

Data Sharing/Use Agreement

Between

Jefferson County Board of Education

And

n2y 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 ***n2y LLC***, a limited liability company organized under the laws of Ohio. (“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 January 20,2021, and end 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 January 20, 2021: Online hosted software subscriptions for special education curriculum and related materials: Unique Learning System (ULS), News-2-You (NWS), and SymbolStix PRIME (SSX).
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.
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 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.
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.
 - 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. 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 Steve Lubowicz, CTO (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.
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. **N.B. – n2y solutions are NIST 800-171 compliant. See <https://www.n2y.com/trust-center/security/> for more information (SEL)**

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.

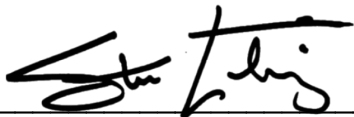
R. ENTIRE AGREEMENT; ASSIGNMENT

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:

n2y LLC
909 University Drive, South
Huron, OH 44839

BY: _____



Name: Steve Lubowicz

Title: Chief Technology Officer

Date: 12/30/2020

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

IP Addresses of Users, Use of cookies, Etc. | Meta data on user interaction with application | Conduct or behavioral data | Date of Birth | Gender | Student grade level | Student Name: First and/or Last | Teacher/Admin: email (for login)

Attachment B

SERVICE PROVIDER'S EMPLOYEE NONDISCLOSURE STATEMENT

15385-370\NDA IP Agreement - 1 -

CONFIDENTIALITY, NON-DISCLOSURE, INTELLECTUAL PROPERTY AND WORK MADE FOR HIRE AGREEMENT

This Confidentiality, Non-Disclosure, Intellectual Property and Work Made for Hire Agreement (the "Agreement"), is entered into by and between **n2y LLC**, an Ohio limited liability company, which with its successors and assigns is herein called "Company" or "n2y", and

_____ (hereinafter referred to as the "Employee") to evidence that, in consideration of the mutual promises made in this Agreement, Company and Employee (collectively, the "Parties") agree as follows:

WHEREAS, in order to protect certain unique and valuable interests of the Company, the Company has made it a condition of employment or continued employment (both of which are at-will), as the case may be, that the Employee enter into this Agreement;

WHEREAS, the Employee understands the benefits and limitations provided by this Agreement and is entering into this Agreement freely and voluntarily;

WHEREAS, Employee is an employee of Company and is familiar with Company's customer, client, vendor and supplier lists and contacts, business processes, formulas, pricing structures, websites, website content and other intellectual property, trade secrets and accumulated confidential information;

WHEREAS, if such lists, information, intellectual property, trade secrets and accumulated confidential information were disclosed or disseminated to others, irreparable damage to Company's competitive position would result.

1. Employment Term. For purposes of this Agreement, the term "Employment Term" shall mean the period of time beginning on the date this Agreement is signed by the Employee and ending on the last date the Employee is employed by the Company. Employee's employment with the Company is at-will.

2. Definitions. For purposes of this Agreement, the Parties agree to and understand the following definitions:

2.1 Confidential Information. For purposes of this Agreement, the term "Confidential Information" means all of the following (whether written, electronic or verbal) pertaining to Company: (i) trade secrets and intellectual property (as defined by Ohio and/or federal law); customer, client, vendor and supplier lists and contacts, records and other information regarding Company's Customers or Clients (whether or not evidenced in writing); Customer/Client, vendor and supplier price schedules and price policies; customer pricing and quotes, financial books, plans, records, ledgers and information; purchase orders, agreements and related data; business development plans; sales and marketing plans; website and website content; research and development plans; employment and personnel manuals, records, data and policies; business manuals, methods and operations; business forms, correspondence, memoranda and other records; know-how;

computer records and related data; and any other confidential or proprietary data and information of Company or its Customers or Clients which Employee encounters while an employee of Company; and (ii) all products, technology, ideas, inventions, discoveries, developments, devices, processes, business notes, forms and documents, business products, computer programs and other creations (and improvements of any of the foregoing), whether patentable or copyrightable, which Employee has acquired, developed, conceived or made (whether directly or indirectly, whether solicited or unsolicited) while Employee was an employee of Company or during the Restricted Period (as defined herein) and which relate to any business activity, service or product of Company or are derived from the Confidential Information defined herein.

