**Wake County Board of Education
Data Confidentiality and Security Agreement for Online Service and Instructional Technology Providers**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Provider”) hereby agrees to the terms of this Data Confidentiality and Security Agreement (“Agreement”) for the purpose of sharing confidential or sensitive information between the Wake County Board of Education (“WCPSS” or “District”), and Provider (collectively “Parties”).

1. **Definitions.**
	1. **“Services”** shall mean the online educational services and/or instructional technology products provided or otherwise made available to WCPSS and its users, including WCPSS employees, agents, parents, students, and other end users (collectively, “WCPSS End Users”). The Services are more specifically described in Attachment A to this Agreement.
	2. **“WCPSS Data.”** “WCPSS Data” includes any data, information, records, or other content that WCPSS or WCPSS End Users upload, create, modify, or share with Provider, including but not limited to any PII about students, employees, or other users. “WCPSS Data” also includes user identification information and metadata which may contain WCPSS Data or from which WCPSS Data may be ascertainable, and any de-identified data or aggregated data sets that may be generated from the underlying data provided. “WCPSS Data” also includes any “Student Data” as defined below.
	3. **“Student Data.”** “Student Data” is a subset of “WCPSS Data.” “Student Data” includes any data that directly relates to WCPSS students, including but not limited to education records as defined in the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. §1232g and other applicable law, any personally identifiable information (“PII”) about students, as well as any aggregated or de-identified data about WCPSS students. Any restrictions, limitations, or conditions regarding Provider’s use of WCPSS Data apply equally to Provider’s use of Student Data or Confidential Student Data.
	4. “**Confidential Student Data**.” “Confidential Student Data” is a subset of “Student Data.” “Confidential Student Data” includes education records as defined in the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. §1232g and other applicable law, any personally identifiable information (“PII”) about students, but not any aggregated or de-identified data about students that would not, when considered in isolation or in conjunction with other reasonably available information, allow a reasonable person in the school community to discern the identity of individual student. Any restrictions, limitations, or conditions regarding Provider’s use of WCPSS Data or Student Data apply equally to Provider’s use of Confidential Student Data
2. **Authorized Use of WCPSS Data.** WCPSS Data will be used by Provider solely for the purpose of providing the Services. When WCPSS Data includes Confidential Student Data, Provider agrees such use will be limited to institutional functions of WCPSS that could otherwise be provided by a school official and which WCPSS is “outsourcing” to Provider pursuant to 34 CFR 99.31(a)(1)(B). Provider agrees that WCPSS Data and all rights to WCPSS Data, including all intellectual property rights, shall remain the exclusive property of WCPSS, and Provider has a limited, nonexclusive, license solely for the purpose of providing such Services.
3. **Compliance with Applicable Laws, Policies, and Procedures**. Provider shall comply with all federal, state, and local laws and WCPSS policies that are applicable to the provision of Services hereunder, including but not limited to all applicable WCPSS policies regarding Confidential Student Data. Provider acknowledges that it may access the applicable WCPSS policies online at <https://www.wcpss.net/Page/45862> or by contacting the WCPSS Purchasing Department. Regarding Confidential Student Data, Provider specifically agrees to comply with the provisions of FERPA, PPRA, COPPA, and all other applicable laws and regulations in all respects, as well as any state law and applicable WCPSS policies. For purposes of this Agreement, FERPA includes 20 U.S.C. 1232g, Part 99 of Title 34 of the Code of Federal Regulations; PPRA includes 20 U.S.C 1232h, Part 98 of Title 34 of the Code of Federal Regulations; and COPPA includes 5 U.S.C. 6501-6505, Part 312 of Title 16 of the Code of Federal Regulations. Nothing in this Agreement shall be construed to allow Provider to maintain, use, or disclose any WCPSS Data in a manner inconsistent with any applicable law, regulation, or policy.
