



## EDUCATIONAL DATA SHARING AND PROTECTION ADDENDUM

This is a rider and addendum (“Addendum”) to the contract, agreement, terms of use, privacy policy, and/or other contractual document(s), as they exist now or as changed and updated by Contractor (collectively, the “Contract”) by and between the Jackson Public School District (“District”) and \_\_\_\_\_ (referred to herein as “Contractor”). This Addendum modifies the Contract. Any and all contradictory terms or conditions in the Contract are hereby null, void, and deleted. This Addendum shall be deemed incorporated by reference into the Contract and the following terms and conditions shall take precedence over and control to the exclusion of all other terms and conditions in the Contract:

1. Ownership of District Data. In the course of performing the Contract, Contractor may receive and have access to student education records (“Education Records”) that are subject to and as defined by the Family Educational Rights and Privacy Act, 20 U.S.C. 1232g, *et seq.* and the regulations promulgated thereunder (“FERPA”). Such information is considered confidential and is therefore protected. Contractor is deemed a “school official,” as defined by FERPA, to the extent of its access to such Education Records. The District has determined that Contractor has a legitimate educational interest qualifying it to access the Education Records, and Contractor agrees and acknowledges that it is bound by and shall follow all rules, regulations, and requirements of FERPA, as amended from time to time. The District will retain exclusive ownership and direct control of the Education Records and any other documents, materials, communications, or other data provided by the District to Contractor.

2. Scope of Data and Education Records Obtained. Contractor shall only request, obtain, access, or otherwise acquire the data and/or Education Records absolutely necessary to perform its obligations under the Contract, and nothing more. Contractor hereby warrants that it has not and will not request, obtain, access, or otherwise acquire data or Education Records beyond what are absolutely necessary to perform its obligations under the Contract.

3. Use of Education Records. Contractor shall keep the Education Records private and secure and not use the Education Records for any purpose outside of those absolutely necessary to perform the Contract.

4. Disclosure of Education Records. Except as required by law, Contractor shall not disclose or share Education Records with any third party, except to Contractor’s vendors who have expressly and contractually agreed to maintain the confidentiality of information to the same extent and for the same period of time required of Contractor as provided in this Addendum. Upon request from the District, Contractor shall provide a complete copy of all contracts or agreements with its vendors, service providers, and other third parties who have access to the Education Records.

5. Requests for Education Records. In the event any person or entity seeks, whether in accordance with FERPA or other relevant federal or state laws or regulations (except to for those requests that fall under section 6 below), to access the Education Records, Contractor shall (1)

immediately (within twelve [12] hours) inform the District and (2) not provide access to such information unless or until Contractor obtains written instructions to do so from the District.

6. Subpoenas or Court Orders for Education Records. In the event Contractor receives a court order or lawfully-issued subpoena seeking the release of Education Records, Contractor shall immediately (within twelve [12] hours) provide notice of the same to the District, and which notice shall include a copy of the court order or lawfully-issued subpoena. Contractor shall wait to release such information until the later of (1) the last day for compliance with the court order or lawfully-issued subpoena or (2) the receipt of written authorization from the District to release the information.

7. Protection of Education Records. Contractor agrees to ensure the security, safety, and privacy of the Education Records. Contractor agrees to implement technical and other security measures to do so, including but not limited to the following:

- a. Encryption of all data while either stored or in transit;
- b. For all Contractor-owned or controlled accounts with access to the Education Records:
  - i. Multi-factor authentication;
  - ii. Separate, individual user accounts;
  - iii. Logging of all access;
  - iv. Implemented policies and procedures granting access to the Education Records only when absolutely required;
  - v. Criminal background checks to ensure the users of such accounts have no felony convictions, other convictions that may indicate a lack of honesty, or are registered sex offenders;
- c. Industry-standard physical security and physical access controls, including but not limited to continuous video surveillance of premises owned or leased by Contractor where the Education Records are stored;
- d. Firewalls for all external data connections;
- e. Backups of the Education Records to at least one site geographically separated from the primary site by at least two hundred and fifty (250) miles; and
- f. Implementation of a procedure for regular and timely installation of all necessary software patches and updates on systems storing or with access to the Education Records.

Contractor shall ensure its vendors and subvendors with access to the Education Records are contractually required to implement security measures including but not limited to those listed herein.

