

CONTRACT # 19005  
(PO 19001980) F419



157 Columbus Avenue, 4<sup>th</sup> Floor, New York, NY 10023  
(646) 450-5174 / info@branchingminds.com

### Branching Minds Master Subscription Agreement

**Service Provider:**  
Branching Minds, Inc.  
("Branching Minds")  
157 Columbus Avenue, 4<sup>th</sup> Floor  
New York, NY 10023

**Customer:**  
Evanston Skokie School  
District 65 ("Customer")  
1500 McDaniel Avenue  
Evanston, IL 60201

This Master Subscription Agreement ("Agreement") is made and entered into by and between Branching Minds, Inc. ("Company") a Delaware corporation, and you ("Customer"). Company offers access to its system, which assists Customer in automating and improving its student intervention process (the "Application"). The Application is offered as a software-as-a-service (SaaS), which is centrally hosted by Company and accessed by the Customer remotely via the web.

- 1. Services.** During the term of this agreement, provided timely payment of the applicable fees, Company shall (i) provide Customer access to (A) the Application and (B) certain other subscription services, including, but not limited, to roster data integration software (collectively, "SaaS Services"), and (ii) perform any professional services, including, but not limited to training and other consulting services (Professional Services), listed on any applicable Proposal(s). SaaS Services and Professional Services are referred to herein as the "Services". Customer authorizes Company to provide the Services and agrees to pay the associated fees as set forth in applicable Proposal(s) as the parties may agree to from time to time. For convenience, a copy of the initial agreed-upon proposal is attached hereto in Addendum B.
- 2. SaaS Subscriptions.** Company will provide to Customer access to the Application and certain other SaaS Services listed on any Proposal(s) for the subscription term indicated therein. Company regularly updates the SaaS Services and reserves the right to add and/or substitute functionally equivalent features from time to time at its sole discretion. Company will provide Customer online access to and use of the SaaS Services via the Internet by use of a Customer -provided browser.
- 3. Term and Termination.** Unless otherwise agreed upon in the applicable Proposal, this Agreement shall be effective for the period of time indicated on the applicable Proposal under "Contract Start Date" ("Initial Term") and shall automatically renew for successive one year terms ("Renewal Terms") at the fee then in effect for the Services selected by the Customer, unless terminated as set forth herein. Either party may terminate this Agreement, for any reason, with at least ninety (90) days' prior written notice to the other party, with such termination to be effective at the end of the Initial Term or any Renewal Term as applicable.
- 4. Billing and Payment.** Fees are due to Company no later than 30 days following the Contract Start Date listed on the applicable Proposal. Interest accrues on past due balances at the lesser of a

1½% per month or the highest rate allowed by law. If Customer fails to make timely payments of any undisputed fees, Customer shall be in material breach of the Agreement. In the event of such payment breach, Company will be entitled to suspend any or all Services upon 10 days written notice to Customer and/or to modify the payment terms, and to request full payment before any additional performance is rendered by Company. Payment of fees is under no circumstances subject or conditioned by the delivery of future products or functionality not otherwise set forth in the Agreement. Company will submit an invoice for the subsequent term's Services, plus the applicable annual fee increase (if any), to Customer at least sixty (60) days before the expiration of the Initial Term or any Renewal Term. If an undisputed amount owed by Customer for the Initial Term, or any subsequent Renewal Terms becomes more than sixty (60) days past due, Customer's access to the Application may be interrupted until payment is received.

5. **License Grant.** Company grants to Customer a limited, non-transferable, non-exclusive license to access and use the Services provided by Company only as authorized in this Agreement.

6. **Customer Data.** Customer shall own all right, title and interest in and to Customer data. However, Customer hereby grants to Company a perpetual, worldwide, royalty-free license to use all Customer data as necessary solely for the purposes of (i) providing the Services to Customer and its Authorized Users pursuant to this Agreement and (ii) solely on an aggregated and de-identified basis as part of Company's overall statistics for marketing and analytical purposes.

7. **Customer Responsibilities.**

a. Customer is solely responsible for (i) complying with this Agreement and the Branching Minds Terms of Service, (ii) submitting accurate, quality and legal data to the Application, (iii) using commercially reasonable efforts to prevent unauthorized access to or use of Services, (iv) notifying the Company promptly of any such unauthorized access or use, and (v) using the Services only in accordance with applicable laws and government regulations. Company may terminate the Agreement as contemplated in Section 3 if Customer fails to adhere to the foregoing acceptable use standards.

b. Customer is solely responsible for obtaining and maintaining at its own expense all equipment needed to access the Services.

