DATA USE AGREEMENT

This Data Use Agreement (“Agreement”), effective on the date last executed by the parties hereto (the “Effective Date”), is made and entered into by and between **[NAME OF VENDOR]**  (hereinafter referred to as **“VENDOR”),** with its principal office at [**INSERT ADDRESS**] and the **CLEVELAND METROPOLITAN SCHOOL DISTRICT**, with offices located at 1111 Superior Avenue, Suite 1800, Cleveland, OH 44114 (hereinafter referred to as “**CMSD**”) (each a “Party” and collectively, the “Parties”).

**WHEREAS**, CMSD has retained VENDOR in the capacity as a contractor to whom CMSD has outsourced institutional services or functions pursuant to 34 CFR § 99.31(a)(1)(B) and, in that capacity, VENDOR has a legitimate educational interest in access to and use of the CMSD Data to perform the Data Services as defined herein;

**WHEREAS**, the Parties wish to enter into this Agreement to ensure the Data Services are performed consistent with appropriate confidentiality obligations and applicable laws;

**NOW THEREFORE**, in consideration of the promises and the mutual covenants and agreements herein set forth, and for other good and valuable consideration, the receipt and the sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties hereby agree as follows:

1. Definitions
	1. “Breach” shall mean any actual or reasonably suspected unauthorized access, acquisition, use, disclosure, loss, modification, or destruction, or inability to account for CMSD Data.
	2. “CMSD Data” shall mean the data described more fully in Appendix A that CMSD provides to VENDOR in connection with this Agreement.
	3. “Data Services” shall mean [if there is an underlying service agreement that describes the services, you can reference that here (“those services that are specifically described in the services agreement executed by the parties on or about [DATE])”; otherwise, insert a description of the services here, with a focus on how CMSD Data may be used and disclosed]
	4. “FERPA” shall mean the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, and implementing regulations set forth in 34 CFR Part 99.
	5. “Personal Data” means any information that identifies or that can reasonably be used to identify a specific individual, including but not limited to any information that meets the definition of “Personally Identifiable Information” set forth in 34 C.F.R. § 99.3
	6. “Privacy and Security Laws” shall mean (i) all applicable U.S. federal, state, and local laws, rules, regulations, directives and governmental requirements currently in effect and as they become effective relating in any way to privacy, confidentiality, security, or breach notification of Personal Data, including but not limited to FERPA and (ii) all applicable industry standards concerning privacy, data protection, confidentiality or information security.
2. Description of Data Exchange and Data Use
	1. The Parties agree that VENDOR is acting in the capacity as a contractor to whom CMSD has outsourced institutional services or functions pursuant to 34 CFR § 99.31(a)(1)(B) and, in that capacity, VENDOR has a legitimate educational interest in access to and use of the CMSD Data to perform the Data Services.
	2. CMSD shall provide the CMSD Data to VENDOR (and, if applicable, VENDOR shall transmit any CMSD Data or other information to CMSD) in a form, format, frequency, and security features mutually agreed by the Parties so that VENDOR may perform the Data Services.
	3. Requests by VENDOR for data outside the scope of Appendix A of this Agreement must be submitted in writing by VENDOR to CMSD Data Custodian with 1) the type of data requested and 2) a good faith showing of why the data is needed by VENDOR.
		1. Any data received in this manner is subject to all the terms, conditions, and obligations of this Agreement.
	4. VENDOR agrees as follows:
		1. VENDOR shall use the CMSD Data solely for the purpose of performing the Data Services and for no other purpose. Without limiting the generality of the foregoing, VENDOR is not permitted to create de-identified data using CMSD Data.
		2. VENDOR shall not use CMSD Data as part of any profit-making plan or activity.
		3. VENDOR shall not disclose any CMSD Data to any third party for any reason. Notwithstanding the foregoing, VENDOR may:
			1. Utilize agents and subcontractors to perform the Data Services, provided that (a) such agents and subcontractors agree in writing to be bound by the same terms and conditions that apply to VENDOR through this Agreement, including but not limited to the obligation to comply with FERPA and the prohibition on re-disclosure of any CMSD Data, and (b) VENDOR agrees to provide a list of such agents or contractors to CMSD upon request.
