AGREEMENT BETWEEN

THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY BY AND THROUGH THE METROPOLITAN BOARD OF PUBLIC EDUCATION

AND

TBD

FOR

STUDENT DATA USE AND SECURITY

This Agreement is entered into by and between **The Metropolitan Government of Nashville and Davidson County by and through the Metropolitan Board of Public Education (**"MNPS") and TBD ("Recipient").

By agreeing to these Terms, MNPS authorizes Recipient to access, or receive from MNPS, Student Data and Information (SDI), consisting of Personal Identifiable Information (PII) and/or Data for the limited purpose of the providing the _____ (Services)

In the course of providing Services to MNPS, Recipient agrees to protect all data including newly created data as outlined in this Agreement:

SDI includes but is not limited to:

- All Personally Identifiable Information ("PII") as defined by the Family Educational Rights and Privacy Act ("FERPA") (20 U.S.C.§1232g and 34 CFR Part 99), the Children's Online Privacy Protection Act ("COPPA") (15 U.S.C. §§6501-6506 and 16 CFR Part 312), Protection of Pupil Rights Amendment (PPRA) (20 U.S.C.§1232g and 34 CFR Part 98) and Student Online Personal Protection Act (SOPPA) (TN Code 49-1-708)

- All data that are descriptive of or could be used in combination with other data to identify a student or family member/guardian, including, but not limited to, information in the student's educational record, first and last name, home address, telephone/cell numbers, email address or other information that allows physical or online contact, social security number, student ID number and other identifiers, disciplinary records, test results, special education data, juvenile dependency records, grades, evaluations, criminal records, health records, behavioral records, disabilities, socioeconomic information, food purchases, political affiliations, religious information, email, text messages and other network/internet or cellular communications, documents, drawings artwork, biometric records, photos, video, voice recordings, handwriting, web search activity, computer/device identifiers and geolocation data.

- All data that are derived from, calculated with or linked to SDI by Recipient, and;

- All data related to students or their families / guardians that may be provided to Recipient by MNPS or an agent of MNPS, and;

De-identified SDI will have all direct and indirect personal identifiers removed, including any data that could be analyzed and linked to other data to identify the student or family member / guardian. This includes, but is not limited to, name, ID numbers, date of birth, demographic information, location data, and school ID. Furthermore, Recipient agrees not to attempt to re-identify de-identified SDI and not to transfer de-identified SDI to any party unless (a) that party agrees in writing not to attempt re-identification, and (b) Recipient gives prior notice to MNPS

and MNPS provides prior written consent. Recipient may use de-identified SDI for internal product development and improvement, and research.

In the provision of the service to MNPS, Recipient is subject to and will comply with applicable laws and regulations, including but not limited to:

- **FERPA**: Family Educational Rights and Privacy Act (20 U.S.C. § 1232g; 34 CFR Part 99)

- **COPPA**: Children's Online Privacy Protection Act, (15 U.S.C. §§ 6501–6506, 16 CFR Part 312)

- **PPRA**: Protection of Pupil Rights Amendment, (20 U.S. Code § 1232h, 34 CFR Part 98)

- **SOPPA:** Student Online Personal Protection Act (TN Code 49-1-708)

Recipient agrees to treat all SDI consistently, as covered by and in compliance with all of these laws and regulations as well as any new laws and regulations related to SDI.

1. **OBLIGATIONS AND ACTIVITIES OF RECIPIENT**

   A. **Permitted Uses of MNPS Student Data and Information ("SDI")**. Recipient shall only use or disclose SDI as required to execute the services.

   B. **No Marketing or Advertising**. Recipient is prohibited from using SDI to (a) market or advertise to students or families / guardians; (b) inform, influence or enable marketing, advertising or other commercial efforts by a third party; or (c) develop a profile of a student, family member / guardian or group, for any commercial purpose other than providing the Service to MNPS.

   C. **Data Analysis and Mining**. Recipient is prohibited from analyzing or mining SDI for any purpose other than delivering the Services to MNPS under this Agreement, or improving the Service for MNPS. Analysis and mining of SDI to support marketing, advertising or other commercial ventures are prohibited.

