



**THE SCHOOL DISTRICT OF ESCAMBIA COUNTY  
PURCHASING DEPARTMENT**

**SCHOOL BOARD EXECUTIVE SUMMARY**

**June 19, 2018**

**V. b. 2. E. CONSENT AGENDA / PURCHASING**

**12. Agreement: School Loop Master Subscription Agreement**

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**DESCRIPTION OF PURCHASE:**

A three (3) year Agreement, subject to annual renewals and School Board approval, to provide hosted webpage services for the School District and School Board of Escambia County, FL. Services include templates, support, and hosting to maintain access and functionality. See attached.

Effective Dates: July 1, 2018 through June 30, 2019.

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**REQUESTED BY:**

Information Technology

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**DISTRICT GOAL SUPPORTED:**

District Goal E.3: Continuity - To improve operational continuity in the learning and work environment

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**SUPPLIER NAME:**

School Loop, Inc., San Francisco, CA

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**AMOUNT OF PURCHASE:**

\$25,900.00 Est. / Yr. 1

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**FUNDING SOURCE:**

General Fund (1110) – Regular Operations-Departments  
(0100)

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**METHOD OF PROCUREMENT:**

Negotiation/Agreement

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**OTHER REFERENCES:**

School Board Rule 6Gx17-5.02(4)(F) – Acquisition of Information Technology Resources

## SCHOOL LOOP MASTER SUBSCRIPTION AGREEMENT

This School Loop Subscription Agreement ("**Agreement**") is agreed to by the Escambia County School District ("**Customer**"), with an address of 75 N. Pace Boulevard, Pensacola, FL 32505 and School Loop, Inc., with an address of P.O. Box 2416, San Francisco, CA 94126 ("**School Loop**"). Customer and School Loop may sign forms ("**Documents**") referencing this Agreement with order details including School Loop's Order Form (Attachment A), or by Purchase Order, or any other agreed to document, and each such Document is subject to the terms of the Agreement. The Agreement is effective as of the "Start Date" listed on the Order Form (the "**Effective Date**") through 06/30/2021, the end date of the term.

This Agreement permits Customer to purchase and receive a subscription to School Loop's web-based Service (as defined below) for the period specified on the Document (the "**Subscription Term**") and sets forth the terms and conditions under which such Service will be provided. This Agreement shall govern Customer's initial subscription on the Effective Date as well as any future subscription purchases made by Customer which reference this Agreement.

### 1. The Service

**1.1. Provision of Service.** School Loop offers on-line subscription products designed to facilitate the distribution of information regarding students to parents, students, school and district staff, and, with the proper approvals, to appropriate people with student information rights ("**Users**"), and provide communications and information-sharing capabilities between teachers, students, school and district staff, people with student information rights, and parents (the "**Service**"). Subject to the terms of this Agreement, School Loop shall host the Service and will make the Service available to Customer during the Subscription Term. From time to time School Loop may make available evaluation or no-charge Services ("**Free Services**"). At all times, the parties will abide by and agree to the terms and conditions of the Student Data Privacy Addendum (Attachment B) having precedence when student information is supplied or accessible by School Loop.

**1.2 Restrictions.** Customer may use the Service only as expressly authorized by School Loop and for no other purpose. Customer shall not: (a) rent, lease, copy, provide access to or sublicense the Service to a third party; (b) reverse engineer, decompile, disassemble, or otherwise seek to obtain the source code to the Service; (c) remove or obscure any product identification, proprietary, copyright or other notices contained in the Service (including any reports or data printed from the Service); or (d) publicly disseminate information or analysis regarding the performance of the Service.

**1.3. Professional Services.** If School Loop and Customer agree separately in a Statement of Work ("**SOW**"), School Loop shall provide the professional consulting services described in that SOW ("**Professional Services**"). During the Subscription Term, Customer shall have a license right to use anything delivered as part of the Professional Services internally solely in conjunction with use of the Service under this Agreement, but School Loop shall retain all right, title and interest in and to any such work product, code or software and any derivative, enhancement or modification thereof created by School Loop (or its agents). Each SOW must be signed by both parties before School Loop shall commence work under such SOW.

### 2. Customer Obligations

**2.1. "Customer Content"** means any data, information or other content of any type which is provided by Customer or any User to School Loop for inclusion in the Service; including, without limitation, data, information or other content which Customer or Users input to or upload to the Service. Customer shall assure that the use of the Service and all Customer Content will, at all times, comply with all applicable local, state, federal and international law, regulations and conventions, including, without limitation, those related to data privacy, international communications, and the exportation of technical or personal data. Customer is solely responsible for the accuracy, content and legality of all Customer Content (including its use as authorized hereunder). Customer represents and warrants to School Loop that Customer has sufficient rights in the Customer Content to authorize School Loop to process, distribute and display the Customer Content as contemplated by this Agreement and the Service, and that the Customer Content does not infringe the rights of any third-party or constitute libel, slander or defamation. Customer represents that all Customer Content complies with Federal and local privacy regulations and its distribution to Users is not a violation of FERPA or of any local laws or education codes.

**2.2 Access to Service.** If Customer or Users are given access to accounts on School Loop's systems in order to make use of the Service, Customer shall require that all Users, employees and agents accessing such accounts keep user ID and password information confidential, and that each employee or agent not share such information with any unauthorized person. User IDs are granted to individual named persons and may not be shared unless required by law. Customer shall be responsible for previously known and deliberate adverse actions taken using Customer's and Users' accounts.

