

DATA PROTECTION ADDENDUM

This Data Protection Addendum ("Addendum") is dated [REDACTED], and is between School District No. 1 in the City and County of Denver and State of Colorado, d/b/a Denver Public Schools ("District") and [REDACTED] ("Contractor"). This Addendum applies to all services provided by Contractor to District through the Contract, as defined herein. This Addendum and the Contract are collectively referred to hereinafter as "Agreement".

This Addendum is hereby incorporated into the Contract. To the extent any such addition, deletion or modification results in any conflict or inconsistency between the Contract and this Addendum, this Addendum shall govern and the terms of the Contract that conflict with this Addendum or are inconsistent with this Addendum shall be of no force or effect.

This Addendum remains in effect for as long as the District provides District Data to the Contractor and the Contractor possesses or otherwise controls District Data, as defined herein.

1. Definitions

1.1. "Act" means the Colorado Student Data Transparency and Security Act, C.R.S. § 22-16-101 et seq., as amended from time to time.

1.2. "Biometric Record," as used in definition "Personally Identifiable Information," means a record of one or more measurable biological or behavioral characteristics that can be used for automated recognition of an individual. Examples include fingerprints; retina and iris patterns; voiceprints; DNA sequence; facial characteristics; and handwriting.

1.3. "Click-Through" means both (1) an act, by clicking or tapping on an electronic on-line or app button or link for the purpose, of accepting on-line terms and conditions without ink on paper, and (2) resulting agreement between the Parties.

1.4. "Contract" means District's Software Services Agreement, service order, purchase order, invoice, or any other form of written agreement that (i) causes the District to release District Data to Contractor and (ii) exists now or may in the future exist between the District and Contractor.

1.5. "COPPA" means the Children's Online Privacy Protection Act of 1998, 5 U.S.C. 6501 to 6505, together with the Federal Trade Commission's rules and regulations promulgated thereunder.

1.6. "De-identified Data" means District Data from which all Personally Identifiable Information, as defined herein, and attributes about such data, have been permanently and irrevocably removed or obscured so that no individual identification can be made.

1.7. "Designated Representative" means District or Contractor employees as specified on **Schedule 1** to whom all notices required in this Addendum will be sent.

1.8. "District Data" means:

1.8.1. PII, Records, and Education Records; and

1.8.2. PII included therein or derived therefrom; and

1.8.3. Health, medical, financial, contract, and employment information about students, employees, and contractors, and their respective families that is protected by various State and federal laws applicable to the Contract or the Addendum or both;

1.8.4. All data and metadata about District Data and PII that the Contractor collects, generates, or infers; and

1.8.5. All data and metadata that students generate or infer by using the Services that collect the data; and

1.8.6. Data and information that the District makes available directly or indirectly to the Contractor; and

1.8.7. Data and information that the District DOES NOT also intentionally make or HAS NOT intentionally made generally available on public websites or publications.

1.8.8. Materials or content that students and other District constituents create through use of the Services and that is delivered in connection with the Contract and includes, without limitation, essays, research reports, portfolios, music, audio files, photographs, videos, and account information.

1.9. "Education Record" means records, files, documents and other materials that: (a) contain information directly related to a student; and (b) are maintained by the District or by a party acting for the District such as Contractor.

1.10. "End User" means individuals authorized by the District to access and use the Services as defined herein.

1.11. "FERPA" means the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g and its implementing regulation 34 C.F.R. Part 99.

1.12. "Imminent Threat" means a suspected, attempted, or imminent threat of Unauthorized Activity.

1.13. "Mine" means the act of searching through, analyzing, accessing, or extracting District Data, metadata, or information that is not necessary to accomplish, for the benefit of the District, the Services, or other purpose(s) of this Addendum.

1.14. "Personally Identifiable Information" or "PII" means data, information, and metadata that, alone or in combination, personally identifies an individual student or the student's parent or family, and that is collected, maintained, generated, or inferred by the District, either

directly or through the Services, or by Contractor. PII also includes other information that, alone or in combination, is linked or is linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or information requested by a person who the District reasonably believes knows the identity of the student to whom the education record relates. Personally Identifiable Information includes, but is not limited to: (a) the student's name; (b) the name of the student's parent or other family members; (c) the address or phone number of the student or student's family; (d) personal identifiers such as the student's state-assigned student identifier, social security number, student number or Biometric Record; (e) indirect identifiers such as the student's date of birth, place of birth or mother's maiden name; and (f) demographic attributes, such as race, socioeconomic information, and gender. To the extent it is not already included in the definition hereinabove, PII also includes: (a) "personal information" as defined in the Colorado Open Records Act, C.R.S. 24-72-101 et seq. ("CORA"); (b) Personally Identifiable Information contained in Education Records; (c) "protected health information" as that term is defined in the Health Insurance Portability and Accountability Act, 45 C.F.R. Part 160.103; (d) "nonpublic personal information" as that term is defined in the Gramm-Leach-Bliley Financial Modernization Act of 1999, 15 U.S.C. 6809; (e) credit and debit card numbers, PINs and other access codes, authentication data, and other cardholder data as those terms are defined in the Payment Card Industry Data Security Standards; and (f) other financial account numbers, access codes, and state- or federal-identification numbers such as driver's license, passport or visa numbers.

1.15. "Record" means any information stored in any way on any medium, including, but not limited to, handwriting, print, computer or other digital media, video or audio tape, film, microfilm, and microfiche.

1.16. "School Service Contractor Provider" means what that term is defined in the Act.

1.17. "Securely Destroy" means to remove District Data from Contractor's systems, paper files, Records, databases, and any other media, regardless of format, in accordance with the standard detailed in National Institute of Standards and Technology ("NIST") Special Publication 800-88 Guidelines for Media Sanitization (November 2014), or such other comparable or equivalent standard to which the District's Chief Privacy Officer or designee may agree in writing, so that District Data is permanently irretrievable in Contractor's and Subcontractors' normal course of business.

