

SERVICES AGREEMENT

This Services Agreement is entered into between EDSided LLC, a Utah corporation and Bonneville School District, and is effective as of February 8, 2021 (the “*Effective Date*”). EDSided and Bonneville Joint School District 93 may be referred to individually herein as a “*Party*” and collectively as the “*Parties.*”

RECITALS

A. EDSided is the owner and/or licensee of certain data, algorithms, methodologies, software and other proprietary technology utilized in developing educational evaluation tools and programs.

B. EDSided desires to provide to Bonneville Joint School District 93, and Bonneville Joint School District 93 desires to access and use, the EDSided Proprietary Technology and Services pursuant to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, the parties hereto hereby agree as follows:

1 **Definitions.** As used in this Agreement, the following terms shall have the following meanings:

1.1 “*Agreement*” means this Services Agreement, and any Order Forms executed by the parties in connection herewith.

1.2 “*Authorized User*” means any person or class of people who is/are specifically authorized to input or provide from Bonneville Joint School District 93 and EDSided.

1.3 “*Bonneville Joint School District 93 Data*” means all information or data provided to EDSided by Bonneville Joint School District 93 and Authorized Users.

1.4 “*Commercial Use*” means any use of the EDSided Proprietary Technology, Services or Reports with the objective of generating revenue or with the objective of otherwise commercially exploiting any of the foregoing.

1.5 “*EDSided Proprietary Technology*” means: (a) all software, specifications, designs, algorithms, methodologies, trade secrets, surveys, websites, and any other data or technology that was created or acquired by EDSided, whether before or after the effective date of this Agreement including, without limitation, any such items created from Services; (b) any materials, research results, analytical results, reports, data, developments, improvements, inventions (whether or not patentable or reduced to practice), designs, algorithms, methodologies, trade secrets and other data or technology that EDSided prepares, makes, conceives, or devises, solely or jointly with Bonneville Joint School District 93, pursuant to this Agreement and/or any Order Form; and (c) all Modifications made to EDSided Proprietary Technology or derivative works derived from EDSided Proprietary Technology, whether prior to or subsequent to the date of this Agreement, and whether made by EDSided or Bonneville Joint School District 93. The Parties acknowledge and agree that if, during the course of EDSided’s delivery of Reports and/or performance of the services or other obligations under this Agreement, EDSided repairs errors in, enhances, improves, creates or Modifies EDSided Proprietary Technology, such repairs, enhancements, improvements, or Modifications shall be deemed to be a part of EDSided Proprietary Technology, even if paid for by Bonneville Joint School District 93. Notwithstanding the foregoing, EDSided Proprietary Technology shall not include Bonneville Joint School District 93.

1.6 **“Modify”** means to modify, improve, enhance, add to, alter or translate (including translation into different computer languages), and **“Modification”** means a modification, improvement, enhancement, addition, alteration or translation.

1.7 **“Proprietary Rights”** means all patent, patent application, copyright, trademark, trade secret, mask work, and any other intellectual property rights, throughout the world.

1.8 **“Report”** means any document or analyses (whether physical or electronic) which is generated by EDSided Proprietary Technology based on the Bonneville Joint School District 93 Data input thereto.

1.9 **“Services”** means the services provided by EDSided to Bonneville Joint School District 93, which may include, without limitation, Report(s), access rights to the Site and specific EDSided Proprietary Technology, consulting services, support services and other services or technology provided or made available to Bonneville Joint School District 93.

1.10 **“Site”** means the website through which Bonneville Joint School District 93 obtains access to the Services.

1.11 **“Personally Identifiable Information (PII)”** has the same meaning as found in U.C.A § 53E-9-301, and includes both direct identifiers (such as a student’s or other family member’s name, address, student number, or biometric number) and indirect identifiers (such as a student’s date of birth, place of birth, or mother’s maiden name). Indirect identifiers that constitute PII also include metadata or other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty.

1.12 **“Student Generated Content”** means materials or content created by a student during the use of EDSided surveys, and related materials.