   D. **Data Sharing and Re-Disclosure**.

      i. Sub-Contractors: MNPS understands that Recipient may rely on one or more sub-contractors to provide the Services under this Agreement. The Recipient may only provide SDI to the sub-contractor(s) if necessary for the furtherance of the services. Recipient is required to hold the sub-contractor(s) to the terms of this Agreement and is responsible for the activities of their sub-contractors.

      ii. Recipient will promptly notify MNPS if Recipient discloses SDI for any of the following reasons

         - Required to ensure legal and regulatory compliance.

         - In response to a judicial process in a court in the USA.

         - To protect the privacy of SDI, the safety of users or others, or the security of the Service.

   E. **Safeguards.**

      i. Recipient shall provide MNPS with the name and contact information for a primary and alternate employee of Recipient who shall serve as the MNPS primary security contact. In the event of any unauthorized access to or disclosure

of SDI, the designated contact shall immediately respond to any MNPS inquiries. Please provide contact information below:

Primary Contact:	Alternate Contact:
Name:	Name:
Phone#:	Phone#:
Email:	Email:

  ii. The identity of all person having access to the SDI will be documented and access will be logged.

iii. Without limiting Recipient's obligations under this Agreement to keep SDI safe and confidential, Recipient shall implement reasonable administrative, physical, and technical infrastructure and procedural safeguards to protect and maintain the integrity, confidentiality and availability of SDI (including backups) that Recipient creates, receives, maintains, transports, or transmits on behalf of MNPS. Such safeguards shall be no less rigorous than current generally accepted industry best practices designed to secure and protect the integrity, confidentiality and availability of PII.

iv. MNPS's SDI shall be stored, backed up and served only on hardware located physically within the United States.

v. Recipient will assure that all data that is transmitted between MNPS's access points and the ultimate server, by Recipient or its disclosees, will use generally accepted industry best practices for secure data transmission.

vi. Recipient agrees to mitigate any actual or potential harmful effects by following best practices such as but not limited to the following:

    a. Have the capability to provide audit trails and or reports of MNPS user activity.

    b. Any audit trails, MNPS user activity and system generated logs should be securely stored using industry best practices.

    c. Conduct or undergo system level testing whenever new functionalities are added to the system to reconfirm system security measures are retained and functional, and that interaction with MNPS systems is not degraded or compromised.

    d. Maintain a documented Business Continuity Disaster Recovery Plan following industry best practices.

    e. Maintain physical access controls to on-premises data centers that store SDI.

    f. Security criminal history screening of employees with access to SDI. Screening is to be conducted by a commercial background screening company, the name of which will be provided to MNPS upon request. If the criminal history records check indicates that any Recipient employee has been convicted in any jurisdiction of a sexual offense, a weapon-related offense, an offense against a child, an assaultive or violent offense, a burglary, a felony offense involving a controlled substance, an

identity theft, fraud, or an attempt, conspiracy, or solicitation to commit any of these offenses, such employee shall not be assigned to work under this Agreement.

F. <u>Notice of Disclosure, Security Incident or Breach</u>.

    i. Immediately upon becoming aware of any unauthorized disclosure, access or use of SDI, Recipient will take action to close and remediate the breach, determine the scope of the SDI that may have been disclosed, and notify MNPS with the reasons for or cause of the breach (if known), actions taken to close and mitigate the breach, and identification of the SDI that may have been compromised.

    ii. Immediately following Recipient's notification to MNPS of a security incident, breach, or loss of SDI, the parties shall coordinate with each other to investigate the matter. Recipient shall reasonably cooperate with MNPS in investigating the matter and assist MNPS with MNPS's notification obligations under any applicable notification laws. Recipient agrees to reasonably cooperate with MNPS in handling the incident, including, but not limited to:

        a) Assisting with any investigation;

        b) Facilitating interviews with Recipient's employees and others involved in the matter;

        c) Making available all relevant records, logs, files, data reporting and other materials requested by MNPS;

        d) Providing the tools and procedures designed to recapture stored SDI.

        e) The date of the discovery of the security incident, breach, or loss of SDI.

    iii. Recipient shall provide the following information to MNPS as soon as possible but not later than five (5) business days of becoming aware of any unauthorized disclosure, access, use or loss of SDI:

        a) The date of the discovery of the security incident, breach, or loss of SDI;

        b) A description of the types of SDI that were involved;

        c) Identification of each individual whose SDI has been, or is reasonably believed to have been compromised and any other details necessary to complete an assessment of the risk of harm to said individual(s).

    iv. Recipient shall provide MNPS prior review of all press releases and any communications to be sent to affected parties per T.C.A. 47-18-2107 which relates to the release of personal information.

    v. Recipient agrees to establish procedures to investigate the security incident, breach, or loss of SDI, to mitigate losses, and to install/implement such safeguards as are needed to protect against any future security incident, breach, or loss of SDI. Recipient agrees to provide a description of these procedures and the specific findings of the investigation to MNPS.