**2.3. User Consents.** Customer acknowledges that use of the Service may require communication with students. Customer agrees that it shall be solely responsible for (a) securing any consents that may be required from Users to have their data used in the Service; (b) securing from Users such

permissions as may be necessary or required in order to collect, store and use such data for the rendering of the Service; (c) providing for such use of User data in its privacy and data use policies; and (d) complying with applicable privacy and other laws. School Loop may provide Customer with a model set of statements which Customer may use to create User consent forms, however, those statements are for Customer's convenience only and it is Customer's responsibility to ensure that these statements conform to the obligations of this Agreement and applicable law. Customer understands and acknowledges that if ordered by Customer, some features of the Service may allow certain Customer Content to be made public on the Internet. This publicly available Customer Content may include general information about a school, information regarding school news and events, and information posted by teachers about their curriculum (such as course descriptions, syllabi, assignments and the like). Customer agrees that it shall be solely responsible for notifying Users that certain Customer Content will be made public on the Internet and for securing the appropriate User consents. Customer also acknowledges that School Loop may make available functionality which allows third parties to access information on the Service or input information on the Service (by way of example and not limitation, functionality which allows synchronizing of a user's School Loop calendar to an external service).

**24. Third Party Services.** Customer acknowledges that the Service may permit Customer to integrate, at Customer's and/or Users' discretion, functionality provided by third party services. Such third party services are not considered part of the "Service" provided hereunder. By enabling any such third party services, Customer agrees that School Loop is not responsible for the accuracy, legality, availability or reliability of any such third party services, the acts or omissions of any providers of such third party services, or any information made available in connection with such third party services. The manner in which such third party services use, store and disclose your information is governed solely by the policies of such third parties, and School Loop will have no liability or responsibility for the privacy practices or other actions of any provider of such third party service. As such, Customer agrees not to seek to hold School Loop liable or responsible for any damage or loss caused by or in connection with the use of such third party services. School Loop enables these features merely as a convenience and the integration or inclusion of such features does not imply an endorsement or recommendation.

### 3. Ownership

**3.1. Rights in Customer Content.** Customer shall retain all right, title and interest (including any and all intellectual property rights) in and to the Customer Content, and School Loop shall use such Customer Content solely for the purposes of providing the Service. Subject to the terms of this Agreement, Customer hereby grants to School Loop the non-exclusive, worldwide, royalty-free right to use, copy, store, transmit, modify, create derivative works of and publicly display the Customer Content solely to the extent necessary to provide the Service except where doing so is in violation of FERPA, Federal, State, or local laws or education code.

**3.2 Subscription not Sale.** This is a subscription agreement for use of the Service and is not an agreement for sale. Customer agrees that the Service and the end-user documentation and any and all related and underlying School Loop software and technology constitute trade secrets or copyrighted material of School Loop or its suppliers, and that School Loop or its suppliers retain all right, title and interest (including all intellectual property rights) therein. Customer may point their Domain Name System ("DNS") to the sites, and they retain full rights and ownership of their own domain. School Loop may employ a subdomain of schoolloop.com in order to provide the Service, however no ownership or license right in the schoolloop.com domain, or any subdomain, is transferred under this Agreement, and School Loop reserves the sole right to manage any and all domains and subdomains related to the Service as it sees fit. All rights not specifically granted shall be reserved to School Loop. No right, title or interest in any of School Loop's trademarks is granted hereunder.

### 4. Fees and Payment.

All fees are as set forth in the applicable Order Form and shall be paid by Customer in accordance with the terms of the applicable Order Form. Except as set forth in Section 6.1. (Limited Warranty), or in the Order Form all fees are non-refundable. Payment is due thirty (30) days from the date of invoice or PO, whichever is later, unless otherwise set forth on the order form. Accounts that are more than thirty (30) days overdue are subject to suspension.

Customer is required to pay any sales, use, value-added withholding, or similar taxes or levies, other than taxes based on the income of School Loop. Customer may not withhold any amounts (including as may be required by any taxing authority) without express written consent of School Loop.

### 5. Term and Termination

**5.1. Term.** This Agreement shall continue until the earlier occurs of (a) expiration or termination of the Subscription Term; or (b) termination in accordance with this Section 5. Customer's subscription shall renew if and as described in the Order Form.

**5.2 Termination for Non-Appropriation.** At all times, the parties agree to abide by Florida Statute 1011.14 which prohibits the Customer from entering into obligations greater than one (1) year. In the event the Customer does not have sufficient funding to continue services, Customer reserves the right to terminate the Agreement for non-appropriation no later than sixty (60) calendar days following Subscription Term renewal. Prior

to termination for non-appropriation, the parties agree to negotiate in good faith, a reduction of services to continue the Agreement. In the event Customer terminates the Agreement under this Section 5.2., Customer agrees to not purchase like services as a replacement for the remainder of what would have been the then-current Subscription Term.

**5.3. Termination for Cause.** Either party may terminate this Agreement: (a) if the other party fails to cure any material breach of this Agreement (including a failure to pay fees) within thirty (30) days after written notice; or (b) if the other party files or has filed against it any bankruptcy, dissolution or similar proceeding or enters into any form of arrangement with its creditors (provided such filing is not removed within sixty (60) days thereof).

**5.4. Effect of Termination.** Upon written notice of any termination of this Agreement, Customer and School Loop shall immediately develop a termination/migration plan, if requested, of data and Services held by School Loop. Such migration plan will be in accordance with the Escambia School District Public Records Addendum (Attachment C). In the event a plan is not requested, Customer and School Loop will identify the date the access and use of Service(s) (including any and all related School Loop software, technology, and systems) by Customer will cease. School Loop may request the deletion and/or return (at School Loop's expense), any and all copies of the Service documentation provided by School Loop, any School Loop passwords or access codes and any other School Loop Confidential Information in Customer's possession. Termination of this Agreement shall be in addition to, and not in lieu of, any equitable or other remedies available to the terminating party.

