WISCONSIN STUDENT DATA PRIVACY AGREEMENT

School District/Local Education Agency:

School District of the Menomonie Area

AND

Provider:

MakeMusic, Inc.

Date:

August 2, 2024

This Wisconsin Student Data Privacy Agreement ("DPA") is entered into by and between the School District of the Menomonie Area (hereinafter referred to as "LEA") and MakeMusic (hereinafter referred to as "Provider") on August 2, 2024. The Parties agree to the terms as stated herein.

RECITALS

WHEREAS, the Provider has agreed to provide the Local Education Agency ("LEA") with certain digital educational services ("Services") pursuant to a contract dated August 2, 2024 ("Service Agreement"); and

WHEREAS, in order to provide the Services described in the Service Agreement, the Provider may receive or create, and the LEA may provide documents or data that are covered by several federal statutes, among them, the Family Educational Rights and Privacy Act ("FERPA") at 20 U.S.C. 1232g and 34 CFR Part 99, Children's Online Privacy Protection Act ("COPPA"), 15 U.S.C. 6501-6506; Protection of Pupil Rights Amendment ("PPRA") 20 U.S.C. 1232h; and

WHEREAS, the documents and data transferred from LEAs and created by the Provider's Services are also subject to Wisconsin state student privacy laws, including pupil records law under Wis. Stat. § 118.125 and notice requirements for the unauthorized acquisition of personal information under Wis. Stat. § 134.98; and

WHEREAS, for the purposes of this DPA, Provider is a school district official with legitimate educational interests in accessing educational records pursuant to the Service Agreement; and

WHEREAS, the Parties wish to enter into this DPA to ensure that the Service Agreement conforms to the requirements of the privacy laws referred to above and to establish implementing procedures and duties; and

WHEREAS, the Provider may, by signing the "General Offer of Privacy Terms" (Exhibit "E"), agree to allow other LEAs in Wisconsin the opportunity to accept and enjoy the benefits of this DPA for the Services described herein, without the need to negotiate terms in a separate DPA.

NOW THEREFORE, for good and valuable consideration, the parties agree as follows:

ARTICLE I: PURPOSE AND SCOPE

1. **Purpose of DPA**. The purpose of this DPA is to describe the duties and responsibilities to protect student data transmitted to Provider from LEA pursuant to the Service Agreement, including compliance with all applicable statutes, including the FERPA, PPRA, COPPA, and applicable Wisconsin law, all as may be amended from time to time. In performing these services, the Provider shall be considered a School District Official with a legitimate educational interest, and performing services otherwise provided by the LEA. With respect to the use and maintenance of Student Data, Provider shall be under the direct control and supervision of the LEA.

2. **Nature of Services Provided**. The Provider has agreed to provide the following digital educational products and services described below and as may be further outlined in Exhibit "A" hereto: see Exhibit A

3. **Student Data to Be Provided**. The Parties shall indicate the categories of student data to be provided in the Schedule of Data, attached hereto as Exhibit "B".

4. **DPA Definitions**. The definition of terms used in this DPA is found in Exhibit "C". In the event of a conflict, definitions used in this DPA shall prevail over term used in the Service Agreement.

ARTICLE II: DATA OWNERSHIP AND AUTHORIZED ACCESS

1. **Student Data Property of LEA**. All Student Data transmitted to the Provider pursuant to the Service Agreement is and will continue to be the property of and under the control of the LEA. The Provider further acknowledges and agrees that all copies of such Student Data transmitted to the Provider, including any modifications or additions or any portion thereof from any source, are subject to the provisions of this Agreement in the same manner as the original Student Data. The Parties agree that as between them, all rights, including all intellectual property rights in and to Student Data contemplated per the Service Agreement shall remain the exclusive property of the LEA. For the purposes of FERPA, the Provider shall be considered a School District Official, under the control and direction of the LEAs as it pertains to the use of Student Data notwithstanding the above. Provider may transfer pupil-generated content to a separate account, according to the procedures set forth below.

2. **Parent Access**. LEA shall establish reasonable procedures by which a parent, legal guardian, or eligible student may review Student Data in the pupil's records, correct erroneous information, and procedures for the transfer of pupil-generated content to a personal account, consistent with the functionality of services. Provider shall respond in a timely manner (and no later than 30 days from the date of the request) to the LEA's request for Student Data in a pupil's records held by the Provider to view or correct as necessary. In the event that a parent of a pupil or other individual contacts the Provider to review any of the Student Data accessed pursuant to the Services, the Provider shall refer the parent or individual to the LEA, who will follow the necessary and proper procedures regarding the requested information.

3. **Separate Account**. If pupil generated content is stored or maintained by the Provider as part of the Services described in Exhibit "A", Provider shall, at the request of the LEA, transfer said pupil generated content to a separate student account upon termination of the Service Agreement; provided, however, such transfer shall only apply to pupil generated content that is severable from the Service.

