



Educational Technology Company Agreement CONTINGENT ON FUNDING

The Providence School District (“District”), a department of the City of Providence, and [Click here to enter text.](#) (“Company”) enter into a contract on [Click here to enter a date.](#) for the provision of software, licensing, and ancillary services (“Products”).

Comment [SS1]: Fill in full name of company.

Comment [SS2]: Fill in contract Effective Date.

1. Scope of Work and Accountability Requirements

District agrees to engage Company, and Company agrees to provide and perform, in a manner satisfactory to District, the following services:

[Click here to enter text.](#)

Comment [SS3]: Enter full scope of work description of software, licenses, or consulting services – use subheads as necessary to clarify what is being obtained

The Company must adhere to the following expectations for customer service by providing:

- Technical assistance to District and its schools when needed;
- Troubleshooting and resolution of issues with the Product and its functionality, preferably within a 24 hour period;
- Informal training for District and school staff in support of the use of the Product; and
- End of year usage reports that include both educator and student datapoints.

2. Data and Release (Representations and Warranties)

2.1 In connection with Company’s provision of the Products to District and to allow for the proper functioning and purpose of the Products, the District agrees to and shall release certain data to the Company and agrees to permit the Company to collect certain data from District’s users of the Products (collectively, “**Data**”). Certain of this Data may be subject to the Family Educational Rights and Privacy Act (“**FERPA**”) (20 U.S.C. § 1232g; 34 CFR Part 99), in which case it will be known as FERPA Data (“**FERPA Data**”). Certain portions of the Data may be considered Personally Identifiable Information (“**Personally Identifiable Information**”). De-Identified Data (“**De-Identified Data**”) is data generated from usage of Company Products from which all Personally Identifiable Information has been removed or obscured so that it does not identify an individual student and there is no reasonable basis to believe the remaining information can be used to identify a student. For the purposes of this agreement De-Identified Data will not be considered Personally Identifiable Information and, thus, shall not be deemed FERPA Data, as defined above, or COPPA Data, as defined below. Personally Identifiable Information may be collected from students under the age of 13 during the normal course of such students’ use of the Products and thus may be subject to the Children’s Online Privacy Protection Act, in which case it will be known as COPPA Data (“**COPPA Data**”), but with respect to both COPPA Data and FERPA Data, such Data may only be used for the purpose of facilitating and enhancing the use and functionality of the Products and in connection with Company’s providing the Products to District and its users. Company will access, use, restrict, safeguard and dispose of all FERPA Data and COPPA Data related to this Agreement in accordance with FERPA and COPPA, respectively. Notwithstanding such release or collection, the FERPA Data, COPPA Data, and Personally Identifiable Information remain the property of the District.

2.2 Company in providing Products to the Customer may use external service providers as required to facilitate a variety of operations, known as Third Party Service Providers. Outsourced

operations may include, but are not limited to: web hosting, assisting with providing customer support, database reporting, analytics, and assisting with marketing or billing. As a result of this relationship, Third Party Service Providers may have access to Personally Identifiable Information. Company Partners are obligated to take appropriate commercially reasonable steps to maintain the confidentiality of all District information they receive in connection with Company Product and are subject to other legal restrictions that prohibit the use of District information for any purpose other than that described below for specific Company purpose. Any data exchanged with Third Party Service Providers will be deleted or transferred, per District request, when no longer needed, or at contract expiration. Company Partners are listed below.

Name of Third Party Service Provider (Product)	Service/Product Description
Click here to enter text.	Click here to enter text.

2.3 Company assures that data is secured and protected in a manner consistent with industry standards at a minimum and has attached documentation reflecting Company's existing data privacy and security guidelines and/or policies ([Click here to enter text.](#)). The guidelines and/or policies will apply to both Personally Identified Information and De-Identified Data. Company's use of Personally Identifiable Information shall be for the exclusive use of the District and / or third parties identified and approved by the District. Company may use De-Identified Data for the following purposes: to improve the Product, to demonstrate the effectiveness of the Product, and for research or other purposes related to developing and improving the Product. [Click here to enter text.](#) Company's use of such De-Identified Data may survive termination of this Agreement.

