

Data Sharing/Use Agreement

Between

Jefferson County Board of Education

And

Achieve3000, Inc.

This Data Sharing/Use Agreement ("Agreement") between the Jefferson County Board of Education, a political subdivision of the Commonwealth of Kentucky doing business as the Jefferson County Public Schools ("JCPS"), and Achieve3000, Inc, a corporation organized under the laws of Delaware ("Services Provider") describes the services to be provided to JCPS by Services Provider, and the means to be used by Services Provider to ensure the confidentiality and security of information and data exchanged between JCPS and Services Provider in connection with the provision of the services.

A. PERIOD OF THE AGREEMENT

This Agreement shall be effective as of August 1, 2019 and will terminate June 30, 2020 unless terminated earlier by either party pursuant to Section H.

B. SCOPE OF THE AGREEMENT AND INTENDED USE OF THE DATA

1. Services Provider will provide the following services to JCPS under the terms of a services contract between JCPS and Services Provider effective August 1, 2019: Achieve3000's patented and proven differentiated instruction for grades prek-12 reaches all students at their individual reading levels to accelerate learning, improve high-stakes assessment performance and drive college and career success. In addition to classroom solutions, Achieve3000 will provide Professional Learning Services (PLS) to empower teachers with effective instructional strategies and activities. Our services are flexible and focused on immediate, actionable results.
2. JCPS and Services Provider agree that Services Provider is an organization to which JCPS can disclose, upon written request, personally identifiable information from an education record of a student, as defined in 34 CFR 99.3, under the "school official exception" of the Family Educational Rights and Privacy Act, 20 U.S.C. 1232(g) and 34 C.F.R. 99.31 (a)(1) ("FERPA"), because the disclosure is to a contractor to whom JCPS has outsourced institutional services or functions for which JCPS would otherwise use employees; the contractor is under the direct control of JCPS with respect to the use and maintenance of education records; and the contractor is subject to the requirements of 34 CFR 99.33(a) governing the use and redisclosure of personally identifiable information from education records.

3. JCPS shall disclose to Services Provider, upon written request, confidential, personally identifiable information from an education record of a student, as defined in 34 C.F.R. 99.3, under the "school official exception" of FERPA, 34 C.F.R. 99.31 (a)(1), when the disclosure is within such exception as stated in Paragraph B.2 above and Services Provider has a legitimate educational interest for access to such education records. The confidential data including student and non-student information to be disclosed is described in a document attached to this agreement as **Attachment A**. Services Provider shall use personally identifiable information from education records and other records in order to perform the services described in Paragraph B.1 above. Services Provider shall notify JCPS and JCPS shall provide written consent, if approved, of any changes to the list of disclosed data necessary for the services or any changes to the scope, purpose or duration of the services themselves. Any agreed upon changes to the data disclosed shall be reduced to writing and included in an update to Attachment A to this Agreement. Any agreed upon changes to the scope, purpose or duration of the services shall be reduced to writing and included in an amendment to the services contract described in Paragraph B.1 above.
4. Services Provider and JCPS shall work cooperatively to determine the proper medium and method for the transfer of confidential data between each other. Services Provider shall confirm the transfer of confidential data and notify JCPS as soon as practicable of any discrepancies between the actual data transferred and the data described in this Agreement. The same protocol shall apply to any transfer of confidential data from Services Provider to JCPS.

C. CONSTRAINTS ON USE OF DATA

1. Services Provider agrees that the services shall be provided in a manner that does not permit personal identification of parents and students by individuals other than representatives of Services Provider that have legitimate interests in the information.
2. Services Provider will not contact the individuals included in the data sets without obtaining advance written authorization from JCPS.
3. Services Provider shall not re-disclose any individual – level data with or without identifying information to any other requesting individuals, agencies, or organizations without prior written authorization by JCPS.
4. Services Provider shall use the data only for the purpose described in Paragraph B.1 above. The data shall not be used for personal gain or profit.

