

## Great Minds PBC Data Processing Agreement

This Data Processing Agreement, along with all Exhibits attached hereto, (the “**DPA**”) is supplementary to, and forms part of, the underlying Digital Services Terms of Service, or other agreement for services (the “**Agreement**”) between Great Minds PBC (“**Great Minds**”) and the school or school district identified as customer in the relevant Agreement (“**District**”), referred to collectively as, (the “**Parties**”).

The Parties hereby agree as follows:

1. **Definitions.** Capitalized terms used but not defined herein shall have the meanings given to them under the Agreement. As defined and used in this DPA, the following terms shall mean:
  - “**District Data**” means any proprietary or confidential data provided by District to Great Minds or created by Great Minds on behalf of the district in the provision of the Services. For the avoidance of doubt, District Data includes Education Records and Personal Data of students and educators (as defined below) and expressly excludes all De-identified Data (as defined below).
  - “**Data Breach**” means any confirmed or reasonably suspected information security incident that results in, or is likely to result in, the unauthorized destruction, loss, alteration, disclosure, or access to Personal Data and/or Education Records that is created, transmitted, stored, or otherwise Processed by Great Minds, in violation of applicable Data Protection Laws.
  - “**Data Protection Law(s)**” means the federal, state and local laws and regulations that are applicable to the Processing of Personal Data by Great Minds under this DPA, including without limitation, the Family Educational Rights and Privacy Act (“**FERPA**”) at 20 U.S.C. § 1232g and regulations at 34 CFR Part 99, the Children's Online Privacy and Protection Act (“**COPPA**”) at 15 U.S.C. § 6501-6505 and 16 CFR Part 213, and the Protection of Pupil Rights Amendment at 34 CFR Part 90 (“**PPRA**”).
  - “**De-identified Data**” means data processed in pseudonymized form, such that there is no reasonable basis to believe that the data can be used to identify an individual without a re-identification code. Great Minds may use De-identified Data solely for internal research, analytics, and product improvement purposes. Vendor shall not use De-Identified Data for targeted advertising, profiling of individuals, or any purpose unrelated to providing or improving the Services.. Great Minds will not attempt to re-identify De-identified Data or transfer it to any third party unless that party agrees in writing not to re-identify or attempt re-identification.
  - “**Disclosure**” the release, transfer, or provision of access to or other communication of Personal Data and/or Education Records by any means, including oral, written, or electronic means, to any unauthorized third-party.

- **“Education Record(s)”** means any records, files, documents, or other materials that contain information directly related to a student of District and that are created, maintained, or otherwise processed by the District, or by any party acting on behalf of the District, including Great Minds.
- **“Personal Data”** means any information processed by Great Minds on behalf of District that relates to an identified or reasonably identifiable student, parent/guardian, or educator. This includes information that, either alone or in combination with other data, can be linked or are linkable to an individual and would enable a reasonable person, without personal knowledge of the relevant circumstances, to identify that individual with reasonable certainty.
- **“Processing”** means any operation or set of operations which is performed upon Personal Data whether or not by automatic means, such as collection, recording, organization, storage, adaptation or alteration, retrieval, consultation, use, Disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure, or destruction (“Process”, “Processes” and “Processed” shall have the same meaning).
- **“School Official”** means a person or entity that: (a) performs a service or function for which the District would otherwise use employees; (b) is under the direct control of the District with respect to the use and maintenance of Personal Data and Education Records; and (c) is subject to 34 CFR § 99.33(a) governing the use and re-disclosure of Personal Data from Education Records.
- **“Services”** means the provision of Great Minds software, services, goods, or other materials described in the underlying Agreement and includes, to the extent necessary to provide the Services, support by underlying infrastructure, hosting, and networks and other routine, operational uses which are incidental to the provision of Services including fraud prevention, information security, quality assurance, Service improvements, education and training, defense against legal claims, or other uses pursuant to a court order, provided that any such uses are consistent with applicable law. To provide such Services, Great Minds may also communicate with users in the School District regarding changes and improvements to the Services, District usage of the Services, and for research purposes to further Service improvements.
- **“Service Provider” or “Processor”** means the entity or individual acting on behalf of and under the authority of District in processing Personal Data received from or acquired on behalf of District pursuant to the provision of Services under the Agreement.
- **“Student Generated Content”** means any content created by a student through their use of the Services, including, but not limited to, essays, research papers, portfolios, creative writing, music or other audio files, or photographs. Student Generated Content does not include student responses to a standardized assessment, or responses to other assessments.
- **“Subprocessor(s)”** means any third-party contracted by Great Minds that Processes

District Data on behalf of Great Minds in the provision of the Services.

