

Platte County R-3 / Vendor Data Protection Agreement

This Agreement is entered into this [redacted] day of [redacted] between [redacted] (Vendor), hereinafter referred to as "Vendor," and the Platte County R-3 School District, a Missouri public school district with principal place of business at 998 Platte Falls Road, Platte City, MO 64079, hereinafter referred to as "District."

Whereas, Vendor is a [Student Information System Company]; and

Whereas, District desires a student information system deployed and implemented; and

Whereas, Vendor and District desire to enter into this Agreement;

Now therefore, for the good and sufficient consideration described below, Vendor and District enter into this Agreement:

1. Definitions

- a. "Brand Features" means the trade names, trademarks, service marks, logos, domain names, and other distinctive brand features of each party, respectively, as secured by such party from time to time.
- b. "District" means the Platte County R-3 School District.
- c. "District Data" includes all Personally Identifiable Information and other information that is not intentionally made generally available by the District on public websites or publications, including but not limited to business, administrative and financial data, intellectual property, and student and personnel data and metadata.
- d. "End User" means the individuals authorized by the District to access and use the Services provided by the Vendor under this Agreement.
- e. "Personally Identifiable Information" (or PII) includes but is not limited to: personal identifiers such as name, address, phone number, date of birth, Social Security number, and student or personnel identification number; personally identifiable information contained in student education records as that term is defined in the Family Educational Rights and Privacy Act, 20 USC 1232g; "protected health information" as that term is defined in the Health Insurance Portability and Accountability Act, 45 CFR Part 160.103; nonpublic personal information as that term is defined in the GrammLeach-Bliley Financial Modernization Act of 1999, 15 USC 6809; credit and debit card numbers and/or access codes and other cardholder data and sensitive authentication data as those terms are defined in the Payment Card Industry Data Security Standards; other financial account numbers, access codes, driver's license numbers; and state- or federal identification numbers such as passport, visa or state identity card numbers.

- f. "Securely Destroy" means taking actions that render data written on physical (e.g., hardcopy, microfiche, etc.) or electronic media unrecoverable by both ordinary and extraordinary means. These actions must meet or exceed those sections of the National Institute of Standards and Technology (NIST) SP 800-88 guidelines relevant to data categorized as high security.
- g. "Security Breach" means an event in which District Data is exposed to unauthorized disclosure, access, alteration, or use.
- h. "Services" means any goods or services acquired by the District from the Vendor, including computer software, mobile applications (apps), and web-based tools accessed by students and/or their parents via the Internet and used as part of a school activity.
- i. "Vendor" means [the firm or vendor selected by the District]
- j. "Mining District Data" means to search through, access, or extract District Data, metadata, or information which is not necessary to accomplish the purpose(s) of this Agreement.

2. Rights and License in and to District Data

- a. The parties agree that as between them, all rights including all intellectual property rights in and to District Data shall remain the exclusive property of the District, and Vendor has a limited, nonexclusive license as provided in this Agreement solely for the purpose of performing its obligations hereunder. This Agreement does not give Vendor any rights, implied or otherwise, to District Data, content, or intellectual property, except as expressly stated in the Agreement.

3. Intellectual Property Rights/Disclosure

- a. Unless expressly agreed to the contrary in writing, all goods, products, materials, documents, reports, writings, video images, photographs or papers of any nature including software or computer images prepared by Vendor (or its subcontractors) for the District will not be disclosed to any other person or entity.
- b. Vendor warrants to the District that the District will own all rights, title and interest in any and all intellectual property created by the District in the performance of this Agreement and will have full ownership and beneficial use thereof, free and clear of claims of any nature by any third party including, without limitation, copyright or patent infringement claims. Vendor agrees to assign and hereby assigns all rights, title, and interest in any and all District-created intellectual property created in the performance of this Agreement to the District, and will execute any future assignments or other documents needed for the District to document, register, or otherwise perfect such rights.