2.4 "Personally Identifiable Information" or "PII" means information provided to Company in connection with Company's obligations to provide the Products under the Agreement that (i) could reasonably identify the individual to whom such information pertains, such as name, address and/or telephone number or (ii) can be used to authenticate that individual, such as passwords, unique identification numbers or answers to security questions or (iii) is protected under Applicable Laws. For the avoidance of doubt, PII does not include aggregate, anonymized data derived from an identified or identifiable individual.

2.5 District represents and warrants that:

- (a) any such FERPA Data released to Company has been released pursuant to, among other things, a limited exception under FERPA acting for the District as a "**School Official**" with a legitimate educational interest for the purposes of providing the Products; and
- (b) District has complied fully with FERPA and, among other things, has specified at least annually in a FERPA notification to parents/guardians that it uses outside contractors/consultants as "School Officials" to provide certain institutional services and functions such as those set forth in this Agreement.

2.6 Company shall function as a school official of the District and agrees to the following conditions, as required by 20 U.S.C. Section 1232g and 34 C.F.R. Section 99.31:

- (a) Company is performing a service or function for which the District would otherwise use employees;
- (b) Company is under the direct control of the District with respect to the use and maintenance of education records;
- (c) Company is subject to the requirements of 34 C.F.R. Section 99.33(a) governing the use and re-disclosure of personally identifiable information from education records; and

Comment [SS4]: Enter third party service provider or product name. If more than one, hit [ENTER] key to list additional providers/products. Double space list.

Comment [SS5]: Enter service or product description adjacent to each named service provider or product listed in first column.

Comment [SS6]: Enter "See Attachment A" to reference attached privacy guidelines/policy document (and annex the referenced document to the final contract as "Attachment A" OR insert webpage address to Company's privacy guidelines/policy document published online.

Comment [SS7]: The use of De-Identified Data for any other purpose must be added here for review and approval by District – use the following language as a stem: "Company will also use De-Identified Data for the purpose of..." OR delete this form field in its entirety if not applicable.

(d) Company represents that it has the knowledge, skill and resources necessary to provide and maintain a web-based educational product or platform that is sufficiently secure and encrypted to protect confidential information.

2.7 Company and District each represent and warrant that any COPPA Data and FERPA Data released and/or shared by Company and/or District for the purposes of this Agreement shall be covered by that party's respective agreement with the other party regarding FERPA Data and COPPA Data and no further agreement shall be needed by the other party for such release or sharing.

2.8 Company and District agree that all such FERPA Data is provided on an "as is" basis and neither party shall be liable for any express or implied warranties, including but not limited to implied warranties of merchantability, non-infringement, and fitness for a particular purpose. Further, absent gross negligence or willful misconduct, neither party shall be liable to the other for any damages in whatever form or under any theory of liability for the "as is" data, even if advised of such.

3. Data Access, Acquisition, and Requirements

3.1 Data Elements. From the District, Company will receive the following Personally Identifiable Information for all students in the school(s) it will serve as part of this Agreement:

Comment [SS8]: Check off all that apply below.

- ☐ student local identification
- ☐ student state identification
- ☐ student name (first and last, middle name or initial)
- ☐ student date of birth
- ☐ student grade
- ☐ student demographics (i.e., gender, race, EL status, FRL status, special education status)
- ☐ student language
- ☐ school name
- ☐ district name
- ☐ school address
- ☐ school identification
- ☐ teacher name
- ☐ teacher email
- ☐ teacher identification
- ☐ class name
- ☐ class/course and section identification

3.2 Timeframe and Frequency of Data Transfer. The District will provide current academic year data to Company on Choose an item. basis via a secure file transfer from the District to Choose an item.

Comment [SS9]: Select nightly or weekly.

Comment [SS10]: Select applicable transfer avenue.

