

## **Data Sharing/Use Agreement**

**Between**

**Jefferson County Board of Education**

**And**

***Frontline Technologies Group LLC***

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 ***Frontline Technologies Group, LLC dba Frontline Education***, a limited liability company 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 September 30, 2020 and will terminate when the services contract referenced in Paragraph B.1. below terminates, 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 September 30, 2020: Student Health Management is a single solution for school nurses, guidance counselors, social workers, administrators and other service providers to schedule, document, report and comply with state and federal standards for physical, mental and behavioral health.
2. JCPS and Services Provider agree that Services Provider is an organization to which JCPS can disclose, 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, 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, except to provide support, or as provided by law.
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, except as provided by law.
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 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.; 7 C.F.R. 245.6 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 agents 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 the date within it is no longer needed by Services Provider for the purposes of the services contract described in Paragraph B.1 above, except backup files made in the normal course of business which are retained per Service Provider's data retention policy, for regulatory compliance.
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 an agency and receives (accesses, collects or maintains) personal information from the agency 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, except in storage of said personal information within cloud services.

- 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 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. Pursuant to KRS 365.734(2), 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.
  - c. Pursuant to KRS 365.734(2), Services Provider shall not sell, disclose, or otherwise process student data for any commercial purpose.
  - d. Pursuant to KRS 365.734(3), 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. Kermit Belcher, Chief Information Officer. 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 discovered 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, a breach of hard copies of records, etc.); (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, except backup files made in the normal course of business which are retained per Service Provider's data retention policy, for regulatory compliance. Services Provider agrees to require all employees, contactors, 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 Lassaad Fridhi, VP & Chief Information Security Officer (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 maintaining 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.
13. Services Provider shall maintain, during the term of this Agreement, a cyber-insurance liability policy, in the amount of \$5M. Upon request, Services Provider shall furnish the certificate of insurance evidencing this coverage. The certificate of insurance shall name the Board of Education of Jefferson County as additional insured in the Description of Operations section of the Certificate of Insurance which shall read:

Board of Education of Jefferson County  
Attn: Insurance/Real Estate Dept.  
3332 Newburg Road  
Louisville, Kentucky 40218

14. Services provider shall maintain, during the term of this Agreement, ISO27001 or SOC2 certification. If Services Provider is unable to provide ISO27001 or SOC2 certification, minimum requirements on a JCPS-provided standardized questionnaire must be met. Upon request, Services Provider shall furnish a current ISO27001, SOC2 certification, or updated questionnaire.

#### **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 the services contract described in Paragraph B.1 above.

#### **F. OBLIGATIONS OF JCPS**

During the term of this Agreement, JCPS shall:

1. Prepare and deliver the data described in **Attachment A**.

#### **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 ("Claim" or "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 in the event of a material breach of this Agreement by another party provided however, the breaching party shall have thirty (30) days to cure such breach and this Agreement shall remain in force.
  - 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, within seven (7) days of the termination the confidential information shall be returned or destroyed within seven (7) days of the termination and the Temporary Custodian shall provide JCPS confirmation of the return or destruction of the data pursuant to Paragraph D.11. If this Agreement terminates at the end of the term described in Section A, within seven (7) days after the end of the term, Services Provider shall return or destroy all confidential information and the Temporary Custodian shall provide JCPS confirmation of the return or destruction of the data pursuant to Paragraph D.11.
3. Destruction of the confidential information shall be accomplished by utilizing an approved method of confidential destruction, including but not limited to 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. 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, subject to Service Provider's right to cure under Section H.1.a. 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 its 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 remaining provisions 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:**