4. Data Privacy

- a. Vendor will use District Data only for the purpose of fulfilling its duties under this Agreement and will not share such data, except as allowed by the terms of this Agreement and by law. **SEE ATTACHMENT A [DESCRIBING THE TERMS OF MORE EXPANSIVE USE/SHARING.]**
- b. District Data will not be stored outside the United States without prior written consent from the District.
- c. Vendor will provide access to District Data, including anonymized, only to its employees and subcontractors who need to access the data to fulfill Vendor obligations under this Agreement. Vendor will ensure that employees and subcontractors who perform work under this Agreement have read, understood, and received appropriate instruction as to how to comply with the data protection provisions of this Agreement. If Vendor will have access to “education records” for the District’s students as defined under the Family Educational Rights and Privacy Act (FERPA), the Vendor acknowledges that for the purposes of this Agreement it will be designated as a “school official” with “legitimate educational interests” in the District Education records, as those terms have been defined under FERPA and its implementing regulations, and the Vendor agrees to abide by the FERPA limitations and requirements imposed on school officials. Vendor will use the Education records only for the purpose of fulfilling its duties under this Agreement for District’s and its End User’s benefit, and will not share such data with or disclose it to any third party except as provided for in this Agreement, required by law, or authorized in writing by the District.
- d. Vendor will not use District Data (including metadata) for advertising or marketing purposes unless such use is specifically authorized by this agreement or otherwise authorized in writing by the District. **SEE ATTACHMENT A [DESCRIBING THE TERMS OF MORE EXPANSIVE USE/SHARING.]**
- e. Vendor agrees to assist District in maintaining the privacy of District’s Data as may be required by State and Federal law, including but not limited to the Protection of Pupil Rights Amendment (PPRA) and the Children’s Online Privacy Protection Act (COPPA).
- f. Selected Firm/Vendor is prohibited from Mining District Data for any purposes other than those agreed to by the Parties. **SEE ATTACHMENT A [DESCRIBING THE TERMS OF MORE EXPANSIVE USE/SHARING.]**

5. Data Security

- a. Vendor will store and process District Data in accordance with commercial best practices, including appropriate administrative, physical, and technical safeguards, to secure such data from unauthorized access, disclosure, alteration, and use. Such measures will be no less protective than those used to secure Vendor’s own data of a similar type, and in no event less than reasonable in view of the type and nature of the data involved. Without limiting the foregoing, Vendor warrants that all electronic District Data will be encrypted in transmission using SSL (Secure Sockets Layer).

- b. Vendor will use industry-standard and up-to-date security tools and technologies such as anti-virus protections and intrusion detection methods in providing Services under this Agreement.

6. Employee and Subcontractor Qualifications

- a. Vendor shall ensure that its employees and subcontractors who have potential access to District Data have undergone appropriate background screening, to the District's satisfaction, and possess all needed qualifications to comply with the terms of this agreement including but not limited to all terms relating to data and intellectual property protection.

7. Data Authenticity and Integrity

- a. Vendor will take reasonable measures, including audit trails, to protect District Data against deterioration or degradation of data quality and authenticity.

8. Security Breach

- a. Response. Immediately upon becoming aware of a Security Breach, or of circumstances that could have resulted in unauthorized access to or disclosure or use of District Data, Vendor will notify the District, fully investigate the incident, and cooperate fully with the District's investigation of and response to the incident. Except as otherwise required by law, Vendor will not provide notice of the incident directly to individuals whose Personally Identifiable Information was involved, regulatory agencies, or other entities, without prior written permission from the District.
- b. Liability. In addition to any other remedies available to the District under law or equity, Vendor will reimburse the District in full for all costs incurred by the District in investigation and remediation of any Security Breach caused in whole or in part by Vendor or subcontractors, including but not limited to providing notification to individuals whose Personally Identifiable Information was compromised and to regulatory agencies or other entities as required by law or contract; providing one year's credit monitoring to the affected individuals if the Personally Identifiable Information exposed during the breach could be used to commit financial identity theft; and the payment of legal fees, audit costs, fines, and other fees imposed against the District as a result of the Security Breach.