8. **Protection of Customer Data.**

a. Company will maintain administrative, physical, and technical safeguards (including the use of encryption and firewalls) for protection of the security, confidentiality and integrity of Customer's data, as described in the Branching Minds Privacy Policy. Notwithstanding the foregoing, Customer acknowledges that the Internet is an open system and Company cannot and does not warrant or guarantee that third parties will not intercept Customer data.

b. **Data Sharing Agreement**

The Data Sharing Agreement attached hereto as Addendum A is hereby incorporated into this Agreement.

9. **Warranty and Disclaimer.** Company warrants that the services will be performed in all material respects in accordance with the services policies referenced in the Proposal.

COMPANY DOES NOT GUARANTEE THAT THE SERVICES WILL BE ERROR-FREE OR UNINTERRUPTED, OR THAT COMPANY WILL CORRECT ALL SERVICES ERRORS. CUSTOMER ACKNOWLEDGES THAT COMPANY DOES NOT CONTROL THE TRANSFER OF DATA OVER COMMUNICATIONS FACILITIES, INCLUDING THE INTERNET, AND THAT THE SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES. COMPANY IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGES RESULTING FROM SUCH PROBLEMS.

THE WARRANTIES SET FORTH IN THIS SECTION ARE EXCLUSIVE AND EXPRESSLY IN LIEU OF ALL OTHER EXPRESS OR IMPLIED WARRANTIES. COMPANY HEREBY EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR IMPLIED WARRANTIES ARISING FROM A COURSE OF DEALING OR COURSE OF PERFORMANCE.

10. **Limitation of Liability.** WITH THE EXCEPTION OF THE PARTIES' INDEMNIFICATION OBLIGATIONS HEREUNDER, NEITHER PARTY'S LIABILITY WITH RESPECT TO ANY SINGLE INCIDENT ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL EXCEED THE AMOUNT PAID BY CUSTOMER HEREUNDER IN THE 12 MONTHS PRECEDING THE INCIDENT, PROVIDED THAT IN NO EVENT WILL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER HEREUNDER. THE ABOVE LIMITATIONS WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY. HOWEVER, THE ABOVE LIMITATIONS WILL NOT LIMIT CUSTOMER'S PAYMENT OBLIGATIONS UNDER SECTION 1 (SERVICES).

11. **Hosting Provider and Limitation of Liability.**

a. The Software will be hosted by an authorized subcontractor (the "Hosting Provider") that has been engaged by Company and shall only be accessed by Customer using the Customer's computers. The Hosting Provider shall have access to Customer data solely for the purpose of enabling Company to provide the Services and will not access or use Customer data for any other purposes.

b. The hosting provider is an independent third party not controlled by Company. Accordingly, IN NO EVENT WILL COMPANY BE LIABLE FOR ANY DIRECT, GENERAL, SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING BUT NOT LIMITED TO LOSS OR DAMAGE TO DATA, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF INFORMATION OR ANY OTHER PECUNIARY LOSS) ARISING OUT OF THE USE OF OR INABILITY TO USE THE SOFTWARE, DUE TO PROBLEMS (INCLUDING BUT NOT LIMITED TO ERRORS, MALFUNCTIONS) ASSOCIATED WITH THE FUNCTIONS OF SERVERS MAINTAINED BY THE HOSTING PROVIDER, EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

12. **Confidentiality.**

a. "Confidential Information" is the confidential business information disclosed by the "Disclosing Party" to the "Receiving Party" whether orally or in writing, that is designated as confidential or that should reasonably be understood to be confidential given the nature of the

information and the circumstances of disclosure. Company and Customer are both Disclosing Parties (when disclosing its confidential information) and Receiving Parties (when receiving the other's information). Confidential Information may take the form (as examples) of the Application, information regarding this Agreement (including pricing information) and any documentation provided to Customer by Company. Confidential Information does not include any information that is generally publicly known at the time of disclosure, or that the Receiving Party legally learns independently, or independently develops without breaching this Agreement.

