

OK AS TO FOR
A.M.H. 12.22.2022

This Confidential Data Privacy Agreement (“**DPA**”) is entered into by and between:

THE BOARD OF EDUCATION OF JEFFERSON COUNTY KENTUCKY, a political subdivision of the Commonwealth of Kentucky, with its principal place of business at 3332 Newburg Road, Louisville, Kentucky 40218 (the “**Board**” or “**Jefferson County Public Schools**”) and

ENGAGE XR Limited, an Irish registered company organized under the laws of Ireland with its principal place of business located at Unit 9, Cleaboy Business Park, Waterford, Ireland, X91 AX83 (the “**Provider**”).

WHEREAS, the Provider is providing educational or digital services to the Board.

WHEREAS, the Provider and the Board recognize the need to protect personally identifiable student information and other regulated data exchanged between them as required by applicable laws and regulations, such as the Family Educational Rights and Privacy Act (“**FERPA**”) at 20 U.S.C. § 1232g (34 CFR Part 99); the Children’s Online Privacy Protection Act (“**COPPA**”) at 15 U.S.C. § 6501-6506 (16 CFR Part 312), applicable state privacy laws and regulations and

WHEREAS, the Provider and the Board desire to enter into this DPA for the purpose of establishing their respective obligations and duties in order to comply with applicable laws and regulations.

NOW THEREFORE, for good and valuable consideration, the Board and Provider agree as follows:

ARTICLE I: PURPOSE AND SCOPE

1. **Entire Agreement.** This DPA is the entire agreement between the Parties and supersedes any and all agreements, representations, and negotiations, either oral or written, between the Parties before the effective date of this DPA. This DPA may not be amended or modified except in writing as provided below. This DPA is supplemented by the Board’s Procurement Regulations currently in effect (hereinafter “**Regulations**”) that are incorporated by reference into and made part of this DPA. In the event of a conflict between any provision of this DPA and the Regulations, the Regulations shall prevail. In the event there is conflict between the terms of the DPA and any other writing, including, but not limited to the Service Agreement and Provider Terms of Service or Privacy Policy the terms of this DPA shall control.
2. **Term.** This DPA shall be effective as of January 18, 2023 (the “**Effective Date**”) and shall continue for three (3) years, terminating on January 17, 2024.
3. **Services.** The services to be provided by Provider to the Board pursuant to this DPA are detailed in **Exhibit “A”** (the “**Services**”). Any compensation to be provided by the Board to Provider is also detailed in **Exhibit “A”** (the “**Compensation**”). Each party shall be responsible for their portion of costs that may result from data sharing. Examples of potential costs to the Board are costs associated with the compiling of Confidential Data requested under this DPA and costs associated with the electronic delivery of Confidential DATA to Provider.
4. **Purpose of DPA.** The purpose of this DPA is to describe the duties and responsibilities to protect Confidential Data including compliance with all applicable federal, state, and local privacy laws, rules, and regulations, all as may be amended from time to time. In performing the Services, the Provider shall be considered a School Official with a legitimate educational interest, and

performing services otherwise provided by the Board. Provider shall be under the direct control and supervision of the Board, with respect to its use of Confidential Data.

5. **Confidential Data to Be Provided.** In order to perform the Services described above, the Board shall provide Confidential Data as identified in the Schedule of Data, attached hereto as **Exhibit “B”**.
6. **DPA Definitions.** The definition of terms used in this DPA is found in **Exhibit “C”**. In the event of a conflict, definitions used in this DPA shall prevail over terms used in any other writing, including, but not limited to the Service Agreement, Terms of Service, Privacy Policies etc.

ARTICLE II: DATA OWNERSHIP AND AUTHORIZED ACCESS

1. **Confidential Data Property of the Board.** All Confidential Data transmitted to the Provider pursuant to the Service Agreement is and will continue to be the property of and under the control of the Board. The Provider further acknowledges and agrees that all copies of such Confidential Data transmitted to the Provider, including any modifications or additions or any portion thereof from any source, are subject to the provisions of this DPA in the same manner as the original Confidential Data. The Parties agree that as between them, all rights, including all intellectual property rights in and to Confidential Data contemplated per the Service Agreement, shall remain the exclusive property of the Board. For the purposes of FERPA, the Provider shall be considered a School Official, under the control and direction of the Board as it pertains to the use of Confidential Data, notwithstanding the above.
2. **Parent Access.** To the extent required by law the Board shall establish reasonable procedures by which a parent, legal guardian, or eligible student may review Education Records and/or Confidential Data correct erroneous information, and procedures for the transfer of student-generated content to a personal account, consistent with the functionality of services. Provider shall respond in a reasonably timely manner (and no later than forty five (45) days from the date of the request or pursuant to the time frame required under state law for the Board to respond to a parent or student, whichever is sooner) to the Board’s request for Confidential Data in a student’s records held by the Provider to view or correct as necessary. In the event that a parent of a student or other individual contacts the Provider to review any of the Confidential Data accessed pursuant to the Services, the Provider shall refer the parent or individual to the Board, who will follow the necessary and proper procedures regarding the requested information.
3. **Separate Account.** If Student-Generated Content is stored or maintained by the Provider, Provider shall, at the request of the Board, transfer, or provide a mechanism for the Board to transfer, said Student-Generated Content to a separate account created by the student.
4. **Law Enforcement Requests.** Should law enforcement or other government entities (“Requesting Party(ies)”) contact Provider with a request for Confidential Data held by the Provider pursuant to the Services, the Provider shall notify the Board in advance of a compelled disclosure to the Requesting Party, unless lawfully directed by the Requesting Party not to inform the Board of the request.
5. **Subprocessors.** Provider shall enter into written agreements with all Subprocessors performing functions for the Provider in order for the Provider to provide the Services pursuant to the

Service Agreement, whereby the Subprocessors agree to protect Confidential Data in a manner no less stringent than the terms of this DPA.

6. **Research and Program Evaluation.** For any project, involving data collection or research (e.g., program evaluation or monitoring activities), student or staff participation is voluntary. As a federally authorized Institutional Review Board (IRB), the Board complies with the federal definition for research, which includes sharing of Personally Identifiable Information (PII) for the purposes of answering a question or evaluating activities for effectiveness beyond standard educational or operational procedures. Thus, all data collection and research activities must be approved by the Board's IRB and shall not begin before approval is secured from the IRB. If Provider wishes to collect data specifically for program evaluation or research purposes, or if Provider wishes to use identifiable data for program evaluation or research purposes, Provider must apply for and obtain permission from the Board's IRB prior to beginning any research or evaluation related data collection.