9. Response to Legal Orders, Demands or Requests for Data

- a. Except as otherwise expressly prohibited by law, Vendor will:
 - i. immediately notify the District of any subpoenas, warrants, or other legal orders, demands or requests received by Vendor seeking District Data;
 - ii. consult with the District regarding its response;

- iii. cooperate with the District's reasonable requests in connection with efforts by the District to intervene and quash or modify the legal order, demand or request; and
 - iv. upon the District's request, provide the District with a copy of its response.
- b. If the District receives a subpoena, warrant, or other legal order, demand including request pursuant to the Missouri Open Records Act, Section 610.010 et seq. ("requests") or request seeking District Data maintained by Vendor, the District will promptly provide a copy of the request to Vendor. Vendor will promptly supply the District with copies of records or information required for the District to respond, and will cooperate with the District's reasonable requests in connection with its response.

10. Data Transfer Upon Termination or Expiration

- a. Upon termination or expiration of this Agreement, Vendor will ensure that all District Data are securely returned or destroyed as directed by the District. Transfer to the District or a third party designated by the District shall occur within a reasonable period of time, and without significant interruption in service. Vendor shall ensure that such transfer/migration uses facilities and methods that are compatible with the relevant systems of the District or its transferee, and to the extent technologically feasible, that the District will have reasonable access to District Data during the transition. In the event that the District requests destruction of its data, Vendor agrees to Securely Destroy all data in its possession and in the possession of any subcontractors or agents to which the Vendor might have transferred District data. The Vendor agrees to provide documentation of data destruction to the District.
- b. Vendor will notify the District as soon as reasonably practicable of impending cessation of its business and any contingency plans. This includes immediate transfer of any previously escrowed assets and data and providing the District access to Vendor's facilities to remove and destroy District-owned assets and data. Vendor shall implement its exit plan and take all necessary actions to ensure a smooth transition of service with minimal disruption to the District. Vendor will also provide a full inventory and configuration of servers, routers, other hardware, and software involved in service delivery along with supporting documentation, indicating which of these are owned by or dedicated to the District. Vendor will work closely with its successor to ensure a successful transition to the new equipment, with minimal downtime and effect on the District, all such work to be coordinated and performed in advance of the formal, final transition date.

11. Institutional Branding

- a. Each party shall have the right to use the other party's Brand Features only in connection with performing the functions provided in this Agreement. Any use of a party's Brand Features will inure to the benefit of the party holding intellectual property rights in and to those features.

12. Compliance

- a. Vendor will comply with all applicable laws and industry standards in performing services under this Agreement. Any Vendor personnel visiting the District's facilities will comply with all applicable District policies regarding access to, use of, and conduct within such facilities. The District will provide copies of such policies to Vendor upon request.
- b. Vendor warrants that any subcontractors used by Vendor to fulfill its obligations under this agreement will be subject to and will comply with each and every term of this Data Protection Addendum in the same manner that Vendor itself is subject to the terms of this Data Protection Addendum.
- c. Vendor warrants that the service it will provide to the District is fully compliant with and will enable the District to be compliant with relevant requirements of all laws, regulation, and guidance applicable to the District and/or Vendor, including but not limited to: the Children's Online Privacy Protection Act (COPPA); Family Educational Rights and Privacy Act (FERPA), Health Insurance Portability and Accountability Act (HIPAA) and Health Information Technology for Economic and Clinical Health Act (HITECH), Gramm-Leach-Bliley Financial Modernization Act (GLB), Payment Card Industry Data Security Standards (PCI-DSS), Protection of Pupil Rights Amendment (PPRA); Americans with Disabilities Act (ADA), and Federal Export Administration Regulations.

13. Conflict with Other Agreements between the Parties

- a. If there is any conflict or potential conflict between the terms of this Data Protection Addendum and the terms of any other agreements between the parties, the terms of this Data Protection Addendum shall control.