Frontline Education  
1400 Atwater Drive  
Malvern, PA 19355

BY:  \_\_\_\_\_

Name: Gregory A. Doran

Title: CFO

Date: September 17, 2020

**AGREED:**

Jefferson County Board of Education  
3332 Newburg Road  
Louisville KY 40218

BY: \_\_\_\_\_

Name: Martin A. Pollio, Ed. D.,

Title: Superintendent

Date: \_\_\_\_\_

## Attachment A

### CONFIDENTIAL INFORMATION TO BE DISCLOSED

#### 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:	Cookies for managing session identification
Application Use Statistics	Meta data on user interaction with application	X
Assessment	Standardized test scores	
	Observation data	
	Other assessment data-Please specify:	
Attendance	Student school (daily) attendance data	X – If provided by the district
	Student class attendance data	
Communications	Online communications that are captured (emails, blog entries)	X – In-App messaging system
Conduct	Conduct or behavioral data	X – If the Mental and Behavior Health modules are utilized.
Demographics	Date of Birth	X
	Place of Birth	X
	Gender	X
	Ethnicity or race	X
	Language information (native, preferred or primary language spoken by student)	X
	Other demographic information-Please specify:	X Address Academic Alerts Attachments Email Family History Identification

Category of Data	Elements	Check if used by your system
		Insurance Medicaid Eligibility Letters Medical Alerts and Problem Phone Picture
Enrollment	Student school enrollment	X
	Student grade level	X
	Homeroom	X
	Guidance counselor	
	Specific curriculum programs	
	Year of graduation	X
	Other enrollment information-Please specify:	
Parent/Guardian Contact Information	Address	X
	Email	X
	Phone	X
Parent/Guardian ID	Parent ID number (created to link parents to students)	X
Parent/Guardian Name	First and/or Last	X
Schedule	Student scheduled courses	X
	Teacher names	X
Special Indicator	English language learner information	X
	Low income status	X
	Medical alerts /health data	X
	Student disability information	X
	Specialized education services (IEP or 504)	X
	Living situations (homeless/foster care)	X

Category of Data	Elements	Check if used by your system
	Other indicator information-Please specify:	
Student Contact Information	Address	X
	Email	X
	Phone	X
Student Identifiers	Local (School district) ID number	X
	State ID number	X
	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)	
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.	
	Other student work data -Please specify:	
Transcript	Student course grades	
	Student course data	
	Student course grades/performance scores	
	Other transcript data -Please specify:	
Transportation	Student bus assignment	X

Category of Data	Elements	Check if used by your system
	Student pick up and/or drop off location	X
	Student bus card ID number	
	Other transportation data -Please specify:	
Other	<p>Please list each additional data element used, stored or collected by your application</p>	<p>           Blood Exam            Dental Exam            Developmental Exam            Growth Exam            Hearing Exam            Immunization Dose Admin            Medical Procedure Admin            Office Visit            Oral Exam            Parasitic Exam            Physical Exam            Postpartum Visit            Prenatal Visit            Prescription Admin            Scoliosis Exam            Speech Exam            Standing Order Admin            TB Results Exam            Tuberculosis Exam            Vision Exam            Immunization Dose Information         </p>