D. DATA CONFIDENTIALITY AND DATA SECURITY

Services Provider agrees to the following confidentiality and data security statements:

1. Services Provider acknowledges that the data is confidential data and proprietary to JCPS, and agrees to protect the data from unauthorized disclosures and to comply with all applicable JCPS, Local, State and Federal confidentiality laws and regulations including but not limited to FERPA; the Kentucky Family Educational Rights and Privacy Act, KRS 160.700 et seq.; the Richard B. Russell National School Lunch Act, 42 U.S.C. 1751 et seq.; the Child Nutrition Act of 1966, 42 U.S.C. 1771 et seq.; the Personal Information Security and Breach Investigation Procedures and Practices Act, KRS 61.931 et seq.; and the Kentucky Open Records Act, KRS 61.820 et seq.
2. If the performance of this Agreement involves the transfer by JCPS to Services Provider of any data regarding any JCPS student that is subject to FERPA, Services Provider agrees to:
 - a. In all respects comply with the provisions of FERPA.
 - b. Use any such data for no purpose other than to fulfill the purposes of the services contract described in Paragraph B.1 above, and not share any such data with any person or entity other than Services Provider and its employees, contractors and agents, without the prior written approval of JCPS.
 - c. Require all employees, contractors and agents of Services Provider to comply with all applicable provisions of FERPA with respect to any such data.
 - d. Maintain any such data in a secure computer environment, and not copy, reproduce or transmit any such data except as necessary to fulfill the purposes of the services contract described in Paragraph B.1 above.
 - e. Provide the services under the services contract described in Paragraph B.1 above in a manner that does not permit the identification of an individual student by anyone other than employees, contractors or agent of Services Provider having a legitimate interest in knowing such personal identification.
 - f. Destroy or return to JCPS any such data obtained under this Agreement within thirty days (30) after a written request is submitted to the Services Provider and such data no longer needed by Services Provider for the purposes of the services contract described in Paragraph B.1 above, or within thirty (30) days after the termination of this agreement.
3. Services Provider shall not release or otherwise reveal, directly or indirectly, the data to any individual, agency, entity, or third party not included in this Agreement, unless such disclosure is required by law or court order. If Services Provider becomes legally compelled to disclose any confidential and otherwise personally identifiable data (whether by judicial or administrative order, applicable law, rule or regulation, or otherwise), then Services Provider shall use all

reasonable efforts to provide JCPS with prior notice before disclosure so that JCPS may seek a protective order or other appropriate remedy to prevent the disclosure or to ensure JCPS's compliance with the confidentiality requirements of federal or state law; provided, however, that Services Provider will use all reasonable efforts to maintain the confidentiality of confidential and otherwise personally identifiable data. If a protective order or other remedy is not obtained prior to the deadline by which any legally compelled disclosure is required, Services Provider will only disclose that portion of confidential and otherwise personally identifiable data that Services Provider is legally required to disclose.

4. Services Provider shall not distribute, reprint, alter, sell, assign, edit, modify or create derivative works or any ancillary materials from or with the data.
5. Services Provider shall not use data shared under this Agreement for any purpose other than the services contract described in Paragraph B.1 above. Nothing in this Agreement shall be construed to authorize Services Provider to have access to additional data from JCPS that is not included in the scope of this Agreement (or addenda). Services Provider understands that this Agreement does not convey ownership of the data to Services Provider.
6. Services Provider shall take reasonable security precautions and protections to ensure that persons not authorized to view the data do not gain access to the data. Reasonable security precautions and protections include, but are not limited to:
 - a. Creating, distributing, and implementing data governance policies and procedures which protect data through appropriate administrative, technical and physical security safeguards, and outline staff responsibilities for maintaining data security;
 - b. Encrypting all data carried on mobile computers/devices;
 - c. Encrypting data before it is transmitted electronically;
 - d. Requiring that users be uniquely identified and authenticated before accessing data;
 - e. Establishing and enforcing well-defined data privilege rights which restrict users' access to the data necessary for this to perform their job functions;
 - f. Ensuring that all staff accessing data sign a nondisclosure statement, attached as **Attachment B**, and maintain copies of signed statements;
 - g. Securing access to any physical areas/electronic devices where sensitive data are stored;

