

**MEMORANDUM OF AGREEMENT**

**Between**

**Jefferson County Board of Education**

**And**

**Cognia, Inc. (Formerly Centerpoint Education Solutions)**

This Memorandum of Agreement (hereinafter "Agreement") is entered into between the Jefferson County Board of Education (hereinafter "JCPS"), a political subdivision of the Commonwealth of Kentucky, with its principal place of business at 3332 Newburg Road, Louisville, Kentucky 40218 and Cognia, Inc. (hereinafter "Cognia"), a corporation located at 9115 Westside Parkway, Alpharetta, GA 30009 (formerly Centerpoint Education Solutions).

WHEREAS Cognia will provide custom-developed Grades 3-8 English Language Arts EL curriculum, Kentucky state standards-aligned Evidence of Learning Checks (ELC). The purpose of the ELCs is to produce actionable student performance data that can provide guidance for instructional focus. Cognia will provide JCPS with psychometric data related to tests and test items created by Cognia. Psychometric analyses will include internal consistency reliability, content and criterion validity, test dimensionality, item difficulty, item discrimination, and differential item functioning between demographic groups.

THEREFORE, in consideration of the terms, conditions, premises, and mutual agreements set forth herein, JCPS and Cognia agree as follows:

**1. Duties of JCPS:**

- a. Previously, JCPS and CenterPoint (now Cognia) entered into a Professional Service Contract on July 24, 2024. After the signing of the Professional Service Contract, CenterPoint and Cognia merged and is now known as Cognia. This MOA only details data sharing agreements as it relates directly to the July 24, 2024 Professional Services Contract.
- . Provide data necessary for Cognia service delivery relative to Attachment A.

**2. Duties of Cognia:**

- a. Cognia will develop Kentucky state standards-aligned courses to include custom-developed, Kentucky state standards-aligned Evidence of Learning Checks.
- b. Acknowledges that projects involving program evaluation, monitoring activities, or data collection or research of any kind, are subject to JCPS IRB review and approval as determined by the JCPS IRB to meet federal, State, and Board policies. In these cases, JCPS student or staff participation is voluntary. As a federally authorized Institutional Review Board (IRB), JCPS complies with the federal definition for research, which includes sharing of Personally Identifiable Information (PII) for the purpose of answering a question or evaluating activities for effectiveness beyond standard educational or operational procedures. Thus, all

research, program evaluation and data collection activities must be approved by the JCPS IRB and shall not begin before approval is secured from the JCPS IRB.

- c. If the performance of this Agreement involves the transfer by JCPS to Cognia of any data regarding any student that is subject to the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g as amended, (“FERPA”), Cognia and JCPS must manage the data transfer in accordance with FERPA requirements, and Cognia agrees to the following conditions:
  - i. If Cognia requests transfer of identifiable data by JCPS that is subject to JCPS IRB procedures, as determined by the JCPS IRB to meet federal, State, and Board policies, JCPS cannot transfer identifiable data to Cognia before the JCPS IRB-approved informed consent process has been executed. In this case, Cognia does not function as an exception under FERPA. Cognia is responsible for obtaining, and maintaining, signed consent after JCPS IRB approval. No data will be provided under this agreement without signed consent from the guardian for records requests involving students or from the JCPS employee or community member for records requests involving adults. Cognia must deliver copies of the signed authorization to JCPS upon request.
  - ii. If Cognia has been legally deemed a FERPA exception by JCPS in accordance with FERPA Exception Conditions, then Cognia shall:
    - (a) In all respects, comply with the provisions of FERPA, including any requirements of Chapter 99 of Title 34 of the Code of Federal Regulations and any other applicable state or federal law.
    - (b) Use any such data for no purpose other than to fulfill the purposes of this Agreement, and not share any such data with any person or entity other than Cognia and its employees, contractors, volunteers, and agents, without prior approval of JCPS. Disclosure shall be limited to only those employees, contractors, volunteers, or agents who are necessary for the fulfillment of this Agreement.
    - (c) Require all employees, contractors, volunteers, and agents of Cognia to comply with all applicable provisions of FERPA with respect to any such data. Cognia shall require and maintain confidentiality Agreements with each employee, contractor, volunteer, or agent with access to data pursuant to this Agreement.
    - (d) Maintain any such data in a secure environment, whether physical or electronic, and not copy, reproduce, or transmit any such data except as necessary to fulfill the purposes of this Agreement. Cognia shall notify JCPS within 24 hours in the event of any data breach or disclosure of data to any person or entity other than the parties listed in this agreement.