b. Except to fulfill the purposes of this Agreement:

i. The Receiving Party will not use the Disclosing Party's Confidential Information, and will maintain the confidentiality of the Disclosing Party's Confidential Information at least to the degree as the Party maintains the confidentiality of her/its own such information.

ii. The Receiving Party may disclose Confidential Information to professionals (such as certified public accountants and attorneys) who are obligated to keep it confidential, and may disclose it when required by subpoena or otherwise by law.

c. Remedies. Each party acknowledges that the disclosure of any Confidential Information, or any information which at law or equity ought to remain confidential, shall immediately give rise to continuing irreparable injury to the other party inadequately compensable in damages at law. Each party shall be entitled to obtain immediate injunctive and other equitable relief against the breach or threatened breach of any of the foregoing confidentiality undertakings (without the necessity to post a bond or to demonstrate the inadequacy of legal remedies), in addition to any other remedies which may be available. Customer hereby consents to the obtaining of such injunctive relief.

13. FERPA. Company acknowledges that personally identifiable information from an education record of a student will be disclosed to Company in connection with the Services, and that such disclosure is made by Customer to Company under the exception granted by Section 99.31(a)(1)(i)(B) of the Family Educational Rights and Privacy Act ("FERPA") whereby Company is considered to be a "school official" for purposes of FERPA. In connection therewith, Company hereby agrees to comply, at all times, with Section 99.33(a) of FERPA.

14. Indemnification.

a. Indemnity by Company. Company shall defend, indemnify and hold Customer harmless from and against any action, suit, or proceeding brought against Customer alleging that the Application infringes any United States patent, trademark or copyright, and Company shall indemnify and hold Customer, its officers, directors and employees, harmless against damages finally awarded against Customer, costs, expenses, and losses (including, without limitation, court costs and reasonable attorneys' fees and expenses) in connection with any such action, suit or proceeding; provided, that (i) Customer notifies Company promptly in writing of the claim in question, (ii) Company has sole control of the defense and all related settlement negotiations, and (iii) Customer provides Company with all commercially reasonable assistance, information and authority to perform the above at Company's expense. In the event that Customer's use of the Services is enjoined by a court of competent authority, Company shall, at its sole option and at its expense, either (I) procure for Customer the right to continue accessing and using of the Services or (II) modify the Services to avoid

infringement without material impairment of their functionality; provided, however, that if neither of the foregoing remedies can be obtained upon commercially reasonable terms, this Agreement shall terminate, and the sole liability of Company shall be to refund to Customer the pro rata portion of the fee for the unused portion of the Term. THIS SECTION STATES COMPANY' SOLE LIABILITY HEREUNDER WITH RESPECT TO INFRINGEMENT OF ANY INTELLECTUAL PROPERTY AND PROPRIETARY RIGHTS.

b. Indemnity by Customer. As permitted by law, Customer shall defend, indemnify and hold Company, its affiliates, and the respective members, managers, employees, or agents thereof, harmless from and against every liability, loss, claim, demand, proceeding, judgment, damage, expense, amount paid in settlement, costs and attorney's fees arising out of, relating to, or in any way connected with: (i) negligence, dishonest acts, willful misconduct, fraud, or unlawful conduct of Customer, its employees, subcontractors and agents in connection with the performance of its obligations pursuant to this Agreement; (ii) the use or operation of the Services by Customer, its employees, subcontractors and agents; (iii) the Customer's breach of its confidentiality obligations under this Agreement; (iv) the breach of any covenant specified in this Agreement by Customer, its employees, subcontractors and agents; (v) Customer's breach of applicable laws, rules, and regulations in the performance of its obligations under this Agreement or its use of the Services and any other services or materials provided under this Agreement; (vi) damages to property, including loss of use thereof and downtime resulting from Customer's negligence or willful misconduct in connection with the performance of its obligations pursuant to this Agreement; (vii) bodily injury, including death, resulting from Customer's use of information derived from the Services under this Agreement; and (viii) claims by any other party (including, without limitation, parents of children whose personal information is contained in the Customer's data) arising from or related to (A) the breach by Customer, its employees, subcontractors or agents of the data integrity, data security or privacy rights under this Agreement or under any applicable law including, but not limited to FERPA and NYS Education Law §2-d, or (B) the unauthorized disclosure of information under this Agreement or the treatment of such children by Customer, its employees, subcontractors and agents.

