



Yup Service Contract for Mountain View Whisman School District

This Yup Service Contract (the “**Agreement**”) is effective on January 28, 2021 (the “**Effective Date**”), between Yup Technologies, Inc., located at 1277 Mission Street, San Francisco, CA 94103 (“**Yup**”) and Mountain View Whisman School District, located at 1400 Montecito Ave, Mountain View, CA 94043 (“**School**”).

WHEREAS, Yup provides a tutoring service that allows students to snap a photo of their math problem and connect to one of Yup’s trained tutors for tutoring services via Yup’s proprietary mobile application (the “**Service**”).

WHEREAS, School desires to engage Yup to provide the Service to School’s students.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **License to Service:** Subject to the terms and conditions of this Agreement, and School’s payment of the applicable fees, Yup hereby grants to School a non-exclusive, non-transferable (except as permitted herein) right to access, and to permit its students to access, the Service during the Term (as defined herein).
2. **Term and Termination:**
 - a. **Term.** This Agreement will commence on the Effective Date and continue through June 30, 2021 (the “**Term**”) unless terminated earlier pursuant to this Section 2. Upon expiration or termination of this Agreement, if not already done, School will promptly pay all fees accrued and owing to Yup.
 - b. **Termination.** Either party may terminate this Agreement, effective upon written notice to the other party, if the other party: (i) breaches this Agreement, and such breach is not cured within 30 days after receipt of notice of such breach; or (ii) ceases operations.
3. **Fees and Payment Terms:** Access to the Service will be charged in hourly increments. School hereby agrees to purchase 666 hours at a cost of \$32 per hour for a total of \$21,312 (the “**Initial Fee**”). School can purchase additional hours at any time for \$32 an hour.
 - a. **Invoicing.** At the start of the Term, Yup will invoice School for the Initial Fee as set forth above. Additional hours will be invoiced at the time of purchase.
 - b. **Payment date.** School will pay all invoices within 30 days of the date of invoice to Yup Technologies, Inc.



- c. **Taxes.** All fees and other amounts payable by School under this Agreement are exclusive of taxes and similar assessments. School is responsible for all sales, use and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state or local governmental or regulatory authority on any amounts payable by School hereunder, other than any taxes imposed on Yup's income.
4. **Accessing and Using the Service:**
 - a. **School Access.** Yup will provide School with access to the Service within 14 days after the Effective Date.
 - b. **Student Access:** As part of the Service, Yup will provide tutoring access to students who are permitted by School to use the Service (each, an "**Authorized Student**"). Yup will provide School with a sign-on method to allow School to designate Authorized Students. Authorized Students will then receive an access code provided by Yup and may access the Service by downloading and installing Yup's proprietary mobile application on the Authorized Student's personal devices or the School's devices (smartphones, iPads, tablets, and select Chromebooks). School shall inform Yup via the online dashboard if an Authorized Student's access will be revoked and replaced with access for another Authorized Student. School is responsible for all acts and omissions of Authorized Student, and any act or omission by an Authorized Student that would constitute a breach of this Agreement if taken by School will be deemed a breach of this Agreement by School. School shall use reasonable efforts to make all Authorized Students aware of this Agreement's provisions as applicable to such Authorized Students' use of the Service, and shall cause all Authorized Students to comply with such provisions.
 - c. **Calculating Use.** Once a session has been initiated through the Service, whether by an Authorized Student or a member of School's staff, the duration of that session (calculated in whole minutes) will be deducted from the number of hours purchased.
 - d. **Unused Hours.** All hours purchased will be valid for the 2020-21 school year only; provided that, at School's election, School may roll over up to 100% of the unused hours to the following school year subject to the terms of this Section 4.d. To roll over unused hours, School must execute an agreement for the Service for the following school year. All unused hours that have not been rolled over as permitted by this Section 4.d will be refunded by Yup to School upon the expiration of the Term.
 - e. **Usage reports:** As part of the Service, Yup will make available to School via an online dashboard which includes usage statistics and metrics on overall performance of students. The foregoing reports may be accessed by School's administrators and academic team members.