- (e) Collect, store, and maintain data in a manner that does not permit the identification of an individual student by anyone other than employees, contractors, or agents of Cognia necessary for the fulfillment of this Agreement and having a legitimate interest related to the purposes of this Agreement in knowing such personal identification, and not disclose any such data in a manner that would permit the identification of an individual student in any form, including, but not limited to, published results of studies.
- d. Limit data requested from JCPS to the specific elements listed in Attachment A. If the data request is associated with an approved JCPS IRB application, then the data in Attachment A should match the JCPS IRB final approval letter data elements listed.
- e. Adhere to the reporting timeframes (e.g., quarters, semesters, years) service provider requested in Attachment A.
- f. Adhere to the timelines in Attachment A for when a service provider will provide JCPS with data outlined in Attachment A. Notify JCPS of unexpected changes in timelines as soon as possible and accept that changes may alter JCPS' capacity to provide requested data.
- g. If relevant, obtain signed non-disclosures (Attachment B) for each individual from Cognia responsible for evaluation and analysis activities who must access identifiable data referenced in Attachment A.
- h. Use reports produced for this project only for the purposes described above. The data and reporting shall not be used for personal or institutional gain or profit.
- i. To direct all communication and decisions regarding the evaluation, data collection, and analysis to the Accountability, Research, and Systems Improvement office.
- j. Acknowledges that JCPS retains the right to audit Cognia's compliance with this agreement.
- k. Cognia 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 pursuant to Article V of this Agreement.
- l. Not use the name or logo of JCPS or individual JCPS schools in printed materials, websites, videos or social media without prior approval from JCPS.
- m. Maintain an all-risk property and casualty insurance policy with respect to the facilities and a policy of commercial general liability in amounts no less than \$1,000,000/\$2,000,000 per policy and provide JCPS with a certificate of insurance upon request.

- n. Require all Cognia employees/volunteers/contractors performing services under this Agreement to have on file a Criminal Records Check, per Kentucky law and JCPS requirements, completed no more than five years ago. Employees/contractors convicted of any of the following, per JCPS Board Policy 03.6, shall not be considered:
  - i. Any conviction for sex-related offenses.
  - ii. Any conviction for offenses against minors.
  - iii. Any conviction for felony offenses, except as provided below.
  - iv. Any conviction for deadly weapon-related offenses.
  - v. Any conviction for drug-related offenses, including felony drug offenses, within the past seven years.
  - vi. Any conviction for violent, abusive, threatening or harassment related offenses.
  - vii. Other convictions determined by the Superintendent/designee to bear a reasonable relationship to the ability to perform services under this Agreement.
- o. Cognia shall require all staff and volunteers performing services on JCPS school premises during JCPS school hours under this Agreement to submit per KRS 160.380 to a national and state criminal history background check by the Department of Kentucky State Police and the Federal Bureau of Investigation and have a letter, provided by the individual, from The Cabinet for Health and Family Services stating no findings of substantiated child abuse and neglect records maintained by the Cabinet for Health and Family Services.
- p. Cognia staff and volunteers will comply with all JCPS health safety guidelines including rules related to COVID-19 mitigation.
- q. To the extent that JCPS facilities are closed to students, those facilities will also be unavailable to Cognia. During any periods of the Non-Traditional Instruction (NTI) or remote learning, JCPS facilities will not be available to Cognia.

**3. Mutual Duties:**

- a. Each party shall not discriminate based on 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.
- b. Each party shall comply with all federal and state laws and regulations and all JCPS policies applicable to the provision of the services described in this

Agreement, including without limitation the Federal Family Educational Rights and Privacy Act (FERPA), the Kentucky Educational Rights and Privacy Act (KFERPA), the federal Health Insurance Portability and Accountability Act (HIPAA) and JCPS policies and procedures for volunteers and visitors entering JCPS facilities.

- c. The respective administrative offices of JCPS and Cognia who have responsibility for the implementation of this Agreement shall meet periodically during the term of this Agreement to evaluate the program and discuss issues of mutual concern.
- 4. Term:** This Agreement shall be effective commencing October 15, 2024 and shall terminate on June 30, 2025. The Agreement may be extended by mutual written agreement of JCPS and Cognia.
- 5. Termination:** Either party may terminate this Agreement prior to the end of its term by giving sixty (60) days prior written notice to the other party. If JCPS terminates the Agreement, Cognia will be permitted in their discretion to continue to provide services during the period in which the sixty (60) day notice becomes effective. JCPS may terminate this agreement immediately in the event of a student health or safety concern or a breach of paragraph 2.j above. In the event of an immediate termination, Cognia shall not be permitted to continue to provide services after receipt of the notice of termination.
- 6. Amendment:** This Agreement may be modified or amended only by a written agreement signed by JCPS and Cognia.
- 7. Independent Parties:** JCPS and Cognia are independent parties, and neither shall be construed to be an agent or representative of the other, and therefore neither shall be liable for the acts or omissions of the other. Each party shall, however, be liable for any negligent or wrongful acts of its own employees, students and invitees.
- 8. Captions:** Section titles or captions in this Agreement are inserted as a matter of convenience and reference, and in no way define, limit, extend, or describe the scope of this Agreement.
- 9. Entire Agreement:** This Agreement contains the entire agreement between JCPS and Cognia concerning the Cognia sharing of data in relation to the July 24, 2024 Professional Services Contract and supersedes all prior agreements, either written or oral, regarding the same subject matter.
- 10. Severability:** If a court of competent jurisdiction holds any provision of this Agreement unenforceable, such provision shall be modified to the extent required to make it enforceable, consistent with the spirit and intent of this Agreement. If such a provision cannot be so modified, the provision shall be deemed separable from the remaining provisions of this Agreement and shall not affect any other provision.
- 11. Counterparts:** This Agreement may be executed in counterparts, in which case each executed counterpart shall be deemed an original, and all executed counterparts shall constitute one and the same instrument.


