

**SCHOOL BOARD OF BREVARD COUNTY, FLORIDA**

**BOARD AGENDA ITEM – May 12, 2020**

**DEPARTMENT/SCHOOL INITIATED AGREEMENT**

**20-726-A-WH - Classlink**

<input type="checkbox"/> (BW) Bids Waived	<input type="checkbox"/> (CA) Consultant Agreement	<input checked="" type="checkbox"/> (A) Agreement
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**REQUESTOR:** Educational Technology

**Legal Review Required:**  Yes  No

**Standard Template Used with No Changes:**  Yes  No

**Standard Template Type:** Software License Addendum, Non-Disclosure Agreement

VENDOR NAME	AMOUNT AWARDED	REQUIRED PRODUCTS/SERVICES
Classlink, Inc.	Year One \$48,000.00 Year Two \$56,000.00 Year Three \$64,000.00 Annual Hosting Fee \$500.00	Classlink OneClick
<b>Total</b>	\$169,500.00	

<input type="checkbox"/> <b>Contract Renewal</b>	<b>New Contract Amount</b>	\$169,500.00
<input checked="" type="checkbox"/> <b>Recurring Contract</b>	<b>Previous Contract Amount</b>	\$40,000.00 Annually
<input type="checkbox"/> <b>New Contract</b>	<b>Variance</b>	Varies Per Year

**PRICE INCREASE / DECREASE EXPLANATION:** Initial price increase proposed by vendor was negotiated through Procurement to reduce the proposed three-year total cost by \$72,000.00.

**DISCUSSION:**

Classlink supplies the familiar “Launchpad” desktop utilized by students and staff throughout BPS to provide secure single sign-on access to digital resources. Launchpad currently supports an average of 1.3 million monthly logins by District users and has been instrumental in supporting digital access and instructional continuity for students during COVID-19 remote learning.

This agreement renews the initial six-year contract for an additional three years. The agreement includes a yearly increase to the per user fee locked into the initial six-year contract while continuing to maintain BPS cost at a rate below the standard current market cost throughout the three year term.

A vendor-provided agreement, standard software license addendum template, and non-disclosure agreement have been used, which does not require legal review.

**CONTRACT TERM:**

The contract term shall commence July 1, 2020 and continue until June 30, 2023.

**RECOMMENDATION:**

It is the recommendation of Russell Cheatham, Assistant Superintendent of Educational Technology and Dawn Bronstein, Manager of Educational Training and Customer Support Services to approve the attached agreement with Classlink, Inc. in the amount of \$169,500.00.

**AUTHORITY FOR ACTION:**

Florida Administrative Code 6A-1.012 (11) (b)

**PROCUREMENT & DISTRIBUTION SERVICES  
2700 JUDGE FRAN JAMIESON WAY  
VIERA, FL 32940-6601**



## SOFTWARE LICENSE ADDENDUM

**THIS SOFTWARE LICENSE ADDENDUM** ("Software Addendum") is entered into by and between The School Board of Brevard County, Florida, a political subdivision of the State of Florida, located at 2700 Judge Fran Jamieson Way, Viera, Florida 32940, more commonly known as Brevard Public Schools (hereinafter referred to as "BPS") and ClassLink, Inc. whose business address is 45 East Madison Avenue, Suite 7, Clifton, NJ 07011, (hereinafter referred to as "Contractor"), and is intended to supplement the agreement entered into between the parties effective upon issuance of Purchase Order under Agreement # 20-726-A-WH regarding software and/or Services to be provided by Contractor to BPS.

1. **TERM** – The term of this Software Addendum will coincide with the term of the agreement between the parties and may be renewed at the end of the term on the same or substantial similar terms by mutual written agreement of the parties.
2. **DEFINITION OF "AGREEMENT" AND CONFLICT** - As used herein, the term "agreement" shall mean Contractor's standard form contracts and/or terms and conditions, any and all exhibits and attachments thereto, and any additional terms and conditions incorporated or referenced therein. Contractor's standard terms and conditions in the agreement, and any additional terms and conditions incorporated or referenced therein, are, with the exceptions noted herein, acceptable to BPS. Nonetheless, because certain standard clauses that may appear in, or be incorporated by reference into, Contractor's agreement cannot be accepted by BPS, and in consideration of the convenience of using those standard agreements without the necessity of specifically negotiating a separate contract document, the parties hereto specifically agree that, notwithstanding any provisions appearing in the attached Contractor's agreement, the following provisions as set forth in this Software Addendum shall control in the event of a conflict and they are specific to The School Board of Brevard County, Florida as a local educational agency.
3. **DISPUTES** - Any references in the agreement to arbitration are hereby deleted. Jurisdiction resides in the Circuit Court in Brevard County, Florida, the local educational agency's county. Agreements to engage in nonbinding mediation are permissible.
4. **HOLD HARMLESS** - Any clause requiring the BPS to indemnify or hold harmless any party is hereby deleted in its entirety. In addition, nothing in the agreement shall be deemed to be a waiver of the BPS's rights, privileges, and immunities as set forth in Section 768.28, F.S.
5. **GOVERNING LAW** - The agreement shall be governed by the laws of the State of Florida. This provision replaces any references to any other State's governing law.
6. **TAXES** - Provisions in the agreement requiring BPS to pay taxes are deleted. As a political subdivision of the State of Florida, BPS is generally exempt from Federal, State, and local taxes and will not pay taxes for any Contractor including individuals, nor will BPS file any tax returns or reports on behalf of Contractor or any other party.
7. **PAYMENT** - Annual licensing and maintenance costs are payable at the beginning of each renewal period. Payment for services will be in arrears. Any references to prepayment are deleted. In accordance with the Local Government Prompt Payment Act, found in Section 218.70, F.S., payment by BPS shall be made within forty-five (45) days of receipt of an invoice from Contractor.
8. **INTEREST** – Any provision for interest or charges on late payments is deleted. BPS has no statutory authority to pay interest or late fees.
9. **NO WAIVER** - Any language in the agreement requiring BPS to waive any rights, claims, or defenses is hereby deleted.

10. **FISCAL YEAR FUNDING** - Services performed under the agreement may be continued in succeeding fiscal years for the term of the agreement, contingent upon funds being appropriated by the Florida Legislature or otherwise being available for these Services. In the event funds are not appropriated or otherwise available for these Services, the agreement shall terminate without penalty at the end of BPS's fiscal year on June 30. After that date, the agreement becomes of no effect and is null and void. However, BPS agrees to use its best efforts to have the amounts contemplated under the agreement included in its budget. Non-appropriation or non-funding shall not be considered an event of default.

11. **STATUTE OF LIMITATION** - Any clauses in the agreement limiting the time in which BPS may bring suit against Contractor, lessor, individual, or any other party are deleted.

12. **SIMILAR SERVICES** - Any provisions in the agreement limiting BPS's right to obtain similar services or equipment in the event of default or non-funding during the term of the agreement are hereby deleted.

13. **ATTORNEY FEES** - BPS recognizes an obligation to pay attorney's fees or costs only when assessed by a court of competent jurisdiction. Any other provision regarding attorney fees in the agreement is invalid and considered null and void.

14. **ASSIGNMENT** - Notwithstanding any clause to the contrary in the agreement, Contractor shall obtain the written consent of BPS prior to assigning the agreement.

15. **LIMITATION OF LIABILITY** - BPS, as a political subdivision of the State of Florida, cannot agree to assume the potential liability of a Contractor. Accordingly, any provision in the agreement limiting the Contractor's liability for direct damages is hereby deleted. Limitations on special, incidental, or consequential damages are acceptable. In addition, any limitation is null and void to the extent that it precludes any action for injury to persons or for damages to personal property.