ARTICLE III: DUTIES OF THE BOARD

1. **Provide Data in Compliance with Applicable Laws.** The Board shall provide Confidential Data for the purposes of obtaining the Services in compliance with all applicable federal, state, and local privacy laws, rules, and regulations, all as may be amended from time to time.
2. **Annual Notification of Rights.** If the Board has a policy of disclosing Education Records and/or Confidential Data under FERPA (34 CFR § 99.31(a)(1)), the Board shall include a specification of criteria for determining who constitutes a school official and what constitutes a legitimate educational interest in its annual notification of rights.
3. **Reasonable Precautions.** The Board shall take reasonable precautions to secure usernames, passwords, and any other means of gaining access to the services and hosted Confidential Data.
4. **Unauthorized Access Notification.** The Board shall notify Provider promptly of any known unauthorized access. The Board will assist Provider in any efforts by Provider to investigate and respond to any unauthorized access.

ARTICLE IV: DUTIES OF PROVIDER

1. **Privacy Compliance.** The Provider shall comply with all applicable federal, state, and local laws, rules, and regulations pertaining to Confidential Data privacy and security, all as may be amended from time to time, 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. **Data Custodian.** For the purposes of this DPA and ensuring Provider's compliance with the terms of this DPA and all application of state and federal law, Provider designated Mick Wall as the data custodian ("Data Custodian") of the Confidential Data. The Board will release all data and information under this DPA to Data Custodian. Data 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 DPA, including confirmation of the return or destruction of data as described below. The Board may, upon request, review the records Provider is required to keep under this DPA.

3. **Authorized Use.** The Confidential Data shared pursuant to the Service Agreement, including persistent unique identifiers, shall be used for no purpose other than the Services outlined in **Exhibit "A"** or stated in the Service Agreement and/or otherwise authorized under the statutes referred to herein this DPA. Provider will not contact the individuals included in the data sets without obtaining advance written authorization from the Board.
4. **Provider Employee Obligation.** Provider shall require all of Provider's employees and agents who have access to Confidential Data to comply with all applicable provisions of this DPA with respect to the Confidential Data shared under the Service Agreement. Provider agrees to require and maintain an appropriate confidentiality agreement from each employee or agent with access to Confidential Data pursuant to the Service Agreement.
5. **Insurance.** Provider shall maintain, during the term of this Agreement, a cyber-insurance liability policy, in the amount of \$5M. Upon request, 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

6. **No Disclosure.** Provider acknowledges and agrees that it shall not make any re-disclosure of any Confidential Data or any portion thereof, including without limitation, user content or other nonpublic information and/or personally identifiable information contained in the Confidential Data other than as required by law or court order. If Provider becomes legally compelled to disclose any Confidential Data (whether by judicial or administrative order, applicable law, rule, regulation, or otherwise), then Provider shall use all reasonable efforts to provide the Board with prior notice before disclosure so that the Board may seek a protective order or other appropriate remedy to present the disclosure or to ensure the Board's compliance with the confidentiality requirements of federal or state law. This prohibition against disclosure shall not apply to aggregate summaries of De-Identified information or to Subprocessors performing services on behalf of the Provider pursuant to this DPA. Provider will not Sell Confidential Data to any third party.
7. **De-Identified Data:** Provider agrees not to attempt to re-identify De-Identified Confidential Data. De-Identified Data may be used by the Provider for those purposes allowed under FERPA and the following purposes: (1) assisting the Board or other governmental agencies in conducting research and other studies; and (2) research and development of the Provider's educational sites, services, or applications, and to demonstrate the effectiveness of the Services; and (3) for adaptive Learning purpose and for customized student Learning. Provider's use of De-Identified Data shall survive termination of this DPA or any request by the Board to return or destroy Confidential Data. Except for Subprocessors, Provider agrees not to transfer de-identified Confidential Data to any party unless (a) that party agrees in writing not to attempt re-identification, and (b) prior written notice

has been given to the Board who has provided prior written consent for such transfer. Prior to publishing any document that names the Board explicitly or indirectly, the Provider shall obtain the Board's prior written approval.

8. **Disposition of Data.** Upon written request from the Board, Provider shall dispose of or provide a mechanism for the Board to transfer Confidential Data obtained under the Service Agreement in a usable format, within sixty (60) days of the date of said request and according to a schedule and procedure as the Parties may reasonably agree. Upon termination of this DPA, if no written request from the Board is received to return the data in a usable format, Provider shall dispose of all Confidential Data after providing the Board with reasonable prior notice. The duty to dispose of Confidential Data shall not extend to Confidential Data that had been De-Identified or placed in a separate student account pursuant to section II 3. The JCPS may employ a **"Directive for Disposition of Data"** form, a copy of which is attached hereto as **Exhibit "D"**. If the JCPS and Provider employ **Exhibit "D"**, no further written request or notice is required on the part of either party prior to the disposition of Confidential Data described in **Exhibit "D"**.
9. **Advertising Limitations.** Provider is prohibited from using, disclosing, or selling Confidential Data to (a) inform, influence, or enable Targeted Advertising; or (b) develop a profile of a student, family member/guardian or group, for any purpose other than providing the Service to the Board. This section does not prohibit Provider from using Confidential Data (i) for adaptive Learning or customized student Learning (including generating personalized Learning recommendations); or (ii) to make product recommendations to teachers or JCPS employees; or (iii) to notify account holders about new education product updates, features, or services or from otherwise using Confidential Data as permitted in this DPA and its accompanying exhibits.
10. **Liability.** 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 Provider's intentional or negligent release of personally identifiable student, parent or staff data ("Claim" or "Claims"). Provider agrees to hold harmless the Board and pay any costs incurred by the Board in connection with any Claim. The provisions of this Section shall survive the termination or expiration of this DPA.

ARTICLE V: DATA PROVISIONS

1. **Data Storage.** Where required by applicable law, Confidential Data shall be stored within the United States. Upon request of the Board, Provider will provide a list of the locations where Confidential Data is stored.
2. **Audits.** No more than once a year, or following unauthorized access, upon receipt of a written request from the Board with at least ten (10) business days' notice and upon the execution of an appropriate confidentiality agreement, the Provider will allow the Board to audit the security and privacy measures that are in place to ensure protection of Confidential Data or any portion thereof as it pertains to the delivery of services to the JCPS. The Provider will cooperate reasonably with the Board and any local, state, or federal agency with oversight authority or jurisdiction in connection with any audit or investigation of the Provider and/or delivery of Services to students and/or the Board, and shall provide reasonable access to the Provider's facilities, staff, agents and the Board's Confidential Data and all records pertaining to the Provider, the Board and delivery of Services to the Board. Failure to reasonably cooperate shall be deemed a material breach of the DPA.

