

INDEPENDENT SCHOOL DISTRICT 271  
Bloomington, Minnesota

**REQUEST FOR SCHOOL BOARD ACTION**

DATE OF BOARD MEETING: May 14, 2018

SUBJECT: Seesaw for Schools Services Agreement

ORIGINATING DEPARTMENT: Technology and Information Services

APPROVAL OF ADMINISTRATIVE: John Weisser  
CABINET MEMBER: Executive Director of Technology and Information Services

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RESOLUTION FOR BOARD TO ADOPT:

RESOLVED, that the School Board of Independent School District 271 approves the agreement with Seesaw for Schools.

RECOMMENDATION OF SUPERINTENDENT:

Approve.

DETAILED BACKGROUND:

Bloomington Public Schools is adopting Seesaw for grades K-5 as part of the Digital Content and Anytime Anywhere Learning elements of Next Technologies for Learning (NTL).

Seesaw is a tool for students in younger grades to digitize and build a portfolio of their learning. Families have access to the shared work to get a closer look inside our classrooms. Teachers use Seesaw to create "Activities" that gather formative data on student progress.

The agreement with Seesaw is for a three year implementation at a cost of \$53,759.33. The District's legal counsel and insurance agent of record have reviewed the agreement.

## SEESAW FOR SCHOOLS ORDER FORM

<b>School Name:</b> Bloomington Pub Sch Dist 271 <b>Address:</b>	<b>Contact:</b> Holly Skadsem <b>Phone:</b> (952) 681-6488 <b>E-Mail:</b> hskadsem@isd271.org
<b>Services:</b> Seesaw: The Learning Journal - Seesaw for Schools Edition	
<b>Service Commencement Date:</b> 7/1/2018	
<b>Service Fees:</b> \$4.5 per student per year. Includes 10% bulk discount as well as a 10% multi-year discount: Payment plan below:  Year 1: \$26,879.66 Year 2: \$13,439.83 Year 3: \$13,439.84	<b>Initial Service Term:</b> 7/1/2018-6/30/2021  The Customer may terminate this Agreement at any time for any reason for a period of 60 days after the Commencement Date by written notice to the Company.
<b>Number of Students:</b> 4,425 <b>Initial Service Fees:</b> USD \$53,759.33	
If during the contract year the Customer wishes to increase the number of students eligible to use the Services an additional order form setting forth the number of additional students will be required. The Service Fee for these additional students will be pro-rated over the applicable contract year.	

# SEESAW FOR SCHOOLS SERVICES AGREEMENT

This Seesaw for Schools Services Agreement (“Agreement”) is entered into on \_\_\_\_\_ between Seesaw Learning, Inc., a Delaware corporation (“Company”), and the School Customer listed above (“Customer”). This Agreement includes and incorporates the above Order Form, any subsequent Order Form, as well as the Company’s Terms of Service, Privacy Policy, and contains, among other things, warranty disclaimers, liability limitations and use limitations. There shall be no force or effect to any inconsistent terms of any related purchase order or similar form even if signed by the parties after the date hereof.

Company and Customer agree as follows:

## 1 SERVICES AND SUPPORT

- 1.1 Subject to the terms of this Agreement, Company will use commercially reasonable efforts to provide Customer the Services. As part of the registration process, Customer will identify an administrative user account and password for Customer’s school account. Company reserves the right to refuse registration of, or cancel passwords it deems inappropriate.
- 1.2 Company will perform duties as a “School Official” as defined in the Federal Educational Rights and Privacy Act (“FERPA”).
- 1.3 Subject to the terms hereof, Company will provide Customer with reasonable technical support services in accordance with the Company’s standard practices.