16. **RIGHT TO TERMINATE** - BPS shall have the right to terminate the agreement upon thirty (30) days' written notice to Contractor. BPS agrees to pay Contractor for services received prior to the effective date of termination.

17. **TERMINATION CHARGES** - Any provision requiring BPS to pay a fixed amount or liquidated damages upon termination of the agreement is hereby deleted. BPS may only agree to reimburse Contractor for actual costs incurred or losses sustained during the current fiscal year due to wrongful termination by BPS prior to the end of any current agreement term.

18. **RENEWAL** - Any reference to automatic renewals are hereby deleted. The agreement may be renewed only upon mutual written agreement of the parties.

19. **INSURANCE** - Any provision requiring BPS to purchase insurance for Contractor's property is deleted. BPS is self-insured and will provide a certificate of property insurance upon request. Contractor, if coming onto property owned or operated by BPS, shall maintain the following types of insurance at its sole expense:

a. Workers' Compensation insurance in statutory amounts and Employer's Liability in an amount not less than One Million Dollars (\$1,000,000) each accident/disease. This insurance shall apply to all Contractor's employees who will be engaged in the performance of the Services under the agreement.

b. Commercial General Liability insurance, including products and completed operations and contractual liability, arising from any and all claims for property damage and bodily injury, including death, in an amount not less than One Million Dollars (\$1,000,000) each occurrence and Two Million Dollars (\$2,000,000) aggregate. This policy must include The School Board of Brevard County, Florida, its board members, employees, and representatives as additional insured.

c. Automobile Liability insurance, including all owned, non-owned, and hired vehicles used in conjunction with providing Services outlined in the agreement, for property damage and bodily injury, including death, in an amount not less than One Million Dollars (\$1,000,000) each accident. This policy must include The School Board of Brevard County, Florida, its board members, employees, and representatives as additional insured.

d. Professional Liability insurance for any and all claims as a result of an action, lack of action, error or omission by Contractor, its employees, or subcontractors in an amount not less than One Million Dollars (\$1,000,000) each claim.

If such policy is written on a "claims-made" basis, coverage shall remain in effect for three (3) years after the expiration or termination of the agreement and any of its extensions.

20. **RIGHT TO NOTICE** - Any provision in the agreement for repossession of equipment without notice is hereby deleted. However, the BPS does recognize a right of repossession with notice.

21. **ACCELERATION** – Any reference in the agreement to acceleration of payments in the event of default or non-funding is hereby deleted.

22. **CONFIDENTIALITY** – Any provision regarding confidentiality of the terms and conditions of the agreement is hereby deleted. BPS contracts are public records under the Florida Public Records Laws and subject to disclosure upon request unless otherwise made confidential or exempt under the F.S..

23. **FERPA** – To the extent Services provided hereunder pertain to the access to student information, Contractor shall adhere to all standards included in the Family Educational Rights and Privacy Act (FERPA) and Sections 1001.41 and 1002.22, F.S. (the Protection of Pupil Privacy Acts), and other applicable laws and regulations as they relate to the release of student information.

24. **INDEMNIFICATION** – Contractor shall indemnify, defend, and hold harmless BPS, its board members, employees, and representatives from and against all claims, suits, actions, damages, losses, expenses, and/or a cause of action, including but not limited to, economic loss, reasonable attorneys' fees, and expenses, arising out of or in connection with the agreement, provided that any such claims, suits, actions, damages, losses, expenses, and/or a cause of action, (a) is attributable to any person(s) claiming personal injury, bodily injury, sickness, disease, or death; or damage to tangible property of a third party including the loss of use, (b) loss of Contractor's tools and equipment used in connection with this Agreement, and (c) is caused or incurred in whole or in part by Contractor or any of its subcontractors, agents, or anyone directly or indirectly employed by Contractor, subcontractor, agents, regardless if caused in part by BPS. This indemnification shall not apply to any claims, suits, actions, damages, losses, expenses, and/or a cause of action, arising from BPS's sole gross negligence or intentional misconduct.

25. **PUBLIC RECORDS – EFFECTIVE JULY 1, 2016 IF THE BIDDER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE BIDDER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 321-633-1000 ext. 11453. [RECORDSREQUEST@BREVARDSCHOOLS.ORG](mailto:RECORDSREQUEST@BREVARDSCHOOLS.ORG). THE SCHOOL BOARD OF BREVARD COUNTY, FLORIDA, 2700 JUDGE FRAN JAMIESON WAY, VIERA, FL 32940.**

a. The agreement and this Software Addendum are subject to and governed by the laws of the State of Florida, including without limitation Chapter 119, F.S., which generally makes public all records or other writings made by or received by the Parties. Contractor acknowledges its legal obligation to comply with Section 119.0701, F.S. Contractor shall keep and maintain public records, as that phrase is defined in the Florida Public Records Act, which would be required to be kept and maintained by BPS in order to perform the scope of services. Contractor shall comply with all requirements for retaining public records and shall transfer, at no cost to BPS, all public records in the possession of Contractor upon a request for such public records. See Section 119.0701(2)(b)4, F.S., for additional record keeping requirements.

b. A request to inspect or copy public records relating to BPS's contract for services must be made directly to BPS's Custodian of Public Records. If BPS does not possess the requested records, BPS's Custodian of Public Records shall immediately notify Contractor of the request. Contractor must provide a copy of the records to BPS or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, F.S. If Contractor does not timely comply with BPS's request for records, BPS shall be able to sue for breach of contract and the prevailing party shall be entitled to attorney's fees.

c. Should Contractor fail to provide the requested public records to BPS within a reasonable time, Contractor understands and acknowledges that it may be subject to penalties under Sections 119.0701(3)(c) and 119.10, F.S.

d. Contractor shall not disclose public records that are exempt, or confidential and exempt, from public records disclosure unless specifically authorized by law for the duration of the agreement term and following the completion, expiration, or termination of same if Contractor does not transfer the records to BPS. Upon completion, expiration, or termination of the agreement, Contractor shall transfer, at no cost to BPS, all public records in its possession or keep and maintain public records required by BPS to perform the services. If Contractor transfers all public records to BPS, Contractor shall destroy any duplicate public records that are exempt, or confidential and exempt, from public records disclosure requirements. If Contractor keeps and maintains public records upon completion, expiration, or termination of the agreement, Contractor shall meet all applicable requirements for retaining public records and provide requested records to BPS pursuant to the requirements of this section. All public records stored electronically must be provided to BPS in a format that is compatible with the information technology systems of BPS.

26. **AMENDMENTS** - All amendments, modifications, alterations, or changes to the agreement or this Software Addendum shall be in writing and signed by both parties. No future amendment, modification, alteration, or change may be made to the agreement or this Software Addendum without the express written consent of the parties.

27. **INCORPORATION BY REFERENCE** – In addition to Contractor’s agreement, a copy of Contractor’s standard terms and conditions as they appear on the date of execution of this Software Addendum are attached hereto and incorporated herein as Exhibit “A.”

**IN WITNESS WHEREOF**, BPS has made and executed this Software License Addendum and Contractor has made and executed this Software License Addendum on the day and year below written.

**CLASSLINK, INC.**

By:  Date: 3/23/20  
 Authorized Representative Signature

Print Name: Marc Crater

Title: VP Finance

**THE SCHOOL BOARD OF BREVARD COUNTY, FLORIDA**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
 Misty Belford, Board Chairperson

YEAR	FND	CNTR	PROJECT	FUNC	OBJT	PRG	S	AMOUNT

Send required insurance certificates to the Purchasing Department.  
 New Vendors: Send all completed Forms to the Procurement and Distribution Services Department.

