Restriction on Use of Confidential Information Agreement

THIS RESTRICTION ON USE OF CONFIDENTIAL INFORMATION AGREEMENT, executed and effective as of the <u>30</u> day of <u>March</u>, 20 by and between <u>Infini-D Learning</u> (the "Independent Contractor"), and PROVO CITY SCHOOL DISTRICT ("PSD"), a public school system organized and existing under the laws of the state of Utah, as authorized by the Board of Education of PSD ("PSD School Board"), a body corporate and legal subdivision of the state under the laws of Utah, recites and provides as follows. Collectively, the Independent Contractor, PSD or PSD School Board are referred to hereinafter as "the Parties."

Recitals

Independent Contractor desires to enter into a Business Relationship or desires to continue under a current Business Relationship to provide services to the District that may require accessing information from the District. The parties desire to enter into this Agreement to allow the Independent Contractor such access to the information from the District upon the terms and conditions set forth below.

As such, the Independent Contractor and the PSD School Board are parties to a certain agreement entitled " <u>Data Non-disclosure Agreement</u>" hereafter referred to as the "Agreement".

The Independent Contractor and the PSD School Board agree that the purpose of such terms and conditions is to ensure compliance with the Family Educational Rights and Privacy Act (FERPA), Utah Code 53A-1, Part 14, and the overall privacy and security of student data, including Personally Identifiable Information (PII) as defined in 34 C.F.R. §99.3 and personally identifiable student data, as defined in Utah Code 53A-1-1402, hereafter referred to as "Student Information". Further, both parties agree terms and conditions shall apply to any employee information subject to the Health Insurance Portability and Accountability Act (HIPPA) and any data subject to the Government Records Management Act (GRAMA). A further purpose of this Agreement is to (a) identify of the Independent Contractor as an entity acting for the PSD School Board in its performance of functions that a PSD School Board employee otherwise would perform; and (b) establish procedures for the protection of Student/Employee Information, including procedures regarding the collection, use, storage, or sharing of Student/Employee Information and procedures regarding security and security breaches.

Agreement

The Parties understand, acknowledge, and agree to the following provisions:

<u>Confidentiality Obligations Applicable to Certain PSD Student and Employee Information</u>. The Independent Contractor hereby agrees that it shall maintain, in strict confidence and trust, all PSD Student and Employee Information. Student and Employee Information shall not be shared with any other resource or entity that is not specifically described in this Agreement.

The Independent Contractor shall cause each officer, director, employee and other representative who shall have access to PSD Student/employee Information during the term of the Agreement (collectively, the "Authorized Representatives") to maintain in strict confidence and trust all PSD Student/employee Information. The Independent Contractor shall take all reasonable steps to insure that no PSD Student/employee Information is disclosed to any person or entity except those who (a) are Authorized Representatives of the Independent Contractor performing functions for PSD under the Agreement and have agreed to be bound by the terms of this Agreement; (b) are authorized representatives of PSD, or (c) are entitled to such PSD Student/employee Information from the Independent Contractor pursuant to court order or federal and/or Utah law. The Independent Contractor shall use PSD Student/employee Information, and shall take all reasonable steps necessary to ensure that its Authorized Representatives shall use such information, solely for purposes related to and in fulfilment of the performance by the Independent Contractor of its obligations pursuant to the Agreement.

The Independent Contractor shall: (a) designate one of its Authorized Representatives to be responsible for ensuring that the Independent Contractor and its Authorized Representatives maintain the PSD Student/employee Information as confidential; (b) train the other Authorized Representatives with regard to their confidentiality responsibilities hereunder and pursuant to federal and Utah law; (c) maintain at all times a list of Authorized Representatives with access to PSD Student/employee Information which shall be accessible to PSD at any time. PSD may conduct periodic privacy audits to confirm that policies and procedures as outlined in this Agreement are being followed.

For the avoidance of doubt, the parties agree that confidential information excludes de-identified information from which the identity of a student cannot reasonably be obtained without personal knowledge of the relevant circumstances.

Prohibitions on the Use of Student/Employee Information. The Independent Contractor shall not engage in secondary use of Student/Employee Information. Student/Employee Information shall only be used for the purposes intended and shall not be shared, sold, or moved to other companies or organizations nor shall other companies or organization be allowed access to said information; however, the Independent Contractor may sell Student/employee Information if the Independent Contractor is acquired through the purchase or, merger with or other acquisition provided the Independent Contractor remains in compliance with this Agreement. The Independent Contractor may not collect or use Student/Employee Information if the collection or use such information is inconsistent with this Agreement. The Independent Contractor may not use Student/Employee Information for targeted advertising.