**5.5. Suspension of Service.** School Loop has the right, in its sole reasonable discretion, to suspend the Services immediately if deemed reasonably necessary, (reasonably necessary conditions which, for example, may include breaches of security that risk FERPA protected-data, the publication of pornography or other restricted materials by Customer) by School Loop to prevent any harm to School Loop and/or its business. School Loop will provide notice and opportunity to cure if practicable depending on the nature of the breach. Once cured, School Loop will promptly restore the Services.

**5.6. Survival.** The following Sections shall survive any expiration or termination of this Agreement: 1.2. (Restrictions), 2.4. (Third Party Services), 3. (Ownership), 4. (Fees and Payment), 5. (Term and Termination), 6.2. (Warranty Disclaimer), 7. (Limitation of Remedies and Damages), 8. (Indemnification), 9. (Confidentiality), and 10. (General).

## **6. Limited Warranty**

**6.1. Limited Warranty.** School Loop warrants, for Customer's benefit only, that the Service will be provided in material conformity with its documentation. School Loop does not warrant that the operation of the Service will be uninterrupted or error-free. As Customer's sole and exclusive remedy for any breach of warranty, School Loop will use the same level of efforts to correct and maintain operability of its' own site to correct any failure of the Service to conform to its documentation at no charge to Customer. If School Loop determines it cannot resolve a material defect within a reasonable period of time, which shall not exceed sixty (60) calendar days, Customer will have the right to terminate the Subscription Term and receive as its sole remedy a refund of: (a) the subscription fees specified in the applicable Order, and; (b) any fees Customer has pre-paid for periods of service it has not yet received. The limited warranty set forth in this Section 6.1. shall not apply: (a) unless Customer makes a claim within thirty (30) days of the date on which the condition giving rise to the claim first became known to Customer; (b) if the error was caused by misuse, unauthorized modifications or third-party hardware, software or services; or (c) to any Free Services.

**6.2. Warranty Disclaimer.** EXCEPT FOR THE LIMITED WARRANTY IN SECTION 6.1., AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE SERVICE AND ALL TRAINING SERVICES ARE PROVIDED TO CUSTOMER "AS IS". SCHOOL LOOP AND ITS SUPPLIERS DO NOT REPRESENT OR WARRANT THAT: (A) THE SERVICE OR TRAINING SERVICES WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR FREE; (B) ANY CUSTOMER CONTENT OR OTHER STORED DATA WILL BE ACCURATE OR NON-CORRUPTED; OR (C) THAT THE SERVICE WILL BE FREE OF ANY VIRUSES OR MALICIOUS CODE WHICH CANNOT BE DETECTED USING COMMERCIALY AVAILABLE PRODUCTS. SCHOOL LOOP SPECIFICALLY DISCLAIMS ANY AND ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICE AND TRAINING SERVICE, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY, TITLE AND FITNESS FOR A PARTICULAR PURPOSE, REGARDLESS OF ANY KNOWLEDGE OF CUSTOMER'S PARTICULAR NEEDS. CUSTOMER MAY HAVE OTHER STATUTORY RIGHTS. HOWEVER, TO THE FULL EXTENT PERMITTED BY LAW, THE DURATION OF STATUTORILY REQUIRED WARRANTIES, IF ANY, SHALL BE LIMITED TO THE LIMITED WARRANTY PERIOD. SCHOOL LOOP SHALL NOT BE LIABLE FOR DELAYS, INTERRUPTIONS, THE SERVICE FAILURES AND OTHER PROBLEMS INHERENT IN USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS OR OTHER SYSTEMS OUTSIDE THE REASONABLE CONTROL OF SCHOOL LOOP.

## **7. Limitation of Remedies and Damages**

**7.1.** NEITHER PARTY SHALL BE LIABLE FOR ANY LOSS OF USE, LOST DATA, FAILURE OF SECURITY MECHANISMS, INTERRUPTION OF BUSINESS, OR ANY INDIRECT, SPECIAL, INCIDENTAL, RELIANCE OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING LOST PROFITS), REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE.

**7.2. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, SCHOOL LOOP'S ENTIRE LIABILITY RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT SHALL NOT EXCEED THE AMOUNT ACTUALLY PAID BY CUSTOMER TO SCHOOL LOOP UNDER THE APPLICABLE ORDER FORM.**

**7.3. THIS SECTION 7 SHALL NOT APPLY TO CUSTOMER WITH RESPECT TO ANY CLAIM ARISING UNDER SECTIONS 1.2. (RESTRICTIONS), 8.2. (INDEMNITY BY CUSTOMER) OR 9. (CONFIDENTIALITY).** The parties agree that the limitations specified in this Section 7 will survive and apply even if any limited remedy specified in this Agreement is found to have failed of its essential purpose.