Contractor Contact Name: Marc Crater  
 Email Address: mcrater@classlink.com  
 Phone Number: 862-225-1501

**EXHIBIT “A”  
 CONTRACTOR’S STANDARD TERMS AND CONDITIONS ATTACHED**

# ClassLink Service Agreement

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Customer:

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Name of Organization

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City, State Zip

# ClassLink Software License Agreement

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## 1. Software License Agreement Overview

- 1.1 This Software License Agreement is entered into by and between ClassLink, Inc. ("ClassLink") and Customer and describes the terms and conditions pursuant to which ClassLink shall grant to Customer a non-transferable and non-exclusive license to use certain ClassLink Software.

## 2. Definitions

- 2.1 "Agreement" means this Software License Agreement including any and all attached Schedules.
- 2.2 "License and Support Fees" include fees payable by Customer to ClassLink for licensing and maintenance support of ClassLink Software.
- 2.3 "ClassLink Software" means (a) ClassLink software products made available to the Customer, (b) Updates, (c) custom reports or any custom software modifications for Customer, and (d) Documentation. ClassLink Software does not include Source Code.
- 2.4 "Confidential Information" means all software listings, Documentation, information, data, drawings, benchmark tests, specifications, trade secrets, object code and machine-readable copies of the ClassLink Software, and any other proprietary information supplied to Customer by ClassLink or by Customer to ClassLink which is clearly marked as "confidential" if in tangible form or identified as "confidential" if orally disclosed.
- 2.5 "Customer Data" shall mean and include all administrative, student, teacher, and other related information belonging to Customer. This data generally includes name, school building affiliation, grade level, email address, profile pictures, cell phone numbers for staff and students age 13+ (to send password reset verification codes), staff and student ID numbers and login credentials for various online resources.
- 2.6 "Documentation" means all written user information, whether in electronic, printed or other format, delivered or made available to Customer by ClassLink with respect to ClassLink Software, now or in the future, including instructions, manuals, training materials, and other publications that contain, describe, explain or otherwise relate to ClassLink Software.
- 2.7 "Effective Date" means the date of commencement of the Subscription Term, listed on the ClassLink Invoice.
- 2.8 "Expiration Date" means the last day of the Subscription Term, listed on the ClassLink Invoice.
- 2.9 "Source Code" means the instructions and statements, used for compilation into machine readable form that makes up an item of ClassLink Software.
- 2.10 "Subscription Term" means the period of time beginning with the Effective Date and ending with the Expiration Date, listed on the ClassLink Invoice.
- 2.11 "Updates" means any updates to the ClassLink Software licensed hereunder which ClassLink, in its discretion, makes generally available to its ClassLink Software licensees.

### **3. License Grant and Terms**

- 3.1 This Agreement authorizes Customer to use items of ClassLink Software specified in the ClassLink Invoice during the term of this Agreement. At the end of Subscription Term, Customer's license and associated rights specified in this Agreement will expire, unless renewed. This Agreement and license to use ClassLink Software will also terminate if Customer fails to comply with any term or condition in this Agreement and fails to remedy such failure within ten (10) days of written notification of such failure from ClassLink to Customer. ClassLink's limitations of liability and disclaimers as well as the provisions of the Sections titled "Confidentiality" and "General Provisions" shall survive expiration or termination of this Agreement.
- 3.2 Customer understands and acknowledges that operation of the ClassLink Software may require the use of certain third-party software such as Microsoft Windows Server, Microsoft SQL, etc., which Customer must separately license at its own expense.
- 3.3 Customer agrees that it will not itself, or through any parent, subsidiary, affiliate, agent or other third party sell, lease, license, sublicense, encumber or otherwise deal with any portion of the ClassLink Software.
- 3.4 ClassLink shall provision and make ClassLink Software available to Customer during the term of this Agreement; provided, however, Customer acknowledges that ClassLink may take the ClassLink Software down from time to time to perform maintenance and/or upgrades. In addition, Customer agrees that from time to time the ClassLink Software may be inaccessible or inoperable due to ClassLink Software errors or causes beyond the control of ClassLink or which are not reasonably foreseeable by ClassLink, including, but not limited to: the interruption or failure of telecommunication or digital transmission links; hostile network attacks; network congestion; or other failures (collectively "Downtime"). ClassLink shall use commercially reasonable efforts to minimize any disruption, inaccessibility and/or inoperability of the ClassLink Software caused by Downtime, whether scheduled or not. A log of past ClassLink Software service disruptions will be maintained at <http://trust.classlink.com> and can serve as an indicator of past service availability.
- 3.5 Force Majeure. Except for payment of fees, non-performance by either party will be excused to the extent that performance is rendered impossible by any act of God (including fire, flood, earthquake, storm, hurricane or other natural disaster), war, invasion, act of foreign enemies, hostilities (regardless of whether war is declared), civil unrest, act of government, act of terror, strike or other labor problem (other than one involving our employees), internet service provider failure or delay, denial of service attack, failure of suppliers, or any other reason where failure to perform is beyond the control and not caused by the negligence of the non-performing party.
- 3.6 ClassLink may, in its discretion, from time to time, as determined by ClassLink, add new features, functionality or content to the ClassLink Software; limit, modify or discontinue existing features, functionality or content made available with the ClassLink Software; or incorporate revisions into the ClassLink Software as may be deemed appropriate by ClassLink.
- 3.7 Where ClassLink Software is installed on premises, Customer shall be responsible for the purchase, configuration and ongoing maintenance of relevant equipment, systems and software to achieve the Customer's desired results.

### **4. Confidentiality**

- 4.1 Customer acknowledges that the ClassLink Software contains proprietary, trade secret and confidential information belonging exclusively to ClassLink. Title to, ownership of and all proprietary rights in the ClassLink Software and all copies thereof, including translations or compilations or partial copies, are reserved to and will at all times remain with ClassLink.



- 4.2 Customer shall not (a) disclose the ClassLink Software or any confidential ideas, techniques and concepts contained therein to any third party without the prior written consent of ClassLink, (b) where ClassLink Software is installed on premises, copy the ClassLink Software or any portion thereof except as necessary for use within Customer's organization.
- 4.3 Customer agrees (a) to hold the ClassLink Software in confidence and (b) where ClassLink Software is installed on premises, to maintain the ClassLink Software in a secure environment and take all reasonable precautions to maintain security to prevent unauthorized use or disclosure. Customer shall inform its employees having access to the ClassLink Software of Customer's limitations, duties and obligations regarding nondisclosure and copying of the ClassLink Software. Customer agrees to maintain the integrity of all copyright, trade secret or other proprietary notices of ClassLink in the ClassLink Software and/or affixed to or imprinted on physical media and embodiments thereof, and to take no action inconsistent with the copyright and trade secret ownership rights of ClassLink.
- 4.4 Where ClassLink Software is installed on premises, Customer shall maintain accurate records of the number and location of all copies of the ClassLink Software and shall promptly provide a current listing to ClassLink upon request.
- 4.5 ClassLink acknowledges and agrees that all Customer Data is and shall remain the property of Customer. ClassLink makes no claims as to ownership of any Customer Data.
- 4.6 ClassLink acknowledges and agrees users shall retain ownership and control of user-generated content, if any. ClassLink shall make all user-generated content available to the user who created it and provide a process by which a user can transfer his or her user-generated content to a personal account. Detailed directions to accomplish this can be found at [docs.classlink.com](https://docs.classlink.com).
- 4.7 ClassLink acknowledges and agrees to exercise commercially reasonable efforts to maintain as confidential all Customer Data. ClassLink team members are bound by contractual non-disclosure agreements. ClassLink data security protections include: internal data management policies and procedures, limitations on access to personal data, data encryption (for both data in transit and at rest), data systems monitoring, incident response plans, and safeguards to ensure Customer Data is not accessed by unauthorized persons when transmitted over communication networks.
- 4.8 ClassLink acknowledges and agrees that Customer Data is to be used solely for purposes of performing this Agreement. Customer Data will not be sold or used for marketing purposes. Except as specifically stated herein, ClassLink will not disclose Customer Data to third parties without Customer's consent. ClassLink may, however, disclose Customer Data to entities performing work for ClassLink related to the set-up, installation and training of Customer to use the ClassLink Software or the development, support or maintenance of the ClassLink Software, to the extent such disclosure is necessary for the facilitation of such work. ClassLink shall ensure that such entities are contractually bound to maintain the confidentiality of such information. ClassLink may disclose the fact that Customer is a user of the ClassLink Software to business partners of ClassLink that offer complementary products or services. In addition, ClassLink may disclose Customer Data in the following situations: (a) in response to a subpoena, court order or other legal process; (b) to protect user security or the security of other persons; or (c) in connection with a sale, joint venture or other transfer of some or all of the assets of ClassLink as long as ClassLink ensures that such sale, joint venture or other transfer includes the requirement to maintain the confidentiality of such information to the same extent as ClassLink under this Agreement.

