Acquisition Regulation Subpart 9.4, and by signing this contract, certifies that this vendor does not appear on the Excluded Parties List (<https://www.sam.gov/>).

23. **Limitation of OUSD Liability.** Other than as provided in this Agreement, OUSD's financial obligations under this Agreement shall be limited to the payment of the compensation described in Paragraph 8 (Compensation). Notwithstanding any other provision of this Agreement, in no event shall OUSD be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of, or in connection with, this Agreement for the Services performed in connection with this Agreement, with the exception of any misappropriation of VENDOR intellectual property.

24. **Indemnification.**

Infringement Indemnity. If a third-party claims that a licensed product (other than related to any licensee content) infringes that party's U.S. patent, copyright, or other proprietary right, VENDOR will defend OUSD against that claim at VENDOR's expense and pay all costs, damages, and attorneys' fees, that a court finally awards or that are included in a settlement approved by VENDOR, provided that OUSD:

Promptly notifies VENDOR in writing of the claim; and  
Allows VENDOR to control, and reasonably cooperates with VENDOR in, the defense and any related settlement.

If such a claim is made, VENDOR may continue to enable OUSD to use the licensed product or to modify it such that it becomes non-infringing. If VENDOR determines that these alternatives are not reasonably available, VENDOR may terminate the licensed product without any liability to OUSD upon notice to OUSD and with the

return of any prepaid and unused fees. The infringement indemnity obligations do not apply to the extent that the infringement claim arises from: (a) any technology not provided by VENDOR to OUSD; (b) use of the licensed products other than in accordance with this Agreement; (c) OUSD's content and/or data; or (d) modification or alteration to the licensed products by anyone other than VENDOR.

- a. To the furthest extent permitted by California law, OUSD shall indemnify, defend, and hold harmless VENDOR, its Board, agents, representatives, officers, consultants, employees, trustees, and volunteers ("VENDOR Indemnified Parties") from any and all claims or losses accruing or resulting from injury, damage, or death of any person or entity arising out of OUSD's performance of this Agreement. OUSD shall, to the fullest extent permitted by California law, defend VENDOR Indemnified Parties at OUSD's own expense, including attorneys' fees and costs.
25. **Audit.** VENDOR shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of VENDOR transacted under this Agreement. VENDOR shall retain these books, records, and systems of account during the term of this Agreement and for three (3) years after the End Date.
  26. **Litigation.** This Agreement shall be deemed to be performed in Oakland, California and is governed by the laws of the State of California, but without resort to California's principles and laws regarding conflict of laws. The Alameda County Superior Court shall have jurisdiction over any litigation initiated to enforce or interpret this Agreement.
  27. **Incorporation of Recitals and Exhibits.** Any recitals and exhibits attached to this Agreement are incorporated herein by reference. VENDOR agrees that to the extent any recital or document incorporated herein conflicts with any term or provision of this Professional Services Contract, the terms and provisions of this Professional Services Contract shall govern.



28. **Integration/Entire Agreement of Parties.** This Agreement constitutes the entire agreement between the PARTIES and supersedes all prior discussions, negotiations, and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both PARTIES.
29. **Severability.** If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.
30. **Provisions Required By Law Deemed Inserted.** Each and every provision of State and federal law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included therein.
31. **Captions and Interpretations.** Section and paragraph headings in this Agreement are used solely for convenience, and shall be wholly disregarded in the construction of this Agreement. No provision of this Agreement shall be interpreted for or against a PARTY because that PARTY or its legal representative drafted such provision, and this Agreement shall be construed as if jointly prepared by the PARTIES.
32. **Calculation of Time.** For the purposes of this Agreement, "days" refers to calendar days unless otherwise specified and "hours" refers to hours regardless of whether it is a work day, weekend, or holiday.
33. **Counterparts and Electronic Signature.** This Agreement, and all amendments, addenda, and supplements to this Agreement, may be executed in one or more counterparts, all of which shall constitute one and the same amendment. Any counterpart may be executed and delivered by facsimile or other electronic signature (including portable document format) by either PARTY and, notwithstanding any statute or regulations to the contrary (including, but not limited to, Government Code section 16.5 and the regulations promulgated therefrom), the counterpart shall legally bind the signing PARTY and the receiving PARTY may rely on the receipt of such document so executed and delivered electronically or by facsimile as if the original had been

received. Through its execution of this Agreement, each PARTY waives the requirements and constraints on electronic signatures found in statute and regulations including, but not limited to, Government Code section 16.5 and the regulations promulgated therefrom.