4. **Third Party Request**. Should a Third Party, including law enforcement and government entities, contact Provider with a request for data held by the Provider pursuant to the Services, the Provider shall redirect the Third Party to request the data directly from the LEA. Provider shall notify the LEA as soon as possible in advance of a compelled disclosure to a Third Party.

5. **Subprocessors**. Provider shall enter into written agreements with all Subprocessors performing functions pursuant to the Service Agreement, whereby the Subprocessors agree to protect Student Data in manner consistent with the terms of this DPA, as well as state and federal law.

ARTICLE III: DUTIES OF LEA

1. **Privacy Compliance**. LEA shall provide data for the purposes of the Service Agreement in compliance with FERPA, COPPA, PPRA, and applicable Wisconsin law.

2. **Annual Notification of Rights**. The LEA shall include a specification of criteria under FERPA for determining who constitutes a school official and what constitutes a legitimate educational interest in its Annual notification of rights.

3. **Reasonable Precautions**. LEA shall take reasonable precautions to secure usernames, passwords, and any other means of gaining access to the services and hosted data.

4. **Unauthorized Access Notification**. LEA shall notify Provider promptly of any known or suspected unauthorized access. LEA will assist Provider in any efforts by Provider to investigate and respond to any unauthorized access.

ARTICLE IV: DUTIES OF PROVIDER

1. **Privacy Compliance**. The Provider shall comply with all applicable state and federal laws and regulations pertaining to data privacy and security, including FERPA, COPPA, PPRA, and applicable Wisconsin law.

2. **Authorized Use**. The data shared pursuant to the Service Agreement, including persistent unique identifiers, shall be used for no purpose other than the Services stated in the Service Agreement and/or otherwise authorized under the statutes referred to in subsection (1), above. Provider also acknowledges and agrees that it shall not make any re-disclosure of any Student Data or any portion thereof, including without limitation, meta data, user content or other non-public information and/or personally identifiable information contained in the Student Data, without the express written consent of the LEA.

3. **Employee Obligation**. Provider shall require all employees and agents who have access to Student Data to comply with all applicable provisions of this DPA with respect to the data shared under the Service Agreement.

4. **No Disclosure**. Provider shall not copy, reproduce or transmit any data obtained under the Service Agreement and/or any portion thereof, except as necessary to fulfill the Service Agreement.

5. **Disposition of Data**. Upon written request and in accordance with the applicable terms in subsection a or b, below, Provider shall dispose or delete all Student Data obtained under the Service Agreement when it is no longer needed for the purpose for which it was obtained. Disposition shall

include (1) the shredding of any hard copies of any student data; (2) erasing; or (3) otherwise modifying the personal information in those records to make it unreadable or indecipherable by human or digital means. Nothing in the Service Agreement authorizes Provider to maintain Student Data obtained under the Service Agreement beyond the time period reasonably needed to complete the disposition. Provider shall provide written notification to LEA when the Student Data has been disposed. The duty to dispose of Student Data shall not extend to data that has been de-identified or placed in a separate Student account, pursuant to the other terms of the DPA. The LEA may employ a "Request for Return or Deletion of Student Data" form, a copy of which is attached hereto as Exhibit "D". Upon receipt of a request from the LEA, the Provider will immediately provide the LEA with any specified portion of the Student Data within ten (10) calendar days of receipt of said request.

a. **Partial Disposal During Term of Service Agreement.** Throughout the Term of the Service Agreement, LEA may request partial disposal of Student Data obtained under the Service Agreement that is no longer needed. Partial disposal of data shall be subject to LEA's request to transfer data to a separate account, pursuant to Article II, section 3, above.

b. **Complete Disposal Upon Termination of Service Agreement.** Upon Termination of the Service Agreement Provider shall dispose or delete all Student Data obtained under the Service Agreement. Prior to disposition of the data, Provider shall notify LEA in writing of its option to transfer data to a separate account, pursuant to Article II, section 3, above. In no event shall Provider dispose of data pursuant to this provision unless and until Provider has received affirmative written confirmation from LEA that data will not be transferred to a separate account.

6. **Advertising Prohibition**. Provider is prohibited from using or selling Student Data to (a) market or advertise to students or families/guardians; (b) inform, influence, or enable marketing, advertising, or other commercial efforts by a Provider; (c) develop a profile of a student, family member/guardian or group, for any commercial purpose other than providing the Service to LEA; or (d) use the Student Data for the development of commercial products or services, other than as necessary to provide the Service to LEA. This section does not prohibit Provider from using Student Data for adaptive learning or customized student learning purposes.

