

## APPENDIX B

### SERVICE LEVEL AGREEMENT

This Service Level Agreement (“SLA”) between the Digital Content Provider and the participating Local Educational Agency (“LEA”) governs the use of the Digital Content Product in accordance with the Agreement with the LEA. If there is any conflict between the Agreement and this SLA, the Agreement shall govern.

#### 1. Availability Service Level

##### 1.1. Definition.

“Availability” shall mean the availability of the Digital Content Product for use by the LEA to view and download content. The Digital Content Provider shall use commercially reasonable efforts to make the Digital Content Product available with a Monthly Uptime Percentage of at least 99.9% during any calendar month. Subject to the SLA Exclusions, if the Digital Content Provider does not meet the Service Level Commitment, the LEA will be eligible to receive a Service Credit. Any unavailability of the Digital Content Product resulting from scheduled maintenance for which Digital Content Provider provided notice under Section 3 of this SLA will not be deemed to be non-Availability, except to the extent such scheduled maintenance time is in excess of four (4) hours in the applicable calendar month.

##### 1.2. Measurement.

Availability measurements of the Digital Content Product shall be performed by the Digital Content Provider.

##### 1.3. Service Level Commitment.

During each calendar month, the Digital Content Provider shall provide an average combined Availability of no less than 99.9%.

##### 1.4. Incident Management Procedure.

The Digital Content Provider shall respond to an incident resulting in the LEA’s loss of use or functionality of the Digital Content Product (“Incidents”) in accordance with time intervals and other requirements corresponding to the applicable Incident priority levels set forth in the below table. Incident priority levels will be reasonably determined by the Digital Content Provider in a manner consistent with the below descriptions. The LEA shall provide commercially reasonable assistance to the Digital Content Provider in connection with the Digital Content Provider’s efforts to respond to an Incident.

Incident Priority	Incident Description	Response Time Service Level*
Priority 1:	<ul style="list-style-type: none"><li>• Service is down or unavailable; or</li><li>• Service function is so severely impacted that there is, or if the Incident is not resolved there will likely be, a halt to LEA’s business; or</li></ul>	The Digital Content Provider will respond to and commence efforts to fix a Priority 1 Incident within 2 hours after notification of such Incident from MCPS. The Digital Content Provider shall acknowledge receipt of the LEA’s

Incident Priority	Incident Description	Response Time Service Level*
	<ul style="list-style-type: none"> <li>&gt;95% of the end users at a school are unable to access or use the service.</li> </ul>	initial notification of a Priority 1 Incident within 1 hour, and shall provide status updates thereafter.
Priority 2:	<ul style="list-style-type: none"> <li>Service functionality is substantially impacted or significant service performance degradation is experienced with high impact to the LEA's business operations affecting 75% to 95% of the end users at a school.</li> </ul>	The Digital Content Provider will respond to and commence efforts to fix a Priority 2 Incident no later than 12 hours after notification of such Incident from the LEA. The Digital Content Provider shall acknowledge receipt of the LEA's initial notification of a Priority 2 Incident within 2 hours, and shall provide status updates thereafter.
Priority 3:	<ul style="list-style-type: none"> <li>There is a partial, non-critical impact to service functionality or service performance degradation with medium to low impact to the LEA's business operations at a school.</li> </ul>	The Digital Content Provider will respond to Priority 3 Incidents no later than 48 hours after notification of such Incident from the LEA. The Digital Content Provider shall acknowledge receipt of the LEA's initial notification of a Priority 3 Incident within 12 hours, and shall provide status updates thereafter.
Priority 4:	<ul style="list-style-type: none"> <li>Requests involving routine technical issues; or</li> <li>Inquiries regarding service capabilities; or</li> <li>Notice of minor service performance issues for which a fix or work around is available.</li> </ul>	As may be available or as may be included in a future update or version.

\*In the event that the LEA reports an Incident outside of the Digital Content Provider's normal business hours, the respective time for the Digital Content Provider to respond to such Incident shall carry over to the next business day.

### **1.5. Sole Remedy.**

Unless otherwise mutually agreed upon by the parties, the LEA's sole and exclusive remedy for any unavailability, non-performance, or other failure by the Digital Content Provider to provide the Digital Content Provider is the receipt of a Service Credit (if eligible) in accordance with the terms of this SLA. The LEA shall be entitled to a Service Credit applied against future payments due from the LEA to the Digital Content Provider. In event that the Availability falls below 99.9%, or the Digital Content Provider fails to meet a Response Time Service Level (as described in Section 1.4 above) in any given month, the Digital Content Provider agrees to provide the LEA a credit in the amount of 1/12th of the total annual amount of fees to be paid by the LEA to the Digital Content Provider for the currently applicable year under the Agreement. Unless otherwise mutually agreed upon by the parties, the foregoing remedy is the LEA's sole and exclusive remedy, and the Digital Content Provider's sole and exclusive obligation, for any failure to meet any service level commitment. Such remedies may not be aggregated.

## **2. Conditions**

### **2.1. Notification.**

To receive credit for a non-Availability incident that has not been acknowledged by the Digital Content Provider, the LEA must notify the Digital Content Provider within ten (10) business days after the end of the calendar month in which the non-Availability incident occurred and include therein the dates and times of each such incident. The Digital Content Provider shall make available to the LEA monthly uptime data for the LEA to determine whether an unacknowledged non-Availability incident has occurred in the previous calendar month.

### **2.2. Amounts.**

Any and all remedies stated herein for any particular month shall not exceed the amount of the license fee applicable for such month. Any credits provided by the Digital Content Provider against future payments shall not affect the LEA's obligation to pay to the Digital Content Provider amounts already due and payable.

### **2.3. Credits.**

In all places where the term "credit" is used in this SLA, the parties acknowledge and agree that such term shall be understood to mean a credit that is to be applied against future amounts that become due and owing from the LEA to the Digital Content Provider.

### **2.4. Exclusions.**

The service level commitments stated herein shall not apply under any of the following circumstances: (i) any usage by the LEA of the Digital Content Product that violates the Agreement or this SLA; (ii) failure of any components or systems that are supplied by the LEA; (iii) force majeure events; (iv) the LEA's negligent, reckless, or intentional acts or omissions, or the negligent, reckless, or intentional acts or omissions of others authorized by the LEA to use the Digital Content Product; (v) delays caused by the LEA, LEA facilities, or LEA equipment, or lack of access to facilities due to the LEA's acts or omissions; and (vi) downtime arising from service and maintenance activities performed by or for the Digital Content Provider that occur during normal service periods.

## **3. Notifications**

The Digital Content Provider shall provide the LEA at least twenty four (24) hours advance notification of scheduled maintenance to the Digital Content Product. Notwithstanding the foregoing, the Digital Content Provider agrees that scheduled maintenance shall not occur Monday through Friday between 7:00 a.m. and 6:00 p.m.