			2. Disclose CMSD Data if required by law; provided, that prior to any such disclosure, VENDOR shall: (a) unless prohibited by law, provide CMSD with immediate notice of any request for disclosure or other legal basis to disclose CMSD Data; (b) reasonably cooperate with CMSD’s efforts to limit any disclosure obligations; (c) not disclose any CMSD Data unless and until CMSD has had a meaningful opportunity to seek to limit any disclosure obligations; and (d) if CMSD’s efforts to limit disclosure are not successful or CMSD provides consent for the disclosure, VENDOR shall disclose only that portion of CMSD Data or provide access to CMSD Data that is legally required.
		4. VENDOR shall provide the results of any analysis performed in connection with the Data Services to CMSD. To the extent that VENDOR prepares any reports or analyses, VENDOR agrees to coordinate with CMSD and to cooperate in good faith to revise any reports if requested before finalizing such reports.
		5. VENDOR agrees not to contact any individuals whose Personal Data is provided to VENDOR as part of the CMSD Data.
3. Security
	1. All individuals from VENDOR or third-party contractors that receive CMSD data must complete a data security training, discussing the proper use and storage of student information and to review the terms and conditions in the completed and executed data use agreement. The type of data security training to be administered will decided and led by VENDOR.
		1. VENDOR shall provide signed declarations of training completion from all individuals or third-party contractors that receive CMSD data within 30 days of the start of the Agreement or within 30 days of joining VENDOR, if after that time.
		2. VENDOR shall provide signed declarations acknowledging review and understanding of the completed data use agreement from all individuals or third-party contractors that receive CMSD data within 30 days of the start of the Agreement or within 30 days of joining VENDOR, if after that time.
		3. All signed documentation will be provided to CMSD within 30 days of execution of this agreement. Signed documentation from individuals or third-parties determined to require data after execution of the agreement shall be provided by VENDOR on a rolling basis and must be completed before the individuals or third-parties receive any data within 30 days of the start of the Agreement or within 30 days of joining VENDOR, if after that time.
	2. VENDOR shall implement reasonable administrative, technical, physical, and organizational safeguards to protect the security, confidentiality, integrity, and availability of CMSD Data that are consistent with prevailing industry best security practices and any security measures that are required by applicable Privacy and Security Laws. Without limiting the generality of the foregoing, VENDOR shall implement at least the following minimum security safeguards:
		1. Access to CMSD Data is restricted to VENDOR employees, agents, and subcontractors who (a) need such access to carry out the responsibilities of VENDOR under this Agreement; and (b) have entered into written confidentiality agreements that are consistent with the terms of this Agreement.
		2. All CMSD Data are stored on computer and storage facilities that (a) are maintained within VENDOR’S or its agent’s or subcontractor’s computer networks, (b) are behind appropriate firewalls, and (c) implement appropriate intrusion detection/intrusion prevention technology;
		3. Access to computer applications and CMSD Data are managed through appropriate user ID/password procedures;
		4. VENDOR will use encryption technology consistent with the highest level of Advance Encryption Standards (AES) to transmit and store CMSD Data (including but not limited to any transmission to agents or subcontractors);
		5. Ensure restricted access to any facilities where CMSD Data may be stored or transmitted, which includes locked rooms with access via security cards;
		6. Ensure auditable controls exist to validate CMSD Data transmission, usage, and safeguards required herein.
4. Breach Notification Obligations
	1. In the event that VENDOR (or any VENDOR agent or subcontractor) experiences a Breach, VENDOR shall immediately take steps to mitigate any harm resulting from such Breach. VENDOR shall report in writing to CMSD without unreasonable delay, but in no event later than twenty-four (24) hours of discovering any Breach of CMSD Data. VENDOR shall cooperate with any reasonable CMSD requests for information regarding such Breach.
	2. In the event of a Breach, VENDOR shall provide any notifications and take any other steps that are required under the Privacy and Security Laws; provided that
		1. In the event the Parties disagree regarding whether a Breach requires notification under Privacy and Security Laws, CMSD shall have the ultimate discretion to determine whether a Breach that requires notification has occurred; and