**12. Applicable Law:** This Agreement shall be governed by, and construed in accordance with, the laws of the Commonwealth of Kentucky.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed.

**Jefferson County Public Schools:**

**Cognia Inc:**

\_\_\_\_\_  
Marty Pollio, Ed.D, Superintendent

  
\_\_\_\_\_  
Suzanne Krause, Chief Improvement Officer

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

**Date:** 10/14/2024

## ATTACHMENT A

### USE IF RECORDS ARE REQUESTED FOR DISCLOSURE

#### *Data Request and Reporting Schedule*

Record Collection Timeframe	School year	When [partner] will submit request to JCPS	When JCPS will fulfill request
Fall of 2024	SY 2024-2025	November 15, 2024	No later than December 15, 2024
Spring of 2025	SY 2024-2025	No sooner than April 1, 2025	No later than May 15, 2025

#### *Data Elements Provided by Partner for Matching*

Data Elements Given to JCPS ARSI by JCPS Curriculum and Instruction
JCPS Curriculum and Instruction Department will provide members of ARSI access to the Otus Platform in order for ARSI to have access to provide the below data elements

#### *Data Elements Delivered to Partner*

Data Elements Fulfilled by JCPS	Delivery Notes
Answers to response	Item responses for each item per administration, per grade
Student Grade Level	For each Student Record Collection Timeframe
Student Race/Ethnicity	For each Student Record Collection Timeframe
Student Gender	For each Student Record Collection Timeframe
Student Language English Proficiency Status	For each Student Record Collection Timeframe
Student time spent on assessment (if available)	For each Student Record Collection Timeframe

## ATTACHMENT B

USE IF RECORDS ARE REQUESTED FOR DISCLOSURE

### SERVICE PROVIDER'S EMPLOYEE NONDISCLOSURE STATEMENT

I understand that the performance of my duties as an employee or contractor of \_\_\_\_\_ ("Services Provider") involve a need to access and review confidential information (information designated as confidential by the Jefferson County Board of Education, and that I am required to maintain the confidentiality of this information and prevent any redisclosure prohibited under applicable federal and state law. By signing this statement, I agree to the following:

- I will not permit access to confidential information to persons not authorized by Services Provider.
- I will maintain the confidentiality of the data or information.
- I will not access data of persons related or known to me for personal reasons.
- I will report, immediately and within twenty-four (24) hours, any known reasonably believed instances of missing data, data that has been inappropriately shared, or data taken off site to my immediate supervisor.
- I understand that procedures must be in place for monitoring and protecting confidential information.
- I understand that the Family Educational Rights and Privacy Act ("FERPA") protects information in students' education records that are maintained by an educational agency or institution or by a party acting for the agency or institution, and includes, but is not limited to the student's name, the name of the student's parent or other family members, the address of the student or student's family, a personal identifier, such as the student's social security number, student number, or biometric record, other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name, and other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty.
- I understand that any unauthorized disclosure of confidential information is illegal as provided in FERPA and in the implementing of federal regulations found in 34 CFR, Part 99. The penalty for unlawful disclosure is a fine of not more than \$250,000 (under 18 U.S.C. 3571) or imprisonment for not more than five years (under 18 U.S.C. 3559), or both.
- I understand and acknowledge that children's free and reduced price meal and free milk eligibility information or information from the family's application for eligibility, obtained under provisions of the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq)(NSLA) or Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.)(CNA) and the regulations implementing these Acts, is confidential information.



- I understand that any unauthorized disclosure of confidential free and reduced price lunch information or information from an application for this benefit is illegal as provided in the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq)(NSLA) or Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.)(CNA) and the regulations implementing these Acts, specifically 7 C.F.R 245.6. The penalty for unlawful disclosure is a fine of not more than \$1,000.00 (under 7 C.F.R. 245.6) or imprisonment for up to one year (under 7 C.F.R. 245.6), or both.
- I understand that KRS 61.931 also defines "personal information" to include 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:
  - a. An account number, 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;
  - b. A Social Security number;
  - c. A taxpayer identification number that incorporates a Social Security number;
  - d. A driver's license number, state identification card number, or other individual identification number issued by any agency;
  - e. A passport number or other identification number issued by the United States government; or
  - f. Individually identifiable health information as defined in 45 C.F.R. sec. 160.103, except for education records covered by the Family Educational Rights and Privacy Act, as amended, 20 U.S.C. sec. 1232g.
- I understand that other federal and state privacy laws protect confidential data not otherwise detailed above and I acknowledge my duty to maintain confidentiality of that data as well.
- I understand that any personal characteristics that could make the person's identity traceable, including membership in a group such as ethnicity or program area, are protected.
- In addition, I understand that any data sets or output reports that I may generate using confidential data are to be protected. I will not distribute to any unauthorized person any data sets or reports that I have access to or may generate using confidential data. I understand that I am responsible for any computer transactions performed as a result of access authorized by use of sign on/password(s).

Employee signature:

Date:

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