### **Attachment B**

## **SERVICE PROVIDER'S EMPLOYEE NONDISCLOSURE STATEMENT**

**FRONTLINE TECHNOLOGIES GROUP LLC**  
**PROPRIETARY RIGHTS AND RESTRICTIVE COVENANT AGREEMENT**

**(Including, but not limited to, Confidentiality, Non-Disclosure, Non-Compete, and Invention Assignment)**

1. Proprietary Information. The undersigned (“Employee”) recognizes and acknowledges that by reason of his or her employment with or engagement by Frontline Technologies Group LLC and/or any of its Subsidiaries or other Affiliates (collectively, including Frontline Technologies Group Holding LLC, the “Company”), he or she will have access to confidential and/or proprietary information of the Company and/or any of its Subsidiaries or Affiliates, including (a) trade secrets, inventions, ideas, processes, methods, apparatus, equipment, software, data, programs, listings, patents, copyrights, trademarks, service marks, other works of authorship, know-how, technology improvements, specifications, formulas, discoveries, developments, designs, drawings, documents, sketches, drawings, models and techniques relating to the current, future and proposed products and services of the Company (collectively, “Inventions”); (b) information and data regarding research, development, new products and services, design, details and specifications, engineering, marketing and sales, business records and plans, budgets, plans for future developments, business forecasts, financial statements and other financial information, licenses, costs, procurement requirements, policies or operational methods, suppliers, customers, potential customers and key personnel, market studies and forecasts, target markets, competitive analyses, sales and pricing policies, sales and pricing information and techniques, promotional strategies, the identity, skills and compensation of employees, personnel policies, the substance of agreements with customers, suppliers and others, marketing or dealership arrangements, servicing and training programs and arrangements, customer lists, customer preferences, customer needs, customer data, customer contact information, profit margins, overhead, and the Company’s methods and techniques for running its business, including but not limited to technical information relating to the creation, installation, repair or maintenance of its products and the services the Company provides; and (c) information regarding the skills and compensation of other employees or consultants of the Company ((a), (b) and (c) collectively, and in any form or medium, “Proprietary Information”). Employee hereby assigns to the Company all rights he or she may have or acquire in such Proprietary Information and recognizes and agrees that all Proprietary Information shall be the sole property of the Company and its assigns. Notwithstanding the foregoing or anything to the contrary in this Agreement or any other agreement between the Company and Employee, nothing in this Agreement shall limit Employee’s right to discuss his or her employment or report possible violations of law or regulation with the Equal Employment Opportunity Commission, United States Department of Labor, the National Labor Relations Board, the Securities and Exchange Commission, or other federal government agency or similar state or local agency or to discuss the terms and conditions of his or her employment with others to the extent expressly permitted by Section 7 of the National Labor Relations Act or to the extent that such disclosure is protected under the applicable provisions of law or regulation, including but not limited to “whistleblower” statutes or other similar provisions that protect such disclosure.

2. Nondisclosure.

2.1. Employee acknowledges and agrees that the Proprietary Information is not generally known to the public, trade or industry and gives the Company a competitive advantage over its competitors in its conduct and operation of its business and that in order to protect and preserve the goodwill associated with the Proprietary Information and the Company’s competitive advantage, the Proprietary Information must be kept strictly confidential by Employee and is intended to be used only by the Company and its employees, agents and independent contractors in the conduct of the Company’s business.

2.2. Employee covenants and agrees to hold the Company’s Proprietary Information



in the strictest confidence and that Employee will not, for as long as Employee is employed or engaged by, or otherwise providing services to, the Company or at any time thereafter, except with the express prior written consent of the President of the Company, directly or indirectly, whether as an employee, associate, owner, partner, member, agent, director, officer, shareholder, consultant, representative or in any other capacity, for his or her own account or for the benefit of any Person (as defined below), communicate, disclose, divulge, refer to, provide commentary regarding, or make available to any Person any of the Company's Proprietary Information or use the Company's Proprietary Information in any manner inconsistent with the Employee's performance of services during Employee's employment with Company; *provided* that the provisions of this Section 2.2 shall not apply to information that (a) is or becomes generally available to the public other than as a result of disclosure by Employee or by another Person in breach of any confidentiality obligation of such Person; (b) was readily available to Employee on a non-confidential basis prior to its disclosure to Employee by the Company or Employee's earlier receipt of such information in the course of employee's relationship with the Company; or (c) was in Employee's prior lawful possession on a non-confidential basis as evidenced by records kept in the ordinary course of business or by proof of actual prior possession. Notwithstanding the foregoing, pursuant to 18 U.S.C. Section 1833(b), Employee shall not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of a trade secret that: (1) is made in confidence to a Federal, State, or local government official, either directly or indirectly, or to an attorney, and solely for the purpose of reporting or investigating a suspected violation of law; or (2) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.

2.3. If Employee is requested to disclose any Proprietary Information by any federal, state, local or foreign court or legislative, executive or regulatory agency, Employee will promptly notify the Company to permit it to seek a protective order or take other action that the Company deems appropriate, and Employee will cooperate (at the Company's expense) in any such efforts to obtain a protective order or other reasonable assurance that confidential treatment will be accorded such Proprietary Information. If, in the absence of a protective order, Employee is compelled as a matter of law to disclose any such information in any proceeding or pursuant to legal process, Employee may disclose to the party compelling disclosure only the part of such Proprietary Information as is required by law to be disclosed (in which case, prior to such disclosure, Employee will advise and consult with the Company and its attorneys as to such disclosure and the nature and wording of such disclosure and Employee will use its reasonable best efforts to obtain confidential treatment therefore). Notwithstanding anything in this Section 2 to the contrary, while employed or engaged by, or otherwise providing services to, the Company, Employee may use Proprietary Information solely as necessary for Employee to properly perform services for the Company during Employee's employment with the Company; *provided* that nothing in this Agreement shall prohibit Employee from disclosing Proprietary Information in confidence to a government official or attorney, either directly or indirectly, solely for the purpose of reporting or investigating a suspected violation of law, or in a complaint or other document filed in a lawsuit or other proceeding if such filing is made under seal. For purposes of this Agreement, "Person" means a natural person, corporation, partnership, limited liability company, trust, estate, joint venture, sole proprietorship, government (and any branch or subdivision thereof), governmental agency, association, cooperative or other entity.