- h. Installing a firewall to permit or deny network transmissions based upon a set of rules; and
 - i. Installing anti-virus software to protect the network.
- 7. If Services Provider receives Personal Information as defined by and in accordance with the Kentucky Personal Information Security and Breach Investigation Procedures and Practices Act, KRS 61.931, et seq., (the "Act"), Services Provider shall secure, protect and maintain the confidentiality of the Personal Information by, without limitation, complying with all requirements applicable to "non-affiliated third parties" set forth in the Act, including but not limited to the following:
 - a. "Personal Information" is defined in accordance with KRS 61.931(6) as "an individual's first name or first initial and last name; personal mark; or unique biometric or genetic print or image, in combination with one (1) or more of the following data elements:
 - i. An account, credit card number, or debit card number that, in combination with any required security code, access code or password, would permit access to an account;
 - ii. A Social Security number;
 - iii. A taxpayer identification number that incorporates a Social Security number;
 - iv. A driver's license number, state identification card number or other individual identification number issued by an agency;
 - v. A passport number or other identification number issued by the United States government; or
 - vi. Individually Identifiable Information as defined in 45 C.F.R. sec. 160.013 (of the Health Insurance Portability and Accountability Act), except for education records covered by FERPA.
 - b. As provided in KRS 61.931(5), a "non-affiliated third party" means "any person or entity that has a contract or agreement with the Commonwealth and receives (accesses, collects or maintains) personal information from the Commonwealth pursuant to the contract or agreement."
 - c. Services Provider shall not re-disclose, without the written consent of JCPS, any "personal information," as defined in KRS 61.931, or any other personally identifiable information of a student or other persons, such as employees.

- d. Services Provider agrees to cooperate with JCPS in complying with the response, mitigation, correction, investigation, and notification requirements of the Act.
 - e. Services Provider agrees to undertake a prompt and reasonable investigation of any breach as required by KRS 61.933.
- 8. If Services Provider is a cloud computing service provider (as defined in KRS 365.734(1)(b) as "any person or entity other than an educational institution that operates a cloud computing service"), Services Provider agrees that:
 - a. Services Provider shall not process student data for any purpose other than providing, improving, developing, or maintaining the integrity of its cloud computing services, unless the provider receives express permission from the student's parent. Services Provider shall work with the student's school and district to determine the best method of collecting parental permission. KRS 365.734 defines "process" and "student data."
 - b. With a written agreement for educational research, Services Provider may assist an educational institution to conduct educational research as permitted by FERPA.
 - c. Pursuant to KRS 365.734, Services Provider shall not in any case process student data to advertise or facilitate advertising or to create or correct an individual or household profile for any advertisement purposes.
 - d. Pursuant to KRS 365.734, Services Provider shall not sell, disclose, or otherwise process student data for any commercial purpose.
 - e. Pursuant to KRS 365.734, Services Provider shall certify in writing to the agency that it will comply with KRS 365.734(2).
- 9. Services Provider shall report all known or suspected breaches of the data, in any format, to Dr. Dena Dossett, Chief, Data Management, Planning and Program Evaluation Division. The report shall include (1) the name, job title, and contact information of the person reporting the incident; (2) the name, job title, and contact information of the person who discover the incident; (3) the date and time the incident was discovered; (4) the nature of the incident (e.g. system level electronic breach, an electronic breach of one computer or device, or a breach of hard copies of records; (5) a description of the information lost or compromised; (6) the name of the electronic system and possible interconnectivity with other systems; (7) the storage medium from which information was lost or compromised; (8) the controls in place to prevent unauthorized use of the lost or compromised information; (9) the number of individuals potentially affected; and (10) whether law enforcement was contacted.
- 10. Services Provider shall securely and permanently destroy the data, and any and all hard and soft (electronic) copies thereof, upon the termination of this

Agreement. Services Provider agrees to require all employees, contractors, or agents of any kind using JCPS data to comply with this provision. Services Provider agrees to document the methods used to destroy the data, and upon request, provide certification to JCPS that the data has been destroyed.