2 **License**

2.1 **License Grant.** EDSided hereby grants Bonneville Joint School District 93 a nontransferable, non-assignable, non-exclusive, worldwide right and license to access and use the EDSided Proprietary Technology and use the Services, as specified on the Order Form during the term of this Agreement for Bonneville Joint School District 93’s internal purposes only (the **“License”**), subject to the terms of this Agreement. Bonneville Joint School District 93 shall have no right to sublicense, transfer or assign its rights with respect to the License granted herein, without EDSided’s prior written consent, which may be withheld in EDSided’s absolute discretion. All rights in the Services not expressly granted to Bonneville Joint School District 93 hereunder are reserved by EDSided.

2.2 **Restrictions.** Neither Bonneville Joint School District 93, its Authorized Users nor any other person accessing the Services through Bonneville Joint School District 93 may use the Services in any manner or for any purpose other than as expressly permitted by this Agreement. Neither Bonneville Joint School District 93, its Authorized Users nor any other person accessing the Services through Bonneville Joint School District 93 may, or may attempt to: (a) modify, copy, recreate, duplicate, alter, tamper with, repair, reverse engineer or otherwise create derivative works of any part of the Services; (b) reverse engineer, disassemble, or decompile the EDSided Proprietary Technology or any other part of the Services, or apply any other process or procedure to derive the source code of the EDSided Proprietary Technology, any other part of the Services or the Site; (c) access or use the Services in a way intended to avoid incurring Fees; (d) resell the Services; (e) copy, modify or create a derivative work from the EDSided Proprietary Technology or any other part of the Services; (f) remove any proprietary notices of EDSided on or in the Services; (g) sublicense, make available, or allow any person or entity who is not an Authorized User, including any of EDSided’s competitors, to use or access the Services without EDSided’s prior written consent; (h) use the Services or any Reports for a Commercial Use; or (i) use the Services or any Reports

for a Medical Use (each of (a) through (i), inclusive, a **“Prohibited Use”**). Any Prohibited Use by Bonneville Joint School District 93, its Authorized Users or any other person utilizing the Services through Bonneville Joint School District 93 under this Section is considered a material breach of this Agreement and will result in the automatic and immediate termination of all licenses and other rights of Bonneville Joint School District 93 to utilize or access any Services.

3 Ownership of Proprietary Rights

3.1 EDSided Proprietary Technology. The EDSided shall own the EDSided Proprietary Technology, all Modifications made thereto and all derivative works derived therefrom, regardless of who makes such Modifications or creates such derivative works, and all Proprietary Rights in and to the EDSided Proprietary Technology, all Modifications thereto and all derivative works created therefrom. In addition, the EDSided shall own all Proprietary Rights in and to any information, software (in source or object code form), designs, algorithms, technology and documentation which it held or created either prior or subsequent to the date hereof. To the extent Bonneville Joint School District 93 has or purports to have any ownership interest in any EDSided Proprietary Information, Bonneville Joint School District 93 hereby assigns any and all right, title and interest in such EDSided Proprietary Technology to EDSided.

3.2 Reports. Bonneville Joint School District 93 shall own the physical media upon which any Report is prepared by the EDSided and delivered as part of the Services; provided, however, that because the Report shall also contain intellectual property and confidential information of EDSided, EDSided shall own any content of the Reports appertaining to the intellectual property and confidential information. Bonneville Joint School District 93 acknowledges that it shall have the License to use such Report in accordance with Section 2 above. Bonneville Joint School District 93 hereby acknowledges EDSided’s exclusive ownership rights with respect to the contents of any Reports if the content is the intellectual property and/or confidential information of EDSided, including any other work product produced or created by EDSided in the course of performing the Services including, but not limited to, any ideas, applications, software, principles, algorithms and methods; all of which shall be considered to be Confidential Information of EDSided, subject to applicable law. Subject to EDSided’s obligations of confidentiality under Section 8, below, nothing in this Agreement shall restrict EDSided from developing and using in the course of its business any techniques, ideas, concepts, information or know-how relating to methods or processes of general application or which may be developed in connection with the preparation of the Reports. Nothing in this Agreement or any other agreement between the parties shall be interpreted to restrict EDSided in any way from providing similar services to other School Districts.