2.4. Upon Employee's termination of service with the Company, or immediately upon request of the Company, Employee shall: (a) return to the Company all originals, copies and reproductions of all Proprietary Information and Third Party Information (as defined below) and all writings and recordings incorporating or referring to any of the Proprietary Information or Third Party Information and all of the Company's other property in Employee's possession or control; and (b) certify in writing to the Company that Employee has satisfied all of Employee's covenants, duties and obligations pursuant to this Section 2.4.

3. Third Party Information. Employee understands that the Company has received, and in the future may receive from third parties confidential or proprietary information (“Third Party 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. Employee covenants and agrees that for as long as he or she is providing services to the Company and at all times thereafter, Employee will hold Third Party Information in the strictest confidence and will not communicate, disclose, divulge, provide commentary regarding or make available to any Person (other than personnel of the Company who need to know such information in connection with his or her work for the Company) or use, except in connection with his or her work for the Company, Third Party Information without the express prior written consent of the President of the Company and otherwise treat Third Party Information as Proprietary Information.

4. Work Product.

4.1. Ownership. Employee acknowledges and agrees that all Inventions and Proprietary Rights (as defined below) conceived, developed, fabricated, improved, made or reduced to practice by Employee (a) within the scope of Employee’s employment; (b) while using the Company’s time, materials, equipment, facilities, personnel or other resources; or (c) otherwise relating the Proprietary Information of the Company, whether in whole or in part, either solely or jointly with others, during the term of Employee’s employment by or service to the Company (collectively, “Work Product”) belong to the Company as set forth below or as a result of assignment from Employee to the Company as set forth below. “Proprietary Rights” means all trade secret, patent, copyright, mask work and other intellectual property rights throughout the world.

4.2. Works for Hire. Employee acknowledges and agrees that all Work Product or other original works of authorship are “works made for hire,” pursuant to United States Copyright Act (17 U.S.C., Section 101) (as a result of which the Company shall be the author) and, to the extent that such Work Product or other original works of authorship may not be deemed “works made for hire,” hereby irrevocably and perpetually assigns, transfers and conveys and agrees to so assign, transfer and convey in the future to the Company all his right, title and interest to such Work Product or other original works of authorship throughout the world, including, without limitation, all Proprietary Rights therein, all paternity, integrity, disclosure, withdrawal, special and any other similar rights recognized by the laws of any jurisdiction or country (“Moral Rights”) and the rights to sue for past infringement. Employee represents that such assignment does not violate the terms and conditions of any agreement to which he or she is a party by which he or she is bound. Any assignment of Work Product (and all Proprietary Rights with respect thereto) hereunder includes an assignment of all Moral Rights. To the extent such Moral Rights cannot be assigned to the Company and to the extent the following is allowed by the laws in any country where Moral Rights exist, Employee hereby unconditionally and irrevocably waives the enforcement of such Moral Rights, and all claims and causes of action of any kind against the Company or related to the Company’s customers, with respect to such rights. Employee further acknowledges and agrees that neither Employee’s successors-in-interest nor legal heirs retain any Moral Rights in any Work Product (and any Proprietary Rights with respect thereto).