#### 15. General.

a. Amendments. This Agreement can only be modified by a written agreement duly signed by persons authorized to sign an Agreement on behalf of Customer and Company.

b. Unenforceability. If any provision of this Agreement shall be held to be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

c. Non-Assignability. Neither this Agreement nor the rights or obligations hereunder may be assigned by either party, by operation of law or otherwise, without the prior written consent of the other party, which consent shall not be unreasonably withheld, provided however that, unless prohibited by applicable law, either party may freely assign this Agreement (i) in connection with a merger, corporate reorganization, or sale of all or substantially all of its assets, stock, or securities, or change in control of the party, or (ii) to any entity which is a successor to the assets, stock, or the business of that party.

d. Governing Laws. This Agreement will be governed and construed by the laws of the State of Texas and the copyright laws of the United States, without giving effect to principles of conflicts of laws. Any and all disputes, demands or other claims involving the parties

arising under, or related to, this Agreement shall be resolved in the federal or state courts located in Harris County, State of Texas, which shall be the sole and exclusive forums for resolution of any and all such disputes, demands or claims of any kind.

e. Force Majeure. Except for payment of fees, non-performance by either party will be excused to the extent that performance is rendered impossible by strike, fire, flood, governmental acts or restrictions, failure of suppliers, or any other reason where failure to perform is beyond the control and not caused by the negligence of the non-performing party.

f. Survival. The provisions of Sections 6,7,12,13, and 15 shall survive the termination or expiration of this Agreement.

g. No Third Party Beneficiaries. The terms and provisions of this Agreement are intended solely for the benefit of each party and their respective successors or permitted assigns, and will not confer third-party beneficiary rights upon any other person or entity.

h. Disputes. Any and all disputes (with the exception of copyright claims) arising out of, under, or in connection with this Agreement (including without limitation, their validity, interpretation, performance, or breach) should be adjudicated exclusively in the federal or state courts located in (or having jurisdiction over) Cook County, Illinois. Copyright claims shall be adjudicated exclusively in a federal court located in (or having jurisdiction over) Cook County, County. Customer expressly consents to the jurisdiction of such courts. Customer expressly waives any claim of forum non conveniens.

IN WITNESS WHEREOF, the parties hereto have caused this Master Subscription Agreement to be duly executed and delivered as of the date set forth below.

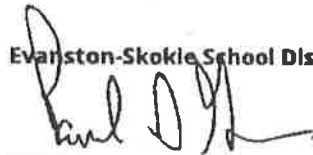
Date: March 25, 2019

**Branching Minds, Inc.**



David Magier  
Chief Operating Officer

**Evanston-Skokie School District 65**



By: PAUL GOREN  
Title: SUPERINTENDENT

## ADDENDUM A

### Data Sharing Agreement

THIS ADDENDUM A, effective simultaneously with the attached Master Subscription Agreement (the "Agreement") by and between "Branching Minds", a corporation organized and existing under the laws of "Branching Minds" (the "Company") and Evanston Skokie School District 65 (the "Customer"), is incorporated in the attached Agreement and modifies the Agreement (and all supplemental terms and conditions and policies applicable to the Agreement) as follows:

1. The Company shall cause each officer, director, employee and other representative who shall have access to any personally identifiable student record information of customer's students (hereinafter "Confidential Student Records") during the term of the Agreement (collectively, the "Authorized Representatives") to maintain in strict confidence and trust all Confidential Student Records. The Company shall take all reasonable steps to insure that no Confidential Student Records are disclosed to any person or entity except those who (i) are Authorized Representatives of the Company performing functions for the Customer under the Agreement; (ii) are authorized representatives of the Customer, or (iii) are entitled to such Confidential Student Records from the Company pursuant to federal and/or Illinois law. The Company shall use Confidential Student Records, and shall take all reasonable steps necessary to ensure that its Authorized Representatives shall use such records, solely for purposes related to and in fulfillment of the performance by the Company of its obligations pursuant to the Agreement.
2. The Company and the Customer agree that the purpose of this Addendum is to ensure compliance with the Family Educational Rights and Privacy Act ("FERPA") and the Illinois School Student Records Act ("ISSRA"). The Company is hereby identified as an entity acting for the Customer in the performance of functions that Customer's employees would otherwise perform.
3. The Company shall institute commercially reasonable physical and technical safeguards, no less rigorous than accepted industry practices (updated as such practices evolve), to protect the Confidential Student Records from unauthorized access or disclosure (a "Security Breach").
4. In the event of a Security Breach, the Company shall promptly institute the following:
  - i. Provide the Customer with the name and contact information for an employee of the Company who shall serve as the Customer's primary security contact and shall be available to assist customer twenty-four (24) hours per day, seven (7) days per week as a contact in resolving obligations associated with a Security Breach;

ii. Notify the Customer of a Security Breach as soon as practicable, but no later than twenty-four (24) hours after the Company becomes aware of it; and