		2. CMSD shall have the right to approve the content and delivery mechanism of any Breach notifications as well as the decision whether to provide credit protection services to affected individuals, which approval shall not be unreasonably withheld.
	3. Subject to and in accordance with Section 4(ii)(a) above, in the event of a Breach caused by the acts or omissions of VENDOR (or VENDOR’s agents or subcontractors), VENDOR shall pay all reasonable costs related to mitigating the effects of the Breach, including but not limited to costs and expenses for notification letters, credit protection services, attorneys’ fees and expenses, and any services that entities commonly make available to impacted individuals in the event of a Breach excluding any costs or legal fees associated with claims that may arise from an alleged Breach.
5. Term and Termination
	1. The Agreement shall commence on the Effective Date and shall terminate on [DATE], unless otherwise provided herein.
	2. CMSD may terminate this Agreement for convenience or cause by providing 30 days’ advanced written notice to VENDOR.
	3. Upon termination or expiration of this Agreement for any reason, VENDOR shall, at CMSD’s option, return to CMSD or destroy in a manner the renders the CMSD indecipherable all CMSD Data that VENDOR maintains in any form (and shall cause any agents or subcontractors to do the same). Upon request, VENDOR shall provide a written certification that the CMSD Data has been destroyed.
	4. In the event of a data breach or discovery of a violation of the terms of the data use agreement (including but not limited to requesting, accessing, or receiving data outside the scope of the Agreement), the involved individuals will be required to complete enhanced security training as identified, designed, and conducted by CMSD. Until the completion of this training, the identified individuals will be denied access to any CMSD data by CMSD and the VENDOR.
	5. At the sole discretion of CMSD, repeated (more than one) or egregious (determined by scope and/or impact) violations of the terms of the data use agreement shall result in CMSD and VENDOR permanently revoking access to CMSD data to involved individuals. Access can be restored at the sole discretion of CMSD.
6. Payment
	1. [If there is an underlying agreement, this section can be deleted. Otherwise, specify payment terms here or state: “Neither Party shall owe any payment to the other for the provision of CMSD Data or performing the Data Services.”]
7. Indemnity
	1. VENDOR (“Indemnitor”), at its own expense, agrees to defend, indemnify and hold harmless CMSD and any of CMSD’s affiliates, subsidiaries, directors, officers, employees, representatives, and agents (collectively, the “Indemnitee”) from and against any claim, demand, cause of action, judgment, or liability, and reasonable costs and expenses relating thereto (including but not limited to reasonable attorneys’ fees and expenses and other costs and expenses related to mitigating or remediating a Breach) arising from, related to, or in connection with any Breach or material violation of this Agreement caused by Indemnitor’s acts or omissions (or the acts or omissions of VENDOR’s agents or subcontractors).
	2. The obligations of the Indemnitor under this Agreement to defend, indemnify and hold harmless the Indemnitee shall be subject to the following: (a) the Indemnitee shall provide the Indemnitor with prompt notice of the claim giving rise to such obligation; provided, however, that any failure or delay in giving such notice shall only relieve the Indemnitor of its obligation to defend, indemnify and hold the Indemnitee harmless to the extent it reasonably demonstrates that its defense or settlement of the claim or suit was adversely affected thereby; (b) the Indemnitor shall have control of the defense and of all negotiations for settlement of such claim or suit; provided, however, that Indemnitor shall not settle any claim unless such settlement completely and forever releases the Indemnitee from all liability with respect to such claim and unless the Indemnitee consents to such settlement in writing (which consent shall not be unreasonably withheld, conditioned, or delayed); and (c) the Indemnitee shall cooperate with the Indemnitor in the defense or settlement of any such claim or suit. Subject to clause (b) above, the Indemnitee may also participate in the defense of any claim or suit in which the Indemnitee is involved at its own expense.
8. Notices
	1. All notices required or permitted to be provided herein shall be furnished by hand delivery, overnight mail or certified mail return receipt requested and shall be effective upon receipt.
	2. Notices shall be provided to the Parties at the following addresses:

[VENDOR CONTACT]

[CMSD CONTACT]

* 1. The points of contact for technical issues regarding the exchange, storage and security of the CMSD Data and related technical issues are:

VENDOR Data Custodian: [VENDOR CONTACT]

CMSD Data Custodian: [CMSD CONTACT]

1. Miscellaneous
	1. *Data Ownership and Other Rights*. VENDOR acknowledges that CMSD is the owner of and has direct control over all CMSD Data, that this Agreement does not effect any transfer of title to or ownership of the CMSD Data, and that CMSD is free to distribute the CMSD Data to other parties for any purpose. Except as expressly provided in this Agreement, nothing in this Agreement shall be construed to confer any ownership interest, license or other rights upon a Party by implication, estoppel or otherwise as to any technology, intellectual property rights, products, or materials of the other Party or any other entity.
	2. *Entire Agreement; Modifications*. This Agreement, including Appendix A, contains the complete agreement of the Parties with regard to the subject matter hereof and cannot be changed or amended except by written agreement executed by the parties hereto.
	3. *Use of Names*. Neither Party may use the name of the other Party, or any of such Party’s agents, officers, staff members, employees, or affiliates, or any adaptation, acronym or name by which the other party is commonly known, in any advertising, promotional or sales literature, or other form of publicity without the written permission of the Party whose name is to be used.
	4. *Assignment*. This Agreement shall not be assigned by either Party without the express written consent of the other Party.
	5. *Choice of Law*. This Agreement shall be governed by the laws of the State of Ohio without regard to conflict of laws principles thereof. The Parties agree to submit to the exclusive jurisdiction of the state or federal courts within the State of Ohio for any proceeding arising out of or in connection with this Agreement, and each Party waives any objection to the laying of venue of any such proceeding in such courts.
	6. *No Third Party Beneficiaries*. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than VENDOR, CMSD and their respective successors and assigns, any rights, remedies, obligations or liabilities whatsoever.
	7. *Compliance With Laws*. The Parties agree during the performance of the work required pursuant to this Agreement, that the Parties and all employees working under the Parties’ direction shall strictly comply with all applicable local, state, or federal laws, ordinances, rules or regulations controlling or limiting in any way the performance of the work required by this Agreement.
	8. *Relationship of the Parties*. Each Party’s relationship to the other party under this Agreement is that of an independent contractor and neither Party shall be considered to be an agent, joint venture, employee, or partner of the other Party. Each Party will be solely and entirely responsible for the acts of its agents, subcontractors, and employees, except that CMSD shall not be responsible for the acts of VENDOR or VENDOR’s employees, agents, or subcontractors. Nothing herein shall be construed to create an employer/employee relationship between the Parties or between either Party and the employees or contractors of the other Party. Neither Party, nor its employees, agents, or subcontractors, shall be eligible for any employee benefits programs of the other Party nor shall they have any claim under this Agreement or otherwise against the other Party for vacation pay, sick leave, retirement benefits, Social Security, Workers’ Compensation, disability or unemployment benefits, or any other employee benefits of any kind.
	9. *Waiver*. The waiver or non-enforcement by any Party of a breach of any provision of this Agreement shall not be construed as a waiver of a subsequent breach of the same or any other provision of this Agreement. The delay or failure of a Party to exercise any right or remedy under this Agreement shall not constitute a waiver by the party of any breach of this Agreement. Any waiver of any breach under this Agreement must be in writing.
	10. *Severability.* If any provision of this Agreement is held invalid by a court of law, the remainder of this Agreement shall not be affected thereby if such remainder would then continue to conform to the laws of the State of Ohio.
	11. *Headings*. All section headings in this Agreement are included solely for the convenience of the Parties and shall not be construed to define, limit, extend, or describe the scope of this Agreement or the intent of any of its provisions.
	12. *Counterparts; Electronic Signatures*. This Agreement may be executed in facsimile or PDF format in one or more counterparts, each of which shall be an original, but all of which shall together constitute one and the same instrument.
	13. *Survival*. The Parties’ respective responsibilities and obligations under Sections 4 and 6 shall survive termination of this Agreement if a Breach or other material violation of this Agreement occurs prior to termination.
	14. *Conflicts*. In the event of a conflict between this Agreement and any other agreement between the Parties, the terms of this Agreement shall control.

[Signature Page Follows]

In witness whereof, the parties have executed this Agreement on the Effective Date as defined above.

 **VENDOR: [NAME OF VENDOR]**

 By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 [VENDOR SIGNATORY]

Dated: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**CLEVELAND METROPOLITAN SCHOOL DISTRICT**

 By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 [CMSD SIGNATORY]

Dated: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Appendix A: CMSD Data**

* CMSD Data shall refer to the following, to the extent that CMSD has access to such data and the ability to provide it to VENDOR.
* Vendor and third-party contractors are not authorized to request, access, or receive any district data not expressly enumerated in this Appendix. Any attempt to do so will be considered a violation of this agreement.
* A VENDOR request for data access made in writing with the nature and rationale for the request set forth therein, shall not be considered a violation of the Agreement.
	+ Data will only be shared as expressly enumerated in this appendix, including a description of who will send the data, who will receive the data, and the timeline and/or cadence for sharing, except as otherwise provided in Section 2 of this Agreement. VENDOR shall provide notice to CMSD in writing of any change to VENDOR’s designated point of contact for data requests.