4.3. Disclosure of Inventions. Employee will inform the Company promptly and fully of any Invention and/or Work Product and upon request by the Company will set forth in writing in such details as are necessary to explain the Invention and/or Work Product, including, without limitation, measurements, theories, processes, structures, procedures, and methodology employed and the results achieved. Upon the Company’s request, Employee will execute all documents necessary to confirm or perfect the Company’s exclusive ownership of any Inventions and Work Product as set forth in this Section 4. Employee will execute such documents and provide such assistance as may be deemed necessary by the

Company to apply for, defend, or enforce any United States and foreign patents, copyrights, and related rights based on or related to such Inventions and Work Product. In the event the Company is unable for any reason, after reasonable effort, to secure Employee's signature on any document needed in connection with the actions specified above, Employee hereby irrevocably designates and appoints the Company and its duly authorized officers and agents as his/her agent and attorney in fact, which appointment is coupled with an interest, to act for and on his/her behalf to execute, verify and file any such documents and to do all other lawfully permitted acts to further the purposes of this Section 4 and this Agreement with the same legal force and effect as if executed by Employee. Employee hereby waives and quitclaims to the Company any and all claims, of any nature whatsoever, which Employee now or may hereafter have for infringement of any Company Invention assigned hereunder to the Company.

4.4. Prior Proprietary Rights. Proprietary Rights, if any, patented or unpatented, which Employee made prior to the commencement of his/her employment with the Company are excluded from the scope of this Agreement, including but not limited to the Proprietary Rights Employee has set forth on Exhibit A attached hereto as a list of Proprietary Rights that Employee has, alone or jointly with others, conceived, developed or reduced to practice or caused to be conceived, developed or reduced to practice prior to the commencement of his/her employment with the Company, that Employee considered to be his/her property or the property of third parties and that Employee wishes to have excluded from the scope of this Agreement (collectively, "Prior Proprietary Rights"). If disclosure of any such Prior Proprietary Right would cause Employee to violate any prior confidentiality agreement, Employee understands that he/she is not to list such Prior Proprietary Rights in Exhibit A but is only to disclose a cursory name for each such Proprietary Right, a listing of the party(ies) to whom it belongs and the fact that full disclosure as to such Proprietary Rights has not been made for that reason. If no such disclosure is attached, Employee represents that there are no Prior Proprietary Rights. If, in the course of Employee's employment with the Company, Employee incorporates a Prior Proprietary Right into a Company product, process or machine, the Company is hereby granted and shall have a nonexclusive, royalty-free, irrevocable, perpetual, transferable, worldwide license (with rights to sublicense through multiple tiers of sublicenses) to make, have made, modify, use and sell such Prior Proprietary Right. Notwithstanding the foregoing, Employee agrees that Employee will not incorporate, or permit to be incorporated, Prior Proprietary Rights in any Company Inventions (as defined in Section 1) without the Company's prior written consent.

4.5. Unassigned/Nonassignable Inventions. This Agreement does not apply to any Invention which qualifies fully for protection from assignment to the Company under any specifically applicable state law, regulation, rule, or public policy as noted below.

a. Notice to Utah Employees. The following applies only to employees who work in Utah: Employee recognizes that this Agreement will not be deemed to require assignment of any Invention that he or she created entirely on his or her own time and that are not an employment invention under Section 34-39-3 of the Utah Code.

b. Notice to Washington Employees. The following applies only to employees who work in Washington: This Agreement does not apply to any Invention which qualifies fully for protection from assignment to the Company under Section 49.44.140 of the Revised Code of Washington ("Section 49.44.140"), or any other specifically applicable state law, regulation, rule, or public policy. Employee will advise the Company of any Inventions that he or she believes meet such provisions.

**NOTICE REQUIRED BY SECTION 49.44.140:**

ANY ASSIGNMENT OF INVENTIONS REQUIRED BY THIS AGREEMENT DOES NOT APPLY TO AN INVENTION FOR WHICH NO EQUIPMENT, SUPPLIES, FACILITY OR TRADE SECRET INFORMATION OF THE COMPANY WAS USED AND WHICH WAS DEVELOPED ENTIRELY ON THE EMPLOYEE'S OWN TIME, UNLESS (A) THE INVENTION RELATED (I) DIRECTLY TO THE BUSINESS OF THE COMPANY OR (II) TO THE COMPANY'S ACTUAL OR DEMONSTRABLY ANTICIPATED RESEARCH OR DEVELOPMENT OR (B) THE INVENTION RESULTS FROM ANY WORK PERFORMED BY THE EMPLOYEE FOR THE COMPANY.

c. Notice to All other Employees. The following applies only to employees who work in any other state not specifically listed above: Employee recognizes that this Agreement will not be deemed to require assignment of any Invention that he or she developed entirely on his or her own time without using the Company's equipment, supplies, facilities, trade secrets, or Proprietary Information, except for those Inventions that either (i) relate to the Company's actual or anticipated business, research or development, or (ii) result from or are connected with work performed by Employee for the Company.

