

## **Data Sharing/Use Agreement**

**Between**

**Jefferson County Board of Education**

**And**

***NoRedInk Corp.***

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 ***NoRedInk Corp.***, a corporation organized under the laws of Delaware. ("Services Provider") describes the services to be provided to JCPS by Services Provider, and the means to be used by Services Provider to ensure the confidentiality and security of information and data exchanged between JCPS and Services Provider in connection with the provision of the services.

### **A. PERIOD OF THE AGREEMENT**

This Agreement shall be effective as of February 17, 2021 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 February 17, 2021: The services to be provided are subscription access to Services Provider's NoRedInk Premium hosted service consisting of adaptive, mastery-based writing curriculum for grades 5-12.
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**. This Agreement shall apply only to, and any reference to “data” or “information” or the like (however qualified) shall mean only that data concerning natural living persons which is provided to Services Provider for use within Services Providers’ hosted service. 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. Except as permitted by applicable law (including FERPA and KRS 365.734), 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 and individual 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 except as permitted by applicable law (including FERPA and KRS 365.734) 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 (if requested) 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. Except as permitted by applicable law (including FERPA and KRS 365.734) Services Provider shall not distribute, reprint, alter, sell, assign, edit, modify or create derivative works (other than aggregated statistics regarding the use of its hosted service which has been de-identified pursuant to FERPA 34 C.F.R. 99.31(b)) or any ancillary materials from or with the data.
5. Except as permitted by applicable law (including FERPA and KRS 365.734), 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 which requires treating all data received from Services Provider's

customers, including JCPS, as confidential information and protected and prohibiting disclosure or use thereof except in connection with such staff's performance under this Agreement, and maintain copies of signed statements. For the avoidance of doubt, any disclosure during staff's performance under this Agreement must comply with FERPA;

- 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 ensure that all employees, contractors, or agents of any kind using JCPS data to comply with this provision. Services Provider agrees to document the methods used to destroy the data, and upon request, provide certification to JCPS that the data has been destroyed.
11. For purposes of this agreement and ensuring Services Provider's compliance with the terms of this Agreement and all application of the state and Federal laws, Services Provider designates Dui Toledo (or an alternative designee specified in writing) as the temporary custodian ("Temporary Custodian") of the data that JCPS shares with Services Provider. Temporary Custodian shall be responsible for transmitting all data requests exclusive of the ordinary operation of the service provided by Services Provider and for ensuring that Services Provider maintains a log or other record of all data requested and received pursuant to this Agreement, and other non-routine correspondence concerning data, 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 may either provide ISO27001 or SOC2 certification, or meet minimum requirements on a JCPS-provided standardized questionnaire. 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**

Subject to the procedural requirements for indemnification set forth in Section 8.3 of the Hosted Service Agreement, Services Provider agrees to defend JCPS against any third party claims, 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"), and agrees to hold harmless JCPS and pay any costs, damages or expenses (including reasonable attorneys' fees) awarded against JCPS or incurred by JCPS in the defense of 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 thirty (30) days of the termination the confidential information shall be returned (if requested by JCPS) or destroyed and the Temporary Custodian shall provide JCPS, if requested, 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 thirty (30) days after the end of the term, Services Provider shall return (if requested by JCPS) or destroy all confidential information and the



Temporary Custodian shall, if requested, 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 seek 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 supplements and modifies the services contract between JCPS and Services Provider (which includes a modified JCPS professional services agreement and Services Provider's Order Form and Master Service Terms (referred to as the Hosted Service Agreement); all terms thereof shall continue in force except as modified herein, This Agreement, together with the services contract between JCPS and Services Provider 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. Neither party shall assign this Agreement or any portion thereof to a third party without the prior written consent of the other party, which consent shall not unreasonably be withheld; provided, however, that without the other party's consent, either party may transfer this Agreement as a whole to a successor-in-interest by corporate reorganization, merger, acquisition or sale of all or substantially all of the assets associated with the services that are the subject of this Agreement. If Services Provider is so permitted by the terms of an acquisition or merger agreement, Services Provider agrees to provide JCPS with at least thirty (30) days advance notice of any such transfer of information, and in all

events will notify JCPS as soon as it is permitted to do so, and at the latest upon the closing date of such transaction. JCPS shall have the ability, within thirty (30) days after receipt of notice, to terminate this Agreement and its service contract with Services Provider without penalty, and shall be entitled to a prorated refund of any fees paid for periods of time subsequent to the termination date. The right and obligations of each party hereunder shall inure to the benefit of and be binding upon the permitted successors and assigns of such party. Any attempted assignment without such prior written consent in violation of this Section R shall be deemed a breach of this Agreement.

**AGREED:**

NoRedInk Corp.  
118 2nd Street, 3rd Floor  
San Francisco CA 94105

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

Name: Steve Gardner

Title: VP of Sales and Marketing

Date: 1/27/2021

**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**

**Student district, Student name, Student schools, Student sis id, Student school,  
Student email, Student gender, Student grade, Student username  
Teacher district, Teacher name, Teacher email**