- 4.9 ClassLink acknowledges and agrees users can review personally identifiable information in ClassLink and correct erroneous information. All users of ClassLink can update certain personal information contained in ClassLink by clicking My Profile, General Settings. ClassLink stores only limited personal information and much of it is originally received by the school organization. It is advised when users make changes to personal information contained in ClassLink they also communicate that information to the school organization. Detailed directions to accomplish this can be found at [docs.classlink.com](https://docs.classlink.com).
- 4.10 ClassLink acknowledges and agrees to permanently deletes Customer Data after the termination of a contract, when no longer needed, or when advised to do so by the Customer.
- 4.11 ClassLink is a signatory to the Student Privacy Pledge (<http://studentprivacypledge.org>) and, for the duration of this Agreement, ClassLink will remain a signatory and abide by the commitments therein as follows:
- Not collect, maintain, use or share student personal information beyond that needed for authorized educational/school purposes, or as authorized by the parent/student.
  - Not sell student personal information.
  - Not use or disclose student information collected through an educational/school service (whether personal information or otherwise) for behavioral targeting of advertisements to students.
  - Not build a personal profile of a student other than for supporting authorized educational/school purposes or as authorized by the parent/student.
  - Not make material changes to school service provider consumer privacy policies without first providing prominent notice to the account holder(s) (i.e., the educational institution/agency, or the parent/student when the information is collected directly from the student with student/parent consent) and allowing them choices before data is used in any manner inconsistent with terms they were initially provided; and not make material changes to other policies or practices governing the use of student personal information that are inconsistent with contractual requirements.
  - Not knowingly retain student personal information beyond the time period required to support the authorized educational/school purposes, or as authorized by the parent/student.
  - Collect, use, share, and retain student personal information only for purposes for which we were authorized by the educational institution/agency, teacher or the parent/student.
  - Disclose clearly in contracts or privacy policies, including in a manner easy for parents to understand, what types of student personal information we collect, if any, and the purposes for which the information we maintain is used or shared with third parties.
  - Support access to and correction of student personally identifiable information by the student or their authorized parent, either by assisting the educational institution in meeting its requirements or directly when the information is collected directly from the student with student/parent consent.
  - Maintain a comprehensive security program that is reasonably designed to protect the security, privacy, confidentiality, and integrity of student personal information against risks – such as unauthorized access or use, or unintended or inappropriate disclosure – through the use of administrative, technological, and physical safeguards appropriate to the sensitivity of the information.
  - Require that our vendors with whom student personal information is shared in order to deliver the educational service, if any, are obligated to implement these same commitments for the given student personal information.
  - Allow a successor entity to maintain the student personal information, in the case of our merger or acquisition by another entity, provided the successor entity is subject to these same commitments for the previously collected student personal information.

## **5. Disclosure of ClassLink Solution Partner Relationship**

- 5.1 Customer agrees that if a ClassLink Solution Partner (“CSP”) is involved and has marketed the ClassLink Software to Customer as an authorized marketer of ClassLink Software Products, Customer understands that as compensation for CSP’s marketing, installation and implementation efforts CSP will be paid a commission from the fees paid by Customer for the ClassLink Software. Customer understands that CSP is an independent business and is not a legal partner, employee or agent of CSP has no authority to bind ClassLink in any respect. The relationship between ClassLink and CSP is solely that of principal and independent contractor, each being responsible for its own actions.
- 5.2 CSP shall have no authority to accept the return or to make or authorize any allowance or adjustment with respect to, any ClassLink Software other than to the extent of the commission to be paid to them. ClassLink does not warrant in any form whatsoever, any of the services or products provided by CSP to the Customer. Any agreements, commitments, promises, representations or recommendations made by CSP are solely between the CSP and the Customer and do not bind ClassLink in any respect.

## **6. Charges**

- 6.1 License and support fees (“ClassLink Subscription Fees”) may be based on student enrollment, staff enrollment or building count for certain ClassLink Software products and will be provided by ClassLink to Customer in the form of a price quote or Invoice. Renewal of this Agreement and related ClassLink Subscription Fees shall be based on current published enrollment and current list prices of the ClassLink Software. Customer agrees to notify ClassLink at such time as student enrollment increases more than 10% during a Subscription Term wherein additional ClassLink Subscription Fees may be required for the remainder of the Subscription Term.
- 6.2 Unless ClassLink and Customer shall otherwise agree, payment for ClassLink Subscription Fees are due on receipt of Invoice.

## **7. Warranties**

- 7.1 ClassLink makes no warranties with respect to the use of the ClassLink Software on technology devices other than those specified in the Documentation.
- 7.2 Modification or attempted modification by Customer of any item of ClassLink Software shall void ClassLink’s warranties with respect to such item of ClassLink Software.
- 7.3 ClassLink warrants to Customer that to the best of its knowledge ClassLink Software is not in violation of any patent, copyright, trademark or other intellectual property claims and that ClassLink has the right to license Customer’s use of the ClassLink Software as provided in this Agreement.
- 7.4 ClassLink agrees to indemnify and save the Customer, its trustees, agents, students and employees, harmless from liability of any nature or kind for use by the Customer, its agents, students and employees of any copyrighted or non-copyrighted materials, secret process, patented or unpatented inventions, articles or appliances, furnished by ClassLink or used in ClassLink’s performance of the agreement for which ClassLink is not the patentee, assignee or licensee, provided that (1) such use results in a third party suit or claim alleging infringement (a “Claim”); (2) the Customer provides ClassLink with prompt notice of the Claim and gives ClassLink a reasonable opportunity to control the defense and settlement of the Claim; and (3) the Customer provides reasonable cooperation and assistance to ClassLink’s defense of the Claim. If ClassLink’s software becomes or is likely to become the subject of an infringement claim, ClassLink may at its option and expense, either: (a) procure for the Customer the right to continue using such software; (b) replace or modify the affected software so it becomes non-infringing and remains functionally equivalent or (c) require the return of the affected software, allow the

Customer to return other software intended to operate with the affected software, and refund to the Customer the portion of the purchase price attributable to the returned product, prorated in accordance with the unused portion of the term.

