

AGREEMENT

THIS AGREEMENT is made and entered into as of this _____ day of _____, 2020, by and between

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA
(hereinafter referred to as “SBBC”),
a body corporate and political subdivision of the State of Florida,
whose principal place of business is
600 Southeast Third Avenue, Fort Lauderdale, Florida 33301

and

TERRACE METRICS, INC.
(hereinafter referred to as “TM”),
whose principal place of business is
1122 Herschel Avenue, Cincinnati, OH, 45208.

WHEREAS, SBBC is willing to partner with TM to obtain a system that allows the district to measure students’ behavioral health status, manage students identified as needing additional resources, and monitor individual and school progress. Using the most robust, empirically supported indicators of behavioral health functioning, the system can be applied to students from grades 3 through 12; and

WHEREAS, TM’s groundbreaking, user-friendly software assesses the most robust predictors of interpersonal and intrapersonal functioning, both of which are vital components of current and future academic success.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

ARTICLE 1 - RECITALS

1.01 **Recitals**. The parties agree that the foregoing recitals are true and correct and that such recitals are incorporated herein by reference.

ARTICLE 2 – SPECIAL CONDITIONS

2.01 **Term of Agreement**. Unless terminated earlier pursuant to Section 3.05 of this Agreement, the term of this Agreement shall commence upon execution by all parties and conclude on August 31, 2021. The term of the Agreement may, by mutual agreement between SBBC and TM, be extended for two (2) additional one (1) year periods through a written amendment to this Agreement.

2.02 **TM Duties and Responsibilities.**

(a) **Task List.** Each task has been assigned a number for reference throughout the rest of this document and during the commission of the project:

- 1) Initial Meeting with District personnel.
- 2) Onsite training and Monitoring.
- 3) Creating a customized, staggered student administration schedule for each school.
- 4) Onsite Monitoring.

(b) **Project Approach Plan and Estimates Milestones.** TM shall perform the following for SBBC:

1) Complete all required SBBC technology requirements for rostering and single sign on solutions through Clever Inc. (“Clever”) by October 1, 2020, as specifically outlined below:

i. Meet SAML 2.0 or WS-FED requirements for authentication.

ii. Be Clever compliant.

iii. Have a defined process for rostering students, teachers, district/school level administrative/instructional personnel, non-classroom teachers through Clever or Canvas API.

iv. Build and maintain class rosters through a syncing process.

v. Support multi-tenancy students.

vi. Allow SBBC staff to act as “students” to view instructional materials through a rostered student perspective.

2) Perform initial meeting with District personnel to establish training dates, initial administration dates, and any aspects of the software that should be customized. This meeting will occur within fifteen (15) calendar days of execution of this contract or a later date determined by SBBC.

3) Provide onsite or online training of each targeted schools' response teams and district coordinators, to include both how to use the software and the administration/identification process. The Duration of training will be approximately two (2) hours and can be held at each participating school or (preferably) at one location. This training will occur approximately one (1) month prior to schools' administering the assessment system.

4) Create a customized, staggered schedule for each participating school, which allows for an efficient process that does not tax school resources. This staggered schedule will be provided within the week after the in-person training sessions (based on feedback from each school).

- 5) Provide on site or online (if preferred by District personnel) monitoring by members of TM during the first two (2) calendar days of administration for each targeted school. The purpose of this monitoring is to answer any questions the schools may have, in real time. Scheduling of this on-site monitoring will be determined by the school.
 - 6) Provide ongoing and continual monitoring of the system and immediate customer service. This service is provided over the entire Term of this Agreement.
 - 7) Provide unlimited use of the software (and administrations) during the Term of this Agreement.
 - 8) Provide ongoing and immediate access to all resources including educator videos, curriculum appropriate for Tier I and Tier II intervention, and parent resources during the Term of this Agreement.
 - 9) Provide each participating school with an aggregated, de-identified behavioral health report. This report can be retrieved immediately after the last registered student has completed the assessment.
 - 10) Provide the District with an aggregated, de-identified report of the behavioral health of participating schools. This report will be delivered to the District within two (2) weeks of the last school receiving their school report.
 - 11) Provide a workshop to the District administration regarding the results of their district report (if preferred by District personnel). Scheduling this workshop will be determined by the District administration.
- (c) Project Reports. TM shall provide the following Reports to SBBC:
- 1) Individualized Student Report:
 - i. Purpose: Only accessible by school response team members; purpose is to inform response team members of student's overall behavioral health functioning, as well as functioning within key resilience and risk indicators
 - ii. Frequency: Immediately after the student completes the assessment
 - 2) Parent Report.
 - i. Purpose: To inform parent(s) of their child's behavioral functioning. Access to parent-specific resources can be retrieved within the report.
 - ii. Frequency: Generated immediately after student completes the assessment; Report is released based on decision of school response team.
 - 3) School Report.
 - i. Purpose: Aggregate data allows schools to measure and monitor students' behavioral health over time. Data is directly linked to educator-focused videos

and curriculum that can be administered by educators or members of response team.

ii. Frequency: Aggregate data allows schools to measure and monitor students' behavioral health over time. Data is directly linked to educator-focused videos and curriculum that can be administered by educators or members of response team.