34. **W-9 Form.** If VENDOR is doing business with OUSD for the first time, VENDOR acknowledges that it must complete and return a signed W- 9 form to OUSD.
35. **Agreement Publicly Posted.** This Agreement, its contents, and all incorporated documents are public documents and will be made available by OUSD to the public online via the Internet.
36. **Signature Authority.**
  - a. Each PARTY has the full power and authority to enter into and perform this Agreement, and the person(s) signing this Agreement on behalf of each PARTY has been given the proper authority and empowered to enter into this Agreement.
  - b. Notwithstanding subparagraph (a), only the Superintendent, Chiefs, Deputy Chiefs, and the General Counsel has authority to sign contracts for OUSD and only under limited circumstances, which required ratification by the OUSD Governing Board. VENDOR agrees not to accept the signature of another other OUSD employee as having the proper authority and empowered to enter into this Agreement or as legally binding in any way.
37. **Contract Contingent on Governing Board Approval.** OUSD shall not be bound by the terms of this Agreement unless and until it has been (i) formally approved by OUSD's Governing Board or (ii) validly and properly executed by the OUSD Superintendent, the General Counsel, or a Chief or Deputy Chief authorized by the Education Code or Board Policy, and no payment shall be owed or made to VENDOR absent such formal approval or valid and proper execution.

REST OF PAGE IS INTENTIONALLY LEFT BLACK

IN WITNESS WHEREOF, the PARTIES hereto agree and execute this Agreement and to be bound by its terms and conditions:

**VENDOR**

Name: Kat Brown

Signature:

DocuSigned by:  
*Kat Brown*  
-87C66A2E73F3482...

Position: EVP, Customer Experience

Date: 1/10/2024

One of the terms and conditions to which VENDOR agrees by its signature is subparagraph (e) of Paragraph 8 (Compensation), which states that VENDOR acknowledges and agrees not to expect or demand payment for any Services performed prior to the PARTIES, particularly OUSD, validly and properly executing this Agreement until this Agreement is validly and properly executed and shall not rely on verbal or written communication from any individual, other than the President of the OUSD Governing Board, the OUSD Superintendent, or the OUSD General Counsel, stating that OUSD has validly and properly executed this Agreement. VENDOR specifically acknowledges and agrees to this term/condition on the above date.

**OUSD**

Name: Sondra Aguilera

Signature:

*Sondra Aguilera*

Position: Chief Academic Officer

Date: 1/10/2024

- Board President
- Superintendent
- Chief/Deputy Chief

Name: Kyla Johnson-Trammell

Signature:

*Kyla Johnson-Trammell*

Position: Superintendent

Date: 2/15/2024

Approved as to form:

*Jenine A. Lindsey*  
Jenine Lindsey, Interim General Counsel  
Oakland Unified School District

## EXHIBIT A

1A. **General Description of Services to be Provided:** *Provide a description of the service(s) VENDOR will provide.*

Vendor will provide online access to the Seesaw for Schools Learning Management System (LMS), which allow teachers to provide online activities and assignments to students. This platform will also allow students to use writing and multimedia tools to send work to their teacher.

Vendor will enable online rostering and single-sign-on access for OUSD teachers, students and staff, through Clever or any other portal website typically offered by the vendor to school districts. Vendor will also offer support resources through its helpdesk to support teachers and staff with technical issues and troubleshooting. Vendor will assign a Customer Success Manager (CSM) as the point person to support the OUSD Instructional Technology team with regular check-ins.

1B. **Description of Services to be Provided During School Closure or Similar Event:** *If there is a school closure (e.g., due to poor air quality, planned loss of power, COVID-19) or similar event in which school sites and/or District offices may be closed or otherwise inaccessible, would services be able to continue?*

- No, services would not be able to continue.
- Yes, services would be able to continue as described in 1A.
- Yes, but services would be different than described in 1A. Please briefly describe how the services would be different.

1C. **Rate of Compensation:** *Please describe the basis by which compensation will be paid to VENDOR:*

Rate Type: **Performance/Deliverable**

Rate Amount:

\_\_\_\_\_

2. **Specific Outcomes:** (A) What are the expected outcomes from the services of this Agreement? Please be specific. For example, as a result of the service(s): How many more OUSD students will graduate from high school? How many more OUSD students will attend school 95% or more? How many more OUSD students will have meaningful internships and/or paying jobs? How many more OUSD students will have access to, and use, the health services they need? (B) Please describe the measurable outcomes specific to the services. Please complete the sentence prompt: "Participants will be able to..." C. If applicable, please provide details of program participation. Please complete the sentence prompt: "Students will..."

3. **Alignment with Single Plan for Student Achievement – SPSA (required if using State or Federal Funds):** Please select the appropriate option below:

Action Item included in Board Approved SPSA (no additional documentation required) – Item Number(s):

Action Item added as modification to Board Approved SPSA – VENDOR agrees to submit the following documents to the Resource Manager either electronically via email or scanned documents, fax or drop off.

- Relevant page of SPSA with action item highlighted. Page must include header with the word "Modified", modification date, school site name, both principal and school site council chair initials and date.
- Meeting announcement for meeting in which the SPSA modification was approved.
- Minutes for meeting in which the SPSA modification was approved indicating approval of the modification.
- Sign-in sheet for meeting in which the SPSA modification was approved.

4. **Waivers:** *OUSD has waived the*

*following:* Commercial General Liability

Insurance Workers' Compensation

Insurance Tuberculosis Screening

Fingerprinting/Criminal Background Investigation

**Seesaw Learning, Inc.  
Master Services Agreement**

This Master Services Agreement (the “Agreement”) describes the terms and conditions of the Services offered by Seesaw Learning, Inc. (“Seesaw”) accepted by you on behalf of your school or school district (the “Customer”). Capitalized terms have the definitions set forth herein. Any terms used but not defined herein will have the meaning set forth in the Order Form.