11. For purposes of this agreement and ensuring Services Provider's compliance with the terms of this Agreement and all application of the state and Federal laws, Services Provider designates Efren Seldura (or an alternative designee specified in writing) as the temporary custodian ("Temporary Custodian") of the data that JCPS shares with Services Provider. JCPS will release all data and information under this Agreement to Temporary Custodian. Temporary Custodian shall be responsible for transmitting all data requests and maintain a log or other record of all data requested and received pursuant to this Agreement, including confirmation of the return or destruction of the data as described below. JCPS or its agents may, upon request, review the records Services Provider is required to keep under this Agreement.
12. Services Provider acknowledges that any violation of this Agreement and/or the provisions of FERPA or accompanying regulations related to the nondisclosure of protected student information constitutes just cause for JCPS to immediately terminate this Agreement.

E. FINANCIAL COSTS OF DATA-SHARING

Each party shall be responsible for their portion of costs that may result from data sharing. Examples of potential costs to JCPS are costs associated with the compiling of student data requested under this agreement and costs associated with the electronic delivery of the student data to Services Provider.

No payments will be made under this Agreement by either party. Any payments to Services Provider will be made under services contract described in Paragraph B.1 above.

F. OBLIGATIONS OF JCPS

During the term of this Agreement, JCPS shall:

1. Prepare and deliver student demographic and academic data as defined in **Attachment A – Data File Description**. All items will be keyed to a "proxy" student identifier that is different from the official student ID. The link between the official and proxy IDs will not be disclosed by JCPS. No personally identifiable information will be provided to Services Provider.
2. After the initial data is provided for the requested student population, JCPS will not provide supplementary data for additional students.
3. Provide Data Stewardship training for data custodian.

G. LIABILITY

Services Provider agrees to be responsible for and assumes all liability for any claims, costs, damages or expenses (including reasonable attorneys' fees) that may arise from or relate to Services Provider's intentional or negligent release of personally identifiable student, parent or staff data ("Claims"). Services Provider agrees to hold harmless JCPS and pay any costs incurred by JCPS in connection with any Claim. The provisions of this Section shall survive the termination or expiration of this Agreement.

H. TERMINATION

1. This Agreement may be terminated as follows, after notification via the United States Postal Service (certified mail or registered mail) or recognized overnight delivery service (e.g., UPS, DHL, or FedEx):
 - a. By either party immediately in the event of a material breach of this Agreement by another party.
 - b. By either party after thirty (30) days advance written notice to the other party, for any reason or no reason.
2. The confidentiality provisions of this Agreement shall survive the termination of this Agreement. If this Agreement is terminated by either party for material breach or for any other reason with thirty (30) days written notice, the confidential information shall be returned or destroyed within seven (7) days of the termination. If this Agreement terminates at the end of the term described in Section A, Services Provider shall return or destroy all confidential information when it is no longer needed for the study. Such return or destruction shall occur within seven (7) days after it is no longer needed for the study.
3. Destruction of the confidential information shall be accomplished by utilizing an approved methods of confidential destruction, including shredding, burning or certified/witnessed destruction for physical materials and verified erasure of magnetic media using approved methods of electronic file destruction.

I. PUBLICATIONS AND COPYRIGHTS

Both parties recognize that each organization may have extant work that predates this agreement. If those materials and/or data are used in the course of this work, they remain the property of the original developer or researcher. If new materials are developed during the term of the services contract described in Paragraph B.1 above, ownership and copyright of such will be governed by the terms of the services contract.

J. MODIFICATION

No waiver, alteration or modification of the provisions of this Agreement shall be binding unless in writing and mutually agreed upon. Any modifications or additions to this Agreement must be negotiated and approved by both parties.

K. QUALITY OF SERVICES

JCPS reserves the right to review Services Provider's performance under this Agreement for effectiveness in serving the specific purposes as outlined in Paragraph B.1. Failure of Services Provider to perform in a manner that meets or exceeds the quality standards for JCPS shall serve as grounds for termination of this Agreement.

L. BREACH OF DATA CONFIDENTIALITY

Services Provider acknowledges that the breach of this agreement or its part may result in irreparable and continuing damage to JCPS for which money damages may not provide adequate relief. In the event of a breach or threatened breach of this agreement by Services Provider, JCPS, in addition to any other rights and remedies available to JCPS at law or in equity, may be entitled to preliminary and permanent injunctions to enjoin and restrain the breach or threatened breach. If the United States Department of Education's Family Policy Compliance Office determines that Services Provider has violated paragraph 34 C.F.R. 99.31(a)(6)(iii)(B), JCPS may not allow Services Provider access to personally identifiable information from education records for at least five (5) years.