## **8. Indemnification**

**8.1. Indemnity by School Loop.** School Loop shall indemnify and hold harmless Customer from and against any claim of infringement of a U.S. patent, U.S. copyright, or U.S. trademark asserted against Customer by a third party based upon Customer's authorized use of the Service, provided that School Loop shall have received from Customer: (a) prompt written notice of such claim (but in any event notice in sufficient time for School Loop to respond without prejudice); (b) the exclusive right to control and direct the investigation, defense, or settlement of such claim; and (c) all reasonable necessary cooperation of Customer. If Customer's use of any of the Service is, or in School Loop's opinion is likely to be, enjoined due to the type of infringement specified above, or if required by settlement, School Loop may, in its sole discretion: (i) substitute substantially functionally similar services; (ii) procure for Customer the right to continue using the Service; or if (i) and (ii) are commercially impracticable, (iii) terminate the Agreement and refund to Customer the fees paid by Customer for the portion of the Subscription Term which was paid by Customer but not rendered by School Loop. The foregoing indemnification obligation of School Loop shall not apply: (1) if the Service is modified by any party other than School Loop, but solely to the extent the alleged infringement is caused by such modification; (2) the Service is combined with other non-School Loop products or processes not authorized by School Loop, but solely to the extent the alleged infringement is caused by such combination; (3) to any known unauthorized use of the Service; (4) to the Customer Content or any third-party deliverables or components contained within the Service; (5) to any action arising as a result of the Customer Content; or (6) to any Free Service. **THIS SECTION 8 SETS FORTH SCHOOL LOOP'S SOLE LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY CLAIM OF INTELLECTUAL PROPERTY INFRINGEMENT.**

**8.2. Indemnity by Customer.** The Customer agrees to indemnify School Loop to the extent and only to the extent of the limits set forth in 768.28(5), Florida Statute and then only for the negligent or wrongful act or omission of any officer or employee acting within the scope of the officer's/employee's office or employment under circumstances in which the state or such agency or subdivision, if a private person, would be liable to the claimant. Further, except as specifically provided herein, the Customer does not waive any defense of sovereign immunity. It is further understood and agreed by the parties to this agreement that no officer or employee may be held personally liable except as provided by 768.28(9), Florida Statute. School Loop agrees to provide such reasonable assistance and cooperation to Customer as is reasonably requested by Customer.

## **9. Confidentiality**

**9.1. "Confidential Information"** means (a) any School Loop software, interfaces, web applications and documentation that are designated as confidential; and (b) information designated as confidential by either party, including, but not limited to, data, designs, drawings, documentation, software (regardless of form or media), prototypes, processes, methods, concepts, research, development and business activities, whether obtained or disclosed verbally or in writing; and (c) any pupil records, as defined under relevant education codes. The Service itself, documentation and technical information provided by School Loop or its agents shall be deemed Confidential Information of School Loop without any marking or further designation. School Loop acknowledges that Customer is a public school district and that certain Customer Content is protected and governed by Federal, State, and Customer's policies (Attachment A), including but not limited to: Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g ("FERPA"). School Loop agrees that it shall maintain the confidentiality of such data and abide by the requirements of Federal, State, and Customer policies.

**9.2. Nondisclosure.** The parties acknowledge that they have been entrusted with Confidential Information of the other party and agree to use reasonable care to protect the confidentiality thereof, using at least the same degree of care that each of them would use to protect their own similar information. Except as otherwise required by applicable law, including Florida Statute Chapter 119, each party shall not: (a) use such Confidential Information of the other party for any purpose except as authorized under this Agreement; (b) disclose any such Confidential Information to any person (except its employees and agents bound by obligations of confidentiality on a need-to-know basis) unless such disclosure is authorized by the other party in writing; or (c) disclose any such Confidential Information required by court or judicial order without first attempting to inform the other party and cooperating with the other party if such party contests the disclosure thereof. Each party agrees to take all reasonable steps to ensure that Confidential Information is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement and to notify the other party promptly and in writing upon its discovery of any unauthorized access or disclosure of any Confidential Information.

**9.3. Exclusions.** The obligations under this Section 9.3. shall not apply to information which: (a) is or becomes a part of public knowledge through no act or omission of the receiving party; (b) was rightfully in the receiving party's possession prior to disclosure by the disclosing party; (c) comes into



the possession of the receiving party rightfully from a third party without obligation of confidentiality; (d) is independently developed by the receiving party without the use of any Confidential Information of the disclosing party; or (e) is subject to disclosure under applicable law.

**9.4. Enforcement.** Each party understands and agrees that, notwithstanding any other provision of this Agreement, breach of Section 9 (Confidentiality) may cause the other party irreparable damage for which recovery of money damages would be inadequate, and that each party shall therefore be entitled to obtain timely injunctive relief to protect such party's rights under this Agreement in addition to any and all remedies available at law.

## **10. General**

**10.1. Assignment.** This Agreement will bind and inure to the benefit of each party's permitted successors and assigns. Neither party may assign this Agreement except upon thirty (30) calendar days advanced written consent of the other party, which will not be unreasonably withheld, except that School Loop may assign this Agreement in connection with a merger, reorganization, acquisition or other transfer of all or substantially all of its assets or voting securities. Any attempt to transfer or assign this Agreement without such written consent will be null and void. We may also share information about users in connection with or during negotiation of any merger, financing, acquisition, bankruptcy, dissolution, transaction or proceeding involving sale, transfer, divestiture or disclosure of all or a portion of our business or assets to another company. In these circumstances, we will only share information with a company that has agreed to data privacy standards no less stringent than those contained within this Agreement. In the event that information is shared in this manner, a notice will be mailed in accordance with Section 10.4. ("Notice").

**10.2. Severability.** If any provision of this Agreement shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited to the minimum extent necessary so that this Agreement shall otherwise remain in effect.

**10.3. Governing Law; Jurisdiction and Venue.** This Agreement shall be governed by the laws of the State of Florida and the United States without regard to conflicts of law provisions thereof, and without regard to the United Nations Convention on the International Sale of Goods or the Uniform Computer Information Transaction Act. Jurisdiction and venue for actions related to the subject matter hereof shall be held in the courts of Escambia County in the State of Florida, and both parties hereby submit to the personal jurisdiction of such courts.