1.18. "Security Breach" means an event where Unauthorized Activity has occurred.

1.19. "Tools" means what that term is defined in the Contract, and also includes any goods or services acquired by the District from the Contractor, including but not limited to computer software, mobile applications (apps), and web-based tools accessed by End Users through the Internet, installed or run on a computer or electronic device.

1.20. "Subcontractor" means Contractor's subcontractors, agents, or any other third party identified on **Schedule 2**, as updated by Contractor from time to time in accordance with the requirements of this Addendum, who Contractor has engaged to aid in performance of Contractor's obligations under the Contract.

1.21. "Student Profile" means a collection of PII data elements relating to a student of the District.

1.22. "Targeted Advertising" means selecting and sending advertisements to individuals based on information obtained or inferred over time from the individual's online behavior, use of applications, or PII; but if the Contractor is also a School Service Contract Provider or otherwise subject to compliance with the Act, then the Act definition of that term, if different from this definition, governs.

1.23. "Unauthorized Activity" means the illegal or otherwise unauthorized disclosure, release, acquisition, access, alteration, use, disruption, or destruction to or of District Data, or a system configuration that results in a documented unsecured disclosure, access, alteration, or use that poses a significant risk of financial, reputational or other harm to the affected End User or the District.

1.24. "Vendor Agreement" means any form of agreement documented with the Contractor prepares and provides and that relates to the Agreement, and includes, without limitation, an on-line Click-Through contract, any form of proposal, any form of invoice, that is or is purported to be made a part of the Agreement or is effective or purported to be effective outside of or in addition to the Agreement.

2. Rights and License in and to District Data

District owns all rights, title, and interest in and to District Data and De-identified Data. Any and all now known or hereafter existing intellectual property rights associated with District Data and De-identified Data, and any derivative works thereof or modifications thereto, belong to the District. The District hereby grants to Contractor a limited, nonexclusive license to use District Data and De-identified Data solely for the purpose of performing its obligations specified in the Contract. This Addendum does not give Contractor any rights, title, or interest, including all intellectual property and proprietary rights, implied or otherwise, to District Data and De-identified Data.

3. Data Privacy

3.1 Use of District Data. Contractor shall use District Data only and solely for the purpose of performing the services and fulfilling its duties under the Contract.

3.2 No Re-Disclosure. Contractor shall not disclose, transfer, release, share, or otherwise provide District Data to any third party except as expressly permitted by this Addendum or the Contract.

3.3 Prohibited Uses of District Data. Contractor shall NOT:

3.3.1 Use, including but not limited to use to train Artificial Intelligence (AI) models or systems, sell, rent, transfer, distribute, alter, Mine, or disclose District Data (including metadata) to any third party without the prior written consent of the District, except as required by

law, permitted by the Act, or in connection with an entity merger or acquisition as permitted by C.R.S. §22-16-109(2)(a);

3.3.2 Use District Data for its own commercial benefit outside of the consideration provided by the Contract;

3.3.3 Use District Data for conducting any research or surveys without the prior written approval of the District's Research Review Board;

3.3.4 Engage in Targeted Advertising or any advertising, marketing, or surveying of any kind directed toward students, parents, guardians, or District employees and agents;

3.3.5 Use District Data in a manner that is inconsistent with Contractor's privacy policy; and

3.3.6 Use District Data to create a Student Profile other than as authorized or required by the Contract to perform the Services.

3.4 Qualified FERPA Exception. If Contractor will have access to Education Records, Contractor acknowledges that, for the purposes of this Agreement, pursuant to FERPA, it will be designated as a "school official" with "legitimate educational interests" in the District Education Records and PII disclosed pursuant to the Contract. Contractor agrees to abide by the FERPA limitations and requirements imposed on school officials. Contractor will use the Education Records only for the purpose of fulfilling its duties under the Contract for District's and its End Users' benefit, and shall not share District Data with or disclose it to any third party except as provided for in the Agreement, as required by law, or if authorized in writing by the District. Contractor warrants and represents that during the five year period preceding the date of this Addendum, it has not been found in violation of FERPA by the U.S. Department of Education's Family Policy Compliance Office.

3.5 Subcontractor Use of District Data. Contractor is responsible for its employees and Subcontractors collection and use of any access to District Data and shall ensure their compliance with the terms of this Addendum. Contractor 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 Addendum. Contractor shall also ensure that its Subcontractors carry insurance coverage against cybersecurity and data breach risks as needed to cover their potential liability when performing under the Contract, at least the same extent as Contractor does and is required to under the Contract, whichever is greater. To the extent necessary to perform its obligations specified in the Contract, Contractor may disclose District Data to Subcontractors pursuant to a written agreement, specifying the purpose of the disclosure and holding Subcontractors accountable in such a manner that the District Data remains protected to the same or greater extent as if the Subcontractor and the Contractor were the same entity. Notwithstanding the above, Subcontractor (a) shall not disclose District Data, in whole or in part, to any other party; (b) shall not use any District Data to advertise or market to students or their parents/guardians; (c) shall access, view, collect, generate and use District Data only to the extent necessary to assist Contractor in performing its obligations specified in the Contract; (d) at the conclusion of its/their work under its/their subcontract(s)

Subcontractor shall, as directed by the District through Contractor, Securely Destroy all District Data in its/their possession, custody or control; (e) shall indemnify the District in accordance with the terms set forth in Section 10 of this Addendum; (f) and shall utilize appropriate administrative, physical and technical safeguards in accordance with industry standards and best practices to secure District Data from unauthorized disclosure, access and use.

3.6 Use of De-identified Data. Contractor may use De-identified Data for purposes of research, the improvement of Contractor's products and services, and/or the development of new products and services. However, Contractor may only use De-identified Data for purposes of research with the prior written approval of the District's Research Review Board. In no event shall Contractor or Subcontractors re-identify or attempt to re-identify any De-identified Data. Contractor shall not use De-identified Data in combination with other data elements. De-identified Data in the possession of a Subcontractor so as to allow for re-identification.