ARTICLE V: DATA PROVISIONS

1. **Data Security**. The Provider agrees to abide by and maintain adequate data security measures, consistent with industry standards and technology best practices, to protect Student Data from unauthorized disclosure or acquisition by an unauthorized person. The general security duties of Provider are set forth below. Provider may further detail its security programs and measures in Exhibit "F" hereto. These measures shall include, but are not limited to:

a. **Passwords and Employee Access.** Provider shall secure usernames, passwords, and any other means of gaining access to the Services or to Student Data, at a level suggested by the applicable standards, as set forth in Article 4.3 of NIST 800-63-3. Provider shall only provide access to Student Data to employees or contractors that are performing the Services. Employees with access to Student Data shall have signed confidentiality

agreements regarding said Student Data. All employees with access to Student Records shall be subject to criminal background checks in compliance with state and local ordinances.

b. **Destruction of Data**. Provider shall destroy or delete all Student Data obtained under the Service Agreement when it is no longer needed for the purpose for which it was obtained, or transfer said data to LEA or LEA's designee, according to the procedure identified in Article IV, section 5, above. Nothing in the Service Agreement authorizes Provider to maintain Student Data beyond the time period reasonably needed to complete the disposition.

c. **Security Protocols**. Both parties agree to maintain security protocols that meet industry standards in the transfer or transmission of any data, including ensuring that data may only be viewed or accessed by parties legally allowed to do so. Provider shall maintain all data obtained or generated pursuant to the Service Agreement in a secure digital environment and not copy, reproduce, or transmit data obtained pursuant to the Service Agreement, except as necessary to fulfill the purpose of data requests by LEA.

d. **Employee Training**. The Provider shall provide periodic security training to those of its employees who operate or have access to the system. Further, Provider shall provide LEA with contact information of an employee who LEA may contact if there are any security concerns or questions.

e. **Security Technology**. When the service is accessed using a supported web browser, Provider shall employ industry standard measures to protect data from unauthorized access. The service security measures shall include server authentication and data encryption. Provider shall host data pursuant to the Service Agreement in an environment using a firewall that is updated according to industry standards.

f. **Security Coordinator**. If different from the designated representative identified in Article VII, section 5, Provider shall provide the name and contact information of Provider's Security Coordinator for the Student Data received pursuant to the Service Agreement.

g. **Subprocessors Bound**. Provider shall enter into written agreements whereby Subprocessors agree to secure and protect Student Data in a manner consistent with the terms of this Article V. Provider shall periodically conduct or review compliance monitoring and assessments of Subprocessors to determine their compliance with this Article.

h. **Periodic Risk Assessment**. Provider further acknowledges and agrees to conduct digital and physical periodic (no less than semi-annual) risk assessments and remediate any identified security and privacy vulnerabilities in a timely manner.

2. **Data Breach**. In the event that Student Data is accessed or obtained by an unauthorized individual, Provider shall provide notification to LEA within a reasonable amount of time of the

incident, and not exceeding forty-eight (48) hours. Provider shall follow the following process:

a. The security breach notification shall be written in plain language, shall be titled "Notice of Data Breach," and shall present the information described herein under the following headings: "What Happened," "What Information Was Involved," "What We Are Doing," "What You Can Do," and "For More Information." Additional information may be provided as a supplement to the notice.

b. The security breach notification described above in section 2(a) shall include, at a minimum, the following information:

i. The name and contact information of the reporting LEA subject to this section.
ii. A list of the types of personal information that were or are reasonably believed to have been the subject of a breach.
iii. If the information is possible to determine at the time the notice is provided, then either (1) the date of the breach, (2) the estimated date of the breach, or (3) the date range within which the breach occurred. The notification shall also include the date of the notice.
iv. Whether the notification was delayed because of a law enforcement investigation, if that information is possible to determine at the time the notice is provided.
v. A general description of the breach incident, if that information is possible to determine at the time the notice is provided.

c. At LEA's discretion, the security breach notification may also include any of the following:

i. Information about what the agency has done to protect individuals whose information has been breached.
ii. Advice on steps that the person whose information has been breached may take to protect himself or herself.

d. Provider agrees to adhere to all requirements in applicable state and federal law with respect to a data breach related to the Student Data, including, when appropriate or required, the required responsibilities and procedures for notification and mitigation of any such data breach.

e. Provider further acknowledges and agrees to have a written incident response plan that reflects best practices and is consistent with industry standards and federal and state law for responding to a data breach, breach of security, privacy incident or unauthorized acquisition or use of Student Data or any portion thereof, including personally identifiable information and agrees to provide LEA, upon request, with a copy of said written incident response plan.

f. Provider is prohibited from directly contacting parent, legal guardian or eligible pupil unless expressly requested by LEA. If LEA requests Provider's assistance providing notice of unauthorized access, and such assistance is not unduly burdensome to Provider, Provider shall notify the affected parent, legal guardian or eligible pupil of the unauthorized access,

which shall include the information listed in subsections (b) and (c), above. If requested by LEA, Provider shall reimburse LEA for costs incurred to notify parents/families of a breach not originating from LEA's use of the Service.

g. In the event of a breach originating from LEA's use of the Service, Provider shall cooperate with LEA to the extent necessary to expeditiously secure Student Data.