8. Audit. Contractor agrees that the District or its designee may conduct audits of Contractor and its systems related to the storage, security, safety, and privacy of the Education Records. Such audits may be conducted on an irregular basis, but no more than two (2) per calendar year, except as provided for otherwise provided herein. The District shall provide Contractor at least five (5) days' notice prior to commencement of any audit performed under this section. By

conducting any audit permitted by this Addendum, neither the District nor its designee shall be liable or responsible for the privacy, safety, and security of the Education Records in the possession or control of Contractor. If, in the sole discretion of the District, the audit reveals issues with the security, safety, or privacy of the Education Records, the District may immediately terminate the Contract without penalty.

9. Insurance. Contractor agrees to maintain at all times the following policies of insurance with companies authorized to do business in Mississippi. The District shall be listed as an additional named insured on each such policy:

- a. Comprehensive commercial general liability, with limits of not less than One Million Dollars (\$1,000,000) per occurrence; and
- b. Cyber insurance, providing coverage for ransomware attacks, data breaches, and other similar incidents, with limits of not less than Two Million Dollars (\$2,000,000) per occurrence.

Upon request from the District, Contractor shall furnish proof of the existence of said policies of insurance.

10. Data Breach. In the event Contractor or its employees, agents, vendors, or subvendors become aware of an actual or likely data breach, ransomware attack, or other incident affecting the security, confidentiality, availability, or integrity of the Education Records in Contractor's custody or care, Contractor shall:

- a. Take immediate steps to limit and mitigate the incident to the extent possible;
- b. Unless expressly prohibited from doing so by law enforcement, immediately (within four [4] hours) notify the District of the incident, and provide regular and timely updates;
- c. Indemnify and hold the District harmless for any loss, cost, damage, or expense suffered by the District as a result thereof, including but not limited to paying for mandatory or voluntary data breach notifications, as well as related costs such as credit monitoring and call center services; and
- d. Refrain from sending notice to persons affected by the breach pursuant to Mississippi Code § 75-24-29 or any other Federal or State law without first obtaining the District's approval for such notice, which approval will not be unreasonably withheld.

11. Return of Data; Destruction. Upon termination of the Contract for any reason, Contractor shall release and return all Education Records within ten (10) business days, in a CSV file or other format usable by the District. Contractor shall be assessed a penalty of Five Thousand Dollars (\$5,000.00) per day payable to the District for each business day in excess of ten (10) days from termination that said Education Records are not returned, with no cap or limit as to the amount of such damages. As for any copies of Education Records retained by Contractor, whether digital or otherwise, Contractor shall ensure that it disposes of any and all data or information or Education Records in a manner that maintains the confidentiality of the contents of such records.

Such disposal must ensure said records are unusable, completely illegible, and cannot be reassembled in any way. Any electronically-stored Education Records must be securely written over at the time of deletion (whether at the termination of the Contract or before) in such a manner to ensure said records or data cannot be recovered. These provisions include and extend to backups of Education Records or any other data.

12. Governing Law and Venue. The Contract is governed and controlled by the laws of the State of Mississippi. All suits, claims, cases, controversies, actions, disputes, complaints and/or orders related to, arising from, in connection with, or to construe or enforce the Contract shall be governed by the laws of the State of Mississippi, without regard to its conflicts of law principles. The courts of Hinds County, Mississippi shall be the sole and exclusive jurisdiction and venue for any civil action related to this Contract, and the Contractor irrevocably consents to jurisdiction in said courts and waives any argument that such courts are not a convenient forum for such litigation. Any provision which purports to establish venue outside the State of Mississippi is deleted. The District will provide notice to Contractor of any pending legal dispute or claim regarding the use of Contractor's products by the District, such that the parties may first attempt to resolve the matter amicably. This language shall not be interpreted to limit the timeframe upon which the District can bring a claim or suit.

13. Tax Exempt Status. The Contractor is liable for all taxes arising from, related to, or in connection with the Contract or the performance of the contract. Pursuant to Mississippi law, the District is exempt from state sales and use tax. Likewise, the District will not pay excise, personal property, real property, income, value added, or any other similar taxes. If the Contractor is liable for such taxes, the Contractor shall take such into consideration in pricing. It is the Contractor's responsibility to contact the local taxing authority in the state and county where equipment will be located to determine possible tax liabilities in connection with the Contract.