- 7.5 ClassLink warrants to Customer that each item of ClassLink Software will conform, when shipped to Customer, to ClassLink specifications which are in effect for that item at that time. If Customer believes there is a defect in any item of ClassLink Software, Customer should notify ClassLink immediately and ClassLink will correct or replace the defective item of ClassLink Software. If ClassLink is unable to make the item of ClassLink Software perform as warranted, Customer may as its sole remedy return the item of ClassLink Software and receive a full refund of fees paid for item of ClassLink Software. ClassLink shall have no liability for any claim under this Section not made within sixty (60) days after the date of shipment of the item of ClassLink Software claimed to be defective. Except as specifically provided herein, ClassLink does not warrant that the functions contained in any item of ClassLink Software will meet the Customer's requirement or will operate in combination with other software that Customer may select or that the operation of the ClassLink Software will be uninterrupted or error-free or that all defects will be corrected.
- 7.6 Where Customer purchases multiple years of ClassLink Software upfront, and ClassLink dissolves or no longer delivers ClassLink Software, ClassLink shall refund to the Customer the portion of the purchase price attributable to the discontinued product, prorated in accordance with the unused years of the term.
- 7.7 Except as specifically provided herein, ClassLink makes no warranties express or implied as to any matter whatsoever, including, without limitation, the condition of any ClassLink Software, its merchantability or its fitness for any particular purpose, as well as any express or implied warranties or conditions arising through any course of dealing or course of performance between the parties or usage of trade.

## **8. Limitation of Liability / Insurance**

- 8.1 IN NO EVENT SHALL CLASSLINK, ITS SERVICE PROVIDERS, EMPLOYEES, AGENTS, OFFICERS OR DIRECTORS BE LIABLE FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL (INCLUDING LOST BUSINESS AND PROFITS) OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT AND/OR ANY SERVICES, WHETHER FOR BREACH OF CONTRACT, IN TORT OR OTHERWISE, EVEN IF CUSTOMER IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. CLASSLINK, ITS SERVICE PROVIDERS, EMPLOYEES, AGENTS, OFFICERS AND DIRECTORS SHALL NOT BE LIABLE FOR (A) THE COST OF COVER OF SUBSTITUTE SERVICES, OR (B) ANY DAMAGES OF ANY NATURE WHATSOEVER RESULTING FROM, OR RELATED TO, BUSINESS INTERRUPTION AND/OR THE LOSS, DELAY OR INABILITY TO USE ANY SERVICES. IN ALL EVENTS, CLASSLINK'S MAXIMUM AGGREGATE LIABILITY TO CUSTOMER OR ANY THIRD PARTY FOR CLAIMS RELATING TO THE AGREEMENTS AND ANY AND ALL SERVICES, WHETHER FOR BREACH OF CONTRACT, BREACH OF WARRANTY, IN TORT, STRICT LIABILITY, MISREPRESENTATIONS, OR OTHERWISE, SHALL NOT EXCEED THE GREATER OF (Y) THE AMOUNT OF FEES PAID BY CUSTOMER DURING THE TWELVE (12) MONTHS PRIOR TO THE OCCURRENCE OF THE EVENT(S) GIVING RISE TO THE CLAIM, OR (Z) THE AMOUNTS PAID BY CLASSLINK'S INSURANCE COMPANY ON BEHALF OF CLASSLINK WITH RESPECT TO THE CLAIM.
- 8.2 During the term of the Contract, ClassLink will purchase and maintain Cyber Liability or Technology Professional Liability insurance in an aggregate amount no less than \$1,000,000.00 (one million U.S. dollars). Upon request, a Certificate of Insurance shall be provided to Customer.

## 9. Term

- 9.1 This Agreement shall automatically renew for the Subscription Term listed on the renewal ClassLink Invoice unless (a) terminated by Customer at any time upon not less than thirty (30) days' written notice to ClassLink prior to the end of the Subscription Term; or (b) terminated by ClassLink by reason of Customer's breach of the provisions of this Agreement concerning Customer's use and non-disclosure of the ClassLink Software or Customer's failure to make timely payment of any ClassLink Subscription Fees.
- 9.2 Upon termination of this Agreement, the license and all rights granted to Customer under this Agreement shall immediately cease and Customer shall immediately: (a) Purge all copies of the ClassLink Software and any portions thereof from all CPU's and storage media and devices on which Customer has placed or allowed others to place the ClassLink Software; and (b) Certify to ClassLink in writing that Customer has complied with its obligations under this Section.
- 9.3 The parties acknowledge the provisions of this Agreement concerning non-disclosure, limitations of liability, disclaimers, and the Sections entitled "Confidentiality" and "General Provisions" shall survive expiration or termination of this Agreement. In the event of Customer's breach of these provisions, ClassLink would suffer irreparable harm with no adequate remedy at law. Accordingly, in the event Customer fails to comply with these provisions, ClassLink shall have the right, without prejudice to any other rights or remedies available to it, to seek equitable relief to enforce and protect its rights hereunder, by way of temporary restraining order or injunction, and such other alternative relief as may be appropriate, without the necessity of posting any bond or surety.

## 10. General Provisions

- 10.1 **Assignment.** Customer shall not assign or otherwise transfer its rights or obligations under this Agreement except with the written consent of ClassLink; provided, however, that a successor in interest by merger, by operation of law or by the acquisition of substantially the entire business of Customer shall acquire all interest and all obligation of Customer under this Agreement.
- 10.2 **Audit Rights.** Upon reasonable notice to Customer, Customer shall provide a designated ClassLink representative reasonable access to Customer's records relating to the ClassLink Software and use thereof for the purpose of assuring Customer compliance with the terms of this Agreement.
- 10.3 **Foreign Reshipment Liability.** Customer will not export or transfer, whether directly or indirectly, the ClassLink Software to anyone outside the United States of America without first complying with all export controls which may be imposed by the U.S. Government and any country or organization of nations within whose jurisdiction Customer operates or does business and paying any fees as specified in Section 5 hereof.
- 10.4 **Notices.** Any notice or other communication required or permitted under this Agreement shall be given in writing to ClassLink and to Customer at Customer's address specified above, or at such other address as shall be specified by one party to the other in writing. Notices shall be deemed to have been given when personally delivered or when deposited in the mail, properly addressed and first class postage prepaid.
- 10.5 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey without reference to its principles of conflicts or choice of law.
- 10.6 **Entire Agreement.** This Agreement constitutes the entire software license agreement between ClassLink and Customer. It supersedes and replaces all previous understandings or agreements, written or oral, regarding such subject matter.

- 10.7 Changes. This Agreement may not be modified, amended, canceled or waived, in whole or in part, except by written amendment signed by the parties hereto.
- 10.8 Severability. Any provision of this Agreement found to be illegal or unenforceable shall be deemed severed, and the balance of this Agreement shall remain in full force.
- 10.9 Change of Law. If, due to any change in applicable law or regulations or the interpretation thereof by any court of law or other governing body having jurisdiction subsequent to the date of this Agreement, performance of any provision of this Agreement shall become unenforceable, invalid or illegal, the parties hereto shall use their best efforts to promptly negotiate an amendment to this Agreement in good faith.

## **11. Agreed**

- 11.1 Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms.

## ClassLink Service Level Agreement

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### 1. Service Level Agreement Overview

- 1.1 This Service Level Agreement (“SLA”) represents an agreement between ClassLink and Customer for the provisioning of technical services required to support and sustain the ClassLink system.