3. **Data Security.** The Provider agrees to utilize administrative, physical, and technical safeguards designed to protect Confidential Data from unauthorized access, disclosure, acquisition, destruction, use, or modification. The Provider shall adhere to any applicable law relating to data security. The provider shall implement an adequate Cybersecurity Framework based on one of the standards set forth in **Exhibit “E”**. Additionally, Provider may choose to further detail its security programs and measures that augment or are in addition to the Cybersecurity Framework in **Exhibit “E”**. Provider shall provide, in the Standard Schedule to the DPA, contact information of an employee who the Board may contact if there are any data security concerns or questions. Additionally, The Provider agrees to maintain a minimum security standard including but limited to the following precautions and protections:

- a) Encrypting all data, at rest and in transit;
- b) Maintaining multi-factor authentication on accounts that can access the network or email remotely, including 3rd party accounts;
- c) Securing access to any physical areas/electronic devices where sensitive data are stored;
- d) Establishing and enforcing well-defined data privilege rights which follow the rule of least privilege and restrict users’ access to the data necessary for this to perform their job functions;
- e) Ensuring all staff and 3rd parties sign a nondisclosure statement, and maintaining copies of the signed statements;
- f) Installing end-point protection including but not limited to anti-malware and anti-spyware on any device connected to the network that has access to scoped data, when applicable

4. **Data Breach.** In the event of an unauthorized release, disclosure or acquisition of Confidential Data that compromises the security, confidentiality or integrity of the Confidential Data maintained by the Provider the Provider shall provide notification to the Board within seventy-two (72) hours of confirmation of the incident, unless notification within this time limit would disrupt investigation of the incident by law enforcement. In such an event, notification shall be made within a reasonable time after the incident. Provider shall follow the following process:

- (1) The security breach notification described above shall include, at a minimum, the following information to the extent known by the Provider and as it becomes available:
 - i. The name and contact information of the individual reporting a breach subject to this section.
 - ii. A list of the types of personal information that were or are reasonably believed to have been the subject of a breach.
 - iii. If the information is possible to determine at the time the notice is provided, then either (1) the date of the breach, (2) the estimated date of the breach, or (3) the date range within which the breach occurred. The notification shall also include the date of the notice.
 - iv. Whether the notification was delayed as a result of a law enforcement investigation, if that information is possible to determine at the time the notice is provided; and

- i. A general description of the breach incident, if that information is possible to determine at the time the notice is provided.
- (2) Provider agrees to adhere to all federal and state requirements with respect to a data breach related to the Confidential Data, including, when appropriate or required, the required responsibilities and procedures for notification and mitigation of any such data breach.
- (1) Provider further acknowledges and agrees to have a written incident response plan that reflects best practices and is consistent with industry standards and federal and state law for responding to a data breach, breach of security, privacy incident or unauthorized acquisition or use of Confidential Data or any portion thereof, including personally identifiable information and agrees to provide the Board, upon request, with a summary of said written incident response plan.
- (2) The Board shall provide notice and facts surrounding the breach to the affected students, parents or guardians, or staff, as applicable.
- (3) In the event of a breach originating from the Board's use of the Service, Provider shall cooperate with the Board to the extent necessary to expeditiously secure Confidential Data.

5. Kentucky Personal Information Security and Breach Investigation Procedures and Practices Act. If 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"), 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. 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. Provider agrees to cooperate with JCPS in complying with the response, mitigation, correction, investigation, and notification requirements of the Act.
- e. Provider agrees to undertake a prompt and reasonable investigation of any breach as required by KRS 61.933.

6. **Cloud Computing Service Providers.** If 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"), Provider agrees that:

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. 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."

Pursuant to KRS 365.734(2), 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.

Pursuant to KRS 365.734(2), Provider shall not sell, disclose, or otherwise process student data for any commercial purpose.

Pursuant to KRS 365.734(3), Provider shall certify in writing to the agency that it will comply with KRS 365.734(2).

ARTICLE VI: MISCELLANEOUS

7. **Termination.** Either party may terminate this DPA if the other party breaches any terms of this DPA, provided however, the breaching party shall have thirty (30) days to cure such breach and this DPA shall remain in force. The Board may terminate this DPA in whole or in part at any time by giving written notice to Provider of such termination and specifying the effective date thereof, at Least thirty (30) days before the specified effective date. In accordance with **Attachment A**, the Board shall compensate Provider for Services satisfactorily performed through the effective date of termination.

8. **Effect of Termination Survival.** If the Service Agreement is terminated, the Provider shall destroy all of JCPS's Confidential Data pursuant to Article IV, section 6.
9. **Priority of Agreements.** This DPA shall govern the treatment of Confidential Data in order to comply with the privacy protections, including those found in FERPA and all applicable privacy statutes identified in this DPA. In the event there is conflict between the terms of the DPA and the Service Agreement, Terms of Service, Privacy Policies, or with any other bid/RFP, license agreement, or writing, the terms of this DPA shall apply and take precedence.
10. **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.
11. **Disputes.** Any differences or disagreements arising between the Parties concerning the rights or liabilities under this DPA, or any modifying instrument entered into pursuant to this DPA, shall be resolved through the procedures set out in the Regulations.
12. **Notices.** All notices or other communication required or permitted to be given hereunder may be given via e-mail transmission, or certified mail, sent to the designated representatives below.

The designated representative for the Board for this DPA is:

Name: Robert Moore Title: Chief of School

Address: VanHoose Education Center, 3332 Newburg Road, Louisville, KY 40218

Phone: 502/485-7623 Email: Robert.moore2@jefferson.kyschools.us

The designated representative for the Provider for this DPA is:

Name: Séamus Larrissey Title: Director

Address: Unit 9, Cleaboy Business Park, Waterford, Ireland, X91 AX83

Phone: 00353861719928 Email: seamus@engageplc.com

13. **Amendment and Waiver.** This DPA may be amended and the observance of any provision of this DPA may be waived (either generally or in any particular instance and either retroactively or prospectively) only with the signed written consent of both Parties. Neither failure nor delay on the part of any Party in exercising any right, power, or privilege hereunder shall operate as a waiver of such right, nor shall any single or partial exercise of any such right, power, or privilege preclude any further exercise thereof or the exercise of any other right, power, or privilege.
14. **Severability.** Any provision of this DPA that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this DPA, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Notwithstanding the foregoing, if such provision could be more narrowly drawn so as not to be prohibited or unenforceable in such jurisdiction while, at the same time, maintaining the intent of the Parties, it shall, as to such jurisdiction, be so narrowly drawn without

invalidating the remaining provisions of this DPA or affecting the validity or enforceability of such provision in any other jurisdiction.