ARTICLE VI- GENERAL OFFER OF PRIVACY TERMS

Provider may, by signing the attached Form of General Offer of Privacy Terms (General Offer, attached hereto as Exhibit "E"), be bound by the terms of this DPA to any other LEA who signs the acceptance on in said Exhibit. The Form is limited by the terms and conditions described therein.

ARTICLE VII: MISCELLANEOUS

1. Term. The Provider shall be bound by this DPA for the duration of the Service Agreement or so long as the Provider maintains any Student Data.

2. Termination. In the event that either party seeks to terminate this DPA, they may do so by mutual written consent so long as the Service Agreement has lapsed or has been terminated. LEA shall have the right to terminate the DPA and Service Agreement in the event of a material breach of the terms of this DPA.

3. Effect of Termination Survival. If the Service Agreement is terminated, the Provider shall destroy all of LEA's data pursuant to Article V, section 1(b), and Article II, section 3, above.

4. Priority of Agreements. This DPA shall govern the treatment of student data in order to comply with privacy protections, including those found in FERPA and all applicable privacy statutes identified in this DPA. In the event there is conflict between the DPA and the Service Agreement, the DPA shall apply and take precedence. Except as described in this paragraph herein, all other provisions of the Service Agreement shall remain in effect.

5. Notice. All notices or other communication required or permitted to be given hereunder must be in writing and given by personal delivery, or e-mail transmission (if contact information is provided for the specific mode of delivery), or first-class mail, postage prepaid, sent to the designated representatives before:

a. Designated Representatives

The designated representative for the LEA for this Agreement is:

Name: Katherine Krueger
Title: Director of Technology

Contact Information:
katherine_krueger@msd.k12.wi.us

715-233-3219

The designated representative for the Provider for this Agreement is:

Name: Christopher Pany
Title: Contracts Manager

Contact Information:
contracts@makemusic.com
720-951-3664
285 Century Pl, Louisville, CO 80027

b. Notification of Acceptance of General Offer of Privacy Terms. Upon execution of Exhibit "E", General Offer of Privacy Terms, Subscribing LEA shall provide notice of such acceptance in writing and given by personal delivery, or e-mail transmission (if contact information is provided for the specific mode of delivery), or first-class mail, postage prepaid, to the designated representative below.

The designated representative for notice of acceptance of the General Offer of Privacy Terms is:

Name: Katherine Krueger
Title: Director of Technology

Contact Information:
katherine_krueger@msd.k12.wi.us
715-233-3219

6. Entire Agreement. This DPA constitutes the entire agreement of the parties relating to the subject matter hereof and supersedes all prior communications, representations, or agreements, oral or written, by the parties relating thereto. This DPA may be amended and the observance of any provision of this DPA may be waived (either generally or in any particular instance and either retroactively or prospectively) only with the signed written consent of both parties. Neither failure nor delay on the part of any party in exercising any right, power, or privilege hereunder shall operate as a waiver of such right, nor shall any single or partial exercise of any such right, power, or privilege preclude any further exercise thereof or the exercise of any other right, power, or privilege.

7. Severability. Any provision of this DPA that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this DPA, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Notwithstanding the foregoing, if such provision could be more narrowly drawn so as not to be prohibited or unenforceable in such jurisdiction while, at the same time, maintaining the intent of the parties, it shall, as to such jurisdiction, be so narrowly drawn without invalidating the remaining provisions of this DPA or affecting the validity or enforceability of such provision in any other jurisdiction.

8. Governing Law; Venue and Jurisdiction. THIS DPA WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF WISCONSIN, WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES. EACH PARTY CONSENTS AND SUBMITS TO THE SOLE AND EXCLUSIVE JURISDICTION TO THE STATE AND FEDERAL COURTS FOR THE COUNTY IN WHICH THIS AGREEMENT IS FORMED FOR ANY DISPUTE ARISING OUT OF OR RELATING TO THIS SERVICE AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

9. Authority. Provider represents that it is authorized to bind to the terms of this Agreement, including confidentiality and destruction of Student Data and any portion thereof contained therein, all related or associated institutions, individuals, employees or contractors who may have access to the Student Data and/or any portion thereof, or may own, lease or control equipment or facilities of any kind where the Student Data and portion thereof stored, maintained or used in any way. Provider agrees that any purchaser of the Provider shall also be bound to the Agreement.

10.Waiver. No delay or omission of the LEA to exercise any right hereunder shall be construed as a waiver of any such right and the LEA reserves the right to exercise any such right from time to time, as often as may be deemed expedient.