## 2. Term & Termination.

**2.1. Term.** This DPA shall be effective as of the date of execution of the Agreement or on the date of execution below, whichever comes first (the “**Effective Date**”). This DPA shall similarly terminate upon the expiration or termination of the Agreement or pursuant to Clause 2.2., whichever comes first. However, the applicable obligations of the Parties pursuant to this DPA shall survive the expiration or termination of the Agreement as set forth in Clause 11.

**2.2. Termination.** In the event of an incurable breach of this DPA by Great Minds, the District may terminate this DPA immediately. This DPA shall automatically terminate upon the same date as the underlying Agreement unless otherwise agreed to by the Parties. In the event of termination, Great Minds shall stop Processing Personal Data and dispose of Personal Data as described in Clause 13.

**3. Relationship of the Parties.** This DPA applies where and to the extent that Great Minds is acting as a Processor or Service Provider of Personal Data received from or acquired on behalf of District pursuant to the provision of Services under the Agreement.

## 4. Data Use, Ownership.

**5. Data Use and Ownership.** As between the District and Great Minds, District owns and controls all District Data provided to or generated by Great Minds under this DPA and the Agreement. All rights and intellectual property in and to District Data shall remain the exclusive property of the District. Any modifications, copies, additions to or any portion of the District Data are subject to the applicable provisions of this DPA. Great Minds receives no right, title, or interest in any Personal Data processed for District hereunder other than a limited, non-exclusive, sublicensable and revocable license (upon termination or expiration of the Agreement) to process the Personal Data in its performance of the Services.

**6. Separate Account.** Solely where required and as defined by applicable Data Protection Laws, if Student Generated Content is created, stored, or maintained by Great Minds or the Services, Great Minds shall, at the request of the District, transfer or provide a mechanism for the District to transfer such Student Generated Content to a separate account created by the student or parent.

**6.1. Applicability to De-Identified Data.** For clarity, this Clause 4 shall not apply to any De-identified Data derived from Personal Data. To the extent allowed by applicable law, Great Minds shall own all right, title, and interest in De-identified Data and further agrees to not re-identify or attempt to re-identify De-identified Data by itself or via a third party. Great Mind's use of De-Identified Data shall survive termination of this DPA or any request by the District to return or destroy Personal Data.

## 7. Compliance with Data Protection Laws.

**7.1. School Official Designation.** The Parties agree that Great Minds operates as a School Official under FERPA and has a legitimate educational interest in Processing Personal Data from Education Records provided by or obtained on behalf of the District under this DPA and the Agreement. District further represents that Great Minds meets the criteria for a School Official as set forth in its annual FERPA notice. In this capacity, the Parties acknowledge that Great Minds: (a) provides a service or function for which the District would otherwise use its' employees; (b) is under the direct control of the District with respect to the use and maintenance of Education Records and any Personal Data contained therein; and (c) is subject to the requirements of FERPA governing the use and re-disclosure of Personal Data from the Education Records received or obtained on behalf of the District.

**7.2. Consent.** The Parties acknowledge that the District provides its consent on behalf of parents, as permitted under COPPA, for the collection, use, and disclosure of Personal Data from students under the age of 13 by and to Great Minds via the Services solely for the use and benefit of the District, and for no other commercial purpose. The District represents and warrants that it has obtained such consent from parents prior to permitting any student under the age of 13 to access or use the Services and has reviewed Great Minds' practices as to the collection, use, or disclosure of Personal Data.

**7.3. Parental Rights.** If a parent or guardian requests access to, or deletion of, their child's Education Records or Personal Data collected through the Services, Great Minds shall cooperate with and support the District in responding to such requests in a manner consistent with the requirements of Data Protection Laws and the District's reasonable policies and procedures.

## **8. District Obligations.**

**8.1.** District shall, in its use or receipt of the Services, process District Data in accordance with applicable law. District will ensure that its instructions to Great Minds for the Processing of Personal Data comply with applicable Data Protection Laws. District shall have sole responsibility for the accuracy, quality, and legality of District Data, how District obtained the District Data, and for fulfilling all requirements under Data Protection Laws necessary to make the District Data available to Great Minds.