M. CHOICE OF LAW AND FORUM

This Agreement shall be governed and construed in accordance with the laws of the Commonwealth of Kentucky. Any action or claim arising from, under or pursuant to this Agreement shall be brought in the Jefferson County, Kentucky, Circuit Court, and the parties expressly waive the right to bring any legal action or claims in any other courts.

N. WAIVER

No delay or omission by either party in exercising any right under this Agreement shall operate as a waiver of that or any other right or prevent a similar subsequent act from constituting a violation of this Agreement.

O. SEVERABILITY

If any part of this Agreement is held to be void, against public policy or illegal, the balance of this Agreement shall continue to be valid and binding.

P. NOTICES

Any notices or reports by one party to the other party under this Agreement shall be made in writing, to the address shown in the signature portions of this Agreement, or to such other address as may be designated in writing by one party to the other. Notices shall be effective when received if personally delivered, or three days after mailing if mailed.

Q. RELATIONSHIP OF PARTIES

JCPS is not an employee, agent, partner or co-venturer of or with Services Provider. Neither Services Provider nor JCPS shall represent or imply to any party that it has the power or authority to enter into a contract or commitment in the name of or on behalf of the other, or to otherwise bind the other.

R. ENTIRE AGREEMENT; ASSIGNMENT

This Agreement, together with any attachments hereto and any amendment or modifications that may hereafter be agreed to, constitute the entire understanding between the parties with respect to the subject-matter hereof and supersede any and all prior understandings and agreements, oral and written, relating hereto. Services Provider shall not assign this Agreement or any portion thereof to a subcontractor or other third party without the prior written consent of JCPS, and any attempted assignment without such prior written consent in violation of this Section R shall automatically terminate this Agreement.

AGREED:

Achieve3000, Inc

1985 Cedar Bridge Ave, Suite 3

Lakewood, NJ 08701

BY: 

Name: Nicholas Bates

Title: Chief Financial Officer

Date: 6/6/2019

AGREED:

Jefferson County Board of Education
3332 Newburg Road
Louisville KY 40218

BY: _____

Name: _____

Title: _____

Date: _____

Attachment A

CONFIDENTIAL INFORMATION TO BE DISCLOSED

Student First Name
Student Last Name
Student Email Address
Other Student 10
Student Ethnicity
Student Gender
School Name
Teacher First Name
Teacher Last Name
Teacher Email Address

Attachment B

ACHIEVE3000, INC.

CONFIDENTIAL INFORMATION, INVENTION ASSIGNMENT AND RESTRICTIVE COVENANTS AGREEMENT

Employee Name: _____

Date: _____

As a condition of my being employed (or my employment being continued) with Achieve3000, Inc., a Delaware corporation, or any of its current or future subsidiaries, affiliates, successors or assigns (collectively, the "Company"), and in consideration of my employment with the Company and my receipt of the compensation now and hereafter paid to me by the Company, I agree to the following:

1. Employment Relationship. I understand and acknowledge that this Agreement does not alter, amend or expand upon any rights I may have to continue in the employ of, or the duration of my employment relationship with, the Company under any existing agreements between the Company and me or under applicable law.

2. At-Will Relationship. I understand and acknowledge that, unless otherwise agreed in a separate written agreement between me and the Company, my employment with the Company is and will continue to be at-will, as defined under applicable law, meaning that either I or the Company may terminate my employment at any time, for any reason or no reason, without further obligation or liability.