Allowed. The Independent Contractor may use Student Information for adaptive learning or customized student learning purposes. The Independent Contractor may market an educational application or product to a parent or legal guardian of a student if the Independent Contractor did not use the Student Information shared or collected on behalf of PSD to market the educational application or product. The Independent Contractor may use a recommendation engine to recommend to a student content or services that relates to learning or employment, within the Independent Contractor's internal application, if the recommendation is not motivated by payment or other consideration from another party. The Independent Contractor may respond to a student request for information or feedback if the content of the response is not motivated by payment or other consideration from another party. The Independent Contractor may use Student Information to allow or improve operability and functionality of the Independent Contractor's internal application. The Independent Contractor may identify for a student nonprofit institutions of higher education or scholarship providers that are seeking students who meet specific criteria, but only if the Independent Contractor obtains written consent of the parent or legal guardian or a student who is age of 18 or older or an emancipated minor.

Other Security Requirements. The Independent Contractor shall maintain all technologies, policies, procedures and practices necessary to secure and protect the confidentiality and integrity of PSD Student/employee Information, including procedures to (a) establish user IDs and passwords as necessary to protect such information; (b) protect all such user passwords from detection and unauthorized use; (c) prevent hostile or unauthorized intrusion that could result in data corruption, or deny service; (d) prevent and detect computer viruses from spreading to disks, attachments to e-mail, downloaded files, and documents generated by word processing and spreadsheet programs; (e) minimize system downtime; (f) notify PSD of planned system changes that may impact the security of PSD data; (g) return or destroy PSD data that exceed specified retention schedules or upon the request of PSD; (h) notify PSD of any data storage outside the United States; (i) in the event of system failure, enable immediate recovery of PSD Student/employee Information to the previous business day. The Independent

Contractor guarantees that PSD Student/employee Information shall not be sold to, accessed by, or moved by third parties.

In the event of a security breach, the Independent Contractor shall (a) promptly take action to close the breach; (b) notify PSD within 24 hours of Independent Contractor's first knowledge of the breach, the reasons for or cause of the breach, actions taken to close the breach, and identify the PSD Student/employee Information compromised by the breach; (c) return compromised PSD Student/employee Information for review; (d) provide communications on the breach to be shared with affected parties and cooperate with PSD efforts to communicate to affected parties by providing PSD with prior review of press releases and any communications to be sent to affected parties; (e) take all legally required, reasonable, and customary measures in working with PSD to remediate the breach which may include toll free telephone support with informed customer services staff to address questions by affected parties and/or provide monitoring services if necessary given the nature and scope of the disclosure; (f) cooperate with PSD by providing information, records and witnesses needed to respond to any government investigation into the disclosure of such records or litigation concerning the breach; and (g) provide PSD with notice within 24 hours of notice or service on Independent Contractor, whichever occurs first, of any lawsuits resulting from, or government investigations of, the Independent Contractor's handling of PSD Student/employee Information of any kind, failure to follow security requirements and/or failure to safeguard PSD Student/employee Information. The Independent Contractor's compliance with the standards of this provision is subject to verification by PSD personnel or its agent at any time during the term of the Agreement. The Independent Contractor shall indemnify and hold harmless the PSD School Board from and against any loss, claim, cost (including attorneys' fees) or damage of any nature arising from or in connection with the breach by the Independent Contractor or any of its officers, directors, employees, agents or representatives of the obligations of the Independent Contractor or its Authorized Representatives under this provision.