Immediately following the Company's notification to the Customer of a Security Breach, the parties shall coordinate with each other to investigate the Security Breach. The Company agrees to fully cooperate with the Customer in the Customer's handling of the matter, including, without limitation:

- i. Assisting with any investigation;
- ii. Facilitating interviews with the Company's employees and other involved in the matter; and
- iii. Making available all relevant records, logs, files, data reporting and other materials required to comply with applicable law, regulation, or as otherwise reasonably required by the Customer.

5. Upon expiration of the term of the Agreement, or upon the earlier termination of the Agreement for any reason, the Company covenants and agrees that it promptly shall deliver to Customer, and shall take all reasonable steps necessary to cause each of its Authorized Representatives promptly to deliver to the Customer, all Confidential Student Records of Customer's students. The Company hereby acknowledges and agrees that, solely for purposes of receiving access to Confidential Student Records and of fulfilling its obligations pursuant to this provision and for no other purpose (including without limitation, entitlement to compensation and other employee benefits), the Company and its Authorized Representatives shall be deemed to be school officials of the Customer, and shall maintain the Confidential Student Records in accordance with all federal state and local laws, rules and regulations regarding the confidentiality of such records. The non-disclosure obligations of the Company and its Authorized Representatives regarding the information contained in the Confidential Student Records shall survive termination of the Agreement. The Company shall indemnify and hold harmless the Customer from and against any loss, claim, cost (including attorneys' fees) or damage of any nature arising from or in connection with a breach by the Company or any of its officers, directors, employees, agents or representatives of the obligations of the Company or its Authorized Representatives under this Addendum A.

6. The Company shall not sell or otherwise disclose to a third party any data received from the Customer's students. The Company shall in all respects comply with the applicable provisions of the Children's Online Privacy and Protection Act, as amended from time to time.



7. The Company shall not transmit to or store any data received from the Customer on a server or other data storage medium located outside the United States of America.

8. Any changes the Company may implement with respect to its privacy policies shall be ineffective and inapplicable with respect to the Customer unless the Customer is provided with notice of such changes. Student record access granted to parents/guardians of Customer's students must not be conditioned upon agreement by the parents/guardians to waive any of the student data confidentiality restrictions or a lessening of any of the confidentiality or privacy requirements contained in the Agreement or this Addendum.

ADDENDUM B

Services & Fee Schedule

July 1, 2018 through June 30, 2021

**Three Year Partnership K8:**

			License Term (Years)
Branching Minds Platform K8	7,953	\$6.00	\$47,718
Subtotal for Licenses			\$47,719
After volume discount 12%			\$41,993
Data & Technology Services	16	\$240	\$3,840
Instructional Leader Professional Learning (1/2 day onsite)	1	\$2,800	\$2,800
Coaches and Interventionists (1/2 day onsite)			
Intervention Team Professional Learning (Full Day Onsite)	1	\$2,800	\$2,800
Teacher Turnkey Support (PPTs and 1 Hour Webinar)	1	\$0	\$0
<b>Total Costs Year 1: Platform, Content &amp; PD</b>			<b>\$51,433</b>
<b>Total Costs Year 2+: Platform &amp; Content</b>			<b>\$45,833</b>

**School District  
Data Privacy Addendum with LAS Links (DRC)**

The provisions of this Data Privacy Addendum are a part of the agreement ("Agreement") between Evanston/Skokie Community Consolidated School District No. 65, Cook County, Illinois ("School District") and LAS Links (DRC) ("Company"). This Addendum supersedes the Agreement by adding to, deleting from, and modifying the Agreement. To the extent any provision in this Addendum results in any conflict or inconsistency between the Agreement and this Addendum, this Addendum shall govern and the term(s) of the Agreement that conflict(s) with this Addendum or are inconsistent with this Addendum shall be of no force or effect.