11.Successors Bound. This DPA is and shall be binding upon the respective successors in interest to Provider in the event of a merger, acquisition, consolidation or other business reorganization or sale of all or substantially all of the assets of such business.

[*Signature Page Follows*]

IN WITNESS WHEREOF, the parties have executed this Wisconsin Student Data Privacy Agreement as of the last day noted below.

Provider: MakeMusic, Inc.

BY: Christopher Pany 2024.08.05 11:44:14 -06'00' Date: 08/05/24

Printed Name: Christopher Pany Title/Position: Contracts Manager

Local Education Agency: School District of the Menomonie Area

BY: Katherine Krueger Date: 8/5/2024

Printed Name: Katherine Krueger Title/Position: Director of Technology

EXHIBIT "A"

DESCRIPTION OF SERVICES

MakeMusic Cloud is a web-based suite of music education tools that support efficient practice, helping musicians to develop and grow. It allows teachers to provide students with individual instruction/assignments and customized feedback necessary for improvement. Students are able to hear their part in context with MakeMusic Cloud's professional background accompaniment, giving them a pitch and rhythmic reference when practicing at home. Users with Performer or paid Teacher subscriptions can print thousands of titles from key music education publishers via the Print Add-Ons functionality.

Students may see which notes and rhythms they played correctly/incorrectly, receive a performance score, and hear their recording. MakeMusic Cloud's content library includes 150+ method books, 5,400+ ensemble titles, and thousands of solos from top publishers. A metronome, tuner, and the ability to loop sections are built in and always close at hand. Both teachers and students can see each others' written comments on every assignment and student recording.

Teachers can instantly create an unlimited number of sight-reading exercises for any type of ensemble or individual instruments. They can provide students with the context of how their part fits in and an opportunity to model their performances after world-class musicians. Users may create their own custom notation as well as import and export MusicXML files between most popular music notation products. Teachers using the Compose notation tool can share compositions privately and publicly with their performers. Teachers may track student progress in MakeMusic Cloud's online Gradebook, accessing student recordings, assignments, and performance scores. Likewise they may customize rubrics with the criteria that matters for their curriculum, collect assignments into units, and easily assign those units to multiple classes. MakeMusic Cloud allows teachers to track student practice time – down to the second. MakeMusic Cloud works on devices students use today, including computers, Chromebooks, and iPads. Colors may be adjusted to ensure that people who see colors differently have equal access.

EXHIBIT "B"

SCHEDULE OF DATA

Category of Data	Elements	Check if used by your system
Application Technology Meta Data	IP Addresses of users, Use of cookies etc.	X
	Other application technology meta data-Please specify:	
Application Use Statistics	Meta data on user interaction with application	X
Assessment	Standardized test scores	
	Observation data	
	Other assessment data-Please specify: *see below	X
Attendance	Student school (daily) attendance data	
	Student class attendance data	
Communications	Online communications that are captured (emails, blog entries)	X
Conduct	Conduct or behavioral data	
Demographics	Date of Birth	
	Place of Birth	
	Gender	
	Ethnicity or race	
	Language information (native, preferred or primary language spoken by student)	
	Other demographic information-Please specify:	
Enrollment	Student school enrollment	X
	Student grade level	
	Homeroom	
	Guidance counselor	
	Specific curriculum programs	
	Year of graduation	
	Other enrollment information-Please specify:	
Parent/Guardian Contact Information	Address	
	Email	
	Phone	
Parent/Guardian ID	Parent ID number (created to link parents	

Category of Data	Elements	Check if used by your system
	to students)	
Parent/Guardian Name	First and/or Last	
Schedule	Student scheduled courses	X
	Teacher names	X
Special Indicator	English language learner information	
	Low income status	
	Medical alerts /health data	
	Student disability information	
	Specialized education services (IEP or 504)	
	Living situations (homeless/foster care)	
	Other indicator information- Please specify:	
Student Contact Information	Address	
	Email	
	Phone	
Student Identifiers	Local (School district) ID number	X
	State ID number	
	Vendor/App assigned student ID number	X
	Student app username	X
	Student app passwords	X
Student Name	First and/or Last	X
Student In App Performance	Program/application performance (typing program-student types 60 wpm, reading program-student reads below grade level)	X
Student Program Membership	Academic or extracurricular activities a student may belong to or participate in	
Student Survey Responses	Student responses to surveys or questionnaires	X
Student work	Student generated content; writing, pictures etc.	X
	Other student work data - Please specify:	

Category of Data	Elements	Check if used by your system
Transcript	Student course grades	X
	Student course data	X
	Student course grades/performance scores	X
	Other transcript data -Please specify:	
Transportation	Student bus assignment	
	Student pick up and/or drop off location	
	Student bus card ID number	
	Other transportation data -Please specify:	
Other	Please list each additional data element used, stored or collected by your application	X

No Student Data Collected at this time _____.
*Provider shall immediately notify LEA if this designation is no longer applicable.