3.3 Schools. Unless discontinued earlier by District, this Contract is intended to cover the following schools:

School Name	School Address	Grade
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		Levels
Click here to enter text.	Click here to enter text.	Click here to enter text.

Comment [SS11]: Fill in applicable school names. If contract applies to multiple schools, hit [ENTER] key to list all applicable school names in column. Double space list.

Comment [SS12]: Fill in school address adjacent to applicable school name listed in first column.

Comment [SS13]: Fill in grade levels to be serviced. If all grades, enter "all grades".

3.4 Data Transfer Protocol. The District will assign a team representing technical and academic expertise ("District team") to work with Company to establish the automated data transfer. The project timeline, services provided by Company, and tasks required of the District Team will be finalized in a Statement of Work provided by Company and agreed upon by the District. Company will need to provide a detailed data definition and layout document that the District team will use to map their data system(s) to Company's data feed specification. At that point, Company will work with the District team to establish scheduled, automatic data transfers between the District student data system(s) and a secure file transfer protocol ("SFTP") site hosted by Company. Company will provide their data validation rules to the District team. Every time new data is published to the SFTP, Company will validate the data, load the successful records into the Company data system, and send an email to the District team notifying them of potential errors.

Comment [SS14]: Leave this section 3.4 in the contract *ONLY IF* the data transfer WILL be automated, otherwise delete this form field in its entirety.

4. Ownership and Protection of Confidential Information

4.1 Confidential Information. By virtue of this Agreement and providing District with the Products, the parties may have access to information of the other party that is deemed confidential ("**Confidential Information**"). Confidential Information includes information, ideas, materials or other subject matter of such party, whether disclosed orally, in writing or otherwise, that is provided under circumstances reasonably indicating that it is confidential or proprietary. Confidential Information includes, without limitation, all business plans, technical information or data, product ideas, methodologies, calculation algorithms and analytical routines; and all personnel, customer, contracts and financial information or materials disclosed or otherwise provided by such party ("**Disclosing Party**") to the other party ("**Receiving Party**"). For the purposes of this agreement De-Identified Data will not be considered Confidential Information. Confidential Information does not include that which (a) is already in the Receiving Party's possession at the time of disclosure to the Receiving Party, (b) is or becomes part of public knowledge other than as a result of any action or inaction of the Receiving Party in violation of this Agreement, (c) is obtained by the Receiving Party from an unrelated third party without a duty of confidentiality, or (d) is independently developed by the Receiving Party.

Confidential Information means any and all information of either party disclosed or otherwise made available to or learned by the parties under this Agreement, which is designated as "confidential" or "proprietary" or which, under all of the circumstances, ought reasonably to be treated as confidential, and includes, but is not limited to, school data and, all school student records and personnel records of both parties.

Company, the District, and each school partner will maintain the confidentiality of any and all Personally Identifiable Information exchanged as part of the Agreement. Confidentiality requirements will survive the termination or expiration of this Agreement. To ensure the continued confidentiality and security of student data, Company and school security plans will be followed.

4.2 Ownership. Confidential Information of either party (and any derivative works thereof or modifications thereto) is and will remain the exclusive property of that party or its licensors, as applicable. Neither party shall possess nor assert any lien or other right against or to Confidential Information of the other party. No Confidential Information of either party or any part thereof, will be sold, assigned, leased, or otherwise disposed of to third parties by the other party or commercially exploited by or on behalf of Company, its employees or agents.

4.3 Method of Transfer. Company will employ industry best practices, both technically and procedurally, to protect the Data from unauthorized physical and electronic access during transfer.