4. **Procedures for the Maintenance and Security of WCPSS Data**. While in the possession, custody, or control of Provider, all WCPSS Data shall be stored in a secure environment with access limited to the least number of employees needed to provide the Services. Provider shall develop, implement, maintain, and use appropriate administrative, technical, and physical security measures to preserve the confidentiality, integrity, security, and availability of all WCPSS Data. Such measures shall include processes for transmission and storage of such data.
	1. **WCPSS Data**. Provider shall protect WCPSS Data from loss, destruction, unauthorized physical and electronic access, and unauthorized uses or disclosures in accordance with commercially reasonable standards and no less rigorously than it protects its own confidential information. All WCPSS Data shall be kept in a secure location preventing access by unauthorized individuals. Provider agrees to handle any and all WCPSS Data using appropriate access control and security, including password-protection and encryption in transport and electronic storage, and periodic auditing of data at rest. Provider will conduct periodic risk assessments and remediate any identified security vulnerabilities in a timely manner.
	2. **Student Data**. Provider shall not forward to any person or entity other than WCPSS any Student Data except as expressly authorized in this Agreement without the advance written consent of WCPSS. Provider shall designate one or more individuals as the primary data custodian(s) of the Student Data and shall notify WCPSS of the name(s) and title(s) of such individual(s) prior to any such data being shared. The primary data custodian(s) shall ensure that the Services shall be conducted in a manner that does not permit personal identification of WCPSS students by anyone other than representatives or authorized subcontractors of Provider who need such information for the purposes described in Paragraph 2 of this Agreement and shall ensure that a log is maintained of all Student Data received pursuant to this Agreement. The provisions described above related to WCPSS Data also apply to Student Data.
	3. **Confidential Student Data**. Provider will maintain an access log delineating the date, time, and identity of any person or entity given access to any Confidential Student Data who is not in the direct employ of Provider and the reason(s) for such access. No such access shall be granted except in compliance with the terms and conditions of this Agreement and applicable law. The primary data custodian(s) described above shall be ensure the timely destruction or return of any Confidential Student Data as required by this Agreement. Confidential Student Data shall not be emailed in plain text. The provisions described above related to WCPSS Data and Student Data also apply to Confidential Student Data.
5. **Prohibition on Unauthorized Use or Disclosure of WCPSS Data**.
	1. Provider agrees to hold all WCPSS Data in strict confidence. Provider shall not use or disclose WCPSS Data except as authorized by this Agreement, as separately authorized in writing by WCPSS, or as required by law. Provider agrees not disclose any WCPSS Data in a manner that could identify any individual employee, student, or user to any other individual or entity, directly or by means of deduction.
	2. Provider is prohibited from mining or scanning WCPSS Data for any purposes other than those agreed to in advance by this Agreement or by separate written authorization of WCPSS.
	3. Provider shall not use any Confidential Student Data, including but not limited to student and parent names, addresses, emails addresses, or similar information, for its own commercial marketing or advertising purposes, or for the commercial marketing or advertising purposes of any third-party without the advance written consent of WCPSS. Provider shall not use any Confidential Student Data to advertise or market products or services to WCPSS employees, students, families, or to any WCPSS-affiliated users of the Services without the advance written consent of WCPSS.
	4. In the event of any unauthorized use or disclosure, Provider shall report the incident to WCPSS as promptly as possible, but no more three (3) business days after Provider learns of such use or disclosure. Such report shall identify:
		1. The nature of the unauthorized use or disclosure,
		2. The data used or disclosed,
		3. Who made the unauthorized use or received the unauthorized disclosure,
		4. What Provider has done and shall do to mitigate the effects of the unauthorized use or disclosure, and
		5. What corrective action Provider has taken or shall take to prevent future similar unauthorized use or disclosure.