This Agreement, along with the Order Form that is mutually executed by the parties and which references this Agreement governs Customer’s access to and use of the Services. By accepting this Agreement, by (1) executing an Order Form that references this Agreement, or (2) signing this Agreement, Customer agrees to the terms of this Agreement. If the individual accepting this Agreement is accepting on behalf of a company or other legal entity, such individual represents that they have the authority to bind such entity and its Affiliates to these terms and conditions, in which case the term “Customer” shall refer to such entity and its Affiliates. If the individual accepting this Agreement does not have such authority, or does not agree with these terms and conditions, such individual must not accept this Agreement and may not use the Services. In the event of any conflict between this Agreement and the applicable Order Form, the Order Form will prevail.

This Agreement was last updated on April 20, 2022. It is effective between Customer and Seesaw as of the date of Customer’s accepting this Agreement (“Effective Date”).

**1. SEESAW OBLIGATIONS**

**1.1 Provision of Services.** Seesaw will: (a) make the Services available to Customer pursuant to this Agreement, and the applicable Order Form, (b) provide applicable Seesaw standard support for the Services to Customer at no additional charge, (c) use commercially reasonable efforts to make the online Services available 24 hours a day, 7 days a week, except for: (i) planned downtime (of



which Seesaw shall give advance electronic notice), and (ii) any unavailability caused by circumstances beyond Seesaw's reasonable control, including, for example, an act of God, act of government, flood, fire, earthquake, civil unrest, pandemic, act of terror, strike or other labor problem (other than one involving Seesaw employees), Internet service provider failure or delay, or denial of service

attack, and (d) provide the Services in accordance with laws and government regulations applicable to Seesaw's provision of its Services to its customers generally, and subject to Customer's and End Users' use of the Services in accordance with this Agreement and the applicable Order Form.

**1.2 Protection of Customer Data.** Facilities used to store and process Customer

Data will adhere to reasonable security standards no less protective than the security standards at facilities where Seesaw stores and processes its own information of a similar type. Seesaw has implemented at least industry standard

systems and procedures to ensure the security and confidentiality of Customer Data, protect against anticipated threats or hazards to the security or integrity of Customer Data, and protect against unauthorized access to or use of Customer Data. Customer permits Seesaw to de-identify and/or aggregate Customer Data, for purposes including sharing how Seesaw is performing in Customer's school(s)

and understanding how to improve the Services. Seesaw will not attempt to re-identify any aggregated or de-identified data it has created under this Agreement using the Student Data or permit any third party to do so.

**1.3 Data Transfer and Data Processing Agreement.** By default, Customer Data

will be stored in the United States, however Administrators can request to store Customer Data associated with their school or district account in another supported region. As part of providing the Services, Seesaw may transfer, store and process Customer Data in the United States. By using the Services, Customer consents to this transfer, processing and storage of Customer Data. The terms of the Data Processing Agreement at <https://web.seesaw.me/dpa> ("DPA") posted as of the last updated date are hereby incorporated by reference.

To the extent Personal Data from the European Economic Area (EEA), the United

Kingdom and Switzerland are processed by Seesaw, the Standard Contractual Clauses or other approved data transfer mechanism shall apply, as further set forth in the DPA. For the purposes of the Standard Contractual Clauses, Customer

is the data exporter, and Customer's acceptance of this Agreement, and execution

of an Order Form, shall be treated as its execution of the Standard Contractual

Clauses and Appendices.

**1.4 Seesaw Personnel.** Seesaw will be responsible for the performance of its personnel (including its employees and contractors) and their compliance with Seesaw's obligations under this Agreement, except as otherwise specified in this Agreement.

**1.5 Beta Services.** Seesaw may make Beta Services available to Customer at no

charge. Despite anything to the contrary in this Agreement, Customer acknowledges that: (a) Customer has the sole discretion whether to use any Beta

Services, (b) Beta Services may not be supported and may be changed at any time, including in a manner that reduces functionality, (c) Beta Services may not be available or reliable, (d) Beta Services may not be subject to the same security

or audits as the Services, and (e) Seesaw provides Beta Services "as-is" and will

have no liability arising out of or in connection with Beta Services.

**1.6 Free Services.** Seesaw may make Free Services available to Customer. Use

of Free Services is subject to the terms and conditions of this Agreement. In the event of a conflict between this section and any other portion of this Agreement, this section shall control. Free Services are provided to Customer without charge

up to certain limits as described at <https://web.seesaw.me/seesaw-for-schools>.

Usage over these limits requires Customer's purchase of additional resources or services. Customer agrees that Seesaw, in its sole discretion and for any or no reason, may terminate Customer's access to the Free Services or any part thereof. Customer agrees that any termination of Customer's access to the Free Services may be without prior notice, and Customer agrees that Seesaw will not be liable to Customer or any third party for such termination. Customer is solely responsible for exporting Customer Data from the Free Services prior to termination of Customer's access to the Free Services for any reason, provided that if Seesaw terminates Customer's account, except as required by law Seesaw

will provide Customer a reasonable opportunity to retrieve its Customer Data.