## 2 RESTRICTIONS AND RESPONSIBILITIES

- 2.1 Customer shall at all times comply with the Seesaw Terms of Service, as updated from time-to-time, located at <http://web.seesaw.me/terms-of-service> (the “Terms of Service”). The Terms of Service are incorporated herein by reference and shall apply in full to the Services, including with respect to limitations on Company’s warranties and liability with respect to the Services, except where provisions are specifically superseded by this agreement. Customer agrees to obtain parental consent for the collection of any personally identifiable student information in conjunction with the Services, or alternatively, agrees that it is providing consent on behalf of parents for the Company to collect such information in the educational context. All such information will be in compliance with applicable law, including the Children’s Online Privacy Protection Act (“COPPA”) and Federal Education Rights and Privacy Act (“FERPA”).
- 2.2 Customer acknowledges and agrees that Customer has reviewed the Seesaw Privacy Policy, as updated from time-to-time, located at <http://web.seesaw.me/privacy-policy> (the “Privacy Policy”).
- 2.3 Customer represents, covenants, and warrants that Customer will use the Services only in compliance with all applicable laws and regulations, including laws that pertain to the collection of information from children. Although Company has no obligation to monitor Customer’s use of the Services, Company may do so and may prohibit any use of the Services it believes may be (or alleged to be) in violation of the foregoing.
- 2.4 Customer shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Services, including, without limitation, modems, hardware, servers, software, operating systems, networking, web servers and the like (collectively, “Equipment”). Customer shall also be responsible for maintaining the security of the Equipment, Customer account, passwords (including but not limited to administrative and user passwords) and files, and for all uses of Customer account or the Equipment with or without Customer’s knowledge or consent.
- 2.5 No rights or licenses are granted except as expressly set forth herein.

## 3 PAYMENT OF FEES

- 3.1 Customer will pay Company the then applicable fees described in the Order Form for the Services in accordance with the terms therein (the "Fees"). Company reserves the right to change the Fees or applicable charges and to institute new charges and Fees at the end of the Initial Service Term or then current renewal term, upon thirty (30) days prior notice to Customer (which may be sent by email). If Customer believes that Company has billed Customer incorrectly, Customer must contact Company no later than 60 days after the closing date on the first billing statement in which the error or problem appeared, in order to receive an adjustment or credit. Inquiries should be directed to Company's customer support department.
- 3.2 Company may choose to bill through an invoice, in which case, full payment for invoices must be received by Company thirty (30) days after the mailing date of the invoice. Unpaid amounts are subject to a finance charge of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is lower, plus all expenses of collection and may result in immediate termination of Service.

#### **4 TERM AND TERMINATION**

- 4.1 Subject to earlier termination as provided below, this Agreement is for the Initial Service Term as specified in the Order Form, and shall be automatically renewed for additional periods of one year (collectively, the "Term"), unless either party requests in writing termination at least thirty (30) days prior to the end of the then-current term.
- 4.2 In addition to any other remedies it may have, either party may also terminate this Agreement upon thirty (30) days' notice (or without notice in the case of nonpayment), if the other party materially breaches any of the terms or conditions of this Agreement. Customer will pay in full for the Services up to and including the last day on which the Services are provided. All sections of this Agreement (including the Terms of Service and Privacy Policy incorporated herein by reference) which by their nature should survive termination will survive termination, including, without limitation, accrued rights to payment, confidentiality obligations, warranty disclaimers, and limitations of liability.

#### **5 LIMITATION OF LIABILITY**

NOTWITHSTANDING ANYTHING TO THE CONTRARY, EXCEPT FOR BODILY INJURY OF A PERSON, COMPANY AND ITS SUPPLIERS (INCLUDING BUT NOT LIMITED TO ALL EQUIPMENT AND TECHNOLOGY SUPPLIERS), OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS AND EMPLOYEES SHALL NOT BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR TERMS AND CONDITIONS RELATED THERETO UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY: (A) FOR ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY OR CORRUPTION OF DATA OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY OR LOSS OF BUSINESS; (B) FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; (C) FOR ANY MATTER BEYOND COMPANY'S REASONABLE CONTROL; OR (D) FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED THE FEES PAID BY CUSTOMER TO COMPANY FOR THE SERVICES UNDER THIS AGREEMENT IN THE 12 MONTHS PRIOR TO THE ACT THAT GAVE RISE TO THE LIABILITY, IN EACH CASE, WHETHER OR NOT COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THESE LIMITATIONS ARE IN ADDITION TO AND NOT IN LIEU OF THE LIMITATIONS SET FORTH IN THE TERMS OF SERVICE.

#### **6 MISCELLANEOUS**

If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. This Agreement is not assignable, transferable or sublicensable by Customer except with Company's prior written consent. Company may transfer and assign any of its rights and

obligations under this Agreement without consent. This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and that all waivers and modifications must be in writing signed by both parties, except as otherwise provided herein. No agency, partnership, joint venture, or employment is created as a result of this Agreement and Customer does not have any authority of any kind to bind Company in any respect whatsoever. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and attorneys' fees. All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested. This Agreement shall be governed by the laws of the State of Minnesota without regard to its conflict of laws provisions.

IN WITNESS WHEREOF, the parties have executed this Seesaw for Schools Services Agreement as of the date first written above.

SEESAW LEARNING, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_