15. **Governing Law; Venue and Jurisdiction.** THIS DPA WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE COMMONWEALTH OF KENTUCKY, WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES. EACH PARTY CONSENTS AND SUBMITS TO THE SOLE AND EXCLUSIVE JURISDICTION TO THE STATE AND FEDERAL COURTS FOR JEFFERSON COUNTY KENTUCKY FOR ANY DISPUTE ARISING OUT OF OR RELATING TO THIS DPA OR THE TRANSACTIONS CONTEMPLATED HEREBY.
16. **Successors Bound:** This DPA is and shall be binding upon the respective successors in interest to Provider in the event of a merger, acquisition, consolidation or other business reorganization or sale of all or substantially all of the assets of such business In the event that the Provider sells, merges, or otherwise disposes of its business to a successor during the term of this DPA, the Provider shall provide written notice to the Board no later than sixty (60) days after the closing date of sale, merger, or disposal. Such notice shall include a written, signed assurance that the successor will assume the obligations of the DPA and any obligations with respect to Confidential Data within the Service Agreement. The Board has the authority to terminate the DPA if it disapproves of the successor to whom the Provider is selling, merging, or otherwise disposing of its business.
17. **Authority.** Each party represents that it is authorized to bind to the terms of this DPA, including confidentiality and destruction of Confidential Data and any portion thereof contained therein, all related or associated institutions, individuals, employees or contractors who may have access to the Confidential Data and/or any portion thereof.
18. **Relationship of Parties.** The Board is not an employee, agent, partner or co-venturer of or with Services Provider. Neither Services Provider nor the Board 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.
19. **Equal Opportunity.** During the performance of this DPA, Provider agrees that Provider shall not discriminate against any employee, applicant or subcontractor because of race, color, national origin, age, religion, marital or parental status, political affiliations or beliefs, sex, sexual orientation, gender identity, gender expression, veteran status, genetic information, disability, or limitations related to pregnancy, childbirth, or related medical conditions. If the Compensation is paid from federal funds, this DPA is subject to Executive Order 11246 of September 24, 1965 and in such event the Equal Opportunity Clause set forth in 41 Code of Federal Regulations 60-1.4 is hereby incorporated by reference into this DPA as if set forth in full herein.
20. **Prohibition on Conflicts of Interest.** It shall be a breach of this DPA for Provider to commit any act which is a violation of Article XI of the Regulations entitled “Ethics and Standards of Conduct,” or to assist or participate in or knowingly benefit from any act by any employee of the Board which is a violation of such provisions.

21. Contractor shall be in continuous compliance with the provisions of KRS Chapters 136, 139, 141, 337, 338, 341, and 342 that apply to Provider for the duration of this DPA and shall reveal any final determination of a violation by the Provider of the preceding KRS chapters.

22. **Access to School Grounds.** No employee or agent of Provider shall access the Board's school grounds on a regularly scheduled or continuing basis for purposes of providing services to students under this DPA.

IN WITNESS WHEREOF, The Board and Provider execute this DPA as of the Effective Date above.

BOARD OF EDUCATION OF JEFFERSON COUNTY KENTUCKY

By: _____ Date: _____

Printed Name: Dr. Marty Pollio

Title/Position: Superintendent

ENGAGE XR LIMITED

By: S. Larrisey Date: 22 December 2022

Printed Name: Séamus Larrisey

Title/Position: Director

EXHIBIT "A"**DESCRIPTION OF SERVICES**

Provider shall provide software licenses and support for the following products at prices equal or below Provider's standard pricing rates for the products:

The ENGAGE platform has been designed from the ground up for human centered interaction within virtual environments.

A robust set of virtual reality tools and features provides maximum flexibility to accommodate training, education and collaboration needs via multi-user virtual reality in which any shared experience becomes possible regardless of the users geophysical location.

ENGAGE enables anybody to host classes, meetings, private lessons, presentations, events and trainings with people from around the world in safe, virtual environments using embodied avatars for interactive social presence and experiential learning.

The platform consists of a web app, main ENGAGE virtual reality application, content editor and event scheduler. An intuitive interface makes virtual interaction easy and engaging with maximum scalability and customization capabilities.

COMPENSATION

Purchase orders shall be entered by each participating school. Funds for purchase shall come from individual school budgets. Total payments under this DPA shall not exceed \$10,000 per fiscal year, running from July 1-June 30.

EXHIBIT "B"

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. | <input checked="" type="checkbox"/> |
| | Other application technology meta data-Please specify: | <input type="checkbox"/> |
| Application Use Statistics | Meta data on user interaction with application | <input type="checkbox"/> |
| Assessment | Standardized test scores | <input type="checkbox"/> |
| | Observation data | <input type="checkbox"/> |
| | Other assessment data-Please specify: | <input type="checkbox"/> |
| Attendance | Student school (daily) attendance data | <input type="checkbox"/> |

ENGAGE XR HOLDINGS
12/19/22- G-DRIVE

| | | |
|----------------|----------------------------------------------------------------------|-------------------------------------|
| | Student class attendance data | <input checked="" type="checkbox"/> |
| Communications | Online communications captured (emails, blog entries) | <input type="checkbox"/> |
| Conduct | Conduct or behavioral data | <input type="checkbox"/> |
| Demographics | Date of Birth | <input type="checkbox"/> |
| | Place of Birth | <input type="checkbox"/> |
| | Gender Note: Optional | <input checked="" type="checkbox"/> |
| | Ethnicity or race | <input type="checkbox"/> |
| | Language information (native, or primary language spoken by student) | <input type="checkbox"/> |
| | Student disability information | <input type="checkbox"/> |

| Category of Data | Elements | Check if Used by Your System |
|------------------|-----------------------------------------------|------------------------------------|
| | Other demographic information-Please specify: | <input type="checkbox"/> |
| Enrollment | Student school enrollment | <input type="checkbox"/> |
| | Student grade level | <input type="checkbox"/> |
| | Homeroom | <input type="checkbox"/> |
| | Guidance counselor | <input type="checkbox"/> |
| | Specific curriculum programs | <input type="checkbox"/> |
| | Year of graduation | <input type="checkbox"/> |
| | Other enrollment information-Please specify: | <input type="checkbox"/> |

| | | |
|-------------------------------------|--------------------------------------------------------|--------------------------|
| Parent/Guardian Contact Information | Address | <input type="checkbox"/> |
| | Email | <input type="checkbox"/> |
| | Phone | <input type="checkbox"/> |
| Parent/Guardian ID | Parent ID number (created to link parents to students) | <input type="checkbox"/> |
| Parent/Guardian Name | First and/or Last | <input type="checkbox"/> |
| Schedule | Student scheduled courses | <input type="checkbox"/> |
| | Teacher names | <input type="checkbox"/> |
| Special Indicator | English language Learner information | <input type="checkbox"/> |
| | Low income status | <input type="checkbox"/> |
| | Medical alerts/ health data | <input type="checkbox"/> |

| Category of Data | Elements | Check if Used by Your System |
|-----------------------------|---------------------------------------------|-------------------------------------|
| | Specialized education services (IEP or 504) | <input type="checkbox"/> |
| | Living situations (homeless/foster care) | <input type="checkbox"/> |
| | Other indicator information-Please specify: | <input type="checkbox"/> |
| Staff Data | First and Last Name | <input type="checkbox"/> |
| | Email Address | <input type="checkbox"/> |
| | Staff ID number | <input type="checkbox"/> |
| | Other information – Please specify | <input type="checkbox"/> |
| Student Contact Information | Address | <input type="checkbox"/> |
| | Email Note: can use anonymized if needed | <input checked="" type="checkbox"/> |
| | Phone | <input type="checkbox"/> |