2. <u>COMPLIANCE OF AGENTS</u>

A. Recipient agrees to ensure that any agent, to whom it provides SDI created, received, maintained, transported or transmitted by Recipient on behalf of MNPS, agrees to the same terms of this Agreement.

B. For all employees or subcontractors who have access to SDI, during the term of each

subcontractor or employee's employment by Recipient, Recipient shall at all times cause such subcontractor or employee to abide strictly by Recipient's obligations under this Agreement.

3. **AUDIT**. Recipient shall make its internal practices, books, and records available, solely to the extent necessary to confirm Recipients compliance with the terms of the Agreement. Such audits shall only occur upon reasonable prior written notice to Recipient, during the hours of the normal workday of Recipient and not more than once annually.

4. **INSURANCE**. Recipient shall maintain, throughout the term of this Agreement, a stand-alone Cyber/Privacy Insurance policy, naming MNPS as additional insured and providing the coverages shown below. The policy or policies will have combined single coverage of not less than five million dollars ($5,000,000) per occurrence and five million dollars ($5,000,000) in the aggregate, except as noted in section 4.a) below.

    a. **Cyber and Privacy Liability.** Although the preferred coverage for all sub-categories of cyber insurance is $5,000,000 (five million dollars), the table below can be used as a guide for coverage limits based on the number of MNPS schools in which the Recipient will be providing services.

Coverage Type	>39 Schools	25-39 Schools	10-24 Schools	<10 Schools
Cyber Liability - Coverage for third party claim arising from hacking or virus	$5,000,000	$3,000,000	$2,000,000	$1,000,000
Privacy Liability - Coverage for a third party claim arising out of a loss/theft of SDI	$5,000,000	$3,000,000	$2,000,000	$1,000,000
System Business Interruption	$2,000,000	$500,000	$500,000	$100,000
Regulatory Actions and Investigations including defense costs and fines/penalties	$5,000,000	$3,000,000	$2,000,000	$1,000,000
Privacy Breach Notification Costs including Credit Monitoring and costs from an Administrative Breach	$5,000,000	$3,000,000	$2,000,000	$1,000,000
Cyber Threats and Extortion	$1,000,000	$1,000,000	$1,000,000	$500,000
Multimedia Liability and Advertising Injury	$500,000	$500,000	$500,000	$500,000
Crisis Communication Costs	$2,000,000	$2,000,000	$1,000,000	$500,000

Recipient must provide a certificate of insurance, in a form satisfactory to MNPS (e.g. standard ACORD), evidencing such coverages, and provide annual renewal certificates to MNPS throughout the term of this Agreement.

Note: If Recipient does not have a stand-alone Cyber/Privacy Insurance policy, MNPS can put Recipient in contact with an insurance broker who specializes in this type of coverage.

5. **INDEMNITY**. Recipient shall indemnify and hold harmless MNPS, its officers, agents and employees from and against any claim, cause of action, liability, damage, cost or expense, including attorneys' fees, arising out of or in connection with any non-permitted use or disclosure of SDI or other breach of this Agreement by Recipient or any subcontractor or agent of the Recipient. To the fullest extent permitted by law, the Recipient shall indemnify and hold harmless MNPS and its employees ("Indemnitees") from and against all claims, liabilities,