3.3 Bonneville Joint School District 93 Student Data. All management of Personally Identifiable Information (PII) and Student Generated Content will be governed by Idaho State Law as outlined in the Data Privacy Agreement (DPA). In the event there is a conflict between the DPA and the Service Agreement, the DPA will take precedence.

4 Term and Termination

4.1 Term. This Agreement shall commence on the Effective Date and shall continue for the duration of the term or study specified in the Order Form (the **“Term”**).

4.2 Termination. This Agreement may be terminated prior to the expiration of the Term only as follows:

4.2.1 Initiated by Bonneville Joint School District 93. Bonneville Joint School District 93 can cancel the Agreement at any time without cause upon 30 days’ notice.

4.2.2 Termination for Breach. Either Party shall be entitled to terminate this Agreement: (i) immediately without notice in the event of a non-curable breach, a breach by either Party of its confidentiality obligations hereunder, or a breach by Bonneville Joint School District 93 of the provisions

of Section 2 hereof; or (ii) upon a breach by either Party of any other provision of this Agreement if such Party fails to cure such breach within thirty (30) days of written notice of such material breach from the other Party; provided, however, such termination shall not take effect if the breaching Party cures or corrects the breach within any notice period provided for herein.

4.2.3 By Mutual Consent. This Agreement shall terminate upon the mutual written consent of the Parties at any time.

4.2.4 Bankruptcy. Either Party may terminate this Agreement upon written notice if the other Party (a) terminates or suspends its business, (b) becomes subject to any bankruptcy or insolvency proceeding under Federal or state statute, (c) becomes insolvent or subject to direct control by a trustee, receiver or similar authority, or (d) has wound up or liquidated, voluntarily or otherwise.

4.3 Consequences of Termination. Upon any termination of this Agreement:

4.3.1 License Terminates. All licenses granted to Bonneville Joint School District 93 under this Agreement, and all rights of Bonneville Joint School District 93 to utilize the EDSided Proprietary Technology and the Services shall immediately terminate; provided, however, that, so long as termination is not as a result of the breach of this Agreement by Bonneville Joint School District 93, Bonneville Joint School District 93's license to utilize the Reports in accordance with the terms of this Agreement shall continue indefinitely so long as it complies with the provisions of Section 2, above; if Bonneville Joint School District 93 fails to comply with Section 2, above, with respect to such reports, all licenses to utilize the Reports shall immediately and automatically terminate.

4.3.2 Survival. The provisions, rights and obligations provided for in Sections 1, 2.2, 2.3, 3, 4, 5, 6, 7, 8 and 9 shall survive termination of this agreement for any reason.

4.3.3 Effect of Termination. Upon expiration of this Agreement or termination of this Agreement by either party for any reason, Bonneville Joint School District 93 shall immediately (a) cease all use of the EDSided Proprietary Technology and the Services provided hereunder; and (b) destroy, delete and expunge such EDSided Proprietary Technology and any portion or copies thereof which it may have in its possession including, without limitation, any such EDSided Proprietary Technology, or any part thereof, which may reside on any of Bonneville Joint School District 93's electronic systems; provided, however, that this provision shall not apply to Reports so long as Bonneville Joint School District 93 retains its License to utilize the Reports in accordance with this Agreement. At EDSided's request, Bonneville Joint School District 93 shall certify to EDSided in writing that Bonneville Joint School District 93 has fully complied with the foregoing requirements.

5 **Warranty and Disclaimer**

5.1 Mutual Warranties. Each Party represents and warrants to the other that (i) it has full right, power and authority to enter into this Agreement and to perform all of its obligation hereunder; (ii) the execution, delivery and performance of this Agreement do not and will not result in a breach of any agreement to which it is a party or by which it or any of its properties is otherwise bound; and (iii) when executed and delivered by it, this Agreement will constitute its legal, valid and binding obligation, enforceable against it in accordance with the terms of this Agreement.