4.4 Restrictions on Use. The Receiving Party shall not use Confidential Information of the Disclosing Party for any purpose other than in furtherance of this Agreement, with the understanding that the Company also retains aggregate, de-identified, anonymized information for improvement, research and development purposes. The Receiving Party shall not disclose Confidential Information of the Disclosing Party to any third parties except as otherwise permitted hereunder. The Receiving Party may disclose Confidential Information of the Disclosing Party only to those employees, subcontractors or agents who have a need to know such Confidential Information and who are bound to retain the confidentiality thereof under provisions (including, without limitation, provisions relating to nonuse and nondisclosure) no less restrictive than those required by the Receiving Party for its own Confidential Information. The Receiving Party shall maintain Confidential Information of the Disclosing Party with at least the same degree of care it uses to protect its own proprietary information of a similar nature or sensitivity, but with no less than reasonable care under the circumstances. Each party shall advise the other party in writing of any misappropriation or misuse of Confidential Information of the other party of which the notifying party becomes aware.

4.5 Exclusions. Notwithstanding the foregoing, this Agreement shall not prevent a party receiving a judicial order or other legal obligation from disclosing Confidential Information of the other party, provided that the other party is promptly notified and cooperates to allow intervention to contest or minimize the scope of the disclosure (including application for a protective order). Otherwise, neither Company nor any of its personnel may release confidential data or results if such data or results include individual person, District- or state-identifiable data or results, either directly or inferentially, unless agreed by the parties in writing on a case by case basis. Notwithstanding the foregoing, nothing in this Agreement shall limit Company's ability to use De-Identified Data for product development and research purposes as permitted under FERPA.

4.6 Destruction of Confidential Information. At no cost to the party that owns the Confidential Information, the other party shall upon (a) written request by the owner at any time, and (b) upon termination or expiration of this Agreement, securely eliminate or return promptly in the format and on the media in use as of the date of the written request, all or any requested portion of Confidential Information that may be in the other party's possession or control

4.7 Breaches and Misuse. A Security Incident is a suspected, attempted, or imminent threat of unauthorized access, use, disclosure, breach, modification, disruption or destruction to or of District Data. In the event of a Security Incident, Company shall investigate the Security Incident, identify the impact of the Security Incident and take commercially reasonable actions to mitigate the effects of any such Security Incident. If the Security Incident results in a Security Breach, a documented, unsecured disclosure, access, alteration or use of the data, not permitted

in this Agreement, which poses a significant risk of financial, reputational or other harm to the affected End User or the District, Company shall, (i) timely provide any notifications to individuals affected by the Security Breach that Company is required to provide, and, (ii) notify District of the Security Breach, subject to applicable confidentiality obligations and to the extent allowed and/or required by Applicable Laws. Except to the extent prohibited by Applicable Laws, Company shall, upon District's written request, provide District with a description of the Security Breach and the type of data that was the subject of the Security Breach.

The parties will each cooperate fully in resolving any actual or suspected acquisition or misuse of Confidential Information.

5. **Payment.** District agrees to pay Company a fee of [Click here to enter text.](#) and 00/100 Dollars (\$[Click here to enter text.](#),00) as compensation for Products and/or services rendered; Company shall not be paid in advance.

School	Product	Unit Quantity	Price
Click here to enter text.	Click here to enter text.	Click here to enter text.	\$ Click here to enter text.
Total			\$ Click here to enter text.

6. **Term.** This Agreement shall be in effect from [Click here to enter a date.](#) to [Click here to enter a date.](#), unless terminated by either party at any time, with or without cause. In the event of termination by District or Company prior to completion of the contract, only the segment of fees attributable to non-licensing shall be subject to proration. Compliance with FERPA and COPPA is subject to survival of any provisions in accordance with their specific terms. Company obligations to comply with FERPA requirements will survive the expiration or termination of this contract.
7. **Restrictions on Transfer.** Company may not assign this contract to a third party without the prior written consent of the District. Notwithstanding the foregoing or anything to the contrary in this Agreement, Company shall have the right without consent to assign this Agreement or rights hereunder or delegate obligations (a) to any affiliate of Company, or (b) to any third party that has acquired all or substantially all of its assets or business, whether by merger, acquisition, transfer, reorganization or otherwise; provided that any such assignment or delegation to any affiliate or third party acquirer is conditioned upon assignee's assumption of all obligations and liabilities of the Company hereunder.
8. **Indemnity.** Company agrees to hold District and the City of Providence harmless from any and all damages incurred by District or City by reason of Company's negligence or breach of contract, including without limitation, damages of every kind and nature, out-of-pocket costs, and legal expenses.
9. **Intellectual Property Rights.** District agrees and acknowledges that Company and its licensors own all intellectual property rights in and to the Products including, without limitation, all trademarks, trade names, service marks and copyrights in the Products and all