**1.7 Modifications to the Services.** Seesaw may make commercially reasonable

changes to the Services from time to time. If Seesaw makes a material change to

the Services, Seesaw will inform Customer.

**1.8 Modifications to this Agreement.** Seesaw may make commercially reasonable changes to this Agreement from time to time. The customer will remain governed by the terms in effect at the time they enter into the Agreement

for the Services Term as set forth and agreed to in the Order Form. If the Services

are renewed, they will be renewed under Seesaw's then current Agreement.

**1.9 Modifications to the Terms of Service and Privacy Policy.** End Users associated with Customer's Admin Account must agree to the Terms of Service and Privacy Policy prior to use of the Services. The Terms of Service and Privacy

Policy may be updated from time to time as set forth therein, and are not governed

by or subject to the terms of this Agreement, nor is Customer a third party beneficiary thereof.

## **2. USE OF SERVICES**

**2.1 Subscriptions.** Unless otherwise provided in the applicable Order Form, Purchased Services are purchased as subscriptions for the Services Term stated

in the applicable Order Form and any subscriptions added during the Services Term will have a prorated term ending on the last day of the Services Term.

Customer agrees that its purchases are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by Seesaw regarding future functionality or features.

**2.2 Customer Responsibilities.** Customer will: (a) be responsible for End Users'

compliance with this Agreement and Order Forms, (b) be responsible for the accuracy, quality and legality of Customer Data, the means by which Customer acquired Customer Data, Customer's use of Customer Data with the Services, and the interoperation of any Non-Seesaw Applications with which Customer uses

the Services, (c) use commercially reasonable efforts to prevent unauthorized access to or use of the Services, and notify Seesaw promptly of any such unauthorized access or use, (d) use the Services only in accordance with this Agreement, and External-Facing Services Policies, Order Forms and applicable laws and government regulations, and (e) comply with terms of service of any Non-Seesaw Applications with which Customer uses the Services. Any use of the

Services in breach of the foregoing by Customer or End Users that in Seesaw's judgment threatens the security, integrity or availability of Seesaw's services, may

result in Seesaw's immediate suspension of the Services, however Seesaw will use commercially reasonable efforts under the circumstances to provide Customer

with notice and an opportunity to remedy such violation or threat prior to any such

suspension.

**2.3 Usage Restrictions.** Customer will not: (a) use the Services for any

purpose other than its own internal, non-commercial, educational use, or use the Services other than in accordance with this Agreement, (b) make the Services available to anyone other than Customer or End Users, or use the Services for the benefit of anyone other than Customer, unless expressly stated otherwise in an Order Form, (c) sell, resell, license, sublicense, distribute, rent, lease or the functional equivalent thereof, the Services to a third party, (d) use the Services or Non-Seesaw Application to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (e) use the Services or Non-Seesaw Application to store or transmit Malicious Code, (f) interfere with or disrupt the integrity or performance of the Services or third-party data contained therein, (g) attempt to gain unauthorized access to the Services or its related systems or networks, (h) permit direct or indirect access to or use of the Services in a way that circumvents a contractual usage limit, or use the Services to access, copy or use any of Seesaw's intellectual property except as permitted under this Agreement or the Order Form, (i) modify, copy, or create derivative works of the Services or any part, feature, function or user interface thereof, (j) frame or mirror any part of the Service, other than framing on Customer's own intranets or otherwise for its own internal business purposes, (k) except to the extent permitted by applicable law, disassemble, reverse engineer, or decompile the Services or access it to (1) build a competitive product or service, (2) build a product or service using similar ideas, features, functions or graphics of the Service, (3) copy any ideas, features, functions or graphics of the Services, or (4) determine whether the Services are within the scope of any patent.

**2.4 Compliance with Applicable Law.** Customers located in the United States are responsible for, and represent and warrant they are in compliance with applicable state or federal laws. Customers located outside the United States are

responsible for, and represent and warrant that they are in compliance with applicable international laws. Customer's disclosure of any information to Seesaw,

and/or Seesaw's use of such information subject to the restrictions of this Agreement, does not and will not violate any applicable laws (including COPPA, FERPA, or GDPR). Customer will not disclose any information to Seesaw that is protected health information ("PHI") subject to the Health Information Portability

and Accountability Act (“HIPAA”). Seesaw will comply with all applicable U.S. federal laws and regulations pertaining to Student Data privacy and security, including FERPA and COPPA. Seesaw does not allow third-party ads, share data

for the purpose of displaying third-party ads, or allow data collection by third-party

advertisers or data brokers. We do not use Student Data for third-party advertising

or sell your data or Student Data.

**2.5 Suspension of End User Accounts.** If Seesaw, in its sole discretion, becomes aware of an End User’s violation of this Agreement or the External-Facing Services Policies then Seesaw may Suspend the End User’s account in accordance with such agreements, without liability to the Customer or the End User.