3. Prior Agreements. Employee represents that, upon commencement of this Agreement that Employee (a) is not bound by any employment, independent contractor, non-disclosure, non-competition or similar agreement or arrangement (whether written or oral) which restricts Employee from signing this Agreement, and (b) has not improperly or unlawfully removed or appropriated any confidential or proprietary information, documents or trade secrets of any third-party.

4. Confidentiality, Non-Disclosure and Intellectual Property Promises.

4.1 Importance of Employee's Promises. Employee acknowledges and agrees that:

- (a) During the Employment Term, Company will devote substantial time, effort, personnel and funds to train Employee, to further develop Employee's skills, and to educate Employee regarding the nature and use of certain Confidential Information (as defined herein);
- (b) During the Employment Term, Employee will materially assist Company in the generation, development or enhancement of certain Confidential Information, special projects, various business opportunities, and customer, client, vendor and supplier goodwill and relationships;
- (c) Employee's promises in this Section 4: (i) were negotiated at arm's-length and with ample time for Employee to seek the advice of legal counsel; (ii) do not constitute an unreasonable hardship to Employee in working for Company or in obtaining other subsequent employment; and (iii) are required for the fair and reasonable protection of Company and its Confidential Information;
- (d) If Employee breaches (or threatens to breach) any of the promises in this Section 4, the secrecy and thereby the value of the Confidential Information will be significantly jeopardized; Company will consequently be subject to the immediate risk of material, immeasurable and irreparable damage and harm; the

remedies at law for Employee's breach would be inadequate; and, therefore, Company shall be entitled to injunctive relief against Employee, without the need to post a bond, in addition to any and all other legal or equitable remedies; and

(e) If Employee had not agreed to all Employee's promises in this Section 4, Company would not have employed or continued to employ Employee and would not have permitted Employee to obtain and use the Confidential Information, and would not have signed this Agreement.

4.2 Non-Disclosure Covenant. Employee acknowledges and agrees that:

(a) The Confidential Information is, and at all times, shall remain the exclusive property of the Company. Employee: (i) shall hold the Confidential Information in strictest confidence and in a position of trust for the Company and its customers, clients, vendors and suppliers; (ii) shall not (directly or indirectly) use for any purpose, copy, duplicate, reverse engineer, disclose, convey to any third-party or convert any Confidential Information at any time following cessation or termination of Employee's status as an employee of the Company; and (iii) upon the request of the Company at any time after cessation or termination of Employee's status as an employee of the Company, shall immediately deliver to the Company all the Confidential Information in Employee's possession and shall neither convey to any third-party nor retain any copies or duplicates thereof;

(b) Immediately upon the written request of the Company at any time, Employee will return to the Company all Confidential Information and all documents and media containing any such Confidential Information. Confidential Information and any and all copies thereof that is in a form incapable of return shall be destroyed or erased, as appropriate; and,

(c) Employee further acknowledges and agrees that no representation or warranty, express or implied, is or will be made, and no responsibility or liability is or will be accepted by the Company, or by any of its respective directors, officers, employees, agents or advisors, as to, or in relation to, the accuracy or completeness of any Confidential Information made available to the Employee.

4.3 Discoveries, Inventions and Work Made for Hire. Employee acknowledges and agrees that:

(a) Employee agrees that upon conception and/or development of any idea, discovery, invention, improvement, software, writing or other material or design that: (i) relates to the Business or (ii) relates to the Company's actual or demonstrably anticipated research or development or (iii) results from any work performed by Employee for or on behalf of the Company, Employee will assign to the

Company the entire right, title and interest in and to any such idea, discovery, invention, improvement, software, writing or other material or design;

(b) Employee has no obligation to assign any idea, discovery, invention, improvement, software, writing or other material or design that Employee conceives and/or develops entirely on Employee's own time without using the Company's equipment, supplies, facilities, Confidential Information or trade secret information unless the idea, discovery, invention, improvement, software, writing or other material or design either: (i) relates to the business or operations of the Company or (ii) relates to the Company's actual or demonstrably anticipated research or development or (iii) results from any work performed by Employee for the Company;