5.2 Suitability. The EDSided does not warrant or represent that the Services or any other EDSided Proprietary Technology will: (i) meet any of the Bonneville Joint School District 93's requirements, including but not limited to, regulatory requirements; (ii) operate uninterrupted or be complete and free of errors. EDSided makes no representation or warranty of any kind with respect to the Bonneville Joint School District 93 Data. EDSided is not responsible for any decisions made in reliance on the Services, the Reports or any other EDSided Proprietary Technology. Receipt of the Services and use of the Reports and other EDSided Proprietary Technology does not constitute any form of advice or recommendation by

the EDSided to Bonneville Joint School District 93 or to any Authorized User and is not intended to be relied upon by Bonneville Joint School District 93 or any Authorized User in making (or refraining from making) any specific decisions, and Bonneville Joint School District 93 and each Authorized User shall take its own advice and/or independently verify such information before relying on it. The Services, Reports and other EDSided Proprietary Technology are provided on an “as is” basis, EDSided accepts no liability and offers no warranties in relation to it and expressly excludes all representations, warranties and conditions and other terms otherwise implied (including, without limitation, any implied warranties of merchantability, fitness for a particular purpose or noninfringement) in relation to the Services, the Reports and/or any other EDSided Proprietary Technology to the extent that such can be excluded by law.

5.3 EDSided Warranty Against Infringement; Indemnification. EDSided warrants that the Services will not infringe upon the Proprietary Rights of any third party. In the event of a breach of the above warranty, EDSided, at its option, will (i) Modify the infringing Services, at the expense of EDSided, so that it no longer infringes, or (ii) secure for Bonneville Joint School District 93, at no cost to Bonneville Joint School District 93, the right to continue to utilize the Services or, if it is not commercially reasonable or economically practical for the EDSided to implement either of the foregoing, (iii) terminate this Agreement as to such infringing Services. Subject to the limitations set forth in Section 7, below, EDSided agrees to indemnify and hold Bonneville Joint School District 93 harmless from and against any claims, liabilities, damages, costs, and expenses (including reasonable attorney fees), that Bonneville Joint School District 93 may incur as a result of any breach of the above warranty. EDSided's obligations under this Section shall apply only if Bonneville Joint School District 93 notifies EDSided promptly of any such claim, turns over control of the defense of such claim to EDSided, does not settle or compromise any such claim without the prior written consent of EDSided, and cooperates in the defense of such claim at the expense of EDSided. The above warranty, and EDSided's obligations under this Section, shall not apply to infringement arising out of or resulting from (a) any Modifications, updates or revisions to the Services or other EDSided Proprietary Technology not done by EDSided, or (b) the use of any Services and/or other EDSided Proprietary Technology in conjunction with items not furnished by EDSided (including, without limitation, Bonneville Joint School District 93 Data), if use of the Services and/or other EDSided Proprietary Technology without such other items would not infringe, or (c) use or incorporation of any Bonneville Joint School District 93 Data into any Services, Reports and/or any other EDSided Proprietary Technology, or (d) use of any Service, Reports or other EDSided Proprietary Technology in a manner not permitted by this Agreement. The EDSided's indemnification obligations shall not apply to claims, liabilities, damages, costs, or expenses arising from Bonneville Joint School District 93's use or distribution of any Services, Reports or other EDSided Proprietary Technology more than thirty (30) days after EDSided has notified Bonneville Joint School District 93 that such activities may infringe the Proprietary Rights of a third party, or after Bonneville Joint School District 93 has otherwise become aware that such is the case. Notwithstanding the provisions of this paragraph, if Bonneville Joint School District 93 distributes, publishes, or otherwise discloses EDSided Proprietary Technology or other EDSided Confidential Information in violation of the terms of this Agreement, or a Prohibited Use occurs, all of the EDSided's warranties, duties, and covenants under this paragraph shall no longer apply to any Services related to such EDSided Proprietary Technology, Confidential Information and/or Prohibited Use.

5.4 Bonneville Joint School District 93 Warranty Against Infringement; Indemnity: Bonneville Joint School District 93 represents and warrants that Bonneville Joint School District 93 is the owner of or has the full legal right to use and provide to EDSided all Bonneville Joint School District 93 Data and any and all other data, information and technology delivered to or made available to the EDSided or any of its Services and/or EDSided Proprietary Technology, and that none of the foregoing will infringe on the Proprietary Rights of any third party. Bonneville Joint School District 93 further represents and warrants that, in the event any Authorized User is a minor, that Bonneville Joint School District 93 has received all necessary consents necessary for the Authorized User to provide such Bonneville Joint School District 93

Data to EDSided for providing the Services, and that the provision of such Bonneville Joint School District 93 Data by Bonneville Joint School District 93 and/or any Authorized User is fully authorized by law.