OTHER: Use this box, if more space needed

*Assignment "Other":

Data collected for assessments:
Audio and/or video recordings of the student performing, visual representation of the student's performance of the performance (red, green, yellow notes) and an automated grade, if applicable.

Other:

For students we capture the following additional information: Time zone, backup email address (optional), role (teacher, student or other), country, marketing opt-in (for users over the age of 13 unless restricted contractually and this field is optional), if student is over the age of 13 (COPPA compliance), primary instrument and secondary instrument (optional).

For parents purchasing a MakeMusic Cloud subscription via credit card, we collect the following information: first and last name, street address, country, zip code, credit card number, email address and phone number. Credit cards are processed by BrainTree, a third-party vendor.

For platform owners/admins/and teachers, we collect the following information: the institution name, and class name.
For customers submitting purchase information via our quote site , we collect the following information: First and last name, email address, billing email address, billing address, physical address, zip code, phone number, school name, district name, country, city, state, age verification (over the age of 18), role (admin, teacher,

EXHIBIT "C"

DEFINITIONS

De-Identifiable Information (DII): De-Identification refers to the process by which the Provider removes or obscures any Personally Identifiable Information ("PII") from student records in a way that removes or minimizes the risk of disclosure of the identity of the individual and information about them.

Educational Records: Educational Records are official records, files and data directly related to a student and maintained by the school or local education agency, including but not limited to, records encompassing all the material kept in the student's cumulative folder, such as general identifying data, records of attendance and of academic work completed, records of achievement, and results of evaluative tests, health data, disciplinary status, test protocols and individualized education programs. For purposes of this DPA, Educational Records are referred to as Student Data.

NIST: Draft National Institute of Standards and Technology ("NIST") Special Publication Digital Authentication Guideline.

Operator: The term "Operator" means the operator of an Internet Website, online service, online application, or mobile application with actual knowledge that the site, service, or application is used primarily for K–12 school purposes and was designed and marketed for K–12 school purposes. For the purpose of the Service Agreement, the term "Operator" is replaced by the term "Provider." This term shall encompass the term "Third Party," as it is found in applicable state statutes.

Personally Identifiable Information (PII): The terms "Personally Identifiable Information" or "PII" shall include, but are not limited to, student data, metadata, and user or pupil-generated content obtained by reason of the use of Provider's software, website, service, or app, including mobile apps, whether gathered by Provider or provided by LEA or its users, students, or students' parents/guardians. PII includes Indirect Identifiers, which is any information that, either alone or in aggregate, would allow a reasonable person to be able to identify a student to a reasonable certainty. For purposes of this DPA, Personally Identifiable Information shall include the categories of information listed in the definition of Student Data.

Provider: For purposes of the Service Agreement, the term "Provider" means provider of digital educational software or services, including cloud-based services, for the digital storage, management, and retrieval of pupil records. Within the DPA the term "Provider" includes the term "Third Party" and the term "Operator" as used in applicable state statutes.

Pupil Generated Content: The term "pupil-generated content" means materials or content created by a pupil during and for the purpose of education including, but not limited to, essays, research reports, portfolios, creative writing, music or other audio files, photographs, videos, and account information that enables ongoing ownership of pupil content.

Pupil Records: Means all of the following: (1) Any information that directly relates to a pupil that

is maintained by LEA;(2) any information acquired directly from the pupil through the use of instructional software or applications assigned to the pupil by a teacher or other LEA employee; and any information that meets the definition of a "pupil record" under Wis. Stat. § 118.125(1)(d). For the purposes of this Agreement, Pupil Records shall be the same as Educational Records, Student Personal Information and Covered Information, all of which are deemed Student Data for the purposes of this Agreement.

Service Agreement: Refers to the Contract or Purchase Order to which this DPA supplements and modifies.

School District Official: For the purposes of this Agreement and pursuant to 34 CFR 99.31 (B) and Wis. Stat. § 118.125(2)(d), a School District Official is a contractor that: (1) Performs an institutional service or function for which the agency or institution would otherwise use employees; (2) Is under the direct control of the agency or institution with respect to the use and maintenance of education records; and (3) Is subject to 34 CFR 99.33(a) and Wis. Stat. § 118.125(2) governing the use and re-disclosure of personally identifiable information from student records.

Student Data: Student Data includes any data, whether gathered by Provider or provided by LEA or its users, students, or students' parents/guardians, that is descriptive of the student including, but not limited to, information in the student's educational record or email, first and last name, home address, telephone number, email address, or other information allowing online contact, discipline records, videos, test results, special education data, juvenile dependency records, grades, evaluations, criminal records, medical records, health records, social security numbers, biometric information, disabilities, socioeconomic information, food purchases, political affiliations, religious information text messages, documents, student identifies, search activity, photos, voice recordings or geolocation information. Student Data shall constitute Pupil Records for the purposes of this Agreement, and for the purposes of Wisconsin and federal laws and regulations. Student Data as specified in Exhibit "B" is confirmed to be collected or processed by the Provider pursuant to the Services. Student Data shall not constitute that information that has been anonymized or de-identified, or anonymous usage data regarding a student's use of Provider's services.