### 2. Goals & Objectives

- 2.1 The goal of this SLA is to obtain mutual agreement for technical services to be provided to the Customer by ClassLink.
- 2.2 The objectives of this Agreement are to:
- Present a clear, concise and measurable description of technical services.
  - Define mutual accountability, roles and responsibilities.

### 3. ClassLink Technical Services

- 3.1 The purpose of technical services within this SLA is to ensure the usability of such that the software works as intended by ClassLink.
- 3.2 The following technical services are the responsibility of ClassLink.
- Troubleshoot access to ClassLink from any device, browser, native app (iOS, Android, Universal Windows App)
  - Creation of new single sign-on connectors
  - Assistance with making settings changes in ClassLink Management Console, or any ClassLink module
  - Continuous system diagnostic monitoring
  - Ensure all ClassLink systems function properly
  - Development and installation of periodic software updates and enhancements
  - Data backup
  - Disaster/data recovery
- 3.3 ClassLink responsibilities in support of this SLA also include:
- Meeting response times associated with service related incidents.
  - Appropriate notification to Customer for all scheduled maintenance.
  - Changes to services will be communicated and documented to Customer.
  - ClassLink, at its discretion, may contact users directly to investigate and resolve software performance issues.
  - Initial and additional ongoing training for Customer key technology staff.
  - Initial and additional ongoing training for Customer key instructional staff.
- 3.4 The following services are outside the scope of this SLA and are available for purchase separately.
- Onsite assistance

#### **4. Response Times**

- 4.1 The following provides relevant details on technical service availability.
- a. ClassLink Help Desk telephone support is available from 7am to 8pm Eastern, Monday through Friday, except ClassLink observed holidays.
  - b. ClassLink provides the following methods of accessing technical services:
    - Toll-free telephone technical support at 888-963-7550
    - Monitored support case system (online helpdesk ticket system)
    - Monitored email request for support at [helpdesk@classlink.com](mailto:helpdesk@classlink.com)
    - Monitored Twitter posts and direct messages at [@classlinkhelp](https://twitter.com/classlinkhelp) and [@classlink](https://twitter.com/classlink)
- 4.2 In support of services outlined in this SLA, ClassLink will respond to service related incidents and/or requests submitted and prioritized by the Customer within the following time frames:
- a. 0-2 hours (during business hours) for issues classified as high priority.
  - b. Within 24 hours for issues classified as medium priority.
  - c. Within 3 working days for issues classified as low priority.

#### **5. Customer Requirements**

- 5.1 Customer responsibilities and/or requirements in support of this SLA include:
- a. Reasonable availability of Customer representative(s) when resolving a service related incident or request.
  - b. Proactive communication of necessary information to assist in resolving a service related incident or request.
  - c. Payment for ClassLink subscription costs as invoiced.
  - d. Maintain ample and reliable internet bandwidth for proper functioning of cloud delivered services.

#### **6. Customer Data Unauthorized Disclosure**

- 6.1 As soon as practicable, but no later than 72 hours after becoming aware of an unauthorized disclosure of Customer Data, ClassLink will notify the Customer of any such unauthorized disclosure and restore the security of its data system. Thereafter, within 30 business days after the notification, ClassLink will further investigate the incident and provide the Customer with a more detailed notification of the unauthorized disclosure, including the Customer Data components which were disclosed and that appropriate measures have been taken to prevent such unauthorized disclosure in the future. ClassLink agrees to reasonably cooperate with Customer in the Customer's investigation and response to the disclosure.

#### **7. SLA Term**

- 7.1 This SLA shall be effective concurrently with the Subscription Term defined in the ClassLink Software License Agreement.

#### **8. Agreed**

- 8.1 Customer acknowledges that Customer has read this SLA, understands it, and agrees to be bound by its terms and conditions.



## Non-Disclosure Agreement

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This Non-Disclosure Agreement (“NDA”) is entered into by and between ClassLink (“Receiving Party”) and Customer (“Disclosing Party”) for the purpose of preventing the unauthorized disclosure of Confidential Information as defined below.

- 1. Definition of Confidential Information:** For purposes of this NDA “Confidential Information” shall include all information or material that has or could have commercial value or other utility in the business in which Disclosing Party is engaged or is required to be kept confidential by law. If Confidential Information is in written form, the Disclosing Party shall label or stamp the materials with the word “Confidential” or some similar warning. If Confidential Information is transmitted orally, the Disclosing Party shall promptly provide a writing indication that such oral communication constituted Confidential Information.
- 2. Exclusions from Confidential Information:** Receiving Party’s obligations under this NDA do not extend to information that is: (a) publicly known at the time of disclosure or subsequently becomes publicly known through no fault of the Receiving Party; (b) discovered or created by the Receiving Party before disclosure by Disclosing Party; (c) learned by the Receiving Party through legitimate means other than from the Disclosing Party or Disclosing Party’s representatives; or (d) is disclosed by Receiving Party with Disclosing Party’s prior written approval.
- 3. Obligations of Receiving Party:** Receiving Party shall hold and maintain the Confidential Information in strictest confidence for the sole and exclusive benefit of the Disclosing Party.
- 4. NDA Term:** This NDA shall be effective concurrently with the Subscription Term defined in the ClassLink Software License Agreement. The nondisclosure provisions of this NDA shall survive the termination of this NDA and Receiving Party’s duty to hold confidential Information in confidence shall remain in effect until the Confidential Information no longer qualifies as a trade secret, the information no longer is required to be kept confidential by law, or until disclosing Party sends Receiving Party written notice releasing Receiving Party from this NDA, whichever occurs first.
- 5. Relationships:** Nothing contained in this NDA shall be deemed to constitute either party a partner, joint venture or employee of the other party for any purpose.
- 6. Severability:** If a court finds any provision of this NDA invalid or unenforceable, the remainder of this NDA shall be interpreted so as best to affect the intent of the parties.
- 7. Integration:** This NDA expresses the complete understanding of the parties with respect to the subject matter and supersedes all prior proposals, agreements, representations and understandings. This NDA may not be amended except in a writing signed by both parties.
- 8. Waiver:** The failure to exercise any right provided in this NDA shall not be a waiver of prior or subsequent rights.
- 9. Agreed:** Customer acknowledges that Customer has read this NDA, understands it, and agrees to be bound by its terms and conditions.

## ClassLink Data Security Statement

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We take security and privacy concerns seriously. We are committed to ensuring that your information is secure and your privacy is protected. This *Security Statement* is aimed at being transparent about our security infrastructure and practices, to help reassure you that your data is sufficiently protected.

### Our Guiding Principles on Personal Data

- **Data Ownership:** ClassLink acknowledges that all personally identifiable information about students, teachers, administrators, and parents is the property of the educational agencies ClassLink serves.
- **Purpose:** ClassLink is a trusted steward of personal data. Data received from educational agencies is to be used solely for purposes of providing educational services. Such data will not be sold or used for marketing purposes.
- **Type of Data Maintained in ClassLink:** ClassLink maintains personal data needed for the satisfactory operation of the ClassLink system. This data includes what is generally regarded as Directory Information such as name, school building affiliation, grade level, and email address. ClassLink may also maintain profile pictures, cell phone numbers for students age 13+ (to send password reset verification codes), student ID numbers, login credentials for various online resources, and personal computer files (temporarily cached for file transfers between cloud drives and stored until deleted by user for the ClassLink cloud drive). ClassLink does not generally maintain information such as mailing address, gender, date of birth, and other personal demographic data.
- **Protection:** ClassLink keeps all personal data confidential and secure. ClassLink team members are bound by contractual non-disclosure agreements. ClassLink's data security protections include: internal data management policies and procedures, limitations on access to personal data, data encryption (for both data in transit and at rest), data systems monitoring, incident response plans, and safeguards to ensure personal data is not accessed by unauthorized persons when transmitted over communication networks.
- **Disposal of Data:** ClassLink permanently deletes personal data after the termination of a contract, when no longer needed, or when advised to do so by the educational agency.
- **Correction:** ClassLink enables users, or their authorized parents, to review personal information maintained in ClassLink and correct erroneous information.
- **Discovery of a security breach that results in unauthorized release of personal data:** ClassLink shall promptly notify affected educational agencies of such breach, shall conduct an investigation, and shall restore the integrity of its data systems as soon as possible. ClassLink will fully cooperate and assist with required notices to those individuals affected by such breach.
- **Financial Protection:** ClassLink shall maintain business insurance policies to protect the educational agencies it serves.