3.6.1 Privacy Policy Changes. As required by § 22-16-108(2) of the Act, prior to making a material change to Contractor's privacy policies, Contractor shall send District's Designated Representative written notice, which includes a clear explanation of the proposed changes.

3.7 Misuse/Unauthorized Release. Upon discovering the misuse or unauthorized release of Personally Identifiable Information held in connection with this Addendum by Contractor, a Subcontractor or a subsequent Subcontractor of Contractor, Contractor will notify the District as soon as possible, regardless of whether the misuse or unauthorized release is a result of a material breach of the terms of this Addendum.

4. **Data Security**

4.1 Security Safeguards. Contractor shall maintain a comprehensive security program that is reasonably designed to protect the security, privacy, confidentiality, and integrity of District Data. Contractor shall store and protect District Data in accordance with industry standards and best practices, including implementing appropriate administrative, physical, and technical safeguards that are no less rigorous than those outlined in [CIS Critical Security Controls \(CIS Controls\)](#), as amended, to secure such data from unauthorized access, disclosure, alteration, and use. Contractor shall ensure that all such safeguards, including the manner in which District Data is collected, stored, used, stored, processed, disposed of and disclosed, comply with all applicable federal and state data protection and privacy laws, regulations and directives, including without limitation the Act, as well as the terms and conditions of this Addendum.

4.2 Security Procedures. Contractor shall implement and maintain reasonable security procedures and practices that are designed to help protect PII from Unauthorized Activity.

4.3 Storage Location. Contractor shall not store District Data outside the continental United States unless Contractor has given the District Designated Representative advance written notice of where and how the servers are housed, managed, and secured, and that the security standards required herein can be achieved.

4.4 Encryption. Contractor shall ensure that all electronic District Data are at all times and will at all times be encrypted in transmission and at rest in accordance with either (1) NIST Special Publication 800-57, as amended, or (2) such other standard as the District's Chief Privacy Officer or designee may agree to in writing. Contractor shall also encrypt any backup, backup media, removable media, tape, or other copies. In addition, Contractor shall fully encrypt disks and storage for all laptops and mobile devices.

4.5 Risk Assessments. Contractor shall conduct periodic risk assessments and remediate any identified security vulnerabilities in a timely manner.

4.6 Audit Trails. Contractor shall conduct audit trails and shall take such reasonable other measures to protect District Data against deterioration or degradation of data quality and authenticity.

4.7 Verification of Safeguards. Upon District's written request, Contractor shall provide or make available to the District for review, one or more of the following to verify Contractor's administrative, physical and technical safeguards are in compliance with industry standards and best practices: (1) a third-party network security audit report; (2) certification from Contractor indicating that an independent vulnerability or risk assessment of the Contractor's data security program has occurred; (3) District Data has been de-identified by Contractor as set forth in the definition of De-identified Data in section 1.7 of this Addendum.

4.8 Background Checks.

4.8.1 If Contractor has access to District Data, but does not provide direct services to students, the Contractor and every person, including any subcontractor or agent of the Contractor, shall be required to have a criminal background check per Contractor's internal employment policies. "Direct services to students" includes but is not limited to: instruction; physical, mental, and social health supports; transportation; and food services, which are provided to students at least one time per month during the school year.

4.8.2 If Contractor provides direct services to students and has access to student data, the Contractor and every person, including any subcontractor or agent of the Contractor, shall be required to have a criminal background check that meets the requirements of § 22-32-109.7, C.R.S. and other District requirements, including a fingerprint-based conviction investigation. Conducting a Colorado Bureau of Investigation criminal history check or a Name Check investigation for any person providing services under this Contract does not meet District requirements. The costs associated with background checks are solely the Contractor's responsibility. Thereafter, any personnel, subcontractor, volunteer or agent hired or added during the term of this Contract shall satisfy the requirements set forth in this Section before performing services on Contractor's behalf. The Contractor shall make the background check results available upon request of the District in compliance with the provisions of § 24-72-305.3, C.R.S. The District also reserves the right to conduct its own criminal background check of every person before Services begin.

4.8.3 Notwithstanding the criminal background check requirement as set forth above, Contractor hereby certifies that no employee, subcontractor, volunteer or agent of the Contractor performing the Services has been convicted in Colorado or in any other State of a

criminal offense involving: (i) any unlawful sexual behavior against a minor, including but not limited to, abuse, abduction, enticement, human trafficking, pimping, sexual molestation, physical or sexual assault, or rape; or (ii) any crime involving sexual exploitation of minors, including but not limited to, child pornography offenses, or (iii) any crime of violence, including, but not limited to, murder or kidnapping. Contractor shall notify the District immediately upon the discovery or receipt of any information that any person performing services on Contractor's behalf has been detained or arrested by a law enforcement agency of the aforementioned crimes. Contractor understands that allowing any employee, subcontractor, volunteer or agent of the Contractor performing the Services who has been arrested or convicted of the aforementioned crimes to: (i) provide direct services to students, (ii) access student data, or (iii) enter onto District property, constitutes a material breach of this Contract and may result in the immediate termination of this Contract and referral to law enforcement for possible criminal charges, or additional sanctions pursuant to federal and state law. Misdemeanor conviction(s) may not necessarily result in the immediate termination of this Contract. Misdemeanor convictions are evaluated on a case-by-case basis, considering the nature and gravity of the offense, time elapsed since the offense, conviction, or time served, and the nature of the Services. Upon the District's request, Contractor shall provide documentation of every person performing the Services to substantiate the basis for this certification.

4.8.4 The Contractor and every person, including any subcontractor or agent of the Contractor, performing the Services, or who is on District's property, may be scanned through the Visitor Management System. If an individual's identity cannot be verified through an acceptable form of identification (driver's license or state ID), they will not be allowed on District's property.