- f. **Use Restrictions.** School shall not, and shall not permit any Authorized Student to, use the Service for any purposes beyond the scope of this Agreement. School shall not at any time, directly or indirectly, and shall not permit any Authorized Student to: (i) copy, modify or create derivative works of the Service, in whole or in part; (ii) rent, lease, lend, sell, license, sublicense, assign, distribute, publish, transfer or otherwise make available the Service; (iii) reverse engineer, disassemble, decompile, decode, adapt or otherwise attempt to derive or gain access to any software component of the Service, in whole or in part; (iv) remove any proprietary notices from the Service; or (v) use the Service in any manner or for any purpose that infringes, misappropriates or otherwise violates any intellectual property right or other right of any person, or that violates any applicable law.
5. **Yup's Ownership.** As between the parties, Yup owns and retains all right, title and interest in and to: (a) the Service (including without limitation Yup's mobile application and technology and any and all improvements, enhancements or modifications thereto), (b) except for Student Data (as defined below), all information, data and materials processed by or provided by the Service, and (c) all intellectual property rights related to any of the foregoing. By submitting any Feedback to Yup, School hereby assigns to Yup all right, title and interest and all intellectual property rights in and to the Feedback, if any. For purposes of this Agreement, "**Feedback**" means any comments, feedback, potential errors or improvements, reports or ideas about the Service that School may provide to Yup concerning the functionality and performance of the Service.
6. **Privacy Obligations.**
- a. **Privacy Compliance.** Each party shall comply with all applicable state and federal laws and regulations pertaining to data privacy, including without limitation the Family Educational Rights and Privacy Act ("FERPA") and the Children's Online Privacy Protection Act ("COPPA"). To the extent that California Assembly Bill 1584 applies to this Agreement, the statements and obligations set forth in Appendix A shall be incorporated herein by this reference.
- b. **COPPA.** As an operator of a commercial website, Yup is required to comply with COPPA in providing notice about its practices with respect to information collected from children under 13 years of age. To the extent COPPA applies to this Agreement, Appendix [A/B], attached hereto and incorporated herein by this reference, sets forth such notice. School hereby represents and warrants that it has obtained the parental consent required by COPPA and authorizes Yup to collect on School's behalf the personal information of Authorized Students under the age of 13 in accordance with this Agreement. Yup acknowledges and agrees that all information collected from Authorized Students under the age of 13 shall be for the use and benefit of School and for no other commercial purpose.
- c. **Student Data.** All Student Data transmitted to Yup under this Agreement is and will continue to be the property and under the control of School. For purposes of this



Agreement, “**Student Data**” means any data, whether gathered by Yup or provided by School, that is directly related to a student including, but not limited to, the student’s email, name, home address and other contact information, and information in the student’s education record, such as discipline records, videos, test results, grades, evaluations, medical records, health records, photos and contents of electronic messages. Yup further acknowledges and agrees that all copies of such Student Data, including any portions thereof or any additions or modifications thereto, are to be treated as Student Data. The parties agree that, as between them, all rights, including all intellectual property rights in and to Student Data, shall remain the exclusive property of School. For the purposes of FERPA, Yup shall be considered a School Official (as that term is defined under FERPA), under the control and direction of School as it pertains to the use of Student Data notwithstanding the above. Yup may transfer content generated by an Authorized Student in connection with the Service to a separate account, according to the procedures set forth below.

- d. **Authorized Use.** Yup agrees that all Student Data shared under this Agreement, including persistent unique identifiers, shall be used for no other purpose than to provide the Services as set forth in this Agreement or as otherwise permitted under applicable law. Yup also agrees not to make any re-disclosure of Student Data or any portion thereof without the express written consent of the School or as otherwise permitted in this Agreement.
- e. **Student-Generated Content.** At School’s request, Yup shall transfer any student-generated content to a separate account upon termination or expiration of this Agreement; provided, however, that such transfer shall only apply to student-generated content that is severable from the Service.
- f. **Non-Disclosure.** Yup shall not copy, reproduce or transmit any Student Data obtained under this Agreement, or any portion thereof, except as necessary to fulfill its obligations hereunder.
- g. **Subprocessors.** Yup shall enter into written agreements with all third-party service providers performing functions on Yup’s behalf in connection with the Service, whereby such third parties agree to protect Student Data in a manner consistent with the terms of this Agreement.
- h. **Third Party Requests.** In the event that Yup receives a request from a third party, including law enforcement and government entities, to disclose or access any Student Data held by Yup in connection with the Services, Yup shall promptly redirect such requestor to request such data directly from School. Yup also agrees to notify School of any such request and in advance of any compelled disclosures.
- i. **Disposition of Data.** Upon written request by School, Yup shall dispose of or delete all Student Data obtained under this Agreement when it is no longer needed for the



purpose for which it was obtained. Yup's obligations to dispose of Student Data shall not apply to information that has been de-identified or placed in a separate account pursuant to the terms of this Agreement.