**2.6 Emergency Security Issues.** If there is an Emergency Security Issue, then Seesaw may automatically Suspend any offending End User. Suspension will be to the minimum extent and of the minimum duration required to prevent or terminate the Emergency Security Issue.

**2.7 Customer Administration of the Services.** Customer will specify one or more Administrators who may have access to Admin Account(s). Customer is responsible for: (a) designating those individuals who are authorized to access the

Admin Account(s); and (b) ensuring that all activities that occur in connection with

the Admin Account(s) comply with the Agreement. Customer agrees that Seesaw

is not responsible for Customer’s use of the Services, including the behavior of designated Administrators and End Users, nor is Seesaw responsible for the internal management or administration of the Services for Customer. Seesaw is merely providing the Services to the Customer for the provisioning of End User Accounts authorized and authenticated by the Customer.

**2.8 End User and Parental Consent.** Customer’s Administrators may have the ability to access, monitor, use, or disclose Customer Data in End User Accounts. Customer will obtain and maintain all required consents from End Users to allow:

(a) Customer’s access, monitoring, use and disclosure of Customer Data and Seesaw providing Customer with the ability to do so; and (b) Seesaw to provide the Services. Customers based in the United States are solely responsible for obtaining and maintaining parental consent for the collection and disclosure of personal information from children under 13 in connection with the Services. Alternatively, teachers in the United States may agree to act as the parent’s agent

and provide consent on their behalf to use Seesaw solely in the educational context, as permitted by the FTC.

**2.9 FERPA.** The parties acknowledge that: (a) Customer Data may include personally identifiable information from education records that are subject to FERPA ("FERPA Records"); and (b) to the extent that Customer Data includes FERPA Records, Seesaw will be considered a "School Official" (as that term is used in FERPA and its implementing regulations) and will comply with FERPA.

**2.10 Third-Party Data Requests.** Except for where required to respond by applicable laws and regulations, Customer is responsible for responding to Third-Party Requests. Seesaw will, to the extent allowed by law and by the terms

of the Third-Party Request: (a) promptly notify Customer of its receipt of a Third-Party Request; (b) comply with Customer's reasonable requests regarding its efforts to oppose a Third-Party Request; and (c) provide Customer with the information or tools required for Customer to respond to the Third-Party Request.

Customer will first seek to obtain the information required to respond to the Third-Party Request and will contact Seesaw only if it cannot reasonably obtain such information.

### **3. NON-SEESAW PRODUCTS AND SERVICES**

**3.1 Non-Seesaw Products and Services.** Seesaw or third parties may make available third-party products or services, including, for example, Non-Seesaw Applications. Any acquisition by Customer of such products or services, and any exchange of data between Customer and any non-Seesaw provider, product or service is solely between Customer and the applicable non-Seesaw provider. Seesaw does not warrant or support Non-Seesaw Applications or other non-Seesaw products or services, whether or not they are designated by Seesaw

as "certified" or otherwise, unless expressly provided otherwise in an Order Form.

Seesaw is not responsible for any disclosure, modification or deletion of Customer

Data resulting from access by such Non-Seesaw Application or its provider.

**3.2 Integration with Non-Seesaw Applications.** The Services may contain features designed to interoperate with Non-Seesaw Applications. Seesaw cannot

guarantee the continued availability of such service features, and may cease providing them without entitling Customer to any refund, credit, or other compensation, if for example and without limitation, the provider of a Non-Seesaw

Application ceases to make the Non-Seesaw Application available for interoperation with the corresponding service features in a manner acceptable to Seesaw.

### **4. PAYMENT**

**4.1 Payment.** The Customer will pay the Fees in accordance with the Fees and Payment Schedule set forth in the applicable Order Form. Except as otherwise

specified herein or in an Order Form, (a) fees are based on subscriptions purchased and not actual usage, (b) payment obligations are non-cancelable and

fees paid are non-refundable, (c) quantities purchased cannot be decreased during the relevant subscription term, and (d) all payments are due in U.S. dollars.

Unless specified otherwise in the Order Form, all Fees are due net thirty (30) days

from the invoice date. Customer is responsible for providing complete and accurate billing and contact information to Seesaw and notifying Seesaw of any changes to such information. If Customer provides credit card information to Seesaw, Customer authorizes Seesaw to charge such credit card for all Purchased Services listed in the Order Form for the initial subscription term and any renewal subscription term(s) as set forth in the Order Form.

**4.2 Delinquent Payments.** If an invoiced amount is not received by Seesaw by the due date, then without limiting Seesaw's rights or remedies, those charges may bear interest at the rate of one-and-one-half (1.5%) percent of the outstanding balance per month (or the highest rate permitted by law, if less) from

the payment due date until paid in full. Customer will be responsible for all reasonable expenses (including attorneys' fees) incurred by Seesaw in collecting

such delinquent amounts, except where such delinquent amounts are due to Seesaw's billing inaccuracies.