5. Incident and Security Breach

5.1 Incident Evaluation. In the event of an Incident, Contractor shall follow prevailing industry practices to fully investigate and resolve the Incident, and take steps to prevent developments that may result in the Incident becoming a Security Breach at Contractor's expense in accordance with applicable privacy laws.

5.2 Response. Immediately upon becoming aware of a Security Breach, or a complaint of a Security Breach, Contractor shall notify the District Designated Representative in writing as set forth herein, fully investigate the Security Breach, cooperate fully with the District's investigation of and response to the Security Breach, and use best efforts to prevent any further Security Breach at Contractor's expense in accordance with applicable privacy laws. Except as otherwise required by law, Contractor shall not provide notice of the Security Breach directly to individuals whose Personally Identifiable Information was involved, to regulatory agencies, or to other entities, without first providing written notice to the District's Designated Representative.

5.3 Security Breach Report. If the District reasonably determines that Contractor has committed a Security Breach, then the District may request Contractor to submit, within seven (7) calendar days from discovery of such breach, a written report, and any supporting documentation, identifying (i) the nature of the Security Breach, (ii) the steps Contractor has executed to investigate the Security Breach, (iii) what District Data or PII was used or disclosed, (iv) who or what was the cause of the Security Breach, (v) what Contractor has done or shall do to remediate any deleterious effect of the Security Breach, and (vi) what corrective action Contractor has taken or shall take to

prevent a future Incident or Security Breach. The District reserves the right to require Contractor to amend its remediation plans.

5.4 Effect of Security Breach. Upon the occurrence of a Security Breach, the District may terminate the Contract. The District may require Contractor to suspend all Services, pending the investigation and successful resolution of any Security Breach, and Contractor may be required to reimburse District all amounts paid for any period during which Services were not rendered. Contractor acknowledges that, as a result of a Security Breach, the District may also elect to disqualify Contractor and any of its Subcontractors from future contracts with the District. The District may request Contractor to amend its remediation plans, and Contractor shall make reasonable good faith efforts to comply but Contractor shall not be obligated to comply.

5.5 Liability for Security Breach. In addition to any other remedies available to the District under law, contract, or equity, Contractor shall reimburse the District in full for all costs, including but not limited to, payment of legal fees, audit costs, fines, and other fees imposed that were actually incurred by the District and caused in whole or in part by Contractor or by Contractor's Subcontractors for any Security Breach. If required by law or contract, Contractor shall provide notification to individuals whose Personally Identifiable Information was compromised and to regulatory agencies or other entities. Contractor shall provide one year's credit monitoring to the affected individuals if the Personally Identifiable Information exposed during any Security Breach could be used to commit financial identity theft.

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

6.1 Received by Contractor. Except as otherwise expressly prohibited by law, Contractor shall immediately notify the District of any subpoenas, warrants, or other legal orders, demands or requests received by Contractor seeking District Data; consult with the District regarding its response; 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, upon the District's request, provide the District with a copy of its response.

6.2 Received by District. If the District receives a subpoena, warrant, or other legal order, demand or request seeking District Data maintained by Contractor, including but not limited to, a request pursuant to the COIA, the District will promptly notify Contractor and, within two (2) business days, including national holidays, Contractor shall supply the District with copies of the District Data for the District to respond.

6.3 Parent Request. If a parent, legal guardian or student contacts the District with a request to review or correct District Data or PII, pursuant to FERPA or the Act, the District will promptly notify Contractor's Designated Representative and Contractor shall use reasonable and good faith efforts to assist the District in fulfilling such requests, as directed by the District, within ten calendar (10) days after receipt of District's notice. Conversely, if a parent, legal guardian or student contacts the Contractor with a request to review or correct District Data or PII, within ten calendar (10) days after receipt of such notice, Contractor shall promptly notify the District and shall use reasonable and good faith efforts to assist the District in fulfilling such requests, as directed by the District.

6.4 Access to District Data. District shall have the right to access and retrieve any or all District Data stored by or in possession of Contractor upon written notice to Contractor's Designated Representative. Contractor shall make the District Data available to the District within seven (7) calendar days from the date of request.

7. Compliance with Laws

7.1. School Service Contract Providers. If Contractor is a School Service Contract Provider, Contractor must complete **Schedule 5**. Contractor shall update Schedule 5 as necessary to maintain accuracy. District reserves the right to terminate the Contract, or this Addendum, or both, as specified in Section 8, should the District receive information after the date of this Addendum that significantly modifies Contractor's representations made in this Section 7.1.

7.2 Children's Online Privacy and Protection Act. If Contractor collects personal information (as defined in COPPA) from children under thirteen (13) years of age in performing the Services, Contractor warrants, represents, and covenants that such collection and shall be for the use and benefit of the District and for no other commercial purpose. Contractor has provided the District with written notice of its collection, use, and disclosure practices.

7.3 Compliance with Laws. Contractor shall comply with all applicable laws, ordinances, rules, regulations, and orders of all governmental agencies or authorities having jurisdiction over the Services, including, most relevantly and without limitation, as applicable: COPPA; FERPA; the Act; the Colorado Privacy Act (CPA), C.R.S. 6-1-131, *et seq.*; the Colorado Consumer Protection Act (CCPA), C.R.S. § 6-1-101 *et seq.*; the Health Insurance Portability and Accountability Act, 45 C.F.R. Part 160.103; the Health Information Technology for Economic and Clinical Health Act; Gramm-Leach-Bliley Financial Modernization Act, 1999, 15 U.S.C. 6809; Payment Card Industry Data Security Standards; Protection of Civil Rights Amendment, 20 U.S.C. 1232h, 34 C.F.R. Part 98; Americans with Disabilities Act; and Federal Export Administration Regulations.