- j. **Data Security.** Yup agrees to abide by and maintain adequate data security measures consistent with industry standards and technology best practices to protect Student Data from unauthorized disclosure or acquisition by unauthorized persons.
- k. **Breach Notification Procedures.** Upon the discovery of any unauthorized access or disclosure of Student Data, Yup shall notify School within a reasonable amount time of such discovery, but in no event more than forty-eight (48) hours thereafter. Yup agrees to reasonably cooperate with School in assessing, mitigating and remedying any such breach.

7. **Confidentiality.** "Confidential Information" means information disclosed by one party to the other, except for Student Data, that is marked as confidential or proprietary or that ought reasonably to be understood as confidential or proprietary. Confidential Information excludes information that: (a) the recipient already lawfully knew, (b) becomes public through no fault of the recipient, (c) was independently developed by the recipient without use of or reference to the other party's Confidential Information, or (d) was lawfully obtained by recipient from a third party. The recipient agrees not to disclose Confidential Information except to its affiliates, employees and agents who need to know it and have agreed in writing to keep it confidential. Only those parties may use the Confidential Information, and only to the extent necessary to exercise the recipient's rights and fulfill its obligations under this Agreement, while using at least a reasonable degree of care to protect it. The recipient may also disclose Confidential Information to the extent required by law after reasonable notice to the discloser (to the extent legally permitted) and reasonable cooperation to obtain confidential treatment. Unauthorized disclosure of Confidential Information may cause harm not compensable by damages, and the disclosing party may seek injunctive or equitable relief in a court of competent jurisdiction, without posting a bond, to protect its Confidential Information.

8. **Indemnification.** School shall indemnify, hold harmless, and, at Yup's option, defend any member of the Yup Group (as defined below) from and against any and all losses, damages and fees (including reasonable attorneys' fees) resulting from or relating to any third-party claim: (a) that School's use or disclosure of Student Data, or Yup's use of the Student Data in accordance with this Agreement, violates any applicable law or regulation; or (b) based on School's or any Authorized Student's (i) negligence or willful misconduct; or (ii) use of the Service in a manner not authorized by this Agreement; provided that School may not settle any such claim against Yup unless Yup consents to such settlement, and further provided that Yup will have the right, at its option, to defend itself against any such third-party claim or to participate in the defense thereof by counsel of its own choice.

9. **Warranty Disclaimer.** THE SERVICE AND THE MATERIALS PROVIDED THEREBY ARE PROVIDED WITH ALL FAULTS ON AN "AS IS" AND "AS AVAILABLE" BASIS. YUP, ITS



AFFILIATES, EMPLOYEES, CONTRACTORS, LICENSORS AND AGENTS (COLLECTIVELY, THE “**YUP GROUP**”) DISCLAIM ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT, THE WARRANTIES THAT THE SERVICE AND MATERIALS PROVIDED THEREBY ARE FREE OF DEFECTS, VIRUS FREE, AND ABLE TO OPERATE ON AN UNINTERRUPTED BASIS, THAT THE SERVICE AND ANY MATERIALS PROVIDED THEREBY WILL MEET SCHOOL’S REQUIREMENTS, OR THAT ERRORS WILL BE CORRECTED, UNLESS SUCH IMPLIED WARRANTIES ARE LEGALLY INCAPABLE OF EXCLUSION. NO ADVICE OR INFORMATION GIVEN BY ANY MEMBER OF THE YUP GROUP SHALL CREATE A WARRANTY OR EXPAND THE SCOPE OF ANY WARRANTY THAT CANNOT BE DISCLAIMED UNDER APPLICABLE LAW. School acknowledges that Yup does not and cannot guarantee the outcome of any matter either at the commencement or during the course of the engagement.

10. **Limitation of Liability.** EXCLUDING BREACH OF A PARTY’S REPRESENTATIONS AND WARRANTIES, SCHOOL’S INDEMNIFICATION OBLIGATIONS AND BREACH OF YUP’S INTELLECTUAL PROPERTY RIGHTS, EACH PARTY EXPRESSLY UNDERSTANDS AND AGREES THAT EACH PARTY (INCLUDING ITS AFFILIATES, EMPLOYEES, CONTRACTORS, LICENSORS AND AGENTS) WILL NOT BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES; HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY. SOME STATES OR OTHER JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATIONS AND EXCLUSIONS MAY NOT APPLY TO SCHOOL. THE YUP GROUP’S AGGREGATE LIABILITY IN SUCH JURISDICTIONS SHALL BE LIMITED TO THE MAXIMUM EXTENT PERMITTED BY LAW. IN NO EVENT WILL THE YUP GROUP’S TOTAL LIABILITY HEREUNDER EXCEED THE AMOUNTS PAID TO YUP IN THE SIX MONTHS PRECEDING THE DATE THE CAUSE OF ACTION AROSE.