Comment [SS15]: Fill in full contract amount in words (e.g., "One Thousand Five Hundred Thirty Seven").

Comment [SS16]: Restate written amount in numerical value (e.g., "1,537").

Comment [SS18]: Enter applicable service or product adjacent to each school listed in first column.

Comment [SS17]: Fill in school name. If more than one school, hit [ENTER] key and list applicable schools in this column. Double space list

Comment [SS20]: Fill in price (in numerical value) applicable to each product listed in second column.

Comment [SS19]: Fill in applicable quantity of service or product (e.g., number of years, number of licenses, etc.) adjacent to each product listed in second column.

Comment [SS21]: Fill in total contract price in numerical value (should match amount entered in Paragraph 5 above).

Comment [SS22]: Fill in Effective Date (should match Effective Date entered in Introductory Paragraph at top of contract.

Comment [SS23]: Fill in contract Termination Date.

underlying software programs and related documentation. District agrees and acknowledges that District and any school shall not acquire any right, title or interest in or to any Company's intellectual property (IP), including, without limitation, software, trademarks, copyrights and other intellectual property of Company and no other rights are granted by Company to the District or any school in Company's IP by implication, estoppel or otherwise. District further acknowledges and agrees that Company shall continue, during the term hereof, to expand and modify its Products, in its sole discretion.

10. General Provisions

- 10.1 Background Checks. Company must conduct a criminal background check, at the Company's expense, of all employees employed under this contract who have direct contact with students, except District employees.
- 10.2 No Employment. Company is not an employee of District and is not entitled to fringe benefits, pension, workers' compensation, retirement, etc. District shall not deduct Federal income taxes, FICA (Social Security), or any other taxes required to be deducted by an employer, as this is the responsibility of the Company.
- 10.3 Entire Agreement. This Agreement is entire and complete, and no representations or warranties, agreements, or covenants, express or implied, or any kind of character whatsoever have been made by either party hereto to the other, except as in this Agreement expressly set forth. This Agreement may not be modified or amended in any way except by mutual agreement in writing and signed by each party.
- 10.4 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original but all of which together shall constitute one (1) and the same instrument. A signature sent via facsimile or e-mail of a .pdf document shall be considered an original signature for purposes of executing this Agreement.
- 10.5 Construction. This Agreement has been negotiated and approved by counsel on behalf of all parties hereto and, notwithstanding any rule or maxim of construction to the contrary, any ambiguity or uncertainty will not be construed against any party hereto by reason of the authorship of any of the provisions hereof.
- 10.6 Jurisdiction. The parties hereto expressly submit themselves to and agree that all actions arising out of or related to this agreement or the relationship between the parties hereto shall occur solely in the venue and jurisdiction of the State of Rhode Island.

IN WITNESS WHEREOF, Providence Public School Department and Company have executed this contract, effective the date first herein written.

Providence Public School Department

Superintendent: _____
or
Chief Financial Officer: _____

Date: _____

[Click here to enter text.](#)

Comment [SS24]: Fill in full name of Company.

Company
Representative: _____

Printed Name and Title: _____

Date: _____

Social Security/Federal Tax ID Number: _____

Approved as to form and correctness.

Charles A. Ruggerio, Esq.
General Counsel and Deputy City Solicitor

Signature of PPSD Staff Contact

Person: _____

Phone Number: _____

Date of Board Approval: _____

(For contracts of \$5,000 or more)

Revised February 2020