| | | |
|----------------------------|--------------------------------------------------------------------------------------------------------------------------|-------------------------------------|
| Student Identifiers | Local (School district) ID number | <input type="checkbox"/> |
| | State ID number | <input type="checkbox"/> |
| | Provider/App assigned student ID number | <input type="checkbox"/> |
| | Student app username | <input type="checkbox"/> |
| | Student app passwords | <input type="checkbox"/> |
| Student Name | First and/or Last | <input checked="" type="checkbox"/> |
| Student In App Performance | Program/application performance (typing program- student types 60 wpm, reading program- student reads below grade level) | <input type="checkbox"/> |
| Student Program Membership | Academic or extracurricular activities a student may belong to or participate in | <input type="checkbox"/> |
| Student Survey Responses | Student responses to surveys or questionnaires | <input checked="" type="checkbox"/> |
| Student work | Student generated content; writing, pictures, etc. | <input type="checkbox"/> |

| Category of Data | Elements | Check if Used by Your System |
|------------------|-------------------------------------------|------------------------------|
| | Other student work data -Please specify: | <input type="checkbox"/> |
| Transcript | Student course grades | <input type="checkbox"/> |
| | Student course data | <input type="checkbox"/> |
| | Student course grades/ performance scores | <input type="checkbox"/> |
| | Other transcript data - Please specify: | <input type="checkbox"/> |
| Transportation | Student bus assignment | <input type="checkbox"/> |
| | Student pick up and/or drop off location | <input type="checkbox"/> |
| | Student bus card ID number | <input type="checkbox"/> |

| | | |
|-------|---------------------------------------------------------------------------------------------------------------------------------|--------------------------|
| | Other transportation data – Please specify: | <input type="checkbox"/> |
| Other | Please list each additional data element used, stored, or collected by your application: | <input type="checkbox"/> |
| None | No Confidential Data collected at this time. Provider will immediately notify JCPS if this designation is no longer applicable. | <input type="checkbox"/> |

EXHIBIT “C”

DEFINITIONS

Compensation: Amounts to be paid to the Provider in exchange for software licenses and support. The maximum amount of Compensation that may be paid under this DPA is set forth in Attachment A. The Board is not obligated to pay the maximum Compensation amount solely by its inclusion in this DPA. Compensation owed is determined by the purchase orders submitted to Provider. The cost for any single license or support provided under this DPA shall not exceed Provider’s standard pricing for that product.

De-Identified Data and De-Identification: Records and information are considered to be De-Identified when all personally identifiable information has been removed or obscured, such that the remaining information does not reasonably identify a specific individual, including, but not limited to, any information that, alone or in combination is linkable to a specific student and provided that the educational agency, or other party, has made a reasonable determination that a student’s identity is not personally identifiable, taking into account reasonable available information.

Educational Records: Educational Records are records, files, documents, and other materials directly related to a student and maintained by the school or local education agency, or by a person acting for such school or local education agency, including but not limited to, records encompassing all the material kept in the student’s cumulative folder, such as general identifying data, records of attendance and of academic work completed, records of achievement, and results of evaluative tests, health data, disciplinary status, test protocols and individualized education programs.

Metadata: means information that provides meaning and context to other data being collected; including, but not limited to: date and time records and purpose of creation Metadata that have been stripped of all direct and indirect identifiers are not considered Personally Identifiable Information.

Operator: means the operator of an internet website, online service, online application, or mobile application with actual knowledge that the site, service, or application is used for K–12 school purposes. Any entity that operates an internet website, online service, online application, or mobile application that has entered into a signed, written agreement with the Board to provide a service to the Board shall be considered an “operator” for the purposes of this section.

Provider: For purposes of the DPA, the term “Provider” means provider of digital educational software or services, including cloud-based services, for the digital storage, management, and retrieval of Confidential Data. Within the DPA the term “Provider” includes the term “Third Party” and the term “Operator” as used in applicable state statutes.

Regulations: The Board Procurement Regulations, available on the JCPS website, as may be amended from time to time.

Student Generated Content: The term “Student-Generated Content” means materials or content created by a student in the services including, but not limited to, essays, research reports, portfolios, creative writing, music or other audio files, photographs, videos, and account information that enables ongoing ownership of student content.

School Official: For the purposes of this DPA and pursuant to 34 CFR § 99.31(b), a School Official is a contractor that: (1) Performs an institutional service or function for which the agency or institution would otherwise use employees; (2) Is under the direct control of the agency or institution with respect to the use and maintenance of Confidential Data including Education Records; and (3) Is subject to 34 CFR § 99.33(a) governing the use and re-disclosure of Personally Identifiable Information from Education Records.

Service Agreement: Refers to the Contract, Purchase Order or Terms of Service or Terms of Use.

Confidential Data: Confidential Data includes any data, whether gathered by Provider or provided by the Board or its users, students, or students' parents/guardians, that is descriptive of the student including, but not limited to, information in the student's educational record or email, first and last name, birthdate, home or other physical address, telephone number, email address, or other information allowing physical or online contact, discipline records, videos, test results, special education data, juvenile dependency records, grades, evaluations, criminal records, medical records, health records, social security numbers, biometric information, disabilities, socioeconomic information, individual purchasing behavior or preferences, food purchases, political affiliations, religious information, text messages, documents, student identifiers, search activity, photos, voice recordings, geolocation information, parents' names, or any other information or identification number that would provide information about a specific student. Confidential Data includes Meta Data. Confidential Data further includes "Personally Identifiable Information (PII)," as defined in 34 C.F.R. § 99.3 and as defined under any applicable state law. Confidential Data shall constitute Education Records for the purposes of this DPA, and for the purposes of federal, state, and local laws and regulations. Confidential Data as specified in **Exhibit "B"** is confirmed to be collected or processed by the Provider pursuant to the Services. Confidential Data shall not constitute that information that has been anonymized or De-Identified, or anonymous usage data regarding a student's use of Provider's services.

Subprocessor: For the purposes of this DPA, the term "Subprocessor" (sometimes referred to as the "Subcontractor") means a party other than Board or Provider, who Provider uses for data collection, analytics, storage, or other service to operate and/or improve its service, and who has access to Confidential Data.

Targeted Advertising: means presenting an advertisement to a student where the selection of the advertisement is based on Confidential Data or inferred over time from the usage of the operator's Internet web site, online service or mobile application by such student or the retention of such student's online activities or requests over time for the purpose of targeting subsequent advertisements. "Targeted Advertising" does not include any advertising to a student on an Internet web site based on the content of the web page or in response to a student's response or request for information or feedback.

Third Party: The term "Third Party" means a provider of digital educational software or services, including cloud-based services, for the digital storage, management, and retrieval of Education Records and/or Confidential Data, as that term is used in some state statutes. However, for the purpose of this DPA, the term "Third Party" when used to indicate the provider of digital educational software or services is replaced by the term "Provider."

EXHIBIT "D"**DIRECTIVE FOR DISPOSITION OF DATA**

The Board of Education of Jefferson County Kentucky directs Provider to dispose of data obtained by Provider pursuant to the terms of the Service Agreement between The Board and Provider. The terms of the Disposition are set forth below:

1. Extent of Disposition

_____ Disposition is partial. The categories of data to be disposed of are set forth below or are found in an attachment to this Directive:

[Insert categories of data here]

 X Disposition is Complete. Disposition extends to all categories of data.