**1. Covered Data**

As used in this Addendum, "School District data" means any and all data or information collected, maintained, generated, or inferred that alone or in combination personally identifies an individual student or the student's parent or family, in accordance with the Family Educational Rights and Privacy Act, 34 C.F.R. § 99.3, and the Illinois School Student Records Act, 105 ILCS 10/2 and other non-public information, including student data, metadata, and user content.

**2. Compliance with State and Federal Law**

All data sharing, use, and storage will be performed in accordance with the requirements of the Family Educational Rights and Privacy Act of 1974 as amended, 20 U.S.C. § 1232g & 34 C.F.R. § 99 ("FERPA") and the Illinois School Student Records Act (ISSRA), 105 ILCS 10/1 *et seq.* & 23 IAC 375.

The Company acknowledges for the purposes of this Addendum that it will be designated as a "school official" with "legitimate educational interests" in the School District data, as those terms have been defined under FERPA and ISSRA and their implementing regulations.

To the extent that the Company's collection, use or disclosure of personal information from students is governed by the Children's Online Privacy Protection Act ("COPPA"), the Company agrees that the Company's use of the School District data will be solely for the benefit of the School District's students and for the school system, and that the operator will not collect personal information from students for any purpose other than the School District's purpose, including any other commercial purpose.

With respect to the Company's collection, disclosure, or use of School District data as governed by the Protection of Pupil Rights Amendment ("PPRA"), the Company agrees that such collection, disclosure, or use, and any use of any School District data, shall be for the exclusive purpose of developing, evaluating, or providing educational products or services for, or to, the School District's students or educational institutions.

With respect to any "Covered Information" as defined by the Illinois Student Online Personal Protection Act, the Company agrees to comply with the terms of that Act and refrain from using the Covered Information in any way prohibited by the Act.

With respect to any "Personal Information" as defined by the Illinois Children's Privacy Protection and Parental Empowerment Act, the Company agrees to comply with the terms of that Act to the extent applicable.

### 3. Company Obligations:

- 3.1 *Uses and Disclosures as Provided in the Agreement.* The Company may use and disclose the School District data provided by the School District only for the purposes described in the Agreement and only in a manner that does not violate local, state, or federal privacy laws and regulations. Only the individuals or classes of individuals will have access to the data that need access to the School District data to do the work described in the Agreement. The Company shall ensure that any subcontractors who may have access to School District data are contractually bound to follow the provisions of the Agreement.
- 3.2 *Nondisclosure Except as Provided in the Agreement.* The Company shall not use or further disclose the School District data except as stated in and explicitly allowed by the Agreement and state and federal law. The Company does not have permission to re-disclose School District data to a third party except as provided for in this Addendum, as required by law, or as authorized in writing by the School District.
- 3.3 *Safeguards.* The Company agrees to take appropriate administrative, technical and physical safeguards reasonably designed to protect the security, privacy, confidentiality, and integrity of School District data. The Company shall ensure that School District data are secured and encrypted to the greatest extent practicable during use, storage and/or transmission. The Company agrees to store and process the School District data in a manner that is no less protective than those methods used to secure the Company's own data. The Company agrees that School District data will be stored on equipment or systems located within the United States. The Company shall maintain complete and accurate records of these security measures and produce such records to the School District for purposes of audit upon reasonable prior notice during normal business hours. The School District reserves the right at its sole discretion to perform audits of the Company's storage of School District data at the School District's expenses to ensure compliance with the terms of the Agreement and this Addendum.
- 3.4 *Reasonable Methods.* The Company agrees to use "reasonable methods" to ensure to the greatest extent practicable that the Company and all parties accessing School District data are compliant with state and federal law.
- 3.5 *Privacy Policy.* The Company must publicly disclose material information about its collection, use, and disclosure of covered information, including, but not limited to, publishing a terms of service agreement, privacy policy, or similar document. Any changes the Company may implement with respect to its privacy policies or terms of use documents shall be ineffective and inapplicable with respect to the School District and/or School District data unless the School District affirmatively consents in writing to be bound by such changes. Access by students or parents/guardians to the Company's programs or services governed by the Agreement or to any School District data stored by the Company shall not be conditioned upon agreement by the parents/guardians to waive any of the student data confidentiality restrictions or a lessening of any of the confidentiality or privacy requirements contained in this Addendum.

