DATA USE AGREEMENT

1.0 Purpose

1.1 This Agreement is between the Arkansas Public School Resource Center (APSRC) and the _____ School District (District) of _____, Arkansas. The purpose of this Agreement is to permit the District to disclose confidential data to APSRC and to determine when and to what extent APSRC may redisclose that confidential data to third party software platform/application providers.

2.0 Scope

2.1 Data to be Disclosed

The District will grant APSRC access to all relevant District data, including without limitation District data maintained by the Arkansas Department of Education (ADE) on behalf of the District, and all District data reported by the District to ADE. The data to be disclosed may include personally identifiable information of District students and personnel. The District represents and affirms that it possesses the legal ability and has secured all permissions necessary to make available such data to APSRC for the purposes set forth in this agreement.

2.2 Protection of Confidential Data

2.2.1 For purposes of this Agreement, the term "confidential data" includes any personally identifiable information the disclosure of which is restricted by FERPA or any other applicable state or federal confidentiality law.

2.2.2 APSRC will, to the extent allowed by law, implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of any confidential data that APSRC creates, receives, maintains, or transmits on behalf of the District.

2.3   FERPA Compliance

2.3.1   The parties acknowledge that the data to be disclosed under this Agreement may include personally identifiable information contained in education records, as those terms are defined by the Family Educational Rights and Privacy Act of 1974 (FERPA), as amended, and its implementing regulations at 34 C.F.R. §§ 99.1 to 99.67. The parties intend that their actions and this Agreement will fully comply with FERPA and any other applicable state or federal confidentiality laws.

2.3.2   The disclosure of personally identifiable information contained in education records under this Agreement is governed by 34 C.F.R. § 99.31(a)(1)(i)(B), which permits disclosure of student records to a local education agency's contractors whom the agency has determined to have legitimate educational interests.

   2.3.2.1   The District has chosen to outsource this service to APSRC, as this service is an institutional service or function for which the District would otherwise use its employees.

   2.3.2.2   APSRC will act under the direct control of the District with respect to the use and maintenance of any personally identifiable information contained in education records disclosed under this Agreement.

   2.3.2.3   To the extent APSRC receives disclosures of personally identifiable information contained in education records under this Agreement, APSRC is subject to the requirements of 34 C.F.R. § 99.33(a) governing the use and redisclosure of personally identifiable information from education records.

3.0   Data Security Requirements

3.1   Data Storage

3.1.1   For any confidential data created, received, maintained, or transmitted by APSRC on behalf of the District, APSRC will store the data using commercially reasonable methods that limit access to only authorized users. APSRC will restrict access using multiple technological or physical access controls, including without limitation requiring unique user identifications and complex passwords. Confidential data will be stored in an encrypted format,

to be decrypted only as necessary for APSRC employees or agents to perform their official duties in connection with this Agreement.

3.1.2   APSRC will authorize District users to access personally identifiable information contained in education records only to the extent the user has a legitimate educational interest in the personally identifiable information, as determined by the District.

3.1.3   APSRC will rely on and follow the District's determinations and instructions as to what constitutes legitimate business or educational interests in the use of its confidential data and the access level to be granted to individual District employees through the appropriate software platform/application.

3.1.4   At no time will APSRC store any unencrypted confidential data on any portable device or media, including without limitation any laptop or notebook computer, portable hard drive, flash drive, optical media, tablet, or smart phone.

3.1.5   The parties acknowledge that confidential data will be stored, using commercially reasonable security methods, both locally at APSRC and in the cloud on the appropriate software platform/application.

3.2   Data Segregation

3.2.1   APSRC will segregate the District's confidential data from any non-District data, to ensure that the District's confidential data can be distinguished from other data and destroyed as required by this Agreement.

3.2.2   APSRC will segregate individual-level student data by student and implement technological access controls so that no user will have access to any personally identifiable information in which the user has no legitimate educational interest, as determined by the District.

3.3   Data Destruction

If requested by the District, APSRC will destroy all confidential data provided by the District when the data is no longer needed for the Purpose set forth in section 1.0 above, or upon the termination or expiration of this Agreement, whichever occurs first. Upon the District's request, APSRC will furnish a certificate of destruction.

3.4　Security Breaches

If APSRC detects any compromise, attempted compromise, or potential compromise in security allowing unauthorized access to any confidential data, APSRC will notify the District within twenty-four (24) hours of discovering the compromise, attempt, or potential compromise. APSRC will make commercially reasonable efforts to take corrective action as soon as practicable and will be responsible for providing any appropriate notice required by law.

4.0　Redisclosure of Data

4.1　APSRC will safeguard the District's confidential data from unauthorized access, use, or disclosure. APSRC will not disclose confidential data to any third party except as permitted by this Agreement or as required by law.

4.2　APSRC will disclose the District's confidential data to only:

4.2.1　APSRC employees or agents who require access to the data to perform their official duties in connection with this Agreement;

4.2.2　District employees or agents who have a legitimate business or educational interest in the data, as determined by the District; and

4.2.3　The appropriate service providers furnishing software platforms/applications or other infrastructure required to implement the Purpose set forth in section 1.0 above, but only to the extent that the service provider acts under the direct control of the District with respect to the use and maintenance of any confidential data disclosed under this Agreement.

5.0　Terms and Conditions

5.1　Effective Date, Duration, and Termination

5.1.1　This Agreement will be effective on the date this Agreement is executed, as noted below, and shall remain in effect so long as the District maintains an active license from APSRC or other appropriate software platform/application provider for use of the corresponding software platform/application.

5.1.2　Termination of this Agreement shall be governed by the EULA or the appropriate direct agreement with the corresponding software platform/application provider. The EULA and/or appropriate direct agreement with the corresponding software

platform/application provider are incorporated herein by reference as if set forth word for word.

5.1.3   Sections 2.2, 2.3, 3.3, 3.4, 4.0, 5.0 of this Agreement shall survive the termination of this Agreement.

5.2   Entire Agreement – Amendment

5.2.1   The parties intend this Agreement to represent a final and complete expression of their understanding. All prior representations, understandings, and discussions are merged herein, and no course of prior dealings between the parties may supplement or explain any terms used in this document.

5.2.2   The parties may amend this Agreement by mutual consent at any time in writing.

5.3   Indemnification and Immunity

Each party to this Agreement will be responsible for all acts and omissions of its own staff, employees, officers, agents, and independent contractors. Nothing in this Agreement may be construed to waive the sovereign immunity of the State of Arkansas, or any tort, charitable, sovereign, statutory, or other immunity held by either party or by either party's employees or agents.

5.4   Third Party Beneficiaries

The enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, is strictly reserved to the parties. Nothing contained in this Agreement will give or allow any claim or right of action whatsoever by any third person. It is the express intent of the parties that any person who is the subject of any personally identifiable information disclosed under this Agreement is not intended to be a third party beneficiary of this Agreement.

5.5   Intellectual Property

Nothing in this Agreement may be construed to grant the District any interest or right in any intellectual property created or improved by APSRC under this Agreement.

5.6   Severability

If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

5.7   Governing Law

This Agreement will be construed under the laws of the State of Arkansas. In the event of an inconsistency in this Agreement, the inconsistency will be resolved by giving precedence first to applicable state or federal laws, and then to the written provisions of this Agreement.

Executed this ____ day of _____, 20___, by:

_____ **School District**

_____
Superintendent

Arkansas Public School Resource Center

_____
Scott Smith, Executive Director