5. Non-Competition; Non-Solicitation; Non-Disparagement.

5.1. During the Employee's employment by or service to the Company and for a period of one year thereafter (the "Non-Competition Period"), Employee shall not directly or indirectly participate in any activity, and shall cause each Person controlled by (as used in the definition of "Affiliate") the Employee not to participate in any activity, in each case that would qualify as Competition in the Territory (as defined below). For purposes hereof, "Competition" means to directly or indirectly own any interest in, manage, operate, control, invest or acquire an interest in, participate in, consult with, render services to or for, operate or in any manner engage in, any Person, business or enterprise (including any division, group or franchise of a larger organization), whether as a proprietor, owner, member, partner, stockholder, director, officer, employee, consultant, joint venturer, investor, licensor, sales representative or other participant, that conducts, participates in or constitutes a business or business line that the Company is conducting or that the Company conducted during the two (2) year period immediately preceding the date that the Employee is no longer employed by the Company or any Company Subsidiary or Affiliate. Notwithstanding anything to the contrary contained herein, the Employee shall not be prohibited from owning up to three percent (3%) of the outstanding stock of a corporation that is engaged in Competition and that is publicly traded on a national securities exchange or in the over the counter market so long as such Person has no active participation in connection with the business of such corporation.

5.2. As used in this Agreement, "Territory" means all of the United States of America, Australia and Canada, together with all of each other country in which the Company provides sales or services during Employee's employment or, upon termination of Employee's employment, provided sales or services at any time during the two year period prior to the termination of Employee's employment.

5.3. During the Non-Competition Period, Employee shall not, directly or indirectly, for the benefit of Employee or any other person, and shall cause any Person controlled by (as used in the definition of "Affiliate") Employee not to directly or indirectly: (a) induce, contact, encourage, or solicit or attempt to induce, contact, encourage, or solicit any employee, associate, agent or representative of the Company, who is or was an employee, associate, agent or representative of the Company on or during the two (2) year period immediately preceding the date of Employee's termination of employment with the Company, to leave the employ of the Company or alter in any way the services provided to the Company; (b) to induce, contact, encourage, or solicit or to attempt to induce, contact, encourage, or solicit any

customer, supplier, vendor, licensee, distributor, contractor or other business relation of the Company, who is or was a customer, supplier, vendor, licensee, distributor, contractor or other business relation of the Company, on or during the two (2) year period immediately preceding the date of Employee's termination of employment with the Company, to cease doing business with or alter in any way such Person's business with, or knowingly adversely alter its business relationship with, the Company; or (c) hire or retain any Person who is or was an employee, associate, consultant, agent or representative of the Company on or during the two (2) year period immediately preceding the date of Employee's termination of employment with the Company.

5.4. For so long as Employee is employed or engaged by the Company, and for a period of two (2) years following the termination of Employee's employment or engagement by the Company, the Employee shall not, directly or indirectly, and shall cause any Person controlled by (as used in the definition of "Affiliate") the Employee not to, make or solicit or encourage others to make or solicit directly or indirectly any derogatory or negative statement or communication about the Company or any of the Company's respective businesses, products, services or activities; provided, however, that such restriction shall not prohibit truthful testimony compelled by valid legal process. Notwithstanding anything herein to the contrary, nothing in this Section 5.4 shall prevent the Employee from exercising the Employee's authority or enforcing the Employee's rights or remedies hereunder or that Employee may otherwise be entitled to enforce or assert under any other agreement or applicable law, or limit such rights or remedies in any way. Notwithstanding the foregoing, nothing in this Agreement shall limit Employee's right to voluntarily communicate with the Equal Employment Opportunity Commission, United States Department of Labor, the National Labor Relations Board, the Securities and Exchange Commission, other federal government agency or similar state or local agency or to discuss the terms and conditions of his or her employment with others to the extent expressly permitted by Section 7 of the National Labor Relations Act.