**10.4. Notice.** Any notice or communication required or permitted under this Agreement shall be in writing to the parties at the addresses set forth on page 1 of this Agreement or at such other address as may be given in writing by either party to the other in accordance with this Section 10.4. and shall be deemed to have been received by the addressee: (a) if given by hand, immediately upon receipt; or (b) if given by registered or certified mail, postage prepaid and return receipt requested, the date delivered.

**10.5. Amendments; Waivers.** No supplement, modification, or amendment of this Agreement shall be binding, unless executed in writing by a duly authorized representative of each party to this Agreement. No waiver will be implied from conduct or failure to enforce or exercise rights under this Agreement, nor will any waiver be effective unless in a writing signed by a duly authorized representative on behalf of the party claimed to have waived. No provision of any purchase order or other business form employed by Customer will supersede the terms and conditions of this Agreement, and any such document relating to this Agreement shall be for administrative purposes only and shall have no legal effect.

**10.6. Entire Agreement.** This Agreement, and any other agreement incorporated by this Agreement by reference, including but not limited to any SOW or Subscription Agreement(s) is/are the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements and communications relating to the subject matter of this Agreement.

**10.7. Changes to the Services.** Customer acknowledges that the Service is an on-line, subscription-based product, and that in order to provide improved customer experience, new features, and new products, School Loop may make changes to the Service at any time. Such changes may require Customer to update or upgrade software or equipment used to access the Service. Customer shall be solely responsible for any such updates or upgrades, provided, however, that if any planned changes to the Service are reasonably foreseeable to require any updates or upgrades to Customer's software or equipment, School Loop shall provide Customer with six (6) months prior notice of such planned changes.

**10.8. Site Count Verification.** Upon contracting, and once a year for the term of the contract, Customer shall furnish School Loop with site counts for each school or department using the Service. Changes to site count during any Subscription Term, whether by increase or decrease, will not prompt any changes in payment for the then-current Subscription Term. Thirty (30) business days prior to the end of the then-current Subscription Term, Customer will provide the site count to School Loop.

**10.9. Force Majeure.** Neither party shall be liable to the other for any delay or failure to perform any obligation under this Agreement (except for a failure to pay fees) if the delay or failure is due to unforeseen events which occur after the signing of this Agreement and which are beyond the reasonable control of such party, such as a strike, blockade, war, act of terrorism, riot, natural disaster.

**10.10. Publicity.** Subject to Customer's sole discretion, which shall not be unreasonably withheld, School Loop shall have the right to use Customer's name and logo as part of School Loop's customer list.

**10.11. Government End Users.** If the user or licensee of the Service is an agency, department, or other entity of the United States Government, the use, duplication, reproduction, release, modification, disclosure, or transfer of the Service, or any related documentation of any kind, including technical data and manuals, is restricted by a license agreement and by the terms of this contract in accordance with Federal Acquisition Regulation 12.212 for civilian purposes and Defense Federal Acquisition Regulation Supplement 227.7202 for military purposes. This product was developed fully at private expense. All other use is prohibited.

**10.12 Subcontractors.** School Loop may use the services of subcontractors for performance of services under this Agreement, provided that School Loop remains responsible for: (a) compliance of any such subcontractor with the terms of this Agreement, and; (b) for the overall performance of the Service as required under this Agreement.

**10.13. Independent Contractors.** The relationship of the parties hereto is that of independent contractors. Neither party shall be deemed to be the legal representative of the other. Each party agrees to assume complete responsibility for its own employees with regard to federal or state employers' liability and withholding tax, worker's compensation, social security, unemployment insurance, and Occupational Safety and Health Administration requirements and other federal, state and local laws.

**10.14. Compliance with Laws.** Customer and School Loop will comply, at their own expense, with all statutes, regulations, laws, rules and ordinances of any governmental body, department or agency which apply to or result from Customer's obligations under this Agreement, including the Escambia School District Risk Management Addendum (Attachment D). Customer agrees not to export the Service directly or indirectly, separately or as part of a system, without first obtaining proper authority to do so from the appropriate governmental agencies or entities, as may be required by law.

School Board of Escambia County, FL

School Loop

\_\_\_\_\_  
Gerald W. Boone, Board Chair

\_\_\_\_\_  
Mark Gross, CEO/Founder

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Attest:

\_\_\_\_\_  
Malcolm Thomas, Superintendent

APPROVED FOR LEGAL CONTENT  
FOR June 2018 AGENDA  
MAY 24 2018  
\_\_\_\_\_  
GENERAL COUNSEL  
ESCAMBIA COUNTY SCHOOL BOARD



Attachment A  
Order Form

Customer Name: School Board of Escambia County, FL

Start Date: 07/01/2018 End Date: 06/30/2021

**Payment Summary**

You will be billed once a year for each year per the terms in the Payment Notes.