6 Liability

6.1 Subject to Section 7.3, EDSided will have no liability whatsoever to Bonneville Joint School District 93 for any special, punitive, indirect or consequential losses or damages, loss of profit, loss of anticipated revenue, loss of or corruption or damage to data, or other economic loss of Bonneville Joint School District 93, howsoever arising, even if advised of the possibility thereof in advance, whether arising in or caused by breach of contract, tort (including negligence) or otherwise.

6.2 Subject to Section 7.3, IN NO EVENT SHALL THE AGGREGATE LIABILITY OF EDSIDED TO BONNEVILLE JOINT SCHOOL DISTRICT 93 UNDER THIS AGREEMENT, FOR INDEMNIFICATION OR FOR ANY OTHER CLAIM, SUIT, OR CAUSE OF ACTION RELATING IN ANY WAY TO THE GOODS, SERVICES OR LICENSES PROVIDED BY EDSIDED UNDER THIS AGREEMENT, EXCEED THE AMOUNT BONNEVILLE JOINT SCHOOL DISTRICT 93 HAS PAID THE EDSIDED UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE CLAIM, NET OF AMOUNTS PREVIOUSLY PAID BY EDSIDED TO BONNEVILLE JOINT SCHOOL DISTRICT 93, AND REGARDLESS OF WHETHER SUCH CLAIM IS IN CONTRACT, WARRANTY, TORT OR OTHERWISE.

6.3 Notwithstanding anything else in this Section 7 or otherwise in this Agreement to the contrary, EDSided agrees it will maintain insurance coverage (e.g., Technology Errors and Omissions Liability Insurance) for breaches of personally identifiable student information and data cause by EDSided, its employees, its systems, or its software, in the amount of \$1 million per occurrence/\$3 million aggregate, and that such insurance shall be available and applied to indemnify Bonneville Joint School District 93 for damages, penalties, costs, and fees sustained by Bonneville Joint School District 93 as a result of such data breaches.

7 Confidential Information

7.1 Non-Disclosure. The Parties acknowledge that, in the course of performing this Agreement, they may find it necessary to disclose to the other Party information deemed to be Confidential Information (as defined in Section 8.2). The Party receiving information (the “*Receiving Party*”) agrees not to disclose any of the other Party’s (the “*Disclosing Party*”) Confidential Information to any third party without the prior written consent of the Disclosing Party. The Receiving Party further agrees not to disclose any of the Disclosing Party’s Confidential Information to any employee or authorized agent of the Receiving Party unless such person both (a) needs to know such information in order to further the authorized use of the information, and (b) contractually agrees to privacy and confidentiality measures that are equal to or exceed those set forth in this Section 8. In addition, the Receiving Party agrees not to make copies of, or otherwise reproduce any documents or other materials containing the Disclosing Party’s Confidential Information, except as authorized by this Agreement, or as otherwise authorized by the Disclosing Party in writing. The Receiving Party agrees not to use any of the Disclosing Party’s Confidential Information for any purpose except in connection with activities permitted by this Agreement. The above restrictions on use and disclosure of Confidential Information shall survive any termination of this Agreement.

7.2 Definition of Confidential Information. As used in this Agreement, the term “*Confidential Information*” means all information disclosed by the Disclosing Party to the Receiving Party or learned by the Receiving Party before or after the date of this Agreement (i) in written or other tangible form, which is marked or labeled “confidential” or “proprietary,” or is otherwise marked in a manner indicating the confidential nature of the information or would be understood by a reasonable person as being confidential or proprietary (for example, internal engineering documents or specifications that may not be marked or labeled “confidential” or “proprietary”); (ii) orally, provided the information is described or