## 6. Representations.

6.1. Employee acknowledges that: (a) the Company's business encompasses a broad range of products and services that the Company now provides and may in the future develop internally or obtain through acquisitions, mergers, licensing or otherwise; (b) the Company is in a highly competitive industry; (c) the Company invests substantial time, money and effort on an ongoing basis to develop its technologies, products and services, to train its employees with specialized skills and knowledge unique to the Company and its business, and to solicit and retain employees, contractors, consultants, clients and customers; and (d) the Company's Proprietary Information must be maintained in strict confidence in order for the Company to maintain its competitive position in the marketplace.

6.2. Employee understands and acknowledges that the Company currently sells and services its products across the entire United States, Australia and Canada, and, therefore, the Territory includes those countries. Employee hereby acknowledges and understands that Employee will be unable to work or provide services to or for a business that is in competition with the Company within the Territory for a period of one (1) year, as set forth more fully in Section 5, above. Employee represents that the geographic and durational restrictions contained herein are reasonable and will not cause Employee undue hardship in Employee's ability to earn a living in Employee's profession in the event of the cessation of Employee's employment with the Company.

7. Equitable Relief. Employee acknowledges that any breach of any of the covenants and agreements set forth in this Agreement (collectively, the "Covenants") may result in irreparable injury to the Company for which monetary damages could not adequately compensate the Company. Therefore, in the event that Employee breaches or threatens to commit a breach of any of the Covenants, the Company shall

have the right to seek the following remedies, each of which rights and remedies shall be independent of the other and severally enforceable, and all of which rights and remedies shall be in addition to, and not in lieu of, any other rights and remedies available to the Company under law or in equity:

7.1. the right and remedy to have the Covenants specifically enforced (without posting any bond) by any court having equity jurisdiction, including the right to any entry against Employee for restraining orders and injunctions (preliminary, mandatory, temporary and permanent) against violations, threatened or actual, and whether or not then continuing, of such covenants, it being acknowledged and agreed that any such breach or threatened breach will cause irreparable injury to the Company and that money damages alone will not provide adequate remedy to the Company;

7.2. the right and remedy to require Employee to account for and pay over to the Company all compensation, profits, monies, accruals, increments or other benefits derived or received by Employee as a result of any transactions constituting a breach of any of the Covenants; and

7.3. the limitations in this Agreement which apply for a period of one (1) year after termination shall be enforced by a court for a period of one (1) year from the date of the last breach or violation of the applicable restriction(s) up to two (2) years after termination of Employee's employment or engagement by the Company.

8. Consideration. Employee expressly acknowledges and agrees that (a) the Covenants (i) are reasonable in all respects and without Employee's agreement to be bound by the Covenants, the Company would not have employed Employee or granted Employee Equity Appreciation Rights of the Company, (ii) do not impose a greater restraint than necessary to protect the goodwill or other business interests of the Company, (iii) are not harmful to the general public, and (iv) are not unduly burdensome to Employee; and (b) the value of Employee's employment with the Company and the Equity Appreciation Rights granted to Employee by the Company includes good and adequate consideration for the Covenants. In consideration of the foregoing and in light of Employee's education, skills and abilities, Employee agrees that he or she will not assert, and it should not be considered, that any provisions of this Agreement otherwise are void, voidable or unenforceable or should be voided or held unenforceable, including without limitation, Employee agrees and acknowledges that Employee shall not use the at-will nature, or length, of employment with the Company as a basis to argue against the validity or enforceability of the Covenants.

9. Scope. If any portion of any Covenant or its application is construed to be invalid, illegal or unenforceable, then the other portions and their application shall not be affected thereby and shall be enforceable without regard thereto. If any of the Covenants is determined to be unenforceable because of its scope, then the court making such determination shall have the power to reduce, limit or reform such scope, duration, area or other factor, and such Covenant shall then be enforceable in its reduced, limited or reformed form.