**8.2.** District shall, for the duration of the Agreement, exercise all appropriate technical, organizational, and administrative controls to prevent the unauthorized acquisition or use of Great Minds-issued credentials to access the Services. District shall promptly notify Great Minds of any known or suspected unauthorized access to the Services. District will assist Great Minds in any efforts to investigate and respond to any actual or suspected unauthorized access to the Services.

## **9. Great Minds Obligations.**

**9.1. Compliance with Law.** In providing the Services, Great Minds agrees to comply with all Data Protection Laws applicable to its Processing of Personal Data.

**9.2. Data Localization.** Great Minds will store all Personal Data in the United States of America.

**9.3. Non-disclosure.** Except as expressly permitted herein or as required by applicable law, Great Minds shall not disclose District Data to any third party without the prior written consent of District. Notwithstanding the foregoing, Great Minds may disclose District Data with its Subprocessors to provide the Services under the Agreement, and any such access shall be on a need-to-know basis.

**9.4. Advertising.** Great Minds shall not sell, transfer, share, or otherwise disclose Education Records or student Personal Data to any third party for targeted advertising, nor shall it create or use student profiles for targeted advertising purposes. Great Minds shall not create or use student profiles for its own advertising or marketing purposes, nor use or permit others to use, Education Records or student Personal Data for its own advertising or marketing purposes.

This restriction does not prevent Great Minds from using District Data to provide adaptive or customized learning services, recommend other relevant products or services to District employees, conduct product efficacy research, or notify customers about service updates or new product features.

**9.5. Great Minds Personnel.** Great Minds shall ensure that its employees, Subprocessors, and agents (collectively “Personnel”) involved in the Processing of Personal Data and Education Records are subject to either contractual or statutory obligations of confidentiality, and that access is strictly limited to those Personnel who require access to perform the Services. Great Minds shall ensure that Personnel are informed of the confidential nature of the Personal Data and Education Records and have directly received or are contractually required to receive appropriate training on their responsibilities under applicable Data Protection Laws.

## **10. Security & Privacy Controls.**

**10.1. Security and Privacy Program.** Great Minds shall implement and maintain a security and privacy program that includes appropriate physical, administrative, technical, and operational controls to protect the confidentiality, integrity, privacy, and availability of Personal Data and Education Records Processed by Great Minds that is aligned with an industry standard framework, for example such as the NIST Cybersecurity Framework, AICPA SOC 2 Type 2, ISO/IEC 27001, or other recognized industry standards. These measures shall include protection against unauthorized or unlawful access, processing, loss, alteration, or damage to Personal Data and Education Records. Great Minds shall regularly monitor compliance with its program and not materially decrease its privacy and security controls during the term of this DPA.

**10.2. Incident Response Plan.** Great Minds shall implement and maintain a written incident response plan that is consistent with industry-standard practices and applicable Data Protection Laws and includes procedures for responding to a Data

Breach.

## **11. Data Breach.**

**11.1. Notification of Breach to District.** In the event of a Data Breach, Great Minds shall notify the District in the most expedient manner possible and without unreasonable delay, but in no case later than seven (7) calendar days after Great Minds becomes aware of the number and identities of the schools, students, and school personnel affected, unless such notification is prohibited by applicable law. Such notification shall be provided to the District's Security Contact. The notification shall include, to the extent available at the time: (a) a general description of the Data Breach; (b) the categories and approximate number of records or individuals affected by the Data Breach; and (c) actions taken by Great Minds to remediate the Data Breach.

**11.2. Mitigation.** In mitigating any notified Data Breach pursuant to Clause 9.1, Great Minds shall: (a) take reasonable steps to mitigate the effects and minimize any damage resulting from the Data Breach; (ii) cooperate with District's reasonable requests for assistance in remediating the Data Breach; and (iii) maintain records of information related to the Data Breach. If any of the information listed above is not available within the specified timeframe, Great Minds shall provide an estimated timeline for when complete details will be provided.

**11.3. Required Notification to Affected Individuals.** Great Minds agrees to cooperate with District, and where applicable, law enforcement, into any investigation, response, and/or remediation of a Data Breach for District to fulfill its reporting and notification obligations in accordance with applicable law. Any costs incidental to the cooperation of Great Minds, as related to such investigation, response, or remediation, will be the responsibility of Great Minds if the Data Breach is attributable to Great Minds or its Subprocessors. District will not communicate or publish any notice, report, admission of liability, or other disclosure concerning any Data Breach which directly or indirectly identifies Great Minds without Great Minds prior approval, which shall not be unreasonably withheld, unless District is compelled to do so under applicable law. In any event, District shall provide Great Minds with prior written notice of any such disclosure, communication or publication.