Provider shall also provide such other information related to the unauthorized use or disclosure that may be reasonably requested by WCPSS. WCPSS also may require that Provider promptly provide a written notice of the breach or disclosure, as well as a description of the corrective actions taken, to any WCPSS employee, student, or user directly impacted by the breach or disclosure. Any such corrective action and notice shall be subject to prior review and approval by WCPSS.

* 1. Provider may use de-identified, aggregated WCPSS Data, including de-identified, aggregated Student Data, for product development and research purposes only as specifically authorized and consented to in advance in writing by WCPSS. Any such de-identified data will have all direct and indirect personal identifiers removed, including but not limited to names, ID numbers, dates of birth, home addresses, phone numbers, email addresses, and similar information. Provider agrees not to attempt to re-identify any de-identified Student Data and not to transfer de-identified Student Data to any other party except as specifically authorized in this Agreement or with WCPSS’s advance written consent. Provider will not release any research or publications pertaining to Student Data without WCPSS’s advance written consent.
1. **Subcontractors**. Provider may share Student Data with its subcontractors only for purposes of providing the Services or with the advance written permission of WCPSS. Any such request from Provider shall be in writing and shall identity the person(s) or entit(ies) to whom disclosures will be made and the purposes of the disclosures. For any authorized disclosure of Student Data to a subcontractor, Provider shall ensure that each approved subcontractor is contractually bound to adhere to all of the terms of this Agreement and is aware of its obligations under applicable law with respect to its possession, use, and re-disclosure of any Confidential Student Data. Nothing in this paragraph shall relieve Provider of any of its obligations under this Agreement, including its responsibilities to ensure the confidentiality and security of any WCPSS Data provided by WCPSS pursuant to this Agreement.
2. **Monitoring and Auditing**. Any WCPSS Data held by Provider will be made available to WCPSS for review and inspection upon request of WCPSS. Provider shall cooperate with WCPSS or with any other person or agency as directed by WCPSS, in monitoring, auditing, or investigating activities related to Provider’s use and safeguarding of the WCPSS Data, including but not limited to allowing reasonable inspection of the data logs or security measures described in Paragraph 4 of this Agreement. Consistent with Section 132-1.2 of the North Carolina General Statutes, WCPSS and its auditors will maintain the confidentiality of any trade secrets of Provider that may be accessed during an audit conducted under this Agreement.
3. **Term; Post-Termination**. This Agreement takes effect upon the date of full execution and shall continue in full force and effect for so long as Provider has possession, custody, or control of any of the WCPSS Data. Upon the termination of the applicable subscription, contract, purchase order, agreement, memorandum of understanding, or terms of service between WCPSS and Provider, or upon written notice of termination of the Services by WCPSS, all Confidential Student Data shall, at WCPSS’ sole option, be destroyed or returned to WCPSS unless WCPSS specifically authorizes its post-termination retention in writing. No other entity, including any subcontractors of Provider, shall be authorized to continue possessing or using any Confidential Student Data following termination without the written consent of WCPSS. Any Confidential Student Data remaining on any computers, servers, or other devices of Provider or its employees, agents, or subcontractors, shall be permanently deleted unless WCPSS specifically authorizes its post-termination retention in writing. Provider shall complete such destruction or return as promptly as possible, but not more than thirty (30) days after termination of the applicable subscription, contract, purchase order, agreement or terms of service between WCPSS and Provider, or written notice of termination of the Services by WCPSS, unless WCPSS extends such deadline in writing. This section shall survive the expiration or earlier termination of this Agreement.
4. **Breach and Default; Indemnification; Remedies**.
	1. In the event of a material data or security breach, or, if WCPSS determines, in its sole discretion, that any WCPSS Data has been mishandled or disclosed in a manner inconsistent with this Agreement, WCPSS may demand the immediate return or destruction of any and all of the WCPSS Data.
	2. Provider shall fully indemnify and hold harmless the Wake County Board of Education and its past, current and future members, agents, and employees from and against all claims, actions, demands, reasonable costs, damages, losses, and/or expenses of any kind whatsoever proximately resulting from any material data breach of this Agreement or any unauthorized use or disclosure of the WCPSS Data by Provider or it’s subcontractor(s). The parties agree that this indemnification clause is an “evidence of indebtedness” for purpose of N. C. Gen. Stat. § 6-21.2. This section shall survive the expiration or earlier termination of this Agreement.