7.4 Accessibility. Contractor, including all Services Contractor provides under this Agreement, shall comply with: (1) all applicable provisions of §§ 24-85-101, *et seq.*, C.R.S.; (2) all accessibility standards for an individual with a disability adopted by the State of Colorado Governor's Office of Information Technology (OIT) pursuant to Section § 24-85-103, C.R.S.; (3) all State of Colorado technology standards related to technology accessibility; and (4) Levels A/AA of the most current version of the Web Content Accessibility Guidelines (WCAG). Contractor shall indemnify, hold harmless, and assume liability on behalf of the District, and the District's elected officials, employees and agents, for all costs, expenses, claims, damages, liabilities, court awards, attorney fees and related costs, and any other amounts incurred by the District in relation to Contractor's noncompliance with accessibility standards for an individual with a disability adopted by OIT pursuant to Section §§ 24-85-103, *et seq.*, C.R.S.

8. Termination of the Contract

8.1 The District may immediately terminate the Contract in accordance with District policies if, at any time, the District determines in its sole discretion, that Contractor has breached any of the requirements of this Addendum. Should Contractor not comply with the requirements of this Addendum and that non-compliance results in the misuse or unauthorized release of PII by the

Contractor, the District may terminate the Contract immediately as provided under this Addendum and in accordance with C.R.S. Section 22-16-107 (2)(a).

8.2. The District may terminate the Contract if the District receives information after execution of this Addendum, that any of Contractor's representations or warranties have substantially changed after execution of this Addendum, including but not limited to the terms of Contractor's privacy policy.

9. Data Transfer; Destruction, Return

9.1 Destruction of District Data. With the exception of De-identified Data that District has specifically agreed in writing to allow Contractor to use after termination or expiration of this Addendum pursuant to **Schedule 3**, or District Data for which Contractor has specifically obtained consent from the parent, legal guardian or student to keep, no later than (90) calendar days after termination or expiration of this Addendum, Contractor shall certify in writing that all District Data and PII that Contractor collected, generated or inferred pursuant to the Contract, Securely Destroyed, pursuant to **Schedule 4**.

9.2 Transfer of District Data to Third Party. If the District elects to have all District Data that is in Contractor's possession or in the possession of Contractor's Subcontractors transferred to a third party designated by the District, such transfer shall occur within a reasonable period of time but no later than thirty (30) calendar days after a District request, and without significant interruption in service or access to such District Data. Contractor shall work closely with such third party transferee to ensure that such transfer migration uses facilities and methods compatible with the relevant systems of the District or its transferee, and that the District will have reasonable access to District Data during the transition. District will pay all costs associated with such transfer, unless such transfer is as the result of termination of this Agreement following Contractor's breach of the terms of this Agreement. Upon successful transfer of District Data, as confirmed in writing by the District's Designated Representative, Contractor shall Securely Destroy all District Data in accordance with Section 9.1.

9.3 Response to Return Requests. After receiving a written request from the District, Contractor shall return any specific District Data or PII that is in its possession or in the possession of its Subcontractors within five (5) business days, excluding national holidays, after receiving a written request from the District. Contractor shall return or migrate District Data and PII using such methods and formats as the District requires and follow such directions as the District provides.

10. Indemnification

10.1 If Contractor is a "public entity" within the meaning of the Colorado Governmental Immunity Act, § 24-10-101 et seq., C.R.S., then it shall be responsible for the negligent acts and omissions of its officers, agents, employees and representatives with respect to its obligations under this Agreement. Any provision of this Agreement, whether or not incorporated herein by reference, shall be controlled, limited and otherwise modified so as to limit any liability of the Contractor under the Colorado Governmental Immunity Act, § 24-10-101 et seq., C.R.S. It is specifically understood and agreed that nothing contained in this paragraph or elsewhere in this Agreement shall be construed as an express or implied waiver of its governmental immunity or as

an express or implied acceptance of liabilities arising as a result of actions which lie in tort or could lie in tort in excess of the liabilities allowable under the Act, as a pledge of the full faith and credit of the Partner, or as the assumption by the Partner of a debt, contract or liability of the District or its affiliates in violation of Article XI, Section 1 of the Constitution of the State of Colorado.

10.2 If Contractor is not a "public entity" within the meaning of the Colorado Governmental Immunity Act, § 24-10-101 et seq., C.R.S., then Contractor shall indemnify, defend and hold District and its elected officials, employees, representatives, and agents harmless, without limitation, from and against any and all losses, damages, liabilities, deficiencies, actions, judgments, interest, awards, penalties, fines, costs or expenses, including attorneys' fees, the costs of enforcing any right to indemnification hereunder, and the cost of pursuing any insurance providers, arising out of or resulting from Contractor's, or Contractor's subcontractors, performance of services under this Addendum, any third-party claim against any indemnified party to the extent arising out of or resulting from Contractor's, or Contractor's subcontractors' failure to comply with any of its obligations under Sections 3, 4, 5, and 9 of this Addendum or the Colorado Consumer Protection Act (CCPA), C.R.S. § 6-1-101 et seq., and any breach of Contractor's, or Contractor's subcontractors, obligations under this Addendum. These indemnification duties shall survive termination or expiration of this Agreement.

11. Insurance

11.1 Insurance Coverage. As required by Schedule 6.

12. EULAs, Terms of Use, and other License Agreements

12.1 The Contractor grants such licenses and user permissions and provides the Services under those conditions as set forth in Schedule 7.

12.2 Click-Through Agreements. If Schedule 7 is blank or not attached, the Contractor grants such licenses and user permissions as the District may accept by Click-Through, whether with the Contractor or provided through a Subcontractor. Notwithstanding any such Click-Through terms and conditions, and notwithstanding the provisions in the Contract or Vendor Agreement, the District DOES NOT agree to any of the following:

12.2.1 Jurisdiction, venue and governing law other than Colorado.

12.2.2 Indemnification or hold harmless by the District of any person.

12.2.3 Binding arbitration or any other binding extra-judicial dispute resolution process.

12.2.4 Limitation of Contractor's liability for (i) direct damages; (ii) bodily injury, death, or damage to property of the District that is caused by the negligence or willful misconduct of the Contractor or of the Contractor's employees or agents; or (iii) amounts that are less than the insurance coverage the Contractor provides.