- 3.6 *Data Return/Destruction.* Upon expiration of the term of the Agreement, upon the earlier termination of the Agreement for any reason, or upon the School District's request, the Company covenants and agrees that it promptly shall deliver to the School District, and shall return to the School District all School District data. If return of the data is not feasible or if School District agrees, then the Company shall destroy the data. School District data must be destroyed in a secure manner. The Company agrees to send a written certificate that the data was properly destroyed or returned within 30 days of the end of the Agreement or within 30 days of the School District's request for destruction. The Company shall destroy School District data in such a manner that it is permanently irretrievable in the normal course of business.
- 3.7 *Minimum Necessary.* The Company attests that the data requested by the Company from the School District in order for the School District to access the Company's products or services represents the minimum necessary data for the services as described in the Agreement and that only necessary individuals or entities who are familiar with and bound by this addendum will have access to the School District data in order to perform the work.
- 3.8 *Authorizations.* When necessary, the Company agrees to secure individual authorizations to maintain or use the School District data in any manner beyond the scope or after the termination of the Agreement.
- 3.9 *Data Ownership.* The School District is the data owner. The Company does not obtain any right, title, or interest in any of the data furnished by the School District.
- 3.10 *Misuse or Unauthorized Release.* The Company shall notify the School District as soon as possible upon discovering the misuse or unauthorized release of School District data held by the Company or one of its subcontractors, regardless of whether the misuse or unauthorized release is the result of a material breach of the Agreement.
- 3.11 *Data Breach.* In the event of a data breach, which means an unauthorized disclosure, access, alteration, or use of School District data or circumstances that could have resulted in such unauthorized disclosure, access, alteration or use, the Company shall promptly institute the following: (1) notify the School District by telephone and email as soon as practicable, but no later than twenty-four hours after the Company becomes aware of the data breach; (2) provide the School District with the name and contact information for an employee of the Company who shall serve as the Company's primary security contact; (3) assist the School District with any investigation, including interviews with Company employees and review of all relevant records; and (4) assist the School District with any notification the School District deems necessary related to the security breach. The Company shall not, unless required by law, provide any notices except to the School District without prior written permission from the School District. The Company shall reimburse and indemnify the School District for any costs imposed on the School District or reasonably undertaken by the School District at its discretion associated with a data breach, including reimbursement of fees paid by the School District related to providing credit monitoring to affected individuals and payment of legal fees, audit costs, fines, and other fees undertaken by the School District as a result of the security breach.
- 3.12 *Access to Data.* Any School District data in the possession or under the control of the Company shall be made available to the School District upon request by the Customer. The Company shall be responsible to provide copies of or access to School District's data in the

possession or under the control of the Company to the School District within a reasonable time frame and in all cases within time frames that will allow timely compliance by the School District with any statutorily or court ordered deadline. This includes requests under the Illinois Freedom of Information Act ("FOIA"), requests for student records under FERPA or ISSRA, requests for records in discovery in state or federal court or administrative proceedings, or any other request.

3.13 *[IF APPLICABLE] Service Levels.* The Company's products or services are provided 24 hours per day, 7 days per week. The Company shall ensure 99.5% up-time, Monday through Friday between 6 a.m. and 6 p.m. US Central Time ("Up-time"). Where Up-time percentage averages less than 99.5% in a calendar month, the School District shall have the right to terminate the Agreement immediately upon written notice to the School District and obtain a pro-rata reimbursement for its past payments to the School District and the School District shall be entitled to a refund of the School District's fees paid for the Services, as depreciated on a straight-line basis over a 12 month period commencing on the date the School District first had access to the Services through the date of termination.

3.14 *[IF APPLICABLE] Limited Warranty.* For the purposes of this Addendum, a "Defect" is defined as a failure of the Company's products or services to substantially conform to the then-current Company's User Guides materials. For as long as the Agreement is in place, the Company warrants that the Company's products or services will not contain Defects. If the products or services do not perform as warranted, the Company will use reasonable efforts, consistent with industry standards, to cure the Defect in accordance with the Company's then current support call process. Should the Company be unable to cure the Defect or provide a replacement product within five business days, the School District shall be entitled to a refund of its fees paid for the products or services, as depreciated on a straight-line basis over a 12-month period commencing on the date the School District first has access to the Company's products or services through the date of termination.