	3. Nothing in this Agreement shall restrict WCPSS from seeking any other rights or remedies to which it may be entitled at law or equity.
5. **No Right or Entitlement to Data**. This Agreement sets out the terms and conditions under which WCPSS may, in its sole discretion, provide WCPSS Data to Provider. Nothing in this Agreement creates any right, title, or interest in Provider to receive any such information.
6. **Miscellaneous**.
	1. Governing Law. This Agreement and the rights and obligations of the parties hereto shall be governed by and construed and enforced in accordance with the laws of the State of North Carolina.
	2. Relationship of Parties. The parties shall be independent contractors, and nothing herein shall be construed as creating a partnership or joint venture; nor shall any employee of either party be construed as employees, agents, or principals of any other party hereto.
	3. No Third Party Beneficiaries. Nothing in this Agreement shall confer upon any person other than the parties to this Agreement any rights, remedies, obligations, or liabilities whatsoever.
	4. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
	5. Headings. The headings and other captions in this Agreement are for convenience and reference only and shall not be used in interpreting, construing or enforcing any of the provisions of this Agreement.
	6. Execution. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
	7. Assignment of Rights. Neither this Agreement, nor any rights, duties, nor obligations described herein shall be assigned by Provider without the prior express written consent of WCPSS.
	8. Severability. If any provision of this Agreement shall be declared invalid or unenforceable, the remainder of the Agreement shall continue in full force and effect.
	9. Authority to Enter Agreement. The persons executing this Agreement have authority to do so as an official, binding act of the respective parties.
	10. Relationship to Other Agreements. This Agreement governs Provider’s maintenance, use, and disclosure of WCPSS Data, Student Data, and/or Confidential Student Data in the course of providing the Services. It is a data confidential and security agreement which may stand on its own or serve as a rider to a separate service contract. In the event Provider is to receive payment from WCPSS for all or any part of the Services, the Parties will enter a separate service agreement setting out payment terms, as well as other provisions relating to insurance and other issues, and such service agreement and this Agreement shall be harmonized to the fullest extent possible. To the extent of any conflict between this Agreement and such separate service agreement as they relate to Provider’s maintenance, use, and disclosure of WCPSS Data, Student Data, and/or Confidential Student in the course of providing the Services, the terms of this Agreement will control. In the event the Parties do not enter such a separate service contract requiring the payment of money to Provider, WCPSS shall be under no obligation to compensate Provider for all or any part of the Services.
	11. Amendment. Any modification or amendments to this Agreement shall be effective only if made in writing and signed by authorized representatives of both parties.
	12. Enforceability. The parties agree that this Agreement is supported by mutual and adequate consideration and is fully enforceable by its terms independent of any other agreement that may or may not exist regarding the provision of the Services.
	13. WCPSS Authorizations. The specific persons or position classifications authorized to issue any of the written authorization or consents described in this Agreement are identified in Attachment B. If no such Attachment exists or if no persons or position classifications are identified in such attachment, then only the WCPSS signatory is authorized to issue such written authorizations or consents.
	14. Incorporation by Reference. Attachment A and Attachment B are incorporated and made a part of this Agreement by reference.
	15. Conflicts. In the event of any conflict between this Agreement and any existing or future contract, purchase order, agreement or terms of service between WCPSS and Provider (including but not limited to Privacy policies or Acceptable Use policies) regarding the subject matter of this Agreement, the terms and conditions of this Agreement shall control.

IN WITNESS THEREOF, the parties to this Agreement have set their hands and seals on the dates indicated below.

**PROVIDER**

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Signature Date

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[Printed Name, Title]

**WAKE COUNTY BOARD OF EDUCATION**

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Signature Date

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[Printed Name, Title]

**ATTACHMENT A**

**DESCRIPTION OF THE SERVICES**

[INSERT CLEAR AND FAIRLY DETAILED DESCRIPTION OF THE SERVICES HERE.]

**ATTACHMENT B**

**WCPSS AUTHORIZATIONS**

For purposes of this Agreement, the following WCPSS position classifications are authorized to provide the written WCPSS authorizations described in this Agreement:

**POSITION CLASSIFICATION**

* Chief Technology Officer
* Information Security Officer
* Senior Administrator, Contract Administration