12.2.5 Ownership or use of District Data other than as described in this Addendum.

12.2.6 Confidentiality provisions in conflict with the District's obligations under CORA and other applicable open records laws.

12.2.7 Fees, penalties, and payment obligations other than as agreed to in the Agreement.

12.2.8 Automatic renewal of digital services licenses, end user license agreements, or other contractual rights and obligations.

12.2.9 Waiver of jury trial or other legal right of the District.

12.3 End Users. In the event that the Contractor enters into terms of use agreements or other agreements or understandings, whether electronic, click-through, verbal or in writing, with End Users or with the District ("EULAs"), the parties agree that the terms of this Addendum shall supersede the EULAs.

12.4 Subcontractor Click-Through. If the Contractor is providing software or on-line services through Subcontractors, and Click-Through will be required for the District to avail itself of the Services under this Agreement, then the Contractor shall cause the Subcontractor providing such software or on-line access to consent to and honor the terms of this Addendum with respect to the District's use of the Services provided through the Subcontractor.

13. Miscellaneous

13.1 Public Inspection of Agreement. Contractor acknowledges and agrees that this Agreement and all documents Contractor provides District as required herein, are public records for purposes of CORA and shall at all times be subject to public inspection. The parties understand that in the event of a request for disclosure of such information, the District will notify Contractor to give Contractor the opportunity to redact its proprietary or confidential material. In the event of the filing of a lawsuit to compel disclosure, the District will tender Contractor's material to the court for judicial determination of the issue of disclosure and Contractor agrees to intervene in such lawsuit to protect and assert its claims of privilege against disclosure and waive the same.

13.2 Survival. The Contractor's obligations under this Addendum, shall survive termination of this Agreement for any reason until all District Data has been returned or Securely Destroyed.

13.3 Choice of Law. Any claim, controversy or dispute arising under or related to this Addendum shall be construed pursuant to the substantive, not conflicts, laws of the State of Colorado. Each of the parties submit to the exclusive jurisdiction of any state court sitting in or federal court with jurisdiction over Denver County, Colorado, in any action or proceeding arising out of or relating to this Agreement and agrees that all claims in respect of the action or proceeding may be heard and determined in any such court. Each party also agrees not to bring any action or proceeding arising out of or relating to this Addendum in any other court. Each of the parties waives any defense of inconvenient forum to the maintenance of any action or proceeding so brought and waives any bond, surety or other security that might be required of any other party with respect to any such action or proceeding.

13.4 Immunities. The District retains all of its rights, privileges and immunities under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 *et seq.*

13.5 No Assignment. Contractor shall not assign or subcontract any of its rights or obligations hereunder without the express written consent of the District. Any assignment in violation of this section shall be void.

13.6 No Third Party Beneficiaries. Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than District.

13.7 Schedules.

Schedule 1 – Designated Representatives

Schedule 2 – Subcontractors

Schedule 3 – Written Consent to Maintain De-identified Data

Schedule 4 – Certification of Destruction

Schedule 5 – Data Elements

Schedule 6 – Insurance

Schedule 7 – EULAs and Terms of Use

13.8 Counterparts. This Addendum may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

13.9 Electronic Signatures and Electronic Records. Each party consents to the use of electronic signatures by the other party. This Addendum and any other documents requiring a signature under this Addendum, may be signed electronically by each party in the manner specified by the District. The parties agree not to deny the legal effect or enforceability of this Addendum solely because it is in electronic form or because an electronic record was used in its formation. The parties agree not to object to the admissibility of the Addendum in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

Remainder of page intentionally left blank. Signatures on the following page.

The parties are signing this Addendum on the date stated in the introductory clause.

SCHOOL DISTRICT NO. 1 IN THE CITY AND COUNTY OF DENVER AND STATE OF COLORADO

By: _____
Signature

Printed Name: _____

Title: _____

“CONTRACTOR”

By: _____
Signature

Printed Name: _____

Title: _____

OPTION 1

SCHEDULE 1
Designated Representatives

NOTICE REQUIRED	DISTRICT REPRESENTATIVE	CONTRACTOR REPRESENTATIVE
Security Breach:	Robert Losinski Manager, Info Security By U.S. Mail: 780 Grant St Denver, CO 80203 By E-mail: Jim.Lucchesi@dpsk12.org and robert.losinski@dpsk12.org	[TITLE] By U.S. Mail: _____ By E-mail: _____
FERPA Records Requests:	Denver Public Schools Records Requests https://denverco.scriborder.com/ By U.S. Mail: 1860 Lincoln St Denver, CO 80203	[TITLE] By U.S. Mail: _____ By E-mail: _____
CORA Requests:	Stacy Wheeler CORA Officer By U.S. Mail: 1860 Lincoln St Denver, CO 80203 By E-mail: cora@dpsk12.org	[TITLE] By U.S. Mail: _____ By E-mail: _____
Updates to Privacy Policy / Transparency Requirements:	Jennifer Collins Chief Privacy Officer, Deputy General Counsel By U.S. Mail: 1860 Lincoln St Denver, CO 80203 By E-mail: legal.contracts@dpsk12.org	[TITLE] By U.S. Mail: _____ By E-mail: _____
Updates to Subcontractor Schedule:	Jennifer Collins Chief Privacy Officer, Deputy General Counsel By U.S. Mail: 1860 Lincoln St Denver, CO 80203 By E-mail: legal.contracts@dpsk12.org	[TITLE] By U.S. Mail: _____ By E-mail: _____
Data Retrieval:	Robert Losinski Manager, Info Security By U.S. Mail: 780 Grant St Denver, CO 80203 By E-mail: Jim.Lucchesi@dpsk12.org and robert.losinski@dpsk12.org	[TITLE] By U.S. Mail: _____ By E-mail: _____
Destruction of Data:	Robert Losinski Manager, Info Security By U.S. Mail: 780 Grant St Denver, CO 80203	[TITLE] By U.S. Mail: _____ By E-mail: _____