(c) In the event the Company is unable, after reasonable effort, and in any event after thirty (30) days, to secure Employee's signature on a written assignment to the Company of any application for letters patent or to any common-law or statutory copyright or other property right therein, whether because of Employee's physical or mental incapacity or for any other reason whatsoever, Employee irrevocably designates and appoints any duly appointed officer of the Company as Employee's attorney-in-fact to act on Employee's behalf to execute and file any such application and to do all other lawfully permitted acts to further the prosecution and issuance of such letters patent, copyright or trademark; and,

(d) Employee acknowledges that, to the extent permitted by law, all work papers, reports, documentation, drawings, designs, writings, photographs, negatives, tapes and masters thereof, prototypes and other materials (hereinafter, "items"), including without limitation, any and all such items generated and maintained on any form of electronic media, generated by Employee while an employee of the Company shall be considered a "work made for hire" and that ownership of any and all copyrights in any and all such items shall belong to the Company. The item will recognize the Company as the copyright owner, will contain all proper copyright notices, e.g., "(creation date) All Rights Reserved," and will be in condition to be registered or otherwise placed in compliance with registration or other statutory requirements.

5. Costs of Enforcement. If Employee is found to have breached any material term of this Agreement, Employee shall be liable for all reasonable costs and expenses (including investigation, litigation and court costs, expert fees and attorneys' fees) incurred by the Company in the enforcement of any and all of the Company's rights and remedies under this Agreement.

6. Venue and Jurisdiction.

6.1 This Agreement is executed in the City of Huron, County of Erie, State of Ohio and Ohio's laws shall govern all disputes, controversies, matters of interpretation and litigation arising hereunder.

6.2 Company and Employee hereby agree that exclusive venue for any disputes, controversies or litigation arising under this Agreement lies with the Erie County Court of Common Pleas.

6.3 Company and Employee (jointly and separately) agree to and hereby submit to the personal jurisdiction of the Erie County Court of Common Pleas for all disputes, controversies and litigation arising under this Agreement and hereby waive any claim, defense or objection to the venue of such courts.

7. Remedies Cumulative. All rights, powers and remedies of the Company are cumulative and concurrent and the existence of one right, power or remedy will not be deemed to be a waiver or release of any other right, power or remedy.

8. Entire Agreement. This Agreement constitutes the entire agreement between Company and Employee regarding the subject matter hereof and all other prior or contemporaneous written or oral negotiations, representations, arrangements and/or agreements (regarding the subject matter hereof) are hereby superseded by this Agreement. Company and Employee acknowledge that there are no oral or other written understandings, arrangements and/or agreements between the Parties relating to the subject matter of this Agreement. Neither party shall assign or transfer all or any part of its rights under this agreement without the express written consent of the other party.

9. Severability. All provisions of this Agreement are severable and no provision hereof shall be affected by the invalidity or unenforceability of any other provision of this Agreement.

10. Modification of Agreement. This Agreement may be amended, altered or changed only by a written document signed by the Parties and clearly designated as an amendment to this specific Agreement.

11. Waiver. The failure of either party to enforce its rights under this Agreement at any time for any period shall not be construed as a waiver of such rights.

12. Survival. Employee's promises, duties and obligations made in this Agreement shall survive the voluntary or involuntary cessation or termination of Employee's status as an employee of the Company. If any of the restrictions contained in this Agreement are ever judicially held to exceed the geographic or time limitations permitted by law, then such restrictions shall be deemed to be reformed to comply with the maximum geographic and time limitations permitted by law. The existence of any claim or cause of action by Employee against Company (whether or not derived from or based upon this Agreement) shall not constitute a defense to Company's enforcement of any covenant, duty or obligation of Employee in this Agreement.

13. At-Will Employment. It is expressly understood to be the intent of the parties that this is not an employment agreement and nothing in this Agreement changes the Employee's classification as an employee at-will.

14. Interpretation of Agreement. The Parties agree that in any dispute regarding the interpretation or construction of this Agreement, no presumption shall operate in favor or against any party hereto by virtue of that party's role in drafting or not drafting the terms and conditions set forth herein.

15. Word Usage. For purposes of this Agreement, the singular includes the plural and vice-versa and the feminine, masculine and neuter include each other. The headings and captions designated in this Agreement are for convenience only and shall not be used to interpret, enlarge or limit any provision of this Agreement.

IN WITNESS WHEREOF, each Party has signed this Agreement as of the day and year designated below.

n2y, LLC EMPLOYEE

By: _____ Signature: _____

Its: _____ Printed Name: _____

Date: _____ Date: _____