summarized in a writing (including, without limitation, by e-mail) delivered to the other party within thirty (30) days of such oral disclosure which indicates that such information is confidential or proprietary; or (iii) information otherwise reasonably expected to be treated in a confidential manner under the circumstances of disclosure under this Agreement or by the nature of the information itself. Confidential Information may include matters of a technical nature (such as designs, specifications, data, formulae, computer software and documentation, know-how, secret processes or machines, inventions and research projects) and matters of a business nature (such as information about costs, profits, markets, sales, customers, suppliers, and employees). Notwithstanding the above, information shall not be deemed "Confidential Information" for purposes of this Agreement if: (a) the information is or becomes publicly known through no wrongful act of the Receiving Party or any employee, agent or contractor thereof; or (b) the Receiving Party can demonstrate, by written records pre-dating the disclosure by the Disclosing Party, that the information was already known to the Receiving Party at the time that it was disclosed by the Disclosing Party; or (c) the information is subsequently disclosed to the Receiving Party by a third party as a matter of right and without restriction on further disclosure. Bonneville Joint School District 93 acknowledges that the data, methodologies and algorithms underlying all EDSided Proprietary Technology constitutes EDSided's Confidential Information and need not be marked or summarized. EDSided acknowledges that personally identifiable student information, as defined by FERPA and UT DPA 2.0, constitutes Bonneville Joint School District 93's Confidential Information and need not be marked or summarized. A disclosure of Confidential Information which is (x) in response to a valid order by a court or other governmental body, (y) otherwise required by law, or (z) necessary to establish the rights of either Party under the Agreement, shall not be considered to be a breach of the Agreement or a waiver of confidentiality for other purposes; provided however, that the Party disclosing such information shall provide prompt written notice thereof to the other Party to enable it to seek a protective order or otherwise prevent such disclosure, or in the case of court orders or subpoenas that compel disclosure of personally identifiable student information, to enable Bonneville Joint School District 93 to provide affected parents with notice as required by 34 CFR 99.31.

7.3 Return of Confidential Information. Upon termination of this Agreement for any reason, or upon the request of the Disclosing Party, the Receiving Party agrees to return to the Disclosing Party, or destroy (at the option of the Disclosing Party), all documents and other materials containing the Disclosing Party's Confidential Information, and to certify in writing to the Disclosing Party that it has done so.

7.4 Remedies. The Receiving Party acknowledges that the unauthorized disclosure or use of the Disclosing Party's Confidential Information may result in substantial and irreparable harm to the Disclosing party and that monetary damages will be difficult to determine and inadequate to compensate the Disclosing party. Therefore, the Receiving Party agrees that, upon any breach or threatened breach of the obligations in this Section by the Receiving Party, the Disclosing Party shall be permitted to seek and, upon a proper showing to the court, obtain equitable relief such as an injunction or specific performance without the necessity of posting a bond, in addition to monetary damages and any other remedies available to the Disclosing Party at law or in equity.

8 **General Provisions**

8.1 Independent Contractors. The parties hereto are independent contractors and no agency, partnership, joint venture, or other relationship shall be created or implied by this Agreement.

8.2 Assignment. It is expressly understood and agreed that Bonneville Joint School District 93 may not, under any circumstances, grant to any person or legal entity whatsoever any sublicense of its rights under this Agreement, or otherwise assign its rights under this Agreement, whether absolutely or by way of security or encumbrance, or otherwise, without the prior written consent of EDSided, which consent may be granted or withheld in the EDSided's sole discretion. Bonneville Joint School District 93 agrees that its rights under this Agreement are personal to it, and may not be transferred to any party whatsoever,

whether by way of security or otherwise, whether in whole or in part, and whether directly or indirectly. The transfer of fifty percent (50%) or more of the voting interest of Bonneville Joint School District 93 shall be deemed a transfer for purposes of this Section. Bonneville Joint School District 93 agrees that the failure to strictly comply with the terms of this Section shall constitute a material default of this Agreement without the necessity of notice or opportunity to cure. Subject to the foregoing, the rights and obligations of the parties under this Agreement shall inure to the benefit of, and shall be binding upon, their successors and permitted assigns.

8.3 Amendment and Waiver. This Agreement may not be amended except by a written instrument signed by both Parties. No waiver of a breach or default shall be effective unless evidenced by a writing signed by the Party entitled to the benefit of the provision breached. No waiver of a breach or default shall be deemed a waiver of any subsequent breach or default.