	By E-mail: Jim.Lucchesi@dpsk12.org and robert.losinski@dpsk12.org	
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Sample

OPTION 2

SCHEDULE 1
Designated Representatives

DISTRICT REPRESENTATIVE	CONTRACTOR REPRESENTATIVE
Name: Jennifer Collins	Name:
Title: Chief Privacy Officer, Deputy General Counsel	Title:
Address: 1860 Lincoln St Denver, CO 80203	Address:
Phone: 720-423-2211	Phone:
E-mail: legal_contracts@dpsk12.org	E-mail:

SCHEDULE 2
Subcontractors

Contractor shall update this information as necessary to maintain accuracy and shall send revised attachments, exhibits or schedules to the District's Authorized Representative.

What third party vendors does Contractor do business with that may have access to student personally identifiable data, and what is the purpose of these third party vendors (please fill complete the table below with this information)?

Name of Subcontractor	Primary Contact Person	Subcontractor's Address	Subcontractor's Phone/email	Purpose of re-disclosure to subcontractor

SCHEDULE 3
Written Consent to Maintain De-identified Data

The District hereby gives its consent for Contractor to retain and use De-identified Data for the stated purpose and period, as set forth below:

Description of De-identified Data Elements	Purpose for Retention and Use	Period of Use

I/We, _____, as [title] _____ and the authorized representative(s) of the Contractor do hereby certify that no attempt will be made to re-identify De-identified Data.

Contractor Name: _____

Contractor Representative Name: _____

Title: _____

Signature: _____ Date: _____

SCHEDULE 4
Certification of Destruction

I/We, [NAME(S)], as the authorized representative(s) of the Contractor do hereby acknowledge and certify under penalty of perjury that:

_____ the District Data and PII provided to Contractor by the District as part of the Data Protection Addendum in accordance with federal and state law was destroyed on _____, 20__ by means of [describe destruction methods]: _____.

_____ the District Data and PII provided to Contractor's Subcontractors as part of the Data Protection Addendum in accordance with federal and state law was destroyed as set forth below:

<i>Name of Subcontractor</i>	<i>Date of Deletion</i>	<i>Destruction Method</i>

I certify that this information is accurate and that no copies of District Data and PII were made.

Contractor Name: _____

Contractor Representative Name: _____

Title: _____

Signature: _____ Date: _____

SCHEDULE 5
Data Elements

(Mandatory to be completed if Contractor is a School Service Contract Provider under CRS 22-16-101 et seq.)

1. Contractor collects, generates or uses pursuant to the Agreement the following data elements of District Data or PII:
2. Contractor collects and uses the District Data for the following educational purposes:
3. Contractor's policies regarding retention and disposal of District Data are as follows:
4. Contractor uses, shares or discloses the District Data in the following manner:
5. Has Contractor's agreement ever been terminated by another school district for failure to comply with the same or substantially similar security obligations as those set forth in this Agreement?
If yes, describe:

SCHEDULE 6

DPS Insurance Requirements

General Provisions

Contractor agrees to secure, at or before the time of execution of this Agreement, the following insurance covering all operations, goods, or services provided pursuant to this Agreement.

Contractor shall provide a copy of this Agreement to its insurance agent or broker. Contractor may not commence services or work relating to the Agreement prior to placement of coverage.

Contractor shall keep the required insurance coverage in force at all times during the term of the Agreement, or any extension thereof, during any warranty period and for eight (8) years after termination of the Agreement.

Insurer Ratings: The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A-III" or better.

Cancellation, Non-Renewal Notifications: Each policy shall contain a valid provision or endorsement requiring notification to the District in the event any of the required policies are to be canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the parties identified in the Notices section of this Agreement. Such notice shall be sent thirty (30) days prior to such cancellation or non-renewal, except in the case of non-payment of premiums for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, Contractor shall provide written notice of cancellation, non-renewal, or reduction in limits to the Parties identified in the Notices section by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s).

Deductibles or Self-Insured Retention: If any policy is in excess of a deductible or self-insured retention, the Contractor must notify the District. Contractor shall be responsible for the payment of any deductible or self-insured retention.

Minimum Requirements: The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the Contractor. The Contractor shall maintain at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

Contractor shall advise the District in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits. At its own expense, and where such general aggregate or other aggregate limits have been reduced below the required per occurrence limits, the Contractor will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.

Proof of Insurance: Contractor certifies that any certificate of insurance, (preferably an ACORD certificate), provided as evidence of insurance coverage under this Agreement, complies with all insurance requirements in this Agreement. The District's acceptance of a certificate of insurance or

other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of Contractor's breach of this Agreement or of any of the District's rights or remedies under this Agreement. The District's Risk Management Department may require additional proof of insurance including but not limited to policies and endorsements.

Subcontractors and Subconsultants: All Subcontractors and Subconsultants (including Independent Contractors, Suppliers, or other entities providing goods or services required by this Agreement) shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of the Contractor. Contractor shall include all such Subcontractors as Additional Insureds under its policies (with the exception of Workers' Compensation) or shall ensure that all such Subcontractors and Subconsultants maintain the required coverages.

Insurance Coverage and Limits

Workers' Compensation/Employer's Liability: Contractor shall maintain the coverages required by statute and shall maintain Employer's Liability insurance with limits of at least \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims.

Contractor expressly represents to the District, as a material representation upon which the District is relying on entering into this Agreement, that none of the Contractor's officers or employees who may be eligible under any state or federal law to reject Workers' Compensation insurance shall affect such rejection during any part of the term of this Agreement, and that any such rejections previously effected, have been revoked as of the date Contractor executes this Agreement.

Business Automobile Liability: Contractor shall maintain Business Automobile Liability coverage with limits of at least \$1,000,000 with accident applicable to all owned, hired, and non-owned vehicles used in performing services under this Agreement.