14. No End User Agreements

- a. This Agreement is the entire agreement between the District (including District employees and other End Users) and the Vendor. In the event that the Vendor enters into terms of use agreements or other agreements or understandings, whether electronic, click-through, verbal or in writing, with District employees or other End Users, such agreements shall be null, void and without effect, and the terms of this Agreement shall apply.

15. Term and Terminations

- a. Term. This Addendum will become effective when the Vendor accepts the Purchasing Terms and Conditions and subsequently is issued a Purchase Order for goods or services which necessitate that the Vendor create, obtain, transmit, use, maintain, process, or dispose of District Data in order to fulfill its obligations to the District. It will continue in effect until all obligations of the Parties have been met, unless terminated as provided in this section. In addition, certain provisions and requirements of this Addendum will survive its expiration or other termination in accordance with Section 10 herein.
- b. Termination by the District. The District may immediately terminate the Agreement if the District makes the determination that the Vendor has breached a material term of this Data Protection Addendum.
- c. Automatic Termination. This Addendum will automatically terminate without any further action of the Parties upon the termination or expiration of the Agreement between the Parties.

16. Survival

- a. The Vendor's obligations under Section 10 shall survive termination of this agreement until all District Data has been returned or Securely Destroyed.

17. Notices

- a. Any notices to be given will be made via certified mail or express courier to the address given below, except that notice of a Security Breach shall also be given as provided in Section 8a of this Addendum.

18. Indemnity

- a. Vendor agrees to indemnify and hold harmless the District from, against and in respect to any and all claims, losses, or liabilities involving a claim or action brought against the District by a third party for damages incurred or suffered, directly or indirectly, arising from or relating to [GOODS OR SERVICES], as is contemplated under this Agreement.

19. Force Majeure

- a. If either party is prevented from performing any of its obligations due to any cause which is beyond the non-performing party's reasonable control, including fire, explosion, flood, epidemic/pandemic or other acts of God; acts, regulations, or laws of any government; strike, lock-out or labor disturbances; or failure of public utilities or common carriers (a "Force Majeure Event"), such non-performing party shall not be liable for breach of this Agreement with respect to such non-performance to the extent any such non-performance is due to a Force Majeure Event. Such

non-performance will be excused for three months or as long as such event shall be continuing (whichever occurs sooner), provided that the non-performing party gives immediate written notice to the other party of the Force Majeure Event.

20. Disputes

- a. To the extent allowed by applicable law, any controversy or claim arising out of or relating to this Agreement or any breach thereof, shall be settled by informal mediation with the parties subject to this Agreement. If any controversy cannot be resolved through informal mediation, any legal action in connection with this Agreement shall be filed in the Circuit Court of Platte County, Missouri, or the United States District Court for the Western District of Missouri, as appropriate, to which jurisdiction and venue Contractor expressly agrees. The prevailing party in any such action shall be entitled to recover attorney's fees and court costs from the non-prevailing party.

21. Termination for Cause

- a. District may terminate the Agreement for cause if Vendor:
 - i. repeatedly refuses or fails to perform the act(s) described in paragraph 1 of this agreement.
 - ii. repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;
 - iii. engages in conduct that would constitute a violation of state or federal criminal law, including but not limited to, laws prohibiting certain gifts to public servants, or engages in conduct that would constitute a violation of the District's ethics or conflict of interest policies or District's Board of Education's policies; or
 - iv. Otherwise is guilty of a substantial breach of a provision of this Agreement.

22. Termination for Convenience

- a. District may terminate the Agreement at any time by giving at least ten (10) days' notice in writing to Vendor. If the contract is terminated by the District as provided herein, the District will pay Vendor for any proven unrecoverable loss with respect to materials, equipment, or purchases made or utilized pursuant to this Agreement, to the extent of actual loss thereon, by the date of termination.

23. Compliance with Laws and District Board Policy

- a. Vendor, at Vendor's sole cost, shall comply with all present and future laws, ordinances, rules, regulations and District Board Policy.