### Hosting

- We host the ClassLink system on Amazon Web Services (AWS). AWS facilities are secure, geographically diverse and are built using best practice security frameworks and standards. Information on the security of Amazon infrastructure can be found at <http://aws.amazon.com/security>.

### Security Reviews/Audits

- We engage expert independent security firms to periodically review our policies, procedures, technical infrastructure and software code each year. Certain of these expert firms provide statements that certify our compliance with regulatory requirements such as FERPA, GDPR and COPPA. More information about these certifications can be found at [www.classlink.com/privacy](http://www.classlink.com/privacy).

**Commitments to Industry Efforts on Privacy and Security**

- ClassLink is a signatory to the Student Privacy Pledge (<http://studentprivacypledge.org>). More information about these certifications can be found at [www.classlink.com/privacy](http://www.classlink.com/privacy).

**Compliance with General Data Protection Regulation (GDPR)**

- General Data Protection Regulation (GDPR) is the current body of regulation regarding the handling of personal data for citizens of the European Union (EU). The primary objective of the GDPR is to give citizens control of their personal data. ClassLink is compliant with the EU General Data Protection Regulation. GDPR includes 11 chapters and nearly 100 articles. More information can be found at [www.classlink.com/privacy](http://www.classlink.com/privacy).

We value your business and respect the importance of information security. We continually strive to mitigate and minimize risk. Computer security is a relative concept. No computer system connected to the Internet can be completely secure and no amount of testing can disclose all possible vulnerabilities. Accordingly, this *Security Statement* does not guarantee the complete security of our systems. We provide this *Security Statement* so that you understand we are committed to your information security by best practice / risk management strategies. You may also need this *Security Statement* for your auditors and insurance policy holders. If you require any further information, please don't hesitate to contact us.

# Signature of Acceptance

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The following is the signature of acceptance to the terms of the attached:

- ClassLink Software License Agreement
- ClassLink Service Level Agreement
- Non-Disclosure Agreement

**Accepted by:**

Customer:

ClassLink:

**SEE ATTACHED BPS SOPFTWARE LICENSE ADDENDUM**

\_\_\_\_\_  
Name of Organization

\_\_\_\_\_  
City, State Zip

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

***Fax to 973-546-5981 or email to [accounting@classlink.com](mailto:accounting@classlink.com)***

Company Address 45 East Madison Ave. Suite 7  
Clifton, NJ 07011

Fax (973) 546-5981

Created Date 12/13/2019

Expiration Date 6/30/2020

Quote Number 00006526

Grand Total \$169,500.00

Prepared By Marc Crater, Controller

Phone (862) 225-1501

Email mcrater@classlink.com

Contact Name Dawn Bronstein

Phone (321) 633-1000

Email bronstein.dawn@brevardschools.org

Bill To 2700 JUDGE FRAN JAMIESON WAY  
VIERA, FL 32940  
United States

Ship To Name Brevard County SD (FL, 32940)

Product	Product Description	Line Item Description	Sales Price	Quantity	Total Price
ClassLink	OneClick	ClassLink Software License from 7/1/2020 - 6/30/2021 <b>YEAR 1</b>	\$0.60	80,000	\$48,000.00
ClassLink	OneClick	ClassLink Software License from 7/1/2021 - 6/30/2022 <b>YEAR 2</b>	\$0.70	80,000	\$56,000.00
ClassLink	OneClick	ClassLink Software License from 7/1/2022 - 6/30/2023 <b>YEAR 3</b>	\$0.80	80,000	\$64,000.00
ClassLink	Rosters Server Hosting	ClassLink Rosters Server Hosting from 7/1/2020 to 6/30/2023 <b>3 YEARS</b>	\$500.00	3	\$1,500.00

### Annual License Amounts Paid Once a Year including Rosters Hosting



## **CONFIDENTIALITY and NON-DISCLOSURE AGREEMENT**

This Confidentiality and Non-Disclosure Agreement (hereinafter "Agreement") is entered into as of the date of the last signature set forth below between The School Board of Brevard County, Florida, a political subdivision of the State of Florida, 2700 Judge Fran Jamieson Way, Viera, Florida 32940 (hereinafter "Brevard Public Schools" or "BPS"), and ClassLink, Inc. whose business address is 45 East Madison Avenue, Suite 7, Clifton, NJ 07011 (hereinafter "Contractor"). BPS and Contractor are collectively referred to as the "Parties" and may be referred to individually as a "Party."

### **RECITALS**

WHEREAS, the Parties wish to confirm their understandings with respect to the confidential nature of the relationship between them relating to the transmission, use, storage, and protection of certain Confidential Information;

NOW THEREFORE, in consideration of the mutual promises and premises contained herein, the receipt and sufficiency of which are hereby acknowledged, BPS and Contractor agree as follows:

#### **1. Confidential Information.**

- a. Contractor acknowledges that, in the course of providing services to BPS, Contractor may be given or have access to non-public, confidential, personally identifiable information ("Confidential Information") which is protected from disclosure by privacy laws. Contractor, its employees, agents, contractors, and subcontractors shall, in addition to their respective obligations hereunder, adopt and follow procedures and practices to protect the confidentiality of the Confidential Information and prevent its disclosure to others without the express written consent of BPS.
- b. Contractor specifically acknowledges and agrees to comply with all Federal privacy laws such as the Family Educational Rights and Privacy Act (Title 20, United States Code, Section 1232g, also known as "FERPA"), including the provisions related to storage, as well as state law, including, but not limited to, Sections 1002.22 and 1002.221, Florida Statutes, which govern the confidential and exempt nature of student records.
- c. In accordance with best practices under FERPA, Contractor agrees to store Confidential Information within the legal boundaries of the United States.
- d. Contractor further acknowledges that BPS's willingness to disclose Confidential Information to Contractor is predicated on Contractor committing to abide by the terms of this Agreement and all applicable privacy laws.
- e. HIPAA, CIPA, and GLBA. Contractor also agrees to comply with all applicable state and federal laws, regulations, and BPS policies including Privacy Rights of Students, Computer Users' Responsibilities, Security of Computing Resources, Security of Data, Privacy of Computing Resources, Health Information Privacy and Accountability Act (HIPAA), Children Internet Protection Act (CIPA), and the Gramm-Leach Bliley Act (GLBA).