Independent Contractor agrees to indemnify, hold harmless, and defend the District and its board, officers, directors, agents, representatives, employees, assigns, affiliates, and successors in interest from and against any and all suits, claims, or causes of action, and Independent Contractor agrees to pay all charges, costs, damages, demands, expenses, attorney fees, costs of litigation, judgments, fines, penalties, liabilities, or losses of any kind or nature whatsoever, in each case that are paid or payable to a third party and that arise out of or are in any way connected with: (a) any unauthorized release of Confidential Information committed, encouraged, or facilitated by Independent Contractor, its officers, employees, affiliates, or agents; (b) Independent Contractor's failure to comply with this Agreement; (c) any violation of FERPA, GRAMA, HIPAA, or State law committed, encouraged, or facilitated by Independent Contractor, its officers, employees, affiliates, or agents; or (d) any release of Confidential Information resulting from a flaw, error, omission, defect, or lack of proper security measures in the software or service provided by Independent Contractor. Independent Contractor has no obligation to indemnify for any claim based on or arising out of the wrongful act or omission of the District or their officers, employees or agents. The obligations set forth in this Section are conditioned upon the party entitled to a defense of a third party claim ("Indemnified Party") notifying the other party ("Indemnifying Party") promptly in writing of any covered action, giving the Indemnifying Party sole control over the defense thereof and any related settlement negotiations, and cooperating and, at the Indemnifying Party's request and expense, assisting in such defense. The Indemnified Party may also participate in the defense at its own expense. Independent Contractor shall only be liable for reasonable attorney's fees and costs.

In an attempt to safeguard the District's reputation, community relations, and goodwill, Independent Contractor agrees to take all reasonably necessary steps to mitigate any damage or potential damage suffered by any third party, or indemnify or otherwise reimburse the District for all reasonable costs and expenditures made by the District to mitigate any damage or potential damage suffered by any third party as a result of (a) any unauthorized release of Confidential Information committed, encouraged, or facilitated by Independent Contractor, its officers, employees, affiliates, or agents; (b) Independent Contractor's failure to comply with this Agreement; (c) any violation of FERPA, GRAMA, HIPAA or State law committed, encouraged, or facilitated by Independent Contractor, its officers, employees, affiliates, or agents; or (d) any release of Confidential Information resulting from a flaw, error, omission, defect, or lack of proper security measures in the software or service provided by Independent Contractor.

Disposition of PSD Student/employee Information Upon Termination of Agreement

Upon expiration of the term of the Agreement, or upon the earlier termination of the Agreement for any reason, the Independent Contractor agrees that it promptly shall deliver to the PSD School Board, with the exception of de-identified data, and shall take all reasonable steps necessary to cause each of its Authorized Representatives promptly to deliver to the PSD School Board, all required PSD Student/employee Information or proof that all student/employee information has been

deleted. The Independent Contractor hereby acknowledges and agrees that, solely for purposes of receiving access to PSD Student/employee Information 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 Independent Contractor and its Authorized Representatives shall be deemed to be school officials of the PSD School Board, and shall maintain PSD data in accordance with all federal, state, and local laws, rules and regulations regarding the confidentiality of such records. The non-disclosure obligations of the Independent Contractor and its Authorized Representatives regarding the information contained in PSD Student/employee Information shall survive termination of the Agreement. Certain residual data may persist in backups that are not used or accessed in the ordinary course of business, and which are overwritten according to the standard retention schedule for backup datasets. To the extent that such backups are restored, the de-identification process(es) shall be re-executed so that such residual data in the restored backup is deleted or destroyed

Certain Representations and Warranties. The Independent Contractor hereby represents and warrants as follows: (a) the Independent Contractor has full power and authority to execute this Agreement and to perform its obligations hereunder and thereunder; (b) the Agreement constitutes valid and binding obligations of the Independent Contractor, enforceable in accordance with their respective terms, except as such enforceability may be limited by bankruptcy or similar laws affecting the rights of creditors and general principles of equity; and (c) the Independent Contractor's execution and delivery of the Agreement and compliance with its respective terms will not violate or constitute a default under, or require the consent of any third party to, any agreement or court order to which the Independent Contractor is a party or by which it may be bound.

Governing Law; Venue. Notwithstanding any provision contained in the Agreement to the contrary, (a) the Agreement shall be governed by and construed in accordance with the laws of the State of Utah, without reference to conflict of laws principles; and (b) any dispute hereunder which is not otherwise resolved by the parties hereto shall be decided by a court of competent jurisdiction located in the State of Utah.

IN WITNESS WHEREOF, the parties hereto have caused this Addendum to be executed by their duly authorized officers effective as of the date first written above.

Contractor:_____Infini-D Learning_____

By: _____ Date:____3/30/21_____

[Name] ____Brooks Heder_____ [Title] _____Co-founder_____

PROVO CITY SCHOOL DISTRICT

By: _Clint Smith_____

[Name] Clint Smith   [Title] Data Privacy Coordinator