14. Attorneys and Collection Fees. Any references to payment of attorney or collection fees by the District are deleted.

15. Indemnification. Any references to the District indemnifying, defending or holding harmless the Contractor or any other party are deleted to the extent they are prohibited under Mississippi law.

16. Time Limitations. Any provision limiting the timeframe upon which the District can bring a claim or suit is deleted.

17. Disclaimer of Warranties. The District does not waive, disclaim or exclude any warranties of any other party to the Contract, including without limitation, such other party's warranties of merchantability or fitness for a particular use or any common law warranties to which the District is entitled.

18. Waiver of Claims, Remedies or Damages. The District does not waive any claim or cause of action (present, past or future). The District does not waive any type or category of remedies or damages.

19. Limitation of Liability/Damages. The District does not limit the liability of the Contractor for negligence, or for intentional or reckless torts. The District does not limit the liability of Contractor to the amount of the Contract, to any other set amount, or in any other way.

20. Liquidated Damages. Any references to payment of liquidated damages by the District are deleted.

21. Immunities. The District does not waive its sovereign immunity or its Constitutional Eleventh Amendment immunity. Miss. Code Ann. § 11-46-1, et seq.

22. District Liability. The District shall only be responsible for liability resulting from the actions/inactions of its officers, agents, and employees acting within the course and scope of their official duties with the District.

23. Policies. Provisions of the Contract that provide for actions or results that are inconsistent with or in violation of the policies of the District or its Board of Education are deleted.

24. Control of Litigation. Any provision giving the Contractor exclusive control over litigation is deleted.

25. District Insurance. The District is self-insured as defined under the Mississippi Tort Claims Act by Miss. Code Ann. §11-46-1. Any provision of the Contract which requires the District to purchase any form of insurance is deleted. Any provision of the Contract which requires the District to name the Contractor party as an additional insured is deleted.

26. Arbitration. The District does not agree to submit to arbitration or mediation.

27. Unauthorized Payments. The District does not agree to pay extra compensation, fees, or allowances after service has been rendered or a contract has been made, or for any payment not authorized by law.

28. Payment by the District. Any and all billing will be in accordance with MS Code §31-7-305. Any provision that requires the District to pay Contractor any late charges, fees or penalties is governed by Miss. Code Ann. §31-7-305.

29. Term. The term of the Contract shall be for the term stated in the Contract itself. In the event no term is stated in the Contract, the Contract shall expire three (3) years from the date of the Contract. Any reference to an automatic renewal of the term of the Contract is deleted. All renewals shall be in writing and agreed to by the parties.

30. Breach of Contract. In the event either party materially breaches the Contract, the non-breaching party may terminate the Contract upon thirty (30) days written notice to the breaching party. Such termination shall not prejudice the non-breaching party's right to pursue any and all other legal or equitable remedies available to it.

31. Termination for Convenience. If a multi-year Contract, the District may terminate this Contract at any time for convenience and with or without cause immediately upon electronic notification to the Contractor.

32. Mutual Termination. If a multi-year Contract, the District may mutually agree to terminate this Contract. Payment shall be made for the services provided up to the agreed upon date of termination.

33. Availability of Funds. The continuance of the Contract with the District is based upon the availability of funds. Therefore, this Contract can be cancelled by the District with thirty (30) days' notice to the Contractor at the end of the fiscal period in the event funds are not appropriated by the funding authority. In such event, any property covered by a lease shall be returned to the lessor.

34. Assignment/Third Party Beneficiary. Neither party may assign its rights or delegate its duties under the Contract without the prior written consent of the other party, which shall not be unreasonably withheld. Any purported assignment of rights in violation of this provision is void. The Contract does not and is not intended to confer any rights or remedies upon any persons other than the parties to the Contract.

35. Public Records. Notwithstanding any other provisions, Contractor acknowledges that the terms of this Contract are subject to the Mississippi Public Records Act ("MPRA"), Mississippi Code Annotated § 25-61-1 *et seq.* (1972, as amended). All disclosures by the District must be made in compliance with District policies and procedures established in accordance with the MPRA.