2. **Nondisclosure; Indemnification.**

- a. Contractor, its employees, agents, contractors, and subcontractors shall use the Confidential Information solely in connection with performance by Contractor of the services provided to BPS and for no other purpose. Neither Contractor nor any of its employees, agents, contractors, or subcontractors shall sell, release, transfer, reprint, duplicate, recreate, disclose, or permit the disclosure to any other person or entity of any of the Confidential Information or of any files, compilation, study, report, or analysis or database containing, based on, or derived from the Confidential Information without the express written consent of BPS and in full compliance with applicable state and federal privacy laws. This Agreement shall not be construed to restrict Contractor from maintaining or using de-identified data (including de-identified aggregated data).
- b. Contractor agrees to indemnify and hold harmless BPS for, of, and from any and all claims, demands, losses, causes of action, damage, lawsuits, and judgments, including reasonable attorneys' fees and costs, arising out of or relating to Contractor's breach of its security obligations under this Agreement regarding its usage or storage of the Confidential Information provided by BPS. Such indemnification includes claims pursuant to FERPA and sections 1002.22 and 1002.221, Florida Statutes. Contractor agrees, at its own expense, to defend against any actions brought or filed against BPS, its board members, officers, agents, and employees with respect to the subject of indemnity contained herein regarding Contractor's breach of its security obligations under this Agreement regarding its usage or storage of the Confidential Information. Contractor shall be solely responsible for paying such defense attorney's fees and costs. Contractor shall have sole discretion and may utilize counsel of its choosing for defense of the BPS against any lawsuit arising out of or relating to Contractor's breach of its security obligations under this Agreement regarding its usage of the Confidential Information. This indemnity shall survive the termination of this Agreement and any underlying associated agreement which specifically sets forth the services to be provided by Contractor.

3. **Disclosure Sought Under Legal Process.** Contractor shall immediately notify BPS in writing of any subpoena, court order, or other legal or administrative process seeking or purporting to compel disclosure of any of the Confidential Information in order for BPS to take action to prevent or limit such disclosure. In no event shall Contractor, without a court order or pursuant to applicable law, disclose or permit the disclosure of any of the Confidential Information in response to legal process unless and until Contractor has given the required notice to BPS and BPS has, or Contractor on BPS's behalf has, exhausted any and all legal remedies available to it to limit or prevent the disclosure.

4. **Return of Materials.** Prior to termination or upon request of BPS at any time for the return of all or part of the Confidential Information, Contractor shall return all or such part of the Confidential Information as BPS may designate to be returned in a format designated by BPS. In addition, upon the completion of the services provided by Contractor to BPS, Contractor shall return or destroy, as BPS may instruct, all Confidential Information in Contractor's possession or control, whether in storage or in printed, electronic, or any other format, including all duplicates and copies thereof of any files, compilation, study, report, analysis, or database containing, based on, or derived from the Confidential Information. BPS acknowledges that any return of Confidential Information by Contractor may result in Contractor's inability to perform or complete the services provided by Vendor to BPS, in which event Contractor will not be liable or responsible for any loss, damage, claim, or inability to perform as a result of the return of Confidential Information.

5. **Loss of Access.** Contractor's disclosure of Confidential Information to third parties without BPS's authorization, or Contractor's failure to return or destroy Confidential Information per Section 4, above, may result in BPS denying Contractor access to Confidential Information for a period of at least five (5) years and/or terminating the underlying agreement with Contractor for cause without any further obligation by BPS to Contractor.

6. **Immediate Notice.** Contractor shall give BPS immediate written notice of any unauthorized use or disclosure of the Confidential Information resulting from any breach or threatened breach by Contractor, or its employees, agents, contractors, or subcontractors of their security obligations under this Agreement, upon learning of same.
7. **Choice of Law; Venue.** Contractor and BPS agree that this Agreement shall be governed by the laws of the State of Florida. Both Parties agree that venue shall be in the Circuit Court of the Eighteenth Judicial Circuit in and for Brevard County, Florida. Both parties will consent that the Circuit Court of the Eighteenth Judicial Circuit in and for Brevard County, Florida has personal and subject matter jurisdiction over any matter arising under this Agreement.
8. **Termination.** Paragraphs 2, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, and 16 of this Agreement shall survive the termination of the underlying agreement for services to be provided by Contractor or any other agreement by and between the Parties.
9. **Severability.** All of the provisions of this Agreement are severable. If any provision of this Agreement is rendered invalid or unenforceable by state or federal statute or regulation or declared null and void by any court of competent jurisdiction, the remaining provisions of this Agreement will remain in full force and effect.
10. **No Additional Obligations.** This Agreement shall not be construed in any manner to be an obligation for either Party to enter into any subsequent contract or agreement.
11. **Sovereign Immunity.** Nothing in this Agreement shall be deemed as a waiver of immunity or limits of liability of BPS beyond any statutory limited waiver of immunity or limits of liability, which has been or which may be adopted by the Florida Legislature, regardless of the nature of any claim which may arise, including, but not limited to, a claim sounding in tort, equity, or contract. In no event shall BPS be liable for any claim or claims for breach of contract, including, without limitation, the wrongful disclosure of confidential or trade secret information for an amount which exceeds, individually and collectively, the then current statutory limits of liability for tort claims. Nothing in this Agreement shall inure to the benefit of any third party for the purpose of allowing any claim against BPS, which would otherwise be barred under the Doctrine of Sovereign Immunity or by operation of law.
12. **Notice.** Whenever either Party desires to give notice unto the other, it must be given by written notice, sent by registered United States mail, with return receipt requested, addressed to the party for whom it is intended, at the place last specified, and the place for giving of notice in compliance with the provisions of this section. For the present, Contractor designates the address set forth below as its place for receiving notice, and BPS designates the following address for such notice:  
  

<b>BPS:</b>	Attention: Assistant Superintendent, Chief Information Officer 2700 Judge Fran Jamieson Way Viera, Florida 32940
<b>Contractor:</b>	Attention: Marc Crater 45 East Madison Avenue, Suite 7 Clifton, NJ 07011
13. **Entire Agreement; Amendments.** This Agreement is intended as the complete, final, and exclusive statement of the Parties with respect to the subject matter hereof, and supersedes any prior agreements or understandings between the Parties hereto. This Agreement may be amended, modified, or supplemented only by a written agreement signed by Contractor and BPS. Any waiver of the terms and conditions of this Agreement must be in writing signed by the Party granting such waiver and shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure to perform.



14. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed as original, but all of which, when taken together, shall constitute but one (1) and the same instrument, and this Amendment may be executed by any or all of the parties hereto and delivered by facsimile or otherwise transmitted electronically. Signed originals of this Agreement will be kept on file in BPS's Office of Information, Communication, and Technology Services, Brevard County Public Schools, 2700 Judge Fran Jamieson Way, Viera, Florida 32940. A copy of the signed original will be provided to Contractor.

15. **Data Breach.** Contractor agrees to comply with the State of Florida Database Breach Notification process and all applicable laws that require the notification of individuals in the event of unauthorized release of personally identifiable information or other event requiring notification. In the event of a breach of any of Contractor's security obligations or other event requiring notification under applicable law ("Notification Event"), Contractor agrees to notify BPS immediately and assume responsibility for informing all such individuals in accordance with applicable law and to indemnify, hold harmless, and defend BPS and its trustees, officers, and employees from and against any claims, damages, or other harm related to such Notification Event.

16. **Waiver of Jury Trial.** Contractor and BPS hereby expressly waive any rights either may have to a trial by jury of any civil litigation related to this Agreement for any litigation limited solely to the Parties of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers, and hereby intend to be legally bound, the day and year as set forth below.

**CONTRACTOR: CLASSLINK, INC.**

By:   
Authorized Representative Signature

**Marc Crater, VP Finance**                                  **3/23/20**  
Name and Title (Type or Print)                                  Date

**THE SCHOOL BOARD OF BREVARD COUNTY, FLORIDA:**

By: \_\_\_\_\_  
Authorized Representative Signature

**Misty Belford, Chairperson** \_\_\_\_\_  
Date