10. Prior Agreements. Employee represents to the Company that (a) there are no restrictions, agreements or understandings whatsoever to which Employee is a party which would prevent or make unlawful Employee's service to the Company or Employee's agreement to be bound by the terms and conditions of this Agreement; (b) that such agreement shall not constitute a breach of any contract, agreement or understanding, oral or written to which Employee is a party or by which Employee is bound; and (c) that this Agreement is a valid and binding obligation of Employee, enforceable in accordance with its terms. Further, Employee represents and acknowledges that the restrictions and other covenants set forth herein are independent from the covenants and agreements set forth in any other agreement executed by

Employee concerning Employee's employment with the Company or any of its Subsidiaries, and is supported by separate and sufficient consideration, the receipt of which is hereby acknowledged.

11. Attorneys' Fees. Employee agrees to indemnify the Company for its reasonable attorneys' fees and costs incurred in enforcing the terms of this Agreement should Employee violate any of its terms.

12. Choice of Law and Forum. This Agreement and all claims arising out of or relating to this Agreement shall be governed by the laws of the Commonwealth of Pennsylvania, without giving effect to any choice of law or similar provision that would cause the law of any jurisdiction other than the Commonwealth of Pennsylvania to apply. Employee agrees that this Agreement shall exclusively be enforced by any federal or state court of competent jurisdiction in the Commonwealth of Pennsylvania and hereby consents to the personal jurisdiction and venue of these courts.

13. Amendment. The provisions of this Agreement may be amended only with the prior written consent of the Company and Employee.

14. Assignment. Employee agrees that the Company may assign part or all of this Agreement to any direct or indirect parent, affiliate, subsidiary, division, related company, or entity of the Company and to any transferee of substantially all of the business or assets of the Company and that any assignee shall have the same rights as the Company.

15. Capitalized Terms. Within the context of this Agreement, the following terms shall have the meanings set forth below:

"Affiliate" means, with respect to any Person, (a) any Person directly or indirectly controlling, controlled by, or under common control with such Person; (b) any Person owning or controlling ten percent (10%) or more of the outstanding voting securities of such Person; (c) any officer, director, general partner, manager or trustee of such Person; and (d) any Family Member of any Person described in clause (a), (b) or (c) above. For purposes of this definition, "controlling," "controlled by," or "under common control with" shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

"Family Member" when used to indicate a relationship with any Person, means (a) the spouse, sibling, parent or lineal descendent of such Person and (b) all trustees and beneficiaries of any such Person that is a trust, and all successors of such trust and its trustees and beneficiaries.

"Subsidiary" means, with respect to any Person that is not an individual, any other Person whose (a) equity securities having ordinary voting power to elect a majority of the board of directors, managers or general partner or general partners (or other persons having similar functions) or (b) other ownership interests (including partnership and limited liability company interests) ordinarily constituting a majority interest in the capital, profits, distributions or cash flow of such Person, are at the time, directly or indirectly, owned or controlled by such Person, or by one or more other Subsidiaries of such Person, or by such Person and one or more of its Subsidiaries.

Employee hereby intends and agrees to be legally bound by the terms and conditions of this Proprietary Rights and Restrictive Covenant Agreement, and intends for this to be a sealed instrument, effective as of the date set forth below.

Name of Employee: \_\_\_\_\_

Signature of Employee: \_\_\_\_\_

Date: \_\_\_\_\_



## EXHIBIT A PRIOR PROPRIETARY RIGHTS

1. Except as listed in Section 2 below, the following is a complete list of all Prior Proprietary Rights relevant to the subject matter of my employment by the Company that have been made or conceived or first reduced to practice by me alone or jointly with others prior to my engagement by the Company:

☐ No Prior Proprietary Rights.

☐ See below: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

☐ Additional sheets attached.

2. Due to a prior confidentiality agreement, I cannot complete the disclosure under Section 1 above with respect to Prior Proprietary Rights generally listed below, the proprietary rights and duty of confidentiality with respect to which I owe the following party(ies):

	Prior Proprietary Rights	Party(ies)	Relationship
1.	_____	_____	_____
2.	_____	_____	_____
3.	_____	_____	_____

☐ Additional sheets attached.