If transporting gases, hazardous material, or regulated substances, Contractor shall carry a pollution coverage endorsement and an MCS 90 endorsement on their policy. Transportation coverage under a Commercial General Liability policy shall be an acceptable replacement for a pollution endorsement to the Business Automobile Liability policy.

Commercial General Liability: Contractor shall maintain Commercial General Liability coverage with limits of at least \$1,000,000 for each occurrence, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations aggregate, and \$2,000,000 policy aggregate.

Professional Liability – Errors & Omissions (if applicable): Contractor shall maintain Professional Liability coverage with limits of at least \$1,000,000 per claim and \$1,000,000 policy aggregate.

Excess/Umbrella Liability: Contractor shall maintain Excess or Umbrella Liability coverage with limits of at least \$1,000,000 per occurrence and \$1,000,000 policy aggregate. Coverage must be written on a "follow form" or broader basis. Any combination of primary and excess coverage may

be used to achieve required limits.

Builder's Risk and/or Installation Floater: Contractor shall maintain limits equal to the completed value of the project. Coverage shall be written on an all risk, replacement cost basis, including but not limited to coverage for soft costs, flood and earth movement (if in a flood or quake zone), and, if applicable, equipment breakdown coverage including testing. The School District No. 1 in the City and County of Denver, d/b/a Denver Public Schools, shall be an Additional Named Insured (or Loss Payee) under the policy. The Trustee (if applicable) shall be an Additional Named Insured and/or Loss Payee under the policy as their interest may appear pursuant to a lenders loss payable clause. The policies shall contain a waiver of subrogation by the issuer of such policies with respect to the District and the Trustee (if applicable), and their respective officers, agents and employees while acting within the scope of their employment. Policy shall remain in force until final acceptance of the project by the District.

Contractors Pollution Liability (if applicable): Contractor shall maintain Contractors Pollution Liability coverage with limits of at least \$1,000,000 per occurrence and \$1,000,000 policy aggregate. The policy shall include but not be limited to bodily injury; property damage including loss of use of damaged property; contractual liability; defense costs including costs and expenses incurred in the investigation, defense, or settlement of claims; and cleanup costs.

Riggers Liability (if applicable): Contractor shall maintain Riggers Liability coverage with limits of at least \$1,000,000 for each occurrence and \$1,000,000 policy aggregate. In lieu of a separate policy, a Riggers Liability endorsement can be attached to the Commercial General Liability policy that modifies or deletes the "care, custody and control" exclusion.

Sexual Abuse, Molestation or Misconduct: Contractor shall maintain Sexual Abuse, Molestation or Misconduct coverage with limits of at least \$1,000,000.

Commercial Crime: Contractor shall maintain Commercial Crime coverage with limits of at least \$1,000,000. Coverage shall include but not be limited to theft of District's money, securities or valuable property by Contractor employees (including any extended definition of employee). The School District No. 1 in the City and County of Denver, d/b/a Denver Public Schools shall be named as Loss Payee as its interest may appear.

Aircraft Liability – Aircraft / Drone use (if applicable): Contractor shall maintain Aircraft Liability insurance covering all manned and/or unmanned aircraft used in the performance of the work with limits of at least \$1,000,000 single limit.

Liquor Legal Liability (if applicable): Contractor shall maintain Liquor Legal Liability coverage with limits of at least \$1,000,000 per claim and \$1,000,000 policy aggregate.

Garagekeepers Liability (if applicable): Contractor shall maintain Garagekeepers Liability coverage with limits of at least \$1,000,000 aggregate.

The following three types of required insurance coverages may be met with separate policies or a combination of these coverages under one policy. If in a combined policy, the combined policy

form shall include minimum limits of at least \$3,000,000 each occurrence and in the aggregate.

Cyber/Network Security & Privacy Liability: Contractor shall maintain Cyber/Network Security & Privacy Liability coverage with limits of at least \$1,000,000 per occurrence and \$1,000,000 policy aggregate. The policy shall include, but not be limited to, coverage for claims involving privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion, and network security.

Technology Errors & Omissions (if applicable): Contractor shall maintain Technology Errors & Omissions Liability coverage with limits of at least \$1,000,000 per occurrence and \$1,000,000 policy aggregate. The policy shall include, but not be limited to Network Security, Privacy, Liability, and Product Failure.

Media Professional Liability (if applicable): Contractor shall maintain Media Professional Liability coverage with limits of at least \$1,000,000 per claim and \$1,000,000 in the aggregate. The policy shall include, but not be limited to, coverage for libel, slander, infringement of copyright, invasion of the right of privacy, and unauthorized use of titles, formats, ideas, characters, plots, or other material used in the publication or design.

Other Insurance Provisions

Additional Insured Status: For Commercial General Liability, Auto Liability, Excess or Umbrella Liability, Pollution Liability (if applicable) and Riggers Liability (if applicable), Cyber/Network Security and Privacy Liability (if applicable), Aircraft Liability (if applicable), and Liquor Legal Liability (if applicable), Contractor's insurance policy shall name School District No. 1 in the City and County of Denver, d/b/a Denver Public Schools and its selected officials, employees, representatives and agents as Additional Insureds.

Waiver of Subrogation: For coverages required under this Agreement, Contractor's insurer(s) shall waive subrogation rights against the District.

Primary Coverage: For claims related to this Agreement, Contractor's insurance coverage shall be primary and non-contributory with other coverage or self-insurance maintained by the District.

Claims Made Policies: For claims-made coverage, the retroactive date must be on or before the contract date or the first date when any goods or services were provided to the District, whichever is earlier.

Additional Provisions: Defense costs are outside the limits of liability. Policies must contain a severability of interests or separation of insureds provision (no insured versus insured exclusion). The Commercial General Liability coverage must provide that this is an Insured Contract under the policy.

SCHEDULE 7
EULAs and Terms of Use

Sample