4) District Report.

i. Purpose: Aggregate data allows the District to monitor schools' behavioral health over time. A workshop is provided to provide an overview of the findings and to generate solutions (if needed as determined by District personnel).

ii. Frequency: Available within fourteen (14) calendar days after last school receives their deidentified report.

2.03 Cost of Services and Payment.

(a) Cost of Services. The total cost of all Services in this Agreement is Forty-Eight Thousand, Two Hundred Eighty Dollars and 00/100 Cents (\$48,280.00).

(b) Payment for Services. TM shall submit an appropriate invoice to SBBC for Twenty-Four Thousand, One Hundred Forty Dollars and 00/100 Cents (\$24,140.00) upon delivery of the system with all applicable technology integrations completed in Section 2.02(b)1). TM shall submit a second invoice for Twenty-Four Thousand, One Hundred Forty Dollars and 00/100 Cents (\$24,140.00) after completion of the remaining balance of all deliverables outlined in this Agreement. SBBC will pay such invoices net thirty (30) calendar days.

2.04 SBBC Disclosure of Education Records.

(a) Purposes: SBBC will disclose the education records listed in this section to TM:

- 1) To transmit data via the District's integration system (Personal identifiers, demographic information)
- 2) To make mental health assessments available for SBBC staff to administer to students who have not opted out.
- 3) To make curriculum available for students to complete on mental health and additional topics that become available through the platform.

(b) SBBC will provide TM with the following education records:

- 1) Student First and Last Name
- 2) Student Identification Number
- 3) Student Date of Birth
- 4) Gender
- 5) Ethnicity
- 6) Race
- 7) Grade Level
- 8) Course Assignments

- 9) Parent email address
- 10) School Location (School Name or School Number)
- 11) Student Roster

(c) TM will have access to student assessment responses. This includes student mental health information. Under the Protection of Pupil Rights Amendment, parents and students age eighteen (18) years or older have the right to opt-out of responding to assessments that ask information about students' mental health. SBBC staff will administer these assessments to students who were not opted out and ensure that students who were opted out do not have access to them.

(d) Parents and students age eighteen (18) or older will be given the opportunity to opt-out of assessments provided by TM. The opt-out form will list all education records that SBBC will provide to TM. SBBC staff will be responsible for providing the opt-out option to parents and students age eighteen (18) or older and maintain a record of the opt-outs.

(e) TM is considered a "school official" with a legitimate educational interest to receive the education records listed in this section. Pursuant to the Family Educational Rights and Privacy Act (FERPA), 34 CFR Part 99.31(a)(1), these education records may be provided by SBBC to TM without prior parental consent.

(f) TM shall make provision for parents' (or students age 18 or over) advance review of all assessment items upon request. Such review shall take place at a school site, under supervision of the principal or designee. Student participation shall be in compliance with the Protection of Pupil Rights Amendment (PPRA; 20 USC §1232h; 34 CFR Part 98) as detailed in the PPRA Notice, attached as **Attachment A**, in the Student Code of Conduct Handbook (Note: the District's PPRA Notice and PPRA Procedures are subject to future revision, if dictated by applicable changes in the federal law.)

(g) TM shall not prompt or request SBBC student or employee users to provide any additional personally identifiable information during use of software, website or program services pursuant to this Agreement. TM shall not use or re-disclose any student information for any purpose not listed in this section of this Agreement. This provision supersedes any of TM's privacy policies regarding collecting and using student information.