2. Nature of Disposition

 X Disposition shall be by destruction or deletion of data.

_____ Disposition shall be by a transfer of data. The data shall be transferred to the following site as follows:

[Insert or attach special instructions]

3. Schedule of Disposition

Data shall be disposed of by the following date:

 X As soon as commercially practicable.

_____ By **[Insert Date]**

Signature

Authorized Representative of the Board

Date

Verification of Disposition of Data

Authorized Representative of Provider

Date

EXHIBIT “E”**DATA SECURITY REQUIREMENTS****Adequate Cybersecurity Frameworks**

Provider will utilize one of the following known and credible cybersecurity frameworks which can protect digital learning ecosystems.

Cybersecurity Frameworks

| | MAINTAINING ORGANIZATION/GROUP | FRAMEWORK(S) |
|--|--------------------------------------------|-----------------------------------------------------------------------------------------------------------|
| | American Institute of CPAs | SOC2 |
| | International Standards Organization (ISO) | Information technology — Security techniques — Information security management systems (ISO 27000 series) |
| | The Board of Education of Jefferson County | Board provided standardized questionnaire |

LICENCE AGREEMENT

THIS AGREEMENT is dated January _____ 2023

PARTIES:

- (1) **ENGAGE XR LIMITED** of Unit 9, Cleaboy Business Park, Waterford, Ireland (the "**Licensor**");
- (2) **JEFFERSON COUNTY PUBLIC SCHOOLS** with its principal place of business at 3332 Newburg Road, Louisville, Kentucky 40218, USA (the "**Licensee**");

BACKGROUND:

The Licensee wishes to license the Software (as defined below), on the terms and conditions set out in this Agreement.

TERMS: It is hereby agreed as follows:

1. INTERPRETATION

- 1.1 In this Agreement (including the Schedules) the following words and expressions shall have the following meanings unless the context requires otherwise:

| | |
|--------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| "Data Protection Legislation" | legislation and regulations relating to the use, processing and protection of data relating to living individuals as applicable under the laws of Ireland or in the jurisdiction in which the data is being used or processed; |
| "Effective Date" | the date as set out in Schedule 1 ; |
| "Fees" | the fees for the Licence set out in Schedule 1 to this Agreement; |
| "Intellectual Property Rights" | all intellectual property rights including but not limited to patents, copyrights (including source code), registered and unregistered design rights, trademarks, trade secrets, know-how, database rights and all other similar or corresponding proprietary rights (whether registered or unregistered) and all applications for the same, anywhere in the world; |
| "Licence" | the licence granted by the Licensor to the Licensee pursuant to Clause 3.1; |
| "Licensee Data" | the data inputted or created by the Licensee and its authorised users in the use of the Software; |
| "Software" | the Software licensed by the Licensor under this Agreement, namely the Licensors' ENGAGE platform; |
| "Taxes" | sales tax, goods and services tax, value added tax and/or related taxes in connection with the provision of the Software and related services; |
| "Term" | the term of this Agreement commencing from the Effective Date for the period specified in Schedule 1 ; |

"TP Software"

computer software used by the Licensor in developing the Software and which is owned by a third party.

- 1.2 Words denoting the singular shall include the plural and vice versa.
- 1.3 Words denoting any particular gender shall include all other genders.
- 1.4 Any reference in this Agreement to a statute or statutory provision shall be construed as referring to that statute or statutory provision as it may from time to time be amended, replaced (whether before or after the date of this Agreement) and including all subordinate legislation from time to time made under it.
- 1.5 Unless otherwise stated references to clauses, sub-clauses and schedules are to clauses and sub-clauses of and schedules to this Agreement.
- 1.6 The clause headings are for convenience only and shall not affect the interpretation of this Agreement. In the event of any conflict between the clauses and schedules of this Agreement, the clauses shall prevail.

2. COMMENCEMENT

This Agreement shall be deemed to have commenced on the Effective Date and the parties' rights and obligations under this Agreement shall be deemed to accrue from that date.

3. LICENCE

- 3.1 Subject to the terms set out in Schedule 1, in consideration of the Fees payable by the Licensee to the Licensor, the Licensor hereby grants to the Licensee a right and licence of use of the Software for the Term.
- 3.2 The Licensee has no right (and shall not permit any third party) to copy, adapt, reverse engineer, decompile, disassemble, modify, adapt or make error corrections to the Software in whole or in part.

4. FEES

- 4.1 The Fees determinable and agreed at the Effective Date are set out in **Schedule 1** and payable in accordance with the payment terms of this Section 4 and **Schedule 1**.
- 4.2 All payments stated in this Agreement are exclusive of applicable Taxes, which shall be added to the Licensor's invoices at the rate applicable at the time of invoicing.
- 4.3 The Licensee shall pay in full each invoice properly due, issued and submitted 90 (ninety) days of receipt by it of the same.

5. OWNERSHIP OF THE SOFTWARE AND INTELLECTUAL PROPERTY RIGHTS

- 5.1 The Licensor shall retain copyright in and to the Software. All Intellectual Property Rights arising as a result of the provision of Services shall be and remain the sole property of the Licensor.
- 5.2 The Licensee shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Licensee Data.
- 5.3 The Licensor does not, and shall, not claim ownership of, any Licensee Data (or any Intellectual Property Rights or other rights therein). As between the Licensor and the Licensee all right, title and interest (including Intellectual Property Rights) in and to the Licensee Data is and will at all times be fully vested in the Licensee, except that, by posting, uploading, inputting, providing, submitting, entering or otherwise transmitting Licensee Data to the Licensor or the ENGAGE Platform, the Licensee agrees as follows:

- a) Licensee hereby grants during the Term (and to the extent required after the Term as part of any termination assistance services) to the Licensors a royalty-free, revocable, non-transferrable, non-exclusive, worldwide, fully paid-up limited licence to use, copy, distribute, transmit, display, edit, delete, publish and translate such Licensee Data to the extent required by the Licensors to provide the Software and perform its obligations under this Agreement; and
- b) Licensee represents and warrants to the Licensors that the Licensee has all right, title and interest (including all Intellectual Property Rights as well as the power and authority necessary), to grant the licence to such Licensee Data set above in subsection 5.3(a).

6. WARRANTIES

The Licensors hereby warrants that:

- 6.1 the Licensors has the full power and authority to execute, deliver and perform its obligations under this Agreement and there are no existing agreements or arrangements with third parties the terms of which prevent the Licensors from entering into this Agreement or would impede the substantial performance of its obligations under it;
- 6.2 it has used all reasonable endeavours to ensure (including without limitation by the use of all generally available and accepted anti-virus software and procedures) that the Software is free from harmful code of any description (whether called viruses, worms or otherwise) including any computer code, programming instruction, or set of instructions that is intentionally constructed to damage, interfere with or otherwise adversely affect computer programs and/or data files and/or hardware and/or computer systems and/or networks; and
- 6.3 it has all necessary rights and consents to license the Software to the Licensee in accordance with this Agreement.