#### **4. Prohibited Uses**

- 4.1 The Company shall not sell School District data; use or share School District data for purposes of targeted advertising; or use School District data to create a personal profile of a student other than for accomplishing the purposes described in the Agreement.
- 4.2 Notwithstanding the previous paragraph, the Company may use School District data to ensure legal or regulatory compliance or take precautions against legal liability; respond to or participate in the judicial process; protect the safety of users or others on the Company's website, online service, or application; or investigate a matter related to public safety. The Company shall notify the School District as soon as possible of any use described in this paragraph.

#### **5. Miscellaneous**

- 5.1 *Indemnification and Insurance.* The Company agrees to indemnify, defend and hold harmless School District and its officers, directors, employees, agents, attorneys and assigns, against any third party claims, demands, actions, arbitrations, losses and liabilities resulting from damage caused by the Company employees, contractors, or subcontractors in performing the obligations under the Agreement or this Addendum. The Company shall maintain liability insurance evidencing that the Company has workers compensation

insurance as required by law and general liability insurance with a minimum limit of \$2,000,000. All insurers shall be licensed by the State of Illinois and rated A+-VII or better by A.M. Best or comparable rating service. The comprehensive general liability shall name the School District, its Board, Board members, employees, agents, and successors as an additional insured with a waiver of subrogation in favor of the School District. The Company shall provide the School District with certificates of insurance and/or copies of policies reasonably acceptable to the School District evidencing the existence of the coverage described above, including form and deductibles, during the duration of the Agreement. The failure to provide acceptable insurance shall be deemed a breach of the Agreement and the School district may immediately terminate the Agreement. Such certificates of insurance shall indicate that should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered to the School District in accordance with the policy provisions.

5.2 *No Indemnification or Limitation of Liability by School District.* Any provision included in the Agreement that requires the School District to indemnify the Company or any other party is deleted and shall not apply to the School District. Any provision in the Agreement that limits the Company's liability is deleted.

5.3 *Infringement.* The Company warrants that no third party has any claim to any trademark, patent, or proprietary interest in any product or services the Company provides to the School District. The Company will defend, hold harmless, and indemnify the School District from any claims brought by a third party against the School District to the extent based on an allegation that the Company product or services infringe any U.S. patent, copyright, trademark, trade secret or other proprietary right of a third party. If the School District's use of the Company's products is restricted as the result of a claim of infringement, the Company shall do one of the following: (i) substitute other equally suitable product or service; (ii) modify the allegedly infringing Company product or service to avoid the infringement; (iii) procure for the School District the right to continue to use the Company products or services free of the restrictions caused by the infringement; or (iv) take back such Company products or services and refund to the School District the license fee previously paid for the Company products depreciated on a straight line basis over 12 months and terminate the School District's license to use the Company's product.

5.4 *Taxes.* The School District is a tax exempt organization. Federal excise tax does not apply to the School District and State of Illinois Sales Tax does not apply. The amounts to be paid to the Company hereunder are inclusive of all other taxes that may be levied, including sales, use, nonresident, value-added, excise, and similar taxes levied or imposed upon the work. The Company shall be responsible for any taxes levied or imposed upon the income or business privileges of the Company.

5.5 *Payments.* The School District shall make payments to the Company in accordance with the Illinois Local Government Prompt Payment Act, 50 ILCS 505/1. If the School District is late in making a payment it shall make interest payments at the maximum amount permitted under the Illinois Local Government Prompt Payment Act, 50 ILCS 505/4.

5.6 *Governing Law.* This Addendum shall be governed by, construed, and enforced in accordance with the laws of the State of Illinois without regard to conflict of law principles. Jurisdiction and venue for all disputes hereunder shall be the Circuit Court located in Cook County, Illinois, or the federal district court for the Northern District of Illinois.

5.7 *Renewal of Agreement.* The parties may renew the Agreement and this Addendum in writing. Any provisions in the Agreement that provide for an automatic renewal of the Agreement are deleted.

5.8 *Termination.* The School District may immediately terminate the Agreement if the School District makes the determination that the Company has breached a material term of this Addendum.

5.9 *Effective Date.* The Addendum shall be deemed dated and become effective on the date the last of the parties signs as set forth below the signature of their duly authorized representatives.

Company:

David Magee

Date

3/25/19

District  
[Signature]

Date

3/22/19

Chief Operating Officer

Superintendent