**12. Liability.** Great Minds shall not be liable for any civil or monetary damages under this DPA or any applicable federal or state law if a Data Breach affecting Great Minds' systems is caused, in whole or in part, by the actions, omissions, negligence, or misconduct of any employee, contractor, or third-party agent of the District.

Either Party's liability arising out of or relating to this DPA shall be limited and/or subject to any limitations on liability and/or exclusions as set forth in the underlying Agreement. No provision of this DPA shall be deemed to waive or otherwise limit the rights of an individual to whom the relevant Personal Data relate under applicable law.

Notwithstanding anything to the contrary in the Agreement, any limitation of liability or exclusion of damages shall not apply to:

- (a) Great Minds' breach of its confidentiality obligations;
- (b) Great Minds' violation of applicable Data Protection Laws;
- (c) Any Data Breach caused by Great Minds or its subprocessors; or
- (d) Great Minds' gross negligence or willful misconduct.

For the foregoing claims, Great Minds' shall be subject to a separate and higher cap equal to three (3) times the fees paid under the Agreement.

### **13. Audit.**

**14. Annual Audit.** Upon advance written request not more than once per calendar year, and subject to the confidentiality provisions of the Agreement, Great Minds shall promptly supply a summary copy of any existing information security audit report(s) to District to evidence compliance with this DPA. Great Minds shall also respond to any reasonable, pertinent questions submitted to it by District, in writing.

**14.1. Regulatory Investigations & Data Breaches.** In the event of a Data Breach or inquiry by a governmental agency relating to Personal Data, District (or the applicable governmental agency) may perform an audit of Great Minds systems solely to the extent reasonably necessary to investigate, assess, or verify Great Minds' compliance with respect to that specific Data Breach or inquiry and only with respect to systems, logs, records, and data that contain, process, or directly relate to Personal Data. District shall send written, advance Notice of such audit to the Great Minds Security Representative identified herein.

Any audit conducted under this Clause 11.2 shall:

- be limited in scope to the specific incident or inquiry, including only the time period reasonably connected to the Data Breach or investigation;
- not include access to systems, environments, or data unrelated to the Personal Data at issue, and Great Minds shall segregate or redact information pertaining to other customers or unrelated operations; and
- be conducted in a manner designed to minimize disruption to Great Minds' normal business operations.

If District engages a third party to perform the audit, such third party shall execute a non-disclosure agreement with Great Minds prior to conducting any audit activities. District agrees to promptly notify Great Minds of any non-compliance discovered during such an audit, and Great Minds agrees to remediate any critical or high security findings, or known exploitable findings, that the audit reasonably determines relate to the Data Breach or inquiry at issue.

**15. Subprocessors.** District agrees that Great Minds may use Subprocessors in providing the

Services and permit such Subprocessors to Process District Data, provided that:

- Great Minds ensures that obligations which are not materially less protective than those set out in this DPA are imposed on its Subprocessors or otherwise as required by applicable law;
- Great Minds is responsible for the acts and omissions of its Subprocessors if and to the same extent Great Minds would be liable if performing the services of each Subprocessor directly; and
- Great Minds provides notice to District of any material updates to its Privacy Policy that is relevant to the Services and its [list of Subprocessors](#) where, and in such form, as required by applicable law.

**16. Destruction and Return of Personal Data.**

**16.1. Destruction.** Subject to Clause 4.3 herein, upon termination or expiration of the Agreement, Great Minds shall permanently destroy all Personal Data and Education Records in its possession or control that has not already been destroyed as part of its standard internal data deletion policies and procedures. Such Personal Data and Education Records shall be securely and permanently destroyed in a manner such that it is non-recoverable. This requirement shall not apply: (a) to the extent that Great Minds is required by applicable law to retain some or all Personal Data or Education Records; or (b) to the extent that Personal Data or Education Records reside in archival data backups, segregated from any production systems (the “Retained Personal Data”). In both cases, Great Minds shall take commercially reasonable measures to isolate and protect the Retained Personal Data from any further processing except to the extent required by such applicable law. Such Retained Personal Data shall continue to be protected in accordance with this DPA until permanently destroyed by Great Minds.

**17. Return.** If the District requests the return of Personal Data and/or Education Records, Great Minds shall, where required by applicable Data Protection Laws, provide to the District all such data that has not already been destroyed as part of its standard internal data deletion policies and procedures in an industry-standard format within ninety (90) days following termination or expiration of this DPA.