School Year Subscription Term	Total Due for Year
18/19	\$20,900.00
19/20	\$17,400.00
20/21	\$17,400.00

**Detail**

The following breaks down the total amount due each year by license and service:

Service Type	License/Service	Price	Unit	18/19
Services	ServBlock	\$350.00	10.00	\$3,500.00
School Loop Standard 2.0 (SLS2)	Site License	\$300.00	58.00	\$17,400.00
Total 18/19				\$20,900.00
Service Type	License/Service	Price	Unit	19/20
School Loop Standard 2.0 (SLS2)	Site License	\$300.00	58.00	\$17,400.00
Total 19/20				\$17,400.00
Service Type	License/Service	Price	Unit	20/21
School Loop Standard 2.0 (SLS2)	Site License	\$300.00	58.00	\$17,400.00
Total 20/21				\$17,400.00

**General Notes**

Includes SLS1 support through 12/31/18. ServBlocks are five (5) hours of professional services billed to the quarter hour. All services to be performed in a ServBlock will be developed into a Statement of Work ("SOW") that will be provided to the Director of Information Technology or his designee for approval. Additional ServBlocks may be purchased through issuance of a Purchase Order during a Subscription Term provided the total does not exceed \$5,000.00. Any unused ServBlocks will roll forward to the following Subscription Term.

**Payment Notes**

Please send a Purchase Order to [accounts@schoolloop.com](mailto:accounts@schoolloop.com). We invoice off your purchase order with payment due Net30. Multi-year Agreements are billed in yearly increments, subject to the Terms and Conditions of the Agreement. Billing will occur on July 1 of the corresponding year. Any related, additional services to be performed by School Loop for Customer besides ServBlock purchases shall be negotiated and executed as a Change Order to this Agreement with prior mutual written authorization.

By signing this Order Form, Customer agrees that any and all subscriptions and services provided by School Loop under this Order Form are subject to the School Loop Master Subscription Agreement which Customer signed with School Loop. Any capitalized terms used but not defined in this Order Form shall have the meanings ascribed to such terms in the Subscription Agreement.

School Board of Escambia County, FL

School Loop

Gerald W. Boone, Board Chair

Mark Gross, CEO/Founder

Date

Date

Attest:

Malcolm Thomas, Superintendent

APPROVED FOR LEGAL COUNSEL  
FOR JUNE 2018 AGENDA  
  
School Loop/EOSS Master Subscription Agreement  
June 19, 2018  
Page 7 of 12



**Attachment B**  
**Student Data Privacy Addendum**

This Student Data Privacy Special Terms and Conditions Addendum ("Addendum") is between the District and Contractor, as previously identified in the attached Agreement. It is understood and agreed that the Contractor is performing institutional services and functions that will require student data to perform those services and functions ("Services"). It is further understood that the District controls the notification to parents and guardians regarding the release of student information to providers. This Addendum is issued to expand the definitions within and provide supplemental terms and conditions to the Agreement.

**1. Definition, Use and Treatment of "Data"**

In the course of performing Services, Contractor will obtain confidential student data. Student data includes all Personally Identifiable Information ("PII"), directory data, confidential student record information, and other non-public information. This data includes, but is not limited to student data, meta data (e.g. logs, cookies, web beacons, etc.), and user content ("Data Files"). Any data or metadata a 3rd party will collect (e.g. analytics, etc.) is a function of the use of the provider's service.

**2. Data De-Identification**

De-identified Confidential Data will have all direct and indirect personal identifiers removed, including any data that could be analyzed and linked to other data to identify the student or family member / guardian. This includes, at a minimum the following: student name, address, telephone numbers, email addresses, photograph, place and date of birth, attendance record, grade level, course enrollment information, physical descriptors and user ID number (or other unique personal identifier as necessary to participate in the services provided under this Agreement).

Furthermore, Contractor agrees not to attempt to re-identify de-identified Confidential Data and not to transfer de-identified Confidential Data to any party unless:

- (a) That party agrees in writing not to attempt re-identification; and
- (b) Contractor gives prior written notice to District and District provides prior written consent.

Contractor may use de-identified Confidential Data for internal product development and improvement, research, and with a written commitment of Contractor to compliance with current and future applicable laws. The following information may be retained and utilized by the Contractor in a de-identified format for Contractor internal purposes: attendance record, course enrollment information, and grade level.

**3. No Marketing or Advertising**

Contractor is prohibited from using Confidential Data to:

- (a) Market or advertise to students or families / guardians;
- (b) Inform, influence or enable marketing, advertising or other commercial efforts by a third party; or
- (c) Develop a profile of a student, family member / guardian or group, for any commercial purpose other than providing the Service to District.

**4. Notification of Amendments to Policies**

**4.1.** Contractor shall not change how Confidential Data is collected, used or shared under the terms of the Agreement, without advance written notice to the stated Agreement point(s) of contact for Notice and prior written consent from District.

**4.2.** Contractor shall provide prior written notice to District of any material changes to its terms of service, terms and conditions of use, license agreement and/or privacy policies that would alter the way student data, designated as confidential or not, is collected, stored, handled, disseminated or distributed, at least thirty (30) days prior to the implementation of any such change. District must approve changes in writing, which will not be unreasonably withheld.

**4.3.** It is understood and agreed that only the terms and conditions set forth in the Agreement, inclusive of this Addendum, as duly executed between the District and Contractor, will be binding, regardless of whether a student or other user "accepts" the terms and conditions presented upon logging in, an email notification is generated or a revision is posted to the Contractor's website.

**5. Data Collection**

Contractor will only collect, process and store the Confidential Data that is necessary and provided by the District in order to provide Service(s) to the District under this Agreement. Contractor will not attempt to or collect, process or store Confidential Data or other data related to students, families or guardians, which is or may be available from third parties. To do so will be viewed as a material breach of the Addendum and will be handled in accordance with the Agreement.

**6. Data Analysis and Mining**

Contractor is prohibited from analyzing or mining Confidential Data for any purpose other than delivering the Service to District under this Agreement, or improving the Service for District. Analysis and mining of Confidential Data to support marketing, advertising or other commercial ventures, whether by Contractor or a third party, are prohibited.