SDPC (The Student Data Privacy Consortium): Refers to the national collaborative of schools, districts, regional, territories and state agencies, policy makers, trade organizations and marketplace providers addressing real-world, adaptable, and implementable solutions to growing data privacy concerns.

Student Personal Information: "Student Personal Information" means information collected through a school service that personally identifies an individual student or other information collected and maintained about an individual student that is linked to information that identifies an individual student, as identified by Washington Compact Provision 28A.604.010. For purposes of this DPA, Student Personal Information is referred to as Student Data.

Subscribing LEA: An LEA that was not party to the original Services Agreement and who accepts the Provider's General Offer of Privacy Terms.

Subprocessor: For the purposes of this Agreement, the term "Subprocessor" (sometimes referred to as the "Subcontractor") means a party other than LEA or Provider, who Provider uses for data

collection, analytics, storage, or other service to operate and/or improve its software, and who has access to PII.

Targeted Advertising: Targeted advertising means presenting an advertisement to a student where the selection of the advertisement is based on student information, student records or student generated content or inferred over time from the usage of the Provider's website, online service or mobile application by such student or the retention of such student's online activities or requests over time.

Third Party: The term "Third Party" means a provider of digital educational software or services, including cloud-based services, for the digital storage, management, and retrieval of pupil records. However, for the purpose of this Agreement, the term "Third Party" when used to indicate the provider of digital educational software or services is replaced by the term "Provider."

EXHIBIT "D"

DIRECTIVE FOR DISPOSITION OF DATA

School District of the Menomonie Area directs MakeMusic to dispose of data obtained by Provider pursuant to the terms of the Service Agreement between LEA and Provider. The terms of the Disposition are set forth below:

Extent of Disposition Disposition shall be:	_____Partial. The categories of data to be disposed of are as follows: __X__Complete. Disposition extends to all categories of data.
Nature of Disposition Disposition shall be by:	__X__Destruction or deletion of data. _____Transfer of data. The data shall be transferred as set forth in an attachment to this Directive. Following confirmation from LEA that data was successfully transferred, Provider shall destroy or delete all applicable data.
Timing of Disposition Data shall be disposed of by the following date:	__X__At the direction of the school district when no longer under contract _____By (Insert Date) _____ [Insert or attach special instructions]

_____ _____

Authorized Representative of LEA Date

_____ _____

Verification of Disposition of Data by Authorized Representative of Provider Date

EXHIBIT "E"

GENERAL OFFER OF PRIVACY TERMS
SCHOOL DISTRICT OF THE MENOMONIE AREA

1. Offer of Terms

Provider offers the same privacy protections found in this DPA between it and School District of the Menomonie Area and which is dated to any other LEA ("Subscribing LEA") who accepts this General Offer though its signature below. This General Offer shall extend only to privacy protections and Provider's signature shall not necessarily bind Provider to other terms, such as price, term, or schedule of services, or to any other provision not addressed in this DPA. The Provider and the other LEA may also agree to change the data provided by LEA to the Provider in Exhibit "B" to suit the unique needs of the LEA. The Provider may withdraw the General Offer in the event of: (1) a material change in the applicable privacy statutes; or (2) a material change in the services and products subject listed in the Originating Service Agreement.

Provider: MakeMusic, Inc.

BY: Christopher Pany 2024.08.05 11:43:54 -06'00' Date: 08/05/24

Printed Name: Christopher Pany Title/Position: Contracts Manager

2. Subscribing LEA

A Subscribing LEA, by signing a separate Service Agreement with Provider, and by its signature below, accepts the General Offer of Privacy Terms. The Subscribing LEA and the Provider shall therefore be bound by the same terms of this DPA.

Subscribing LEA:

BY: _____ Date: _____

Printed Name: _____ Title/Position: _____

TO ACCEPT THE GENERAL OFFER, THE SUBSCRIBING LEA MUST DELIVER THIS SIGNED EXHIBIT TO THE PERSON AND EMAIL ADDRESS LISTED BELOW

Name: Christopher Pany

Title: Contracts Manager

Email Address: contracts@makemusic.com

EXHIBIT "F"

DATA SECURITY REQUIREMENTS

See attached document to follow

To follow is a summary accounting of our policies and procedures relating to data privacy and security. Further information regarding our policies and be found at the follow: for MakeMusic website and marketing, see the MakeMusic Privacy Statement; for **MakeMusic Cloud**, please see the specific **MakeMusic Cloud Privacy Policy** which governs the use of the application.