**18. Law Enforcement Requests.** If Great Minds receives a request for access to Personal Data or Education Records from a legally authorized law enforcement agency or official, Great Minds shall promptly notify District of such request prior to making any Disclosure unless prohibited by applicable law.

**19. Insurance.** In addition to any insurance requirements under the Agreement, Great Minds shall secure and maintain, at Great Minds’ sole expense, the insurance coverage described in Exhibit A attached hereto.

**20. Miscellaneous.**

- 20.1. Severability.** Should any provision of this DPA be held invalid or unenforceable, the remainder of this DPA shall remain valid and in full force. The invalid or unenforceable provision(s) shall be either amended as necessary to ensure its validity and enforceability, while preserving the Parties' intentions as closely as possible or, if this is not possible, the DPA shall be construed in a manner as if the invalid or unenforceable provision(s) had never been contained therein.
- 20.2. Entire Agreement.** This DPA and the underlying Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof and supersedes any prior or contemporaneous representations, understandings, writings, or agreements by the Parties. Great Minds may not materially modify this DPA without the prior written consent of the District. Vendor may provide updates to this DPA to reflect changes in applicable law or industry standards; however, any such updates that materially diminish District's rights or Vendor's obligations shall not take effect unless agreed to in writing by District. Continued use of the Services shall not constitute acceptance of any material changes to this DPA. Great Minds may provide this notice via email to the email address associated with District's account.
- 20.3. Governing Law, Jurisdiction, and Venue.** This DPA shall be governed by and interpreted in accordance with the laws of the state of Kentucky, without regard to conflict of laws principles. The Parties consent to the exclusive jurisdiction of the courts located in Bullitt County, Kentucky and waive any objections to venue in those courts.
- 20.4. Assignment.** Great Minds may not assign its rights and obligations under this DPA without the consent of the District, which shall not be unreasonably withheld. Any such assignment without consent shall be considered null and void. Notwithstanding the foregoing, Great Minds may assign its rights and obligations under this DPA, in whole or part, in connection with the transfer or sale of all or substantially all the assets or business of Great Minds. This DPA will be binding upon, incur to the benefit of, and be enforceable by the Parties and respective successors and permitted assigns.
- 20.5. Notice.** Any Notice required or permitted under this DPA shall be in writing and shall be addressed to the appropriate Party's Legal Notice Representative at the address specified below. Notices shall be deemed to have been given for all purposes: (a) when delivered, if sent by a reputable courier service; (b) within five (5) business days after mailing by certified mail; or (c) upon receipt when delivered by email provided that the recipient of the Notice acknowledges such delivery.

<b>District Legal Notice Representative</b>		<b>District Security Representative</b>	
Name		Name	
Title		Title	
Address		Address	
Phone		Phone	
Email		Email	
<b>Great Minds Legal Notice Representative</b>		<b>Great Minds Security Representative</b>	
Name	Ingrid Hackett	Name	Ian Lotinsky
Title	General Counsel	Title	Chief Technology Officer
Address	55 M. Street, SE, Suite 301, Washington, DC 20003	Address	55 M. Street, SE, Suite 301, Washington, DC 20003
Phone	202-223-1845	Phone	202-223-1845
Email	privacy@greatminds.org	Email	privacy@greatminds.org

**FOR GREAT MINDS:**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

**FOR DISTRICT:**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

## **Exhibit A**

### **Insurance Coverage**

Insurance coverage maintained pursuant to this DPA by Great Minds shall be with an admitted carrier(s) having at least an “A” BEST rating. Upon written request, Great Minds shall include the District as an additional insured, and provide evidence of such coverage upon request with respect to:

1. Cyber liability coverage providing protection against industry standard cyber losses including: (a) liability arising from the unauthorized disclosure, loss, acquisition, or use of District Data; (b) denial or loss of service attacks; (c) introduction, implantation, or spread of malicious software code; and (d) unauthorized access or use of computer systems, with a limit of \$5,000,000 USD per occurrence; and
2. Commercial general liability insurance covering bodily injury and property damage to third parties and including products/completed operations and blanket contractual liability, covering Great Minds and its employees, with limits of \$1,000,000 USD per occurrence and \$2,000,000 USD general aggregate.

**Exhibit B**

*[Exhibits applicable to New York State's Education Law § 2-d available for customers in the State of New York upon request.]*