36. District Employment. Any provision penalizing the District for hiring an employee of Contractor is deleted.

37. Publicity/Trademarks. Contractor may not publicize the fact of the Contract, publicize the District's relationship with the Contractor as its customer, include the District on a customer list; or use the District as a referral source without the District's prior written consent. Contractor shall submit, for the District's review and approval, all press releases or any other publicity materials mentioning the District by name, and Contractor shall not publish such without the District's prior written approval, which may be withheld at the District's sole discretion. Neither party shall use the other party's trademarks, service marks, logos, symbols, designs, or other marks without prior written approval of the other party.

38. Governmental Entity. The Contractor recognizes and acknowledges that the District, as a political subdivision of the State of Mississippi, enters into this Contract only to the extent authorized by Mississippi law, including the opinions of the Attorney General of Mississippi. Any provision to the Contract that is not authorized by or is inconsistent with Mississippi law, including the opinions of the Mississippi Attorney General, is invalid and deleted.

39. Personal Liability. Contractor acknowledges that the individual executing the Contract on behalf of the District is doing so only in his/her official capacity. To the extent any provision contained in the Contract exceeds such authority, Contractor agrees that it will not look to the individual capacity or otherwise seek to hold the individual personally liable for exceeding such authority.

40. Employment Protection Act. Contractor represents and warrants that it will ensure compliance with the Mississippi Employment Protection Act, Miss. Code Ann. § 71-11-1 et seq. and shall register and participate in the status verification system for all newly hired employees.

41. Ethics: Gratuities and Kickbacks. By signing this Addendum, the Contractor certifies that neither it nor any of its employees, representatives or agents have offered or given gratuities, in the form of entertainment, gifts or otherwise, to any director, officer or employee of the District with the view toward securing favorable treatment in the awarding, amending, or the making of any determination with respect to the performing of this Contract. The right of Contractor to proceed may be terminated after notice and hearing, the District determines that a Contractor, any agent, or other representative of Contractor gave or agreed to give, any employee in connection with any decision, approval, disapproval, recommendation, preparation or any part of a program requirement or a purchase request, as listed in Miss Code Ann. § 97-11-53.

42. Records. Contractor shall maintain all records relevant to this Contract for at least three years following completion of the Contract.

43. Representation Regarding Contingent Fees. By signing this Contract, the Contractor represents that it has not retained a person to solicit or secure a District contract upon and agreement or understanding for a commission, percentage, brokerage, or contingent fee.

44. Conflict of Interest. By signing this Contract, the Contractor certifies no involvement, financial or otherwise, that any member of the District's board of education, employee, officer or agent of the District may have in the Contractor's organization. Contracts shall be in accordance with Miss Code Ann. §37-11-27.

45. Debarment or Suspension. By signing this Contract, the Contractor agrees that neither it nor its principals are currently debarred or suspended from entering into a contract with a federal department, any political subdivision, a governing authority, agency of the State of Mississippi, or any other state, and that it is not an agent of a person or entity that is currently debarred from entering into a contract with a federal department.

46. Infringement. (A) Contractor represents to the best of its knowledge that it has full right to sell or license to the District the software, the products or the use thereof, and that all such software or products are delivered free of any liens, encumbrances or rightful claim for any infringement of any United States copyright, patent, trade secret or trademark. The Contractor further warrants that the licensed software or product does not knowingly infringe any patent, copyright, trade secret or trademark. The Contractor agrees to indemnify and hold the District harmless from any and all third party claims or infringement relating to the District's use of the

products sold hereunder, including but not limited to paying all actual defense costs and reasonable attorney's fees, and any judgements. (B) If the use of any element of the licensed software is enjoined as a result of any claim arising out of a breach of the warranty, the District may terminate the subscription to the product and seek other remedies available by law.

47. Entire Agreement. The parties acknowledge that the Contract, including this Addendum, sets forth the entire agreement and understanding of the parties as to the subject matter(s) including therein. The Contract may only be modified by express written agreement of the parties. Any revisions or changes to any terms of use, privacy policy, or other documents posted on Contractor website or otherwise provided shall be null and void as to the District to the extent contradicted by the Contract and this Addendum.

**ACCEPTED AND AGREED BY CONTRACTOR:**

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Contractor Name

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Contractor Authorized Signature

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Date