damages, losses, and costs including, but not limited to, reasonable costs and attorneys' fees at the pre-trial, trial and appellate levels, arising out of, resulting from, or incidental to Recipient's performance under this Agreement or to the extent caused by negligence, recklessness, or intentional wrongful conduct of the Recipient, approved disclosees or other persons employed or utilized by the Recipient in the performance of this Agreement. The remedy provided to the Indemnitees by this indemnification shall be in addition to and not in lieu of any other remedy available under the Agreement or otherwise. This indemnification obligation shall not be diminished or limited in any way by any insurance maintained pursuant to the Agreement otherwise available to the Recipient. The remedy provided to the Indemnitees by this indemnification shall survive this Agreement. The provisions of this Section shall specifically survive the termination of this Agreement. The provisions of this Section are intended to require the Recipient to furnish the greatest amount of indemnification allowed under Tennessee law. To the extent any indemnification requirement contained in this Agreement is deemed to be in violation of any law, that provision shall be deemed modified so that the Recipient shall be required to furnish the greatest level of indemnification to the Indemnitees as was intended by the parties hereto.

6. **TERM, TERMINATION, AND RETURN OF SDI**

   A. Term. The Term of this Agreement shall be effective as of _____ and end _____, however, in no event shall the term of this Contract exceed five (5) years.

   B. Termination for Convenience. MNPS may terminate this Agreement at any time upon thirty (30) days written notice to Recipient. A termination for convenience shall not be a breach of this Agreement by MNPS

   C. Termination for Breach. Should Recipient fail to fulfill in a timely and proper manner its obligations under this Agreement or if it should violate any of the terms of this Agreement, MNPS shall have the right to immediately terminate this Agreement if the Recipient has not corrected the cause of the breach to the satisfaction of MNPS within thirty (30) days of written notification of the breach. It shall also be considered a breach of Agreement if a party becomes insolvent, makes an assignment for the benefit of its creditors, a receiver is appointed or a petition in bankruptcy is filed with respect to that party and is not dismissed within thirty (30) days.

   D. Obligations on Termination.

   i. Except as provided in subsection 6.D.ii., upon termination of this Agreement, for any reason, Recipient shall return or destroy, as determined by MNPS, all SDI received from MNPS, or created or received by Recipient on behalf of MNPS. This provision shall also apply to SDI that is in the possession of subcontractors, or agents of the Recipient. Recipient shall complete such return or destruction as promptly as possible. Notwithstanding the foregoing, it is acknowledged and agreed that Recipient's computer systems may automatically back up MNPS'S SDI and to the extent such backup procedures create copies of the SDI, the Recipient may retain such copies in its archival or backup computer system no later than one year from the date of termination. Recipient shall retain no copies of the SDI.

   ii. In the event that Recipient determines that returning or destroying the SDI is infeasible, Recipient shall provide to MNPS notification of the conditions that make return or destruction infeasible. Upon mutual Agreement of the Parties that return or destruction of SDI is infeasible, Recipient shall cease and desist use of SDI. If MNPS determines that return or destruction of SDI is feasible, subparagraph 6.D.i. shall apply.

7. **Amendment.** This Agreement may be modified only by written amendment executed by all parties and their signatories hereto.

8. **Obligations of MNPS:** MNPS shall notify Recipient of any changes in, or revocation of, permission by MNPS to use or disclose SDI, to the extent that such changes may affect Recipient's use or disclosure of SDI.

9. **Changes to Policies or Terms of Service:** Recipient shall provide prompt notice in the event it makes material changes to its privacy policy.

10. **Survival.** The respective rights and obligations of Recipient and MNPS shall survive the termination of this Agreement.

11. **Interpretation.** Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits MNPS and Recipient to comply with FERPA and any other applicable laws and regulations.

12. **Not a Purchase Agreement:** Execution of this Agreement does not in any way obligate MNPS to purchase anything, nor does it imply that MNPS is authorized to purchase goods or services from Recipient.

THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY BY AND THROUGH THE METROPOLITAN BOARD OF PUBLIC EDUCATION:

APPROVED:

_____
Chair, MNPS

RECOMMENDED:

_____
Executive Director of Information Technology, MNPS

_____
Executive Staff Member, MNPS

_____
Director of Purchasing, MNPS

_____
Chief Operating Officer, MNPS

_____
Metropolitan Director of Finance

APPROVED AS TO INSURANCE:

_____
Metropolitan Director of Insurance

APPROVED AS TO FORM AND LEGALITY:

_____
Metropolitan Attorney

RECIPIENT:

_____
Signature

_____
Name

_____
Title

FILED IN THE OFFICE OF THE METROPOLITAN CLERK:

_____
Metropolitan Clerk

Date: _____