**7. Data Sharing and Re-Disclosure**

**7.1** District understands that Contractor may rely on one (1) or more sub-contractors to provide the Service under this Agreement, which may have access to Confidential Data. At all times, the Contractor warrants and agrees to be held liable and fiscally responsible for the deliberate and/or unintentional acts and/or omissions of sub-contractors utilized in the performance of these Services who fail to adhere to the requirements for data confidentiality and security.

contained in the executed Agreement between the District and Contractor.

**7.2 Contractor is also prohibited from further disclosing any Confidential Data unless re-disclosure is:**

- (a) Only in furtherance of providing the Service to District, and recipients of re-disclosed Confidential Data agree in writing to comply with the terms of this Student Data Privacy Special Terms and Conditions and related federal and state laws / regulations that protect Confidential Data; or
- (b) Required to ensure legal and regulatory compliance; or
- (c) In response to a judicial process in a court in the state of Florida; or
- (d) To protect the privacy of Confidential Data, the safety of users or others, or the security of the Service.

If any of the four (4) permitted re-disclosure events noted above occurs, Contractor will immediately notify District in writing to the person(s) listed in the "Notices" section of the Agreement. Such notification, notwithstanding unforeseen events, will occur no later than three (3) business days from notice of request to Contractor.

**8. Data Transfer and Destruction**

Upon notice from District, Contractor will ensure that:

- (a) A complete, readable and usable copy of all Confidential Data in Contractor's possession will be delivered to District within sixty (60) days or as otherwise noted in a mutually executed migration plan, following notice from District; and
- (b) This copy of all Confidential Data will be provided in a standard format with standard delimiters and a matching data dictionary, mutually agreeable and sufficient to enable efficient transfer of the Confidential Data to a new system; and
- (c) This copy must include all Confidential Data which may have been re-disclosed to or held by sub-contractors or agents of Contractor; and
- (d) Following notice of acceptance of this copy of all Confidential Data by District, Contractor will permanently destroy all copies of Confidential Data held by Contractor or re-disclosed by Contractor, e.g. to Contractor's agents, sub-contractors or business partners. Permanent destruction of this Confidential Data must be non-recoverable. It is recommended that the Contractor meet either the Department of Defense ("DoD") standard 5220.22-M or the processes recommended by National Institute of Standards and Technology ("NIST") Special Publication 800-88; and
- (e) Within ninety (90) days of notice, Contractor will deliver a written confirmation to District certifying that the permanent destruction of all Confidential Data held by Contractor and Contractor's sub-contractors, agents and business partners has been completed.

**9. Rights and License to Confidential Data and Intellectual Property**

The parties agree that:

- (a) All rights to Confidential Data and derivative works created from Confidential Data shall remain the exclusive property of District; and
- (b) All rights to District intellectual property shall remain the exclusive property of District and District students and staff; and
- (c) Contractor may not transfer Confidential Data or District intellectual property to any third party without prior written authorization from the District; and
- (d) District grants to Contractor a limited, nonexclusive license to use, process and store the Confidential Data and District intellectual property solely for the purpose of delivering the Service to District under the terms of the Agreement; and
- (e) This limited, nonexclusive license granted to Contractor by District expires when the Agreement is terminated unless otherwise agreed to in writing between Contractor and District resulting from a mutually executed migration document.

**10. Confidential Data: Access, Changes, Copies and Removal**

At any time and upon District's request, any Confidential Data held by Contractor will be made available to District, may be changed by District, may be deleted in whole or in part by District, and may be copied by District.

**11. Security Framework and Standards**

Contractor will operate the Service and collect, process and store Confidential Data in accordance with NIST data security standards and current industry best practices, and maintain all technologies, policies, procedures and practices necessary to secure and protect the confidentiality and integrity of Confidential Data, and prevent unauthorized access, disclosure and use. Contractor will, at a minimum:

- (a) Restrict access to the Service and Confidential Data to only those individuals that require access in order for Contractor to provide the Service to District; and
- (b) Establish user IDs and authentication as necessary to protect access to Confidential Data, and protect all such user credentials from unauthorized access or use; and
- (c) Always protect all Confidential Data with strong encryption, at rest and in transit; and
- (d) Prevent hostile or unauthorized intrusion that could compromise confidentiality, result in data corruption, or deny access to or the proper operation of the Service; and
- (e) Prevent and detect computer viruses and malware from spreading through the use of the Service, e.g. via e-mail, files, documents, messages, other data or the required use of insecure client-side applications; and
- (f) Detect and prevent the unauthorized re-disclosure of Confidential Data by Contractor employees or agents; and
- (g) Provide prior notice to District of any planned system change that may impact the security of Confidential Data.

Contractor acknowledges and agrees that this Agreement is for the purpose of sharing Data Files between the parties in a manner consistent with the Family Education Records Privacy Act of 1974 ("FERPA"). The Data Files will be used by the Contractor and its employees to populate student data only for the purpose of delivering these Services. Contractor further acknowledges and agrees that all copies of such Data Files, including any modifications or additions to Data Files or any portion thereof from any source, are subject to the provisions of this Agreement in the same manner as the original Data Files.