The Licensee hereby warrants that:

- 6.4 the Licensee has the full power and authority to execute, deliver and perform its obligations under this Agreement and there are no existing agreements or arrangements with third parties the terms of which prevent the Licensee from entering into this Agreement or would impede the substantial performance of its obligations under it; and
- 6.5 it is the owner of, and has the right to grant use to, all branding and marketing material, logos or otherwise provided by the Licensee to the Licensors.

7. CONFIDENTIALITY AND DATA PROTECTION

- 7.1 Each party (the "**Recipient**") shall keep secret and not disclose to anyone, except only on a need to know basis, to (i) in the case of the Licensors, its employees or individual consultants bound by express written secrecy obligations or (ii) in the case of the Licensee its employees, agents, sub-contractors and customers) without the prior written consent of the other party ("**Disclosing Party**") any information received from or belonging to the Disclosing Party (including without limitation any document submitted to the Recipient and marked "Commercial in Confidence" or otherwise expressly designated as confidential).
- 7.2 The Licensors shall be permitted to list the Licensee as a Licensee, including use of the Licensee logo. The Licensors shall not provide further details of the contract in its advertising or publicity material without the prior written consent of the Licensee, the Licensee reserves the right to vet such material prior to its use. This consent will not be unreasonably withheld.
- 7.3 This Clause 7 shall not apply:
 - 7.3.1 to any information which has become or which becomes either before, on or after the date of this Agreement generally and freely available through no fault of the Recipient;
 - 7.3.2 to any information which the Recipient can otherwise show came into its possession without it owing a duty of confidence to the Disclosing Party in respect of such information;

- 7.3.3 to the extent the disclosure is required to or by any court, tribunal, government authority of competent jurisdiction, or applicable law; or
 - 7.3.4 to any information which is trivial or obvious.
- 7.4 The provisions of Clauses 7.1 to 7.3 shall survive the termination of this Agreement howsoever arising for a period of two (2) years.
- 7.5 If as a result of this Agreement the Licensor is required to process personal data supplied to it by the Licensee then the Licensor will:
 - 7.5.1 process such personal data in accordance with Data Protection Legislation; and
 - 7.5.2 implement appropriate technical and organisational measures to protect such personal data against accidental or unlawful destruction or loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.

8. NON-SOLICITATION OF EMPLOYEES

Neither party shall solicit (except pursuant to recruitment advertising in the national, local or trade press or otherwise in the ordinary course of business) the employment of any employees of the other party at any time during the continuance of this Agreement or within twelve (12) months following its expiry or termination for any reason without the prior written consent of the other party.

9. LIABILITY

- 9.1 Subject to applicable laws, each party shall accept liability for death or personal injury caused by its negligence and the negligence of its employees and agents acting within the scope of their duties.
- 9.2 Subject to Clause 9.1, the Licensor shall in no circumstances be liable for any consequential, indirect or special loss or damage (including without limitation loss of business or loss of profit) howsoever arising whether in contract negligence, other tort or otherwise.
- 9.3 Except as set out in Clause 9.1, the total aggregate liability of the Licensor, whether in contract, tort or otherwise in connection with this Agreement, shall in no circumstances exceed 1 (one) months Fees, subject to an upper limit equal to €10,000, whichever is the lesser.

10. TERM, TERMINATION AND CONSEQUENCES OF TERMINATION

- 10.1 This Agreement shall continue from the Effective Date for the Term.
- 10.2 Either party shall have the right to terminate this Agreement forthwith on written notice to the other if such other:
 - 10.2.1 does any of the following:
 - (a) passes a resolution or the Court makes an order for its winding up;
 - (b) has a receiver, administrative receiver or administrator appointed over its undertaking or over any of its assets;
 - (c) is or becomes insolvent;
 - (d) takes or suffers any analogous action on account of debt; or
 - (e) ceases or threatens to cease to carry on business; or
 - 10.2.2 shall have committed a material breach of any of its obligations under this Agreement and in the case of a breach capable of remedy shall not have remedied such breach within 30 (thirty) days of receiving notice from the first mentioned party detailing the breach and requiring its remedy within such 30 (thirty) day period.

Either party shall notify the other in writing as soon as any event justifying termination under Clause 10.2 occurs.

- 10.3 Termination of this Agreement howsoever arising shall not affect or prejudice the accrued rights of the parties as at termination or the continuation of any provision expressly stated to survive or implicitly surviving termination. Clauses 5, 6 and 7 shall survive the termination of this Agreement.
- 10.4 On termination of this Agreement howsoever arising, each party shall (except as otherwise agreed) promptly deliver up all documentation and other materials in its possession or under its control and belonging to the other party.

11. GENERAL

- 11.1 *Force Majeure:* If either party is prevented from or hindered or delayed in performing any obligations under this Agreement by reason of any acts of God or other circumstances beyond its reasonable control, it shall be excused performance to the extent affected by the circumstances concerned so long as it shall both have given notice to the other party of those circumstances promptly after they first affected performance and has used all reasonable commercial endeavours to remove or avoid their cause or effect. For the avoidance of doubt, any delay, failure, act or omission of a sub-contractor of the Licensor and any industrial action by employees or sub-contractors of the Licensor shall not represent circumstances beyond the reasonable control of the Licensor.
- 11.2 *Assignment:* The Licensee shall not assign, novate, sub-license, sub-contract or otherwise dispose of this Agreement or any part thereof without the prior written consent of the Licensor. The Licensor shall be entitled to assign, novate, sub-let or otherwise dispose of any or all of its rights and/or obligations under this Agreement.
- 11.3 *Waiver:* No forbearance, delay or granting of time by either party in or before enforcing this Agreement shall prejudice its rights. No waiver of any right or breach under this Agreement shall be effective unless in writing and signed by the party making the waiver. Any such waiver shall not be construed as a waiver of any other right or breach.
- 11.4 *Notices:* Notices under this Agreement shall be given by sending them pre-paid registered post, signed PDF letter emailed, or personal delivery to the other party at its address set out in this Agreement or to such other address notified in writing to the sender. Notices sent by registered post shall be treated as received 48 (forty-eight) hours after sending (as shown by the sender's receipt). Notices sent by email shall be treated as received on the first working day after sending (as shown by the timed print-out on or with the sender's copy). Notices sent by personal delivery shall be treated as received at the time delivery is made.
- 11.5 *Service:* Service of any legal proceedings concerning or arising out of this Agreement shall be effected by causing the same to be delivered to the company secretary (or similar officer) of the party to be served at its registered office or to such other address as may be notified in writing to the other party.
- 11.6 *Entire Agreement:* This Agreement (including the Schedules) supersedes all prior agreements and arrangements of whatever nature and sets out the entire agreement and understanding between the parties relating to its subject matter. Unless expressly agreed to in writing between the parties, it applies in place of and prevails over any terms or conditions contained or referred to in correspondence or elsewhere or implied by trade custom or course of dealing and any purported contrary or inconsistent provision is hereby excluded.
- 11.7 *Variation:* Any variation to this Agreement shall only be effective if in writing and signed by (or by persons duly authorised by) the Licensor and the Licensee.
- 11.8 *No Partnership:* Nothing in this Agreement shall create a partnership or joint venture between the parties to this Agreement and save as expressly provided for in this Agreement neither party shall enter into or have authority to enter into any engagement or make any representation or warranty on behalf of or pledge the credit of or otherwise bind or oblige the other party hereto.
- 11.9 *Dispute Resolution:* Other than to apply for an injunction or other equitable remedy, a party must not

start arbitration or court proceedings (except proceedings seeking interlocutory relief) about a dispute arising out of this Agreement ("**Dispute**") unless it has complied with the following provisions of this Clause 11.10:

- 11.9.1 If a Dispute arises, the Parties undertake in good faith to use all reasonable endeavours to settle the Dispute. Either Party may give notice of a dispute under this Agreement to the other Party. If such notice is given, each Party must arrange to meet in an effort to resolve the Dispute.
- 11.9.2 If the Dispute involves technical matters and has not been resolved by negotiations under the previous clause within a reasonable time, the Parties will refer the Dispute for determination by an independent expert agreed by the Parties in the technical field of the Dispute.
- 11.9.3 If the Parties are unable in good faith to settle the Dispute within 14 days of the notice referred to in Clause 11.9.1 (or a longer period agreed between the parties) then the parties must agree to appoint a mediator and refer the matter to mediation. If the Parties fail to agree on a mediator within 3 days of the expiration of the 14-day period, then a person appointed by the president or CEO of the principal mediation institute in Dublin will be the mediator. Such mediation may take place via Video-teleconference. The costs of the mediator shall be shared equally between the parties.
- 11.9.4 If the Dispute is not resolved under clause 11.9.3 within 30 days after referral (or a longer period agreed between the parties) it shall be referred to one or more arbitrators appointed in accordance with the Rules of Arbitration of the International Chamber of Commerce and to be resolved under those Rules, except that in relation to Rule 14.1 of the Rules of Arbitration, the place of arbitration may take place via Video-teleconference.

For and on behalf of
ENGAGE XR Limited

For and on behalf of
Jefferson County Public
Schools

Schedule 1

1. Effective Date: _____ 2023
2. Term: 12 months
3. Conditions and fees
 - 80 ENGAGE K-12 Education Annual Licenses
 - User management system to allocate licenses for your organization
 - Private Group inside ENGAGE SaaS Multi-Tenant environment hosted on AWS Servers
 - Custom logo placement on UI and inside one virtual environment
 - One item of branded avatar clothing
 - Content uploads to store and share organization content privately with the following conditions:
 - Storage limit of 2GB per License for content uploaded to ENGAGE servers. Additional space can be purchased on request.
 - 3D Models ('IFX') - We provide 5 submissions a month free for IFX and each additional submission is charged at €50 per submission.
 - A submission is defined as any IFX that the Licensee submits for upload. If the IFX is ENGAGE ready as per the parameters provided, this is deemed one submission. Should an IFX be provided by the Licensee that is not ENGAGE ready as per the parameters, it may be returned to the client for additional work and resubmitted. Each additional submission, for any one IFX will be deducted from the 5 submissions allowance for that month.
 - Custom locations or environments that are required by the Licensee will be priced on a case by case basis by the Licensor
 - 3 Internal Private Metaworlds (1 for every 25 licenses)
4. License Fee: **\$6,400**
5. Pricing for additional licenses is as follows:

| License tier | 5 – 49 | 50 – 99 | 100 – 249 | 250 – 499 | 500 – 999 | 1,000+ |
|--------------------------------|-----------|-------------------------|--------------------------|--------------|--------------|--------|
| Price per account | \$150 | \$80 | \$75 | \$70 | \$65 | \$60 |
| Internal Persistent Metaworlds | 1 | 1 for every 25 licenses | | | | |
| Public Metaworlds | 0 | 1 | 1 for every 100 licenses | | | |

Date: 06/01/2022

Client Code: IMME01

To Whom It May Concern,

Re: Insured - ENGAGE XR Holdings Plc
Business Description: Software Development

We confirm we act as insurance brokers for the above mentioned client and set out on the attached details of the insurances we have arranged on their behalf:

| Policy Type: Office Combined | |
|---------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Policy Period: | 08/01/2022 to 07/01/2023 both days inclusive. |
| Policy Holder: | ENGAGE XR Holdings Plc |
| Policy Number: | HUPI69291108 |
| Insurer: | Hiscox |
| Liability Cover Limits of Indemnity: | <ul style="list-style-type: none"> • Employers Liability: €13,000,000 • Public Liability: €6,500,000 • Products Liability: €6,500,000 |

| Policy Type: Cyber & Professional Indemnity | |
|---------------------------------------------|-----------------------------------------------|
| Policy Period: | 08/01/2022 to 07/01/2023 both days inclusive. |
| Policy Holder: | ENGAGE XR Holdings Plc |
| Policy Number: | ESK0437110169 |
| Insurer: | CFC Underwriting Ltd. |

O'LEARY INSURANCES LTD.

is regulated by the Central Bank of Ireland.

Lough Mahon House, Blackrock, Cork, T12 C43C, Tel: 021 4536800, Fax: 021 4536801, Email: info@oli.ie, Website: www.olearyinsurances.ie.

Telephone calls are recorded for training quality and verification purposes.

Directors: A.F. O'Leary, B.Comm, Mng., D. Nolan, MBS HDip, Deputy Mng., R.J. Kennedy,

A.J. Keegan Dip CIL, J.F. O'Flynn, M.G. O'Brien, R.J. Williams, Dip CIL, M.A. O'Sullivan, D. McCarthy,

J.J. O'Sullivan, B.R. Dunphy, N.P. Heffernan, A.C.I.L., M.P. Scannell, F.C.I.P.D., F.M. Jeffers, G. Reynolds, B.A., M. Cochrane.

Registered in Ireland, Company Registration No. 18930, Registered Office: Lough Mahon House, Blackrock, Cork, T12 C43C, Ireland.



O'LEARY

INSURANCE GROUP

Insurance Brokers & Consultants . Est. 1961 .

Cyber Limit of Liability: €5,000,000 Each & Every Claim, including Costs & Expenses

Excess - €5000

**Professional Indemnity
Limit of Indemnity:**

**€5,000,000 In the Aggregate
Excess €5,000**

Geographical Limits:

Worldwide including USA / Canada

**Jurisdiction / Applicable
Courts:**

Worldwide including USA / Canada

Subject to policy terms, conditions and exclusions.

Trusting this is the information you require.

Yours sincerely,

**Maura Browne
Account Handler**

Tel. 0214536869

Email - mbrowne@oli.ie

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