11. **Miscellaneous.** This Agreement will be governed by the laws of the State of California without reference to conflict of law principles. Each party agrees to submit to the exclusive jurisdiction of the courts located within the county of San Francisco, California to resolve any legal matter arising from this Agreement. Neither party may assign any of its rights or obligations under this Agreement, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld). Notwithstanding the foregoing, Yup may assign the entirety of its rights and obligations under this Agreement, without consent of School, to an affiliate or to a successor in interest in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Subject to the foregoing, this Agreement shall be binding upon the parties’ successors and permitted assigns. Yup’s relationship with School will be that of an independent contractor and not that of an employee. Yup will have the right to list School as a customer in written, oral and electronic materials which include the names of Yup’s customers. This Agreement, together with all appendices attached hereto, is the entire agreement between the parties relating to the subject matter hereof. This



Agreement shall control over any additional or different terms of any correspondence, order, confirmation, invoice or similar document, even if accepted in writing by both parties, and waivers and amendments of any provision of this Agreement shall be effective only if signed by both parties and clearly understood by both parties to be an amendment or waiver. The failure of either party to enforce its rights under this Agreement at any time for any period shall not be construed as a waiver of such rights. If any part of this Agreement is held invalid or unenforceable, that portion shall be construed in a manner consistent with applicable law to reflect, as nearly as possible, the original intentions of the parties, and the remaining portions shall remain in full force and effect.

Signature Page Follows



In witness of their agreement to the terms above, the parties or their authorized agents hereby affix their signatures:

Mountain View Whisman School District

Yup Technologies, Inc.

By _____

By _____

Name: Cathy Baur

Name: Kreg Moccia

Date:

Date:

Title: Chief Academic Officer

Title: Chief Academic Officer



Appendix A

Compliance with California Assembly Bill 1584

California Assembly Bill 1584 requires, in part, that certain provisions be included in any agreement between a local education agency and a third-party service provider. Any term used in this Appendix that is not otherwise defined in the Agreement shall have the meaning ascribed to it in California Education Code § 49073.1.

- I. Pupil records obtained by Yup from School will continue to be the property and under the control of School.
- II. School shall be solely responsible for: (a) establishing reasonable procedures by which pupils seeking to retain possession and control of their own pupil-generated content may make such requests, and (b) managing, responding to and notifying Yup of any such requests. Any such requests submitted by pupils to Yup will be redirected to School. Yup shall reasonably cooperate with School to comply with any requests of which Yup is notified by School, including compliance with the transfer requirements for student-generated content as set forth in Section 6 of the Agreement.
- III. Yup shall not use any information in pupil records for any purpose other than those required or specifically permitted by the Agreement.
- IV. School shall be solely responsible for: (a) establishing reasonable procedures by which parents, legal guardian or eligible pupils may review personally identifiable information in pupil records and/or correct erroneous information, and (b) for managing, responding to and notifying Yup of any such requests. Any such requests submitted by parents, legal guardians or eligible pupils to Yup will be redirected to School. Yup shall reasonably cooperate with School to comply with any requests of which Yup is notified by School.
- V. Yup shall comply with the data security measures set forth in Section 6 of the Agreement to ensure the security and confidentiality of pupil records, including designating and training responsible individuals.
- VI. In the event of the unauthorized disclosure of pupil records, Yup shall comply with the breach notification procedures set forth in Section 6 of the Agreement.
- VII. Yup certifies that pupil records shall not be retained or available to Yup upon the later of completion of the terms of the Agreement and the completion of the terms of any subsequent agreement for the Service between the parties; provided that the foregoing shall not apply to any pupil-generated content stored as directed by School or as permitted under California Education Code § 49073.1. Yup shall provide written certification of compliance with the foregoing requirement upon School's reasonable



written request.

- VIII. The parties shall work together to ensure compliance with FERPA by establishing and maintaining policies and procedures consistent therewith.
- IX. Yup shall not use any personally identifiable information in pupil records to engage in targeted advertising.