8.4 Entire Agreement. This Agreement and any document or agreement executed by the Parties pursuant to this Agreement constitute the entire understanding, agreement, and contract of the parties with respect to their subject matter and supersede all prior agreements or understandings, written or oral, between the parties with respect thereto. No party shall be liable or bound to the other in any manner by any warranty, representation, or covenant contained in any such prior agreement, understanding, or contract except as specifically set forth in this Agreement. Notwithstanding the foregoing, in the event the Parties have executed any confidentiality and/or non-disclosure agreement, such confidentiality and/or non-disclosure agreement shall remain enforceable to the extent it contains greater restrictions on a Party's use or disclosure of Confidential Information of the other Party.

8.5 Severability. If the application of any provision of this Agreement shall be held to be invalid or unenforceable by any court of competent jurisdiction, then (i) to the extent feasible, such provision shall be reformed in a manner that makes it enforceable and which accomplishes the intention of the parties as nearly as possible, and (ii) the validity and enforceability of other provisions of this Agreement shall not in any way be affected or impaired thereby.

8.6 No Third Party Beneficiaries. EDSided and Bonneville Joint School District 93 agree that, except as otherwise expressly provided in this Agreement, there shall be no third party beneficiaries to this Agreement.

8.7 Notices. All notices under this Agreement shall be in writing and shall be deemed given (i) on the same day if delivered in person, or (ii) on the third business day if sent by certified mail, return receipt requested, or (iii) on the next business day if sent by reputable overnight courier; or (iv) upon transmission, if sent by e-mail or facsimile if also sent within one business day of transmission by overnight courier; or (v) upon receipt, if sent in a manner other than as described in (i) through (iv), above, to a party at its address shown in this Agreement. Either party may change its address for notice purposes by notifying the other of the new address in accordance with the above notice procedure. The initial addresses for notices hereunder are as specified on the signature page hereof.

8.8 Governing Law. This Agreement shall be construed in accordance with and governed by the internal laws of the State of Idaho, excluding that body of law known as conflicts of law.

8.9 Force Majeure. Neither party will be liable for, or be considered in breach of or default under this Agreement on account of any delay or failure to perform as required by this Agreement (other than an obligation to pay money) as a result of any causes or conditions beyond such party's reasonable control (a "***Force Majeure Event***") including but not limited to fire, earthquakes, storms, flood, strikes, riots, war, and acts, delays or failures to act by the other party or any third party. Any breach of this Agreement shall be excused for the duration of any such Force Majeure Event.

8.10 Promotion. Bonneville Joint School District 93 agrees that, following delivery of the Services to Bonneville Joint School District 93, EDSided may use Bonneville Joint School District 93's name and

may disclose the existence of Bonneville Joint School District 93 as a licensee hereunder in promotional materials, websites and other publications, which may be issued or published from time to time by the EDSided.

8.11 Attorneys' Fees. In the event that any litigation, arbitration, or other proceeding is commenced between the parties hereto or their personal representatives, successors or assigns concerning the enforcement or interpretation of any provision of this Agreement or the rights and duties of any party in relation thereto, the party or parties prevailing in such litigation, arbitration or other proceeding shall be entitled, in addition to such other relief as may be granted, to all attorneys' fees and costs incurred in such litigation, arbitration or other proceeding, and in any appeal or enforcement of any judgment rendered therein.

8.12 Jurisdiction and Venue. Any action to enforce terms of this Agreement shall be brought in the 7th Judicial District Courts of Idaho Falls, Idaho.

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EDsided Agreement

Final Audit Report

2021-02-28

Created:	2021-02-22
By:	Scott Woolstenhulme (woolstes@d93.k12.id.us)
Status:	Signed
Transaction ID:	CBJCHBCAABAAvIbEbaLkxhW6V0B5H1os44_zIWv5LbrX

"EDsided Agreement" History

-  Document created by Scott Woolstenhulme (woolstes@d93.k12.id.us)
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-  Document e-signed by Holly L. Allen (hla451@gmail.com)
Signature Date: 2021-02-28 - 9:52:37 PM GMT - Time Source: server- IP address: 67.2.174.196
-  Agreement completed.
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