**4.3 Suspension of Services for Non-Payment.** If any charge owing by Customer under this or any other agreement for services is thirty (30) days or more overdue, Seesaw may, without limiting its other rights and remedies, suspend Services until such amounts are paid in full, provided that, Seesaw will give Customer at least ten (10) days' prior notice that its account is overdue before suspending services to Customer.

**4.4 Taxes.** Seesaw's fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, "Taxes"). Customer is responsible for paying any Taxes associated with its purchases hereunder, and Customer will pay Seesaw for the Services without any reduction for Taxes. If Seesaw is obligated to collect or pay Taxes, the

Taxes will be invoiced to Customer, unless Customer provides Seesaw with a valid

tax exemption certificate authorized by the appropriate taxing authority. If Customer is required by law to withhold any Taxes from its payments to Seesaw, Customer must provide Seesaw with an official tax receipt or other appropriate documentation to support such payments.

## **5. PROPRIETARY RIGHTS AND LICENSES**

**5.1 Reservation of Rights.** Except as expressly set forth herein, this Agreement does not grant either party any rights, implied or otherwise, to the other's content or any of the other's intellectual property. As between the parties, Customer owns all Intellectual Property Rights in Customer Data, and Seesaw owns all Intellectual Property Rights in the Services.

**5.2 Access to and Use of Content.** Customer has the right to access and use applicable content subject to the terms of the applicable Order Form and this Agreement.

**5.3 License by Customer to Seesaw.** Customer hereby grants to Seesaw a non-exclusive, royalty-free, fully paid-up, worldwide, sublicensable and transferable license to use the Customer Data as necessary to fulfill its obligations and exercise its rights hereunder.

**5.4 License by Customer to Use Feedback.** Customer grants to Seesaw a worldwide, perpetual, irrevocable, royalty-free license to use, distribute, disclose, and make and incorporate into its services any suggestion, enhancement request, recommendation, correction or other feedback provided by Customer or End Users relating to the operation of Seesaw's services without obligation to Customer.

## **6. CONFIDENTIALITY**

**6.1 Obligations.** As between the parties, each party retains all ownership rights in and to its Confidential Information. Each party will: (a) protect the other party's Confidential Information with the same standard of care it uses to protect its own Confidential Information (but not less than reasonable care); and (b) not disclose the Confidential Information, except to Affiliates, employees, independent contractors and agents who need to know it and who have agreed in writing to keep it confidential. Each party (and any Affiliates, employees and agents to whom it has disclosed Confidential Information) may use Confidential Information only to exercise rights and fulfill its obligations under this Agreement. Each party is responsible for any actions of its Affiliates, employees and agents in violation of this Section.

**6.2 Required Disclosure.** Each party may disclose the other party's Confidential Information solely to the extent required by law or court order but only after it, if legally permissible: (a) uses commercially reasonable efforts to notify the other



party; and (b) gives the other party the chance to challenge the disclosure.

## **7. REPRESENTATIONS, WARRANTIES, AND DISCLAIMERS**

**7.1 Representations and Warranties.** Each party represents that it has validly entered into this Agreement and has the full power and authority to do so. Each party warrants that it will comply with all laws and regulations applicable to its provision, or use, of the Services.

**7.2 Disclaimers.** TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT AS EXPRESSLY PROVIDED FOR HEREIN, NEITHER PARTY MAKES ANY OTHER WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE AND NONINFRINGEMENT WITH RESPECT TO THE SERVICES, CONFIDENTIAL INFORMATION OR ANYTHING ELSE PROVIDED IN CONNECTION WITH THIS AGREEMENT. SEESAW MAKES NO REPRESENTATIONS ABOUT ANY CONTENT OR INFORMATION MADE ACCESSIBLE BY OR THROUGH THE SERVICES.

## **8. LIMITATION OF LIABILITY**

**8.1 Limitation on Indirect Liability.** NEITHER PARTY WILL BE LIABLE UNDER

THIS AGREEMENT FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES ARISING OUT OF

OR IN ANY WAY CONNECTED WITH THE USE OF THE SERVICES OR ANYTHING PROVIDED IN CONNECTION WITH THIS AGREEMENT, THE DELAY OR INABILITY TO USE THE SERVICES OR ANYTHING OTHERWISE ARISING FROM THIS AGREEMENT, INCLUDING WITHOUT LIMITATION COST

OF PROCUREMENT OF SUBSTITUTE GOODS, LOSS OF REVENUE OR ANTICIPATED PROFITS OR LOST BUSINESS OR LOST SALES, WHETHER BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY

OR OTHERWISE, EVEN IF THE PARTY KNEW OR SHOULD HAVE KNOWN THAT SUCH DAMAGES WERE POSSIBLE AND EVEN IF DIRECT DAMAGES DO NOT SATISFY A REMEDY.

**8.2 Limitation on Amount of Liability.** THE TOTAL LIABILITY OF EITHER PARTY, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), OR OTHERWISE, WILL NOT EXCEED, IN THE AGGREGATE THE LESSER OF: (A) ONE THOUSAND DOLLARS OR (B) THE AMOUNT PAID OR PAYABLE BY CUSTOMER TO SEESAW UNDER THIS AGREEMENT DURING THE TWELVE MONTHS PRIOR TO THE EVENT GIVING RISE TO LIABILITY.