3. Confidential Information.

a. Company Information. I agree at all times during the term of my employment with the Company and thereafter, to hold in strictest confidence, and not to use, except for the benefit of the Company, or to disclose to any person or entity without written authorization of the Board of Directors or appropriate senior executive officer of the Company, any Confidential Information of the Company. I understand that "Confidential Information" means any Company proprietary information, technical data, trade secrets or know-how, including, but not limited to, research, product plans, products, services, customer lists and customers (including, but not limited to, customers of the Company on whom I called or with whom I became acquainted during the period of my employment), markets, software, developments, inventions, processes, formulas, technology, designs, drawings, engineering, hardware configuration information, marketing, finances or other business information disclosed to me by the Company either directly or indirectly in writing, orally or by drawings or observation of parts or equipment or created by me during the period of my employment. I further understand that Confidential Information does not include any of the foregoing items that (i) are or have become publicly known and made generally available to the public through no wrongful act of me or of others who were under confidentiality obligations to the Company, (ii) after termination of my employment, are or become known to me from third parties who were not subject to confidentiality obligations in favor of the Company, or (iii) after termination of my employment, are independently developed by me without use of the Confidential Information. Specific information comprising a part of any Confidential Information will not be deemed to be in the public domain merely because it is embraced by more general information in

the public domain. Failure to mark any of the Confidential Information as confidential or proprietary will not affect its status as Confidential Information under this Agreement.

b. Former Employer Information. I represent and covenant that my performance of all terms of this Agreement as an employee of the Company has not breached and will not breach any agreement to keep in confidence proprietary information, knowledge or data acquired by me in confidence or trust from a third party prior to or subsequent to the commencement of my employment with the Company. I will not improperly use or disclose any proprietary information or trade secrets of any former or concurrent employer or other person or entity, and I will not bring onto the premises of the Company any unpublished document or proprietary information belonging to any such employer, person or entity unless consented to in writing by such employer, person or entity.

c. Third Party Information. I recognize that the Company has received and in the future will receive from third parties their confidential or proprietary information subject to a duty on the Company's part to maintain the confidentiality of such information and to use it only for certain limited purposes. I agree to hold all such confidential or proprietary information in the strictest confidence and not to disclose it to any person or entity or to use it except as necessary in carrying out my work for the Company consistent with the Company's agreement with such third party.

4. Inventions.

a. Inventions Retained and Licensed. I have attached hereto, as Exhibit A, a list describing all inventions, original works of authorship, developments, improvements and trade secrets that were made by me prior to my employment with the Company (collectively, "Prior Inventions"), which (i) belong solely to me or jointly to me and one or more other persons or entities, and (ii) are not assigned to the Company hereunder. If no such list is attached, I represent that there are no such Prior Inventions. If in the course of my employment with the Company, I incorporate into a Company product, process or machine a Prior Invention owned by me or in which I have an interest (whether or not listed on Exhibit A), the Company is hereby granted and will have a nonexclusive, royalty-free, irrevocable, assignable, perpetual, worldwide license to make, have made, copy, modify, make derivative works of, use, sell and otherwise distribute such Prior Invention as part of or in connection with such product, process or machine.

b. Assignment of Inventions. I agree that I will promptly make full written disclosure to the Company, will hold in trust for the sole right and benefit of the Company, and hereby assign to the Company, or its designee, all my right, title and interest throughout the world in and to any and all inventions, original works of authorship, developments, concepts, improvements, designs, discoveries, ideas, trademarks or trade secrets, whether or not patentable or registrable under copyright or similar laws, which I may solely or jointly conceive or develop or reduce to practice, or cause to be conceived or developed or reduced to practice, within the scope and during the period of my employment with the Company (collectively referred to as "Inventions"). I further acknowledge that all original works of authorship that are made by me (solely or jointly with others) within the scope and during the period of my employment with the Company and which are protectable by copyright are "works made for hire," as that term is defined in the United States Copyright Act. To the extent any of my rights in Inventions,

including any moral rights, are not capable of assignment under applicable law, I hereby irrevocably and unconditionally waive all enforcement of such rights against the Company to the maximum extent permitted under applicable law. I understand and agree that the decision whether or not to commercialize or market any Invention developed by me solely or jointly with others is within the Company's sole discretion and for the Company's sole benefit and that no royalty will be due to me as a result of the Company's efforts to commercialize or market any such Invention.

c. Maintenance of Records. I agree to keep and maintain adequate and current written records of all Inventions made by me (solely or jointly with others) during the term of my employment with the Company. The records may be in the form of notes, sketches, drawings, flow charts, electronic data or recordings, laboratory notebooks, and any other format that may be specified by the Company. The records will be available to and remain the sole property of the Company at all times. I agree not to remove such records from the Company's place of business except as expressly permitted by Company policy which may, from time to time, be revised at the sole election of the Company for the purpose of furthering the Company's business.