Purpose of Data Collection/Use:

We collect information to: (a) provide our Sites and Services; (b) provide information about our products and Services, such as updates and new features; (c) provide information about data security and privacy; (d) learn more about our customer's preferences; (e) enhance, personalize, and support your experience on our Sites and develop our products to better serve customer needs; and (f) monitor the success and/or usage of features to improve performance and functionality.

Data Accuracy/Corrective Practices:

Parents, eligible students, teachers or principals who seek to challenge the accuracy of PII will do so by contacting the EA. If a correction to data is deemed necessary, the EA will notify Contractor. Contractor agrees to facilitate such corrections within 21 days of receiving the EA's written request.

Subcontractor Oversight:

Individual subcontractors (personnel) receive the same training as employees and are bound by the same policies and agreements regarding handling customer data and PII.

MakeMusic Cloud Suprocessors (Service Providers):

In order to provide our users with the best experience possible, we use subprocessors and/or service providers to assist our efforts to analyze and improve our products, resolve errors or issues, and/or manage billing and accounting information. We send deletion requests to our subcontractors when we receive deletion requests from our customers to ensure data is deleted.

MakeMusic enters into data addendums and/or DPAs with subprocessors and service providers (subcontractors) as applicable to secure and protect data. All subprocessors and service providers are obliged to use any received data solely for the purposes outlined in our service agreements and to maintain industry standards safeguards and practices regarding data privacy and security.

Data Destruction:

Upon expiration of an agreement or termination of use, data may be securely destroyed or transferred, per and upon request from the EA or customer, barring any legal obligations.

Security Practices:

Data Storage:

- Customer data is securely housed in virtual machines and databases within the AWS us-east-1 region.

Protective Protocols:

- All traffic between users and the application occurs over HTTPS with TLS 1.2.
- Connections between application and database are encrypted using TLS.
- Application servers, database servers exist in a private virtual network.
- Network Security groups are used to restrict access to application/database servers.
- IAM policies are used to limit employee access to cloud computing resources.
- OS Security patches are installed in a timely manner.
- AWS GuardDuty is used to detect anomalous cloud account activity.
- Data is encrypted at rest at a minimum of 128-bit AES.
- Data is encrypted in transit at a minimum of 128-bit AES.
- Maintain a Data Incidence Response Plan which aligns with the NIST Cybersecurity Framework v1.1.
- Engage third-party vendors to perform penetration tests.
- Annual training for applicable employees and contracted personnel, covering:
  - FERPA law overview
  - COPPA law overview
  - Cybersecurity and best practices
  - State-specific requirements (as applicable)

Data Incident Response:

The following process will be followed when responding to a suspected incident:

1.Confirmed or suspected incidents shall be reported promptly to MakeMusic's engineering management at vhellot@makemusic.com or cpany@makemusic.com. A report will be filed that includes detailed information about the incident including team members involved, timelines, and data involved.

2. When an incident is reported, MakeMusic's engineering management will form a team with the necessary skills to investigate the severity of the incident, next steps, and potential remedies/solutions. Depending on the results of the investigation, MakeMusic's engineering management will determine if the incident constitutes a breach.

3. All investigations will be documented to ensure appropriate steps are taken and that consistency in response, management, and reporting is followed. MakeMusic's engineering management will communicate any updates to all other departments and stakeholders.

4. If it is determined a Data Breach has occurred per legal definition, MakeMusic shall implement the recovery and respond portion of its Data Incident Response plan and notify affected parties duly per legal requirement.

The objective of our incident response plan is to ensure that: a) a culture of vigilance is built and maintained; b) a framework exists to help expedite incident investigation; c) incidents are reported in a timely manner and can be properly investigated; d) incidents are handled by appropriately authorized and skilled personnel; e) the appropriate levels of management are involved in response; f) incidents are recorded and documented; g) organizational impacts are understood; h) action is taken to prevent further damage; i) evidence is gathered, recorded, and maintained during the process; j) customers, proper agencies, and affected parties are notified per legal statues and as appropriate; k) incidents are resolved in a timely manner; and l) Incidents are reviewed to identify improvements.

Privacy – Data Access Request:

Steps for how we handle requests for customer data access:

1. Ensure the request is captured in a Zendesk ticket or email to privacy@makemusic.com. Documentation is the first step in safety for our company and the customer.
2. Verify the customer's account exists. We first work to verify the request is coming from the account holder before proceeding with the request.
3. Ensure the information on the customer's account matches the information the customer wants to view/change. (E.g., johndoe@makemusic.com wants to view and/or edit John Doe's data, not John Smith's data. If the customer is a parent and the data does not match, we may be able to honor the request through the affiliate school or educational organization. If it is a school/admin wanting to view and/or alter information about a student or view/alter information about a child on the school's or a parent's behalf, we ensure they can provide the correct student information (first name, last name, email address) and that the student is a member of the platform associated with the person making the request.