**8.3 Exceptions to Limitations.** These limitations of liability apply to the fullest extent permitted by applicable law, but do not apply to breaches of confidentiality

obligations or violations of a party's Intellectual Property Rights by the other party.

## **9. TERM AND TERMINATION**

**9.1 Agreement Term.** This Agreement will remain in effect for the Services Term

as set forth and agreed to in the Order Form.

**9.2 Professional Development Term.** Customers purchasing Professional Development sessions must have all sessions completed within one (1) year of the contract start date. Sessions not completed within one (1) year will expire and

will not be refunded.

**9.3 Termination for Breach.** Either party may suspend performance or terminate

this Agreement: (a) if the other party is in material breach of the Agreement and fails to cure that breach within thirty (30) days after receipt of written notice; (b) if the other party ceases its business operations or becomes subject to insolvency proceedings and the proceedings are not dismissed within ninety (90) days; or (c)

immediately, if the other party is in material breach of this Agreement more than twice, notwithstanding any cure of such breaches.

**9.4 Other Termination.** Customer may terminate this Agreement for any reason (or no reason) with thirty (30) days prior written notice to Seesaw, provided, however, that Seesaw will not issue a refund for Services purchased.

**9.5 Effects of Termination.** If this Agreement terminates, then: (a) the rights granted by one party to the other will cease immediately (except as set forth in this

Section and the "Survival" Section); (b) Seesaw will provide Customer access to,

and the ability to export, the Customer Data for a commercially reasonable period

of time at Seesaw's then-current rates, if applicable, for the Services; (c)

Customer

will be able to use Seesaw's Free Services, however, if Customer subsequently requests termination of all Services and deletion of accounts, Seesaw will offer End Users the choice whether to continue using Seesaw, and, if so, provide each

End User with control over his or her Seesaw account; (d) after a commercially reasonable period of time and only upon explicit, written request of the Customer,

Seesaw will delete Customer Data for those individual accounts that have not been claimed by End Users by overwriting the Customer Data over time; and,

(e)

upon explicit, written request of the other party, each party will promptly use commercially reasonable efforts to return, delete (by overwriting over time) or

destroy all other Confidential Information of the other party.

## **10. MISCELLANEOUS**

**10.1 Export Compliance.** The Services may be subject to export laws and regulations of the United States and other jurisdictions. Seesaw and Customer each represents that it is not on any U.S. government denied-party list.

Customer

will not permit any End User to access or use the Services in violation of any U.S.

export law or regulation.

**10.2 Anti-Corruption.** Neither party has received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from an employee or agent of the other party in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above

restriction.

**10.3 Notice.** Unless specified otherwise herein: (a) all notices must be in writing and addressed to the attention of the other party's legal department or primary point of contact; and (b) notice will be deemed given: (i) when verified by written receipt if sent by personal courier, overnight courier, or when received if sent by mail without verification of receipt; or (ii) when verified by automated receipt or electronic logs if sent by facsimile or email.

**10.4 Assignment.** Neither party may assign or transfer this Agreement in whole or in part without the written consent of the other; provided, however, either party

may freely transfer and assign any of its rights and obligations under this Agreement without the other party's consent to its Affiliate or in connection with a

merger, acquisition, corporate reorganization, or sale of all or substantially all of its

assets.

**10.5 No Waiver.** Failure to enforce any provision of this Agreement will not constitute a waiver.

**10.6 Severability.** If any provision of this Agreement is found unenforceable, the remaining provisions of the Agreement will remain in full force and effect.

**10.7 No Agency.** The parties are independent contractors, and this Agreement does not create an agency, partnership, joint venture, franchise, fiduciary or employment relationship between the parties. Each party will be solely responsible

for payment of all compensation owed to its employees, as well as all employment-related taxes.

**10.8 No Third-Party Beneficiaries.** There are no third-party beneficiaries to this Agreement.

**10.9 Equitable Relief.** Nothing in this Agreement will limit either party's ability to seek equitable relief.

**10.10 Governing Law.** The governing law and venue that will apply in case of any

dispute or lawsuit arising out of or in connection with this Agreement will be determined by Customer's billing address, if within the United States.

Accordingly,

each party agrees to the governing law without regard to choice or conflicts of law

rules. For Customers located outside of the United States, the parties agree to remain silent regarding governing law and venue.

**10.11 Amendments.** Any amendment must be in writing, signed by both parties, and expressly state that it is amending this Agreement.

**10.12 Survival.** The following Sections will survive expiration or termination of this

Agreement: "Confidentiality", "Free Services", "Proprietary Rights and Licenses", "Effects of Termination", "Delinquent Payments", "Suspension of Services for Non-Payment", "Limitation of Liability", "Miscellaneous", and "Definitions", and the

section titled "Protection of Customer Data" will survive any termination of this Agreement for so long as Seesaw retains possession of Customer Data.

**10.13 Insurance.** Seesaw will maintain insurance coverage consistent with generally recognized commercial standards including general liability insurance.