**12. Data Breach**

In the event of an unauthorized disclosure of Confidential data, Contractor shall, pursuant to the following procedure: notify District in writing to:

ECSDatabreach@escambia.k12.fl.us within three (3) days of its determination that it has experienced a data breach, breach of security, privacy incident or unauthorized acquisition or use of any Data Files and/or any portion thereof contained therein. Contractor is aware and agrees that this is the only instance in which email notification is accepted and only in relation to actual, suspected, or potential data breaches. Any other use of this email for notification, including changes to Terms and Conditions, Privacy, etc. are hereby dismissed and will not constitute an approved change to the Agreement. Contractor agrees that said notification shall include, to the extent feasible, the date or approximate dates of such incident and the nature thereof, the specific scope of said breach (i.e., what data was accessed, used, released or otherwise breached, including the names of individual students that were affected by said breach) and what actions or steps with respect to the incident that Contractor plans to take or has taken in response to said breach. Additionally, Contractor agrees to adhere to all requirements in federal law with respect to a data breach related to the Data Files, including, when appropriate or required, the required responsibilities and procedures for notification and mitigation of any such data breach. Contractor 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 Data Files or any portion thereof, including personally identifiable information and agrees to provide District, upon request, with a copy of said written incident response plan.

ESCAMBIA SCHOOL DISTRICT PUBLIC RECORDS ADDENDUM

CONTRACTOR'S RESPONSIBILITY FOR COMPLIANCE WITH CHAPTER 119, FLORIDA STATUTES.  
Pursuant to Section 119.0701, F.S., CONTRACTOR agrees to comply with all public records laws, specifically to:

A. Keep and maintain public records required by the School Board to perform the service.

1. The timeframes and classifications for records retention requirements must be in accordance with the General Records Schedule GS1-SL for State and Local Government Agencies and GS7 for Public Schools. (See <http://dos.myflorida.com/library-archives/records-management/general-records-schedules>)

2. Records include all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business with the School Board. Contractor's records under this Agreement include but are not limited to supplier/subcontractor invoices and contracts, project documents, meeting notes, emails and all other documentation generated during this Agreement.

B. Upon request from the School Board's custodian of public records, provide the School Board with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided for by law. If a Contractor does not comply with the School Board's request for records, School Board shall enforce the provisions in accordance with the contract.

C. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Contractor does not transfer the records to School Board.

D. Upon completion of the contract, transfer, at no cost, to the School Board all public records in possession of the Contractor or keep and maintain public records required by the School Board to perform the service. If the Contractor transfers all public records to the School Board upon completion of the contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon the completion of the contract, the Contractor shall meet all applicable requirements for retaining public records. All records kept electronically must be provided to the School Board, upon request from the School Board's custodian of public records, in a format that is compatible with the information technology systems of the SCHOOL BOARD.

**IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE SCHOOL BOARD OF ESCAMBIA COUNTY, CUSTODIAN OF PUBLIC RECORDS AT (850)469-6131, NROSS@ESCAMBIA.K12.FL.US, OR 75 NORTH PACE BLVD., PENSACOLA, FL 32505.**

A Contractor who fails to provide the public records to the School Board within a reasonable time may also be subject to penalties under Section 119.10, Florida Statutes.

Approved:



Donna Sessions Waters  
General Counsel  
Escambia County School Board  
75 North Pace Blvd.  
Pensacola, FL 32505  
02/21/2017

Initials of Each Signatory:

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ESCAMBIA SCHOOL DISTRICT RISK MANAGEMENT ADDENDUM (REGULAR)

Anything in the foregoing agreement to the contrary notwithstanding, each Signer thereof (other than the School Board, the Superintendent of Schools, the School District, their officers, agents and employees) hereby agrees to:

A. HOLD HARMLESS/INDEMNIFICATION AGREEMENT:

1. Save and hold harmless, pay on behalf of, protect, defend, and indemnify the School Board, (including the Superintendent of Schools, the School District, their officers, agents, and employees) from and against any demand, claim, suit, loss, expense, or damage which may be asserted against any of them in their official or individual capacities by reason of any alleged damage to property, or injury to, or death of any person arising out of, or in any way related to, any action or inaction of the Signer (including its sub-contractors, officers, agents, and employees) in the performance or intended performance of this agreement, or the maintenance of any facility, or the operation of any program, which is the subject of, or is related to the performance of this agreement. The obligations of the Signer pursuant to this paragraph shall not be limited in any way by any limitation in the amount or type of proceeds, damages, compensation, or benefits payable under any policy of insurance or self-insurance maintained by or for the use and benefit of the Signer.

B. REQUIRED INSURANCE:

1. Maintain, keep in full force and effect during the term of this agreement and any extensions and renewals thereof, and furnish to the undersigned good and sufficient evidence of general liability and auto liability insurance in an amount not less than \$1,000,000 with an insurance company rated not lower than "A" by A. M. Best and Company. The School Board shall be named as an additional insured. The policy and evidence of such insurance shall be endorsed so as to provide coverage for all liability hereby contractually assumed by the Signer and a copy thereof shall be delivered to the undersigned before beginning performance of this agreement. Such insurance shall not be subject to cancellation, non-renewal, reduction in policy limits or other adverse change in coverage, except with 45 days prior written notice to the School Board, which notice shall be given by U.S. Certified Mail with return receipt requested to the undersigned. No other form of notification shall relieve the insurance company, or its agents, or representatives of responsibility.
2. If this agreement involves performance by officers, employees, agents or sub-contractors of the Signer, the Signer shall also maintain, keep in full force and effect during the term of this agreement and any extensions and renewals thereof, and furnish to the undersigned good and sufficient evidence of workers' compensation insurance in the amount required by Florida Statutes Chapter, 440, and Employer Legal Liability Insurance in the amount of \$100,000.

Approved:  
Signer:

Initials of each  
Signer:



Kevin T. Windham, CFE, CSRM,  
Director-Risk Management  
Escambia School District  
75 North Pace Boulevard  
Pensacola, FL 32505

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