d. Patent and Copyright Registrations. I agree to assist the Company, or its designee, at the Company's expense, in every proper way to secure the Company's rights in the Inventions and any copyrights, patents, trademarks, mask work rights, moral rights or other intellectual property rights relating thereto in any and all countries, including the disclosure to the Company of all pertinent information and data with respect thereto, the execution of all applications, specifications, oaths, assignments, recordations and all other instruments that the Company may deem necessary in order to apply for and obtain such rights and in order to assign and convey to the Company, its successors, assigns and nominees the sole and exclusive rights, title and interest in and to such Inventions, and any copyrights, patents, mask work rights or other intellectual property rights relating thereto. I further agree that my obligation to execute or cause to be executed, when it is in my power to do so, any such instrument or papers will continue after the termination of this Agreement until the expiration of the last such intellectual property right to expire in any country of the world. If the Company is unable because of my mental or physical incapacity or for any other reason to secure my signature to apply for or to pursue any application for any United States or foreign patents or copyright registrations covering Inventions or original works of authorship assigned to the Company as above, then I hereby irrevocably designate and appoint the Company and its duly authorized officers and agents as my agent and attorney in fact, to act for and in my behalf and stead to execute and file any such applications and to do all other lawfully permitted acts to further the prosecution and issuance of letters patent or copyright registrations thereon with the same legal force and effect as if executed by me. I hereby waive and irrevocably quitclaim to the Company any and all claims, of any nature whatsoever, that I now or hereafter have for infringement of any and all proprietary rights assigned to the Company.

e. Exception to Assignments. The provisions of this Agreement requiring assignment of Inventions to the Company do not apply to the extent prohibited by applicable law, including Section 2870 of the California Labor Code (if and to the extent applicable), which provides:

(a) Any provision in an employment agreement which provides that an employee will assign, or offer to assign, any of his or her rights in an invention to his or her employer will not apply to an invention that the employee developed entirely on his or her own time without using the employer's equipment, supplies, facilities, or trade secret information except for those inventions that either: (1) relate at the time of conception or reduction to practice of the invention to the employer's business, or actual or demonstrably anticipated research or development of the employer; or (2) result from any work performed by the employee for the employer.

(b) To the extent a provision in an employment agreement purports to require an employee to assign an invention otherwise excluded from being required to be assigned under subdivision (a), the provision is against the public policy of this state and is unenforceable.

5. Non-Solicitation. I agree that during the term of my employment with the Company, and for a period of 12 months following the termination of my employment with the Company for any reason, whether with or without cause, I will not either directly or indirectly solicit, induce, recruit or encourage any of the Company's employees or consultants to terminate their relationship with the Company, or take away such employees or consultants, or attempt to solicit, induce, recruit, encourage or take away employees or consultants of the Company, either for myself or for any other person or entity. Further, for a period of 12 months following termination of my employment with the Company for any reason, with or without cause, I will not solicit any licensor to or customer of the Company or licensee of the Company's products, in each case that are known to me, to terminate or reduce their business with the Company or to conduct business with me or any other person or entity with respect to any business, products or services that are competitive to the products or services offered by the Company or under development as of the date of termination of my employment with the Company.

6. Conflicting Employment. I agree that, during the term of my employment with the Company, I will not engage in any other employment, consulting or other business activity related to the business in which the Company is now involved or becomes involved during the term of my employment, nor will I engage in any other activities that conflict with my obligations to the Company.

7. Returning Company Documents. I agree that, at the time of termination of my employment with the Company, I will deliver to the Company (and will not keep in my possession, recreate or deliver to anyone else) any and all devices, records, data, notes, reports, proposals, lists, correspondence, specifications, drawings, blueprints, sketches, materials, equipment, other documents or property, or reproductions of any aforementioned items developed by me pursuant to my employment or otherwise belonging to the Company. I further agree that any property situated on the Company's premises or owned by the Company, including disks and other storage media, filing cabinets or other work areas, is subject to inspection by Company personnel at any time with or without notice. In the event of the termination of my employment, I agree to sign and deliver a Termination Certification,

substantially in the form attached hereto as Exhibit B, attesting to my compliance with the terms and conditions of this Section 7.