24. Federal Work Authorization Program

- a. Prior to commencement of any work contemplated under this Agreement, Vendor shall provide to the District a sworn affidavit and other sufficient documentation to affirm its enrollment and participation in the Federal Work Authorization Program. Federal Work Authorization Program means the eVerify program maintained and operated by the United States Department of Homeland Security and the Social Security Administration, or any successor program. Vendor shall also provide the District a sworn affidavit affirming that it does not knowingly employ any person who is an undocumented worker in connection with the contracted services.

25. Background Checks

- a. Before employment of any employee, Vendor, subcontractor, consultant or subconsultant who is an individual for work on the services set forth in this Agreement, the Vendor shall conduct or shall allow the District to conduct background checks through all appropriate state agencies and any other background checks as may be standard for entities providing services to public schools, including without limitation, a thorough review of the list of registered sex offenders as provided by the County Sheriff's Department, the Federal Bureau of Investigation's criminal history files, the Missouri Highway Patrol's criminal history database and sexual offender registry, the Family Care Safety Registry, or the central registry of child abuse and neglect of the Missouri Children's Division; and any such individual who does not pass such background check as determined by the District in its sole discretion shall not be permitted to enter the premises where the services are being performed or any other school district property or to work on the services under this Agreement. The Vendor shall include all of these requirements in its contracts with their subcontractors and suppliers.

26. Drugs and Alcohol

- a. The Vendor shall be responsible to the District for acts and omissions of the Vendor's employees, subcontractors and their agents and employees, and other persons or entities performing portions any work contemplated under this Agreement for, or on behalf of, the Vendor or any of its subcontractors. As part of that responsibility, Vendor shall enforce the District's alcohol-free, drug-free, tobacco-free, harassment-free and weapon-free policies and zones, which will require compliance with those policies and zones by Vendor's employees, subcontractors, and all other persons carrying out the Agreement.

27. No Boycott of Israel

- a. All parties to this Agreement certify that they are not currently engaged in and shall not, for the duration of the contract, engage in a boycott of goods or services from the State of Israel; companies doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel; or persons or entities doing business in the State of Israel.

28. Forbearance

- a. The failure or delay of the parties to insist on the timely performance of any of the terms of this Agreement, or the waiver of any particular breach of any of the terms of this Agreement, at any time, will not be construed as a continuing waiver of those terms or any subsequent breach, and all terms will continue and remain in full force and effect as if no forbearance or waiver had occurred.

29. Immunity

- a. No provision of this agreement shall be construed in such a way as to waive or terminate the statutory or common law immunities enjoyed by District. District shall retain all immunities, including those immunities contained within Missouri Revised Statute § 537.600 et.seq.

30. Assignment

- a. This Agreement cannot be assigned by either party without the prior written consent of the other party.

31. Entire Agreement

- a. This Agreement is the entire Agreement between Vendor and District and supersedes any prior oral understandings, written agreements, proposals, or other communications between Vendor and District.

32. Modification

- a. Any change or modification to this Agreement will not be effective unless made in writing. This written instrument must specifically indicate that it is an amendment, change, or modification to this Agreement.

33. Binding Effect

- a. The obligations, covenants, terms, conditions, provisions, and undertakings in this Agreement, or in any amendment, will be binding upon the parties' heirs, successors, and permitted assigns.

34. Severability

- a. If any court of competent jurisdiction finds any provision or part of this Agreement is invalid, illegal, or unenforceable, that portion will be deemed severed from this Agreement, and all remaining provisions and parts of this Agreement will remain binding and enforceable; the parties will reconvene negotiations to arrive, in good faith, at an agreement as to matters remaining undetermined as a result of any finding by a court of competent jurisdiction that any provision or part of this Agreement is invalid, illegal, or unenforceable.

Vendor:

Name: _____

Signature: _____

Title: _____

Address: _____

Platte County R-3 School District:

Name: _____

Signature: _____

Title: _____

Address: _____

Attest:

By: _____

Title: Secretary, Board of Education