Appendix B

Yup's Privacy Policy for Children Under 13

COPPA requires Yup to inform parents and legal guardians (as used in this policy, "parents") about its practices for collecting, using and disclosing personal information from children under the age of 13 ("children"). It also requires Yup to obtain verifiable consent from a child's parent for certain collection, use and disclosure of the child's personal information. Any term used in this policy that is not defined herein or in the applicable agreement with Yup shall have the meaning ascribed to it under COPPA.

This policy only applies to and notifies parents of:

- The types of information Yup may collect from children.
- How Yup uses the information it collects.
- Its practices for disclosing that information.
- Its practices for notifying and obtaining parents' consent when collecting personal information from children.
- All operators that collect or maintain information from children through the Service.

This policy supplements Yup's general privacy policy located at <https://yup.com/privacy/>.

Information Collected from Children

Only children who are Authorized Students may access the Service. In order to provide such access, Yup must collect certain information, including personal information, from such Authorized Students. In addition, Yup uses certain technologies, such as cookies, to automatically collect information from Yup's users (including children) when they visit or use the Service.

A child must provide Yup with his or her name and an email address (or, if he or she prefers, phone number) in order to register for access to the Service. Yup may also require the child to create a member name and password and may provide the opportunity to provide additional information, such as geographic location and a photograph. However, Yup does not condition access to the Service on the disclosure of more personal information than is reasonably necessary.

The information collected through automatic data collection technologies may include:

- One or more persistent identifiers that can be used to recognize a user over time.
- Information that identifies a device's location (geolocation information).
- Information about communication between a user's device and the service.



Information collected automatically will not be associated with personal information except to the extent required to provide the Services and facilitate quality assurance.

How Yup Uses a Child's Information

Yup uses the personal information it collects from a child to:

- register him or her with the Service; and
- allow him or her to make full use of the service; and
- track his or her performance in connection with the Service.

Yup may also use the information collected automatically through technology (see above), and other non-personal information collected, to evaluate and improve the Service.

Yup's Practices for Disclosing Children's Information

Yup does not share, sell, rent or transfer children's personal information other than as described in this policy or the applicable agreement with Yup.

Except as prohibited by law, Yup may disclose aggregated information about many of its users, and information that does not identify any individual or device. In addition, Yup may disclose children's personal information in accordance with this policy and the applicable agreement with Yup:

- To third parties used to support the internal operations of the Service and who are bound by contractual or other obligations to use the information only for such purpose and to keep the information confidential.
- If Yup is required to do so by law or legal process, such as to comply with any court order or subpoena or to respond to any government or regulatory request.
- If Yup believes disclosure is necessary or appropriate to protect the rights, property, or safety of Yup, its customers or others, including to:
 - protect the safety of a child;
 - protect the safety and security of the Service; or
 - enable Yup to take precautions against liability.
- To law enforcement agencies or for an investigation related to public safety.
- If Yup is involved in a merger, divestiture, restructuring, reorganization, dissolution or other sale or transfer of some or all of Yup's assets, whether as a going concern or as part of bankruptcy, liquidation or similar proceeding or event, Yup may transfer the personal information collected or maintained to the buyer or other successor in interest.

Obtaining Parental Consent



Under COPPA, where a school has contracted with an operator of a commercial website to collect personal information from students for the use and benefit of the school, and for no other commercial purpose, the operator is not required to obtain consent directly from parents. For the purposes of this policy, Yup is an operator of a commercial website and presumes that the school's authorization for the collection of students' personal information is based on the school having obtained the parents' consent.

Accessing and Correcting a Child's Personal Information

At any time, a parent may review his or her child's personal information maintained by Yup, require that Yup correct or delete the personal information, and/or refuse to permit Yup from further collecting or using the child's information. A parent can make such requests by sending Yup an email at privacy@yup.com or by directing such request to the applicable school.

Operators That Collect or Maintain Information from Children

The following are all operators that may collect or maintain personal information from children through the Service:

Amazon Web Services, 410 Terry Avenue North, Seattle, WA 98109-5210

Heroku, 415 Mission Street, Suite 300, San Francisco, CA 94105. Phone: (866) 278-1349

Please direct any inquiries about any operator's privacy practices and use of children's information to the operator at its contact information provided.

How Yup Protects Children's Information

Yup cares about the integrity and security of all personal information collected and maintained in connection with the Services. In particular, Yup keeps all personal information in encrypted form on a secured server behind a firewall. Yup also uses automated and social measures to enhance security, such as analyzing account behavior for fraudulent or otherwise anomalous behavior, and may limit use of Service features in response to possible signs of abuse, may remove inappropriate content or links to illegal content, and may suspend or disable accounts for violations of applicable contractual obligations.