8. Notification of Third Parties. I hereby consent to notification by the Company to any new or additional employer or other person or entity about my rights and obligations under this Agreement.

9. Representations. I agree to execute any proper oath or verify any proper document required to carry out the terms of this Agreement. I represent that my performance of all the terms of this Agreement will not breach any agreement to keep in confidence proprietary information acquired by me in confidence or in trust prior to my employment by the Company. I have not entered into, and I agree I will not enter into, any oral or written agreement in conflict herewith.

10. General Provisions.

a. Governing Law; Consent to Personal Jurisdiction. This Agreement will be governed by the internal laws of the State of New Jersey, without giving effect to conflict of law rules. I hereby expressly consent to the personal jurisdiction of the state and federal courts located in the State of New Jersey for any lawsuit filed there against me by the Company arising from or relating to this Agreement.

b. Specific Performance. I acknowledge that the Company has no adequate remedy at law and will be irreparably harmed if I breach or threaten to breach the provisions of this Agreement, and, therefore, I agree that in any such event the Company will be entitled to (i) injunctive relief to prevent any such breach or threatened breach, (ii) specific performance of the terms of this Agreement in addition to any other legal or equitable remedy the Company may have, and (iii) enforcement of this Agreement in any court of competent jurisdiction. If, at the time of enforcement of a covenant contained in this Agreement, a court will hold that the duration, scope or other restrictions are unreasonable under circumstances then existing, I agree that the maximum duration, scope or other restrictions reasonable under such circumstances will be substituted for the stated duration, scope or other restrictions and that the court will be requested and allowed to revise the appropriate section to cover the maximum duration, scope and other restrictions permitted by law. Any injunction will be available without the posting of any bond or other security.

c. Reimbursement of Expenses. In the event the Company is required to bring an action against me to enforce any of the provisions of this Agreement or to obtain money damages for the breach thereof, and such action results in the granting of any injunction in favor of the Company or the award of a judgment for money damages, then the Company will be awarded reasonable attorneys' fees and expenses in addition to any other rights and remedies available to the Company.

d. Entire Agreement; Amendments and Modifications. This Agreement sets forth the entire agreement and understanding between the Company and me with respect to the subject matter hereof and supersedes any prior agreements or understanding, whether oral or in writing with respect to the subject matter hereof. No amendment, waiver, or discharge of any

provision of this Agreement will be effective unless made in writing, signed by both parties. Any subsequent change or changes in my position, duties, salary or compensation will not affect the validity or scope of this Agreement.

e. Severability. The provisions of this Agreement are severable, and if any provision is determined to be invalid or unenforceable, such invalidity or unenforceability will not in any way affect the validity or enforceability of the remaining provisions.

f. Successors and Assigns. This Agreement will be binding upon my heirs, executors, administrators and other legal representatives and will be for the benefit of the Company and its successors and assigns.

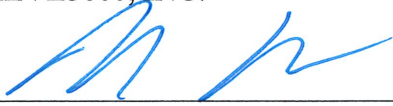
g. Counterparts. This Agreement may be executed in counterparts, each of which will be deemed an original, but both of which together will constitute one and the same instrument.

h. ADVICE OF COUNSEL. I ACKNOWLEDGE THAT, IN EXECUTING THIS AGREEMENT, I HAVE HAD THE OPPORTUNITY TO SEEK THE ADVICE OF INDEPENDENT LEGAL COUNSEL, AND I HAVE READ AND UNDERSTOOD ALL OF THE TERMS AND PROVISIONS OF THIS AGREEMENT.

[Signature page to follow.]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first written above.

ACHIEVE3000, INC.

By: 

Nick Bates
Chief Financial Officer

EMPLOYEE

By: _____
Name:
Title:

**LIST OF PRIOR INVENTIONS
AND ORIGINAL WORKS OF AUTHORSHIP**

Title	Date	Identifying Number or Brief Description
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__No inventions or improvements

__Additional Sheets Attached

Signature: _____

Name: _____

Date: _____