**10.14 Entire Agreement.** This Agreement, and all documents referenced herein,

is the parties' entire agreement relating to its subject and supersedes any prior or

contemporaneous agreements, proposals or representations, written or oral, on that subject.

**10.15 Counterparts.** The parties may enter into this Agreement by executing the

applicable Order Form (if any) or this Agreement in counterparts, including facsimile, PDF or other electronic copies, which taken together will constitute one

instrument.

## 11. DEFINITIONS

**"Admin Account(s)"** means the administrative account(s) provided to Customer by Seesaw for the purpose of administering the Services.

**"Administrators"** mean the Customer-designated personnel who administer the Admin Account.

**"Affiliate"** means any entity that directly or indirectly controls, is controlled by, or is

under common control with a party.

**"Agreement"** means this Master Services Agreement.

**"Beta Services"** means Seesaw services or functionality that may be made available to Customer to try at its option at no additional charge which is clearly

designated as beta, pilot, limited release, developer preview, non-production, evaluation, or by a similar description.

**“Confidential Information”** means information disclosed by a party to the other party under this Agreement, whether orally or in writing, that is designated as confidential or that reasonably should be considered confidential given the nature

of the information and the circumstances of disclosure. Confidential Information does not include information that: (a) the recipient of the Confidential Information already knew; (b) becomes public through no fault of the recipient; (c) was independently developed by the recipient; or (d) was rightfully given to the recipient by another party.

**“Customer”** means in the case of an individual accepting this Agreement on his or

own behalf, such individual, or in the case of an individual accepting this Agreement on behalf of a company or other legal entity, the company or other legal entity for which such individual is accepting this Agreement, and Affiliates of

that company or entity (for so long as they remain Affiliates) which have entered into Order Forms.

**“Customer Data”** means data provided, generated, transmitted or displayed via the Services by Customer or End Users.

**“Effective Date”** means the date on which Customer accepts this Agreement.

**“Emergency Security Issue”** means either: (a) Customer’s use of the Services in

violation of the Agreement, which could disrupt: (i) the Services; (ii) other Customers’ (including End Users’) use of the Services; or (iii) the Seesaw network

or servers used to provide the Services; (b) unauthorized third party access to the

Services; or (c) an actual or potential security breach.

**“End User”** means, in the case of an individual accepting these terms on his or her own behalf, such individual, or, in the case of an individual accepting this Agreement on behalf of a company or other legal entity, an individual who is authorized by Customer to use the Services, for whom Customer has purchased a

subscription (or in the case of the Services provided by Seesaw without charge, for whom the Services have been provisioned), and to whom Customer (or, when

applicable, Seesaw at Customer’s request) has supplied a user login credentials.

End Users may include, for example, students, teachers, administrators or parents

associated with Customer.

**“End User Account”** means a Seesaw-hosted account provisioned through the

Services for an End User.

**“External-Facing Services Policies”** means Seesaw policies applicable to all End Users’ use of the Services, including, but not limited to, Seesaw’s Terms of Service <https://web.seesaw.me/terms-of-service/>, Privacy Policy <https://web.seesaw.me/privacy-policy>, and Copyright and Intellectual Property Policy <https://web.seesaw.me/dmca>.

**“Fees”** means the amounts invoiced to Customer by Seesaw for the Services (if applicable) as described in this Agreement.

**“Free Services”** means Services that Seesaw makes available to Customer free of charge. Free Services exclude Services offered as a free trial and Purchased Services.

**“Intellectual Property Rights”** means current and future worldwide rights under patent law, copyright law, trade secret law, trademark law, moral rights law, and other similar rights.

**“Malicious Code”** means code, files, scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs and Trojan horses.

**“Non-Seesaw Application”** means Web-based, mobile, offline or other software functionality that interoperates with a Service, that is provided by Customer or a third party.

**“Order Form”** means an ordering document or online order specifying the Services to be provided hereunder that is entered into between Customer and Seesaw, including any addenda and supplements thereto.

**“Purchased Services”** means Services that Customer purchases under an Order

Form or online purchasing portal, as distinguished from Free Services or those provided pursuant to a free trial.

**“Seesaw”** means Seesaw Learning, Inc.

**“Services”** means the products, services, content, and functionality that are provided by Seesaw or Seesaw’s Affiliates to Customer as described in the Order

Form and as described here: <https://web.seesaw.me>.

**“Services Term”** means the term stated in the Order Form during which the Services will be provided to Customer.

**“Student Data”** means personally identifiable information, metadata, and content

directly attributable to a student user. Student Data is a category of Customer Data.

**“Suspend”** means the immediate disabling of all or a portion of access to the Services, or components of the Services, as applicable, to prevent further use of the Services.

**“Taxes”** means any duties, customs fees, or taxes (other than Seesaw’s income tax) associated with the sale of the Services, including any related penalties or interest.

**“Third-Party Request”** means a request to Customer from a third party for

records relating to an End User's use of the Services. Third-Party Requests can be a lawful search warrant, court order, subpoena, other valid legal order, or written consent from the End User permitting the disclosure.