2.05 **TM Confidentiality of Education Records.**

(a) Notwithstanding any provision to the contrary within this Agreement, TM shall:

1) fully comply with the requirements of Sections 1002.22, 1002.221, and 1002.222, Florida Statutes; the Family Educational Rights and Privacy Act, 20 U.S.C § 1232g (FERPA) and its implementing regulations (34 C.F.R. Part 99), and any other state or federal law or regulation regarding the confidentiality of student information and records;

2) hold any education records in strict confidence and not use or redisclose same except as required by this Agreement or as required or permitted by law unless the parent of each student or a student age 18 or older whose education records are to be shared provides prior written consent for their release;

3) ensure that, at all times, all of its employees who have access to any education records during the term of their employment shall abide strictly by its obligations under this Agreement, and that access to education records is limited only to its employees that require the information to carry out the responsibilities under this Agreement and shall provide said list of employees to SBBC upon request;

4) safeguard each education record through administrative, physical and technological safety standards to ensure that adequate controls are in place to protect the education records and information in accordance with FERPA's privacy requirements;

5) utilize the education records solely for the purposes of providing products and services as contemplated under this Agreement; and shall not share, publish, sell, distribute, target advertise, or display education records to any third party;

6) notify SBBC immediately upon discovery of a breach of confidentiality of education records by telephone at 754-321-0300 (Manager, Information Security), and 754-321-1900 (Privacy Officer), and email at, and take all necessary notification steps as may be required by federal and Florida law, including, but not limited to, those required by Section 501.171, Florida Statutes;

7) fully cooperate with appropriate SBBC staff, including Privacy Officer and/or Information Technology staff to resolve any privacy investigations and concerns in a timely manner;

8) prepare and distribute, at its own cost, any and all required breach notifications, under federal and Florida Law, or reimburse SBBC any direct costs incurred by SBBC for doing so, including, but not limited to, those required by Section 501.171, Florida Statutes;

9) be responsible for any fines or penalties for failure to meet breach notice requirements pursuant to federal and/or Florida law;

10) provide SBBC with the name and contact information of its employee who shall serve as SBBC's primary security contact and shall be available to assist SBBC in resolving obligations associated with a security breach of confidentiality of education records; and

11) securely erase education records from any media once any media equipment is no longer in use or is to be disposed; secure erasure will be deemed the deletion of the education records using a single pass overwrite Secure Erase (Windows) or Wipe (Unix).

(b) All education records shall remain the property of SBBC, and any party contracting with SBBC serves solely as custodian of such information pursuant to this Agreement and claims no ownership or property rights thereto and, upon termination of this Agreement shall, at SBBC's request, return to SBBC or dispose of the education records in compliance with the applicable Florida Retention Schedules and provide SBBC with a written acknowledgment of said disposition.

(c) TM shall, for itself, its officers, employees, agents, representatives, contractors or subcontractors, fully indemnify and hold harmless SBBC and its officers and employees for any

violation of this section, including, without limitation, defending SBBC and its officers and employees against any complaint, administrative or judicial proceeding, payment of any penalty imposed upon SBBC, or payment of any and all costs, damages, judgments or losses incurred by or imposed upon SBBC arising out of a breach of this covenant by the party, or an officer, employee, agent, representative, contractor, or sub-contractor of the party to the extent that the party or an officer, employee, agent, representative, contractor, or sub-contractor of the party shall either intentionally or negligently violate the provisions of this section or of Sections 1002.22 and/or 1002.221, Florida Statutes. This section shall survive the termination of all performance required or conclusion of all obligations existing under this Agreement.

2.06 SBBC Disclosure of Employee Records.

- (a) Purposes: TM will utilize employee's records to
 - 1) configure user accounts for TM's systems,
 - 2) define user roles and permissions within TM's systems, and
 - 3) access assessment data by classroom, requiring employee roster records.

- (b) SBBC will provide the following employee records to TM via the District's integration system:
 - 1) School Location (School Name or School Number)
 - 2) First and Last Name
 - 3) Identification Number
 - 4) SBBC Email Address
 - 5) Course Schedule
 - 6) Student Rosters

(c) TM shall not use the employee records provided by SBBC for any purpose other than those listed in this section or re-disclose the records to any outside source without the prior written consent of the employee, except as required or allowable by law.

2.07 HIPAA Compliance. TM acknowledges that the Health Insurance Portability and Accountability Act ("HIPAA") and the Health Information Technology for Economic and Clinical Health Act of 2009 ("HITECH Act") (HIPAA and HITECH Act are collectively referred to herein as "HIPAA") protect the privacy of protected health information ("PHI") and may be applicable to student records in certain circumstances; and shall enter into SBBC's HIPAA Business Associate Agreement ("BAA") attached as **Attachment B** PHI may be used and disclosed only in compliance with HIPAA.

2.08 Inspection of TM's Records by SBBC. TM shall establish and maintain books, records and documents (including electronic storage media) sufficient to reflect all income and expenditures of funds provided by SBBC under this Agreement. All TM's applicable records, regardless of the form in which they are kept, shall be open to inspection and subject to audit, inspection, examination, evaluation and/or reproduction, during normal working hours, by SBBC's agent or its authorized representative to permit SBBC to evaluate, analyze and verify the satisfactory performance of the terms and conditions of this Agreement and to evaluate, analyze and verify the applicable business records of TM directly relating to this Agreement in order to verify the accuracy of invoices provided to SBBC. Such audit shall be no more than one (1) time per calendar year.

(a) Duration of Right to Inspect. For the purpose of such audits, inspections, examinations, evaluations and/or reproductions, SBBC's agent or authorized representative shall have access to TM's records from the effective date of this Agreement, for the duration of the term of this Agreement, and until the later of five (5) years after the termination of this Agreement or five (5) years after the date of final payment by SBBC to TM pursuant to this Agreement.

(b) Notice of Inspection. SBBC's agent or its authorized representative shall provide TM reasonable advance written notice (not to exceed two (2) weeks) of any intended audit, inspection, examination, evaluation and or reproduction.

(c) Audit Site Conditions. SBBC's agent or its authorized representative shall have access to TM's facilities and to any and all records related to this Agreement, and shall be provided adequate and appropriate work space in order to exercise the rights permitted under this section.

(d) Failure to Permit Inspection. Failure by TM to permit audit, inspection, examination, evaluation and/or reproduction as permitted under this section shall constitute grounds for termination of this Agreement by SBBC for cause and shall be grounds for SBBC's denial of some or all of any TM's claims for payment.

(e) Overcharges and Unauthorized Charges. If an audit conducted in accordance with this section discloses overcharges or unauthorized charges to SBBC by TM in excess of two percent (2%) of the total billings under this Agreement, the actual cost of SBBC's audit shall be paid by TM. If the audit discloses billings or charges to which TM is not contractually entitled, TM shall pay said sum to SBBC within twenty (20) calendar days of receipt of written demand unless otherwise agreed to in writing by both parties.

(f) Inspection of Subcontractor's Records. If applicable, TM shall require any and all subcontractors, insurance agents and material suppliers (hereafter referred to as "Payees") providing services or goods with regard to this Agreement to comply with the requirements of this section by insertion of such requirements in any written subcontract. Failure by TM to include such requirements in any subcontract shall constitute grounds for termination of this Agreement by SBBC for cause and shall be grounds for the exclusion of some or all of any Payees' costs from amounts payable by SBBC to TM pursuant to this Agreement and such excluded costs shall become the liability of TM.

(g) Inspector General Audits. TM shall comply and cooperate immediately with any inspections, reviews, investigations, or audits deemed necessary by the Florida Office of the Inspector General or by any other state or federal officials.

2.09 Notice. When any of the parties desire to give notice to the other, such notice must be in writing, sent by U.S. Mail, postage prepaid, addressed to the party for whom it is intended at the place last specified; the place for giving notice shall remain such until it is changed by written notice in compliance with the provisions of this paragraph. For the present, the Parties designate the following as the respective places for giving notice:

To SBBC: Superintendent of Schools
The School Board of Broward County, Florida
600 Southeast Third Avenue

Fort Lauderdale, Florida 33301

With a Copy to: Director of Student Assessment and Research
The School Board of Broward County, Florida
600 Southeast Third Avenue
Fort Lauderdale, Florida 33301

To: Kathleen Chard
Terrace Metric, Inc.
1122 Herschel Ave. Cincinnati, OH 45208

With a Copy to: Denis Deters
1122 Herschel Ave. Cincinnati, OH 45208

2.10 **Background Screening.** TM shall comply with all requirements of Sections 1012.32 and 1012.465, Florida Statutes, and all of its personnel who (1) are to be permitted access to school grounds when students are present, (2) will have direct contact with students, or (3) have access or control of school funds, will successfully complete the background screening required by the referenced statutes and meet the standards established by the statutes. This background screening will be conducted by SBBC in advance of TM or its personnel providing any services under the conditions described in the previous sentence. TM shall bear the cost of acquiring the background screening required by Section 1012.32, Florida Statutes, and any fee imposed by the Florida Department of Law Enforcement to maintain the fingerprints provided with respect to TM and its personnel. The parties agree that the failure of TM to perform any of the duties described in this section shall constitute a material breach of this Agreement entitling SBBC to terminate immediately with no further responsibilities or duties to perform under this Agreement. TM agrees to indemnify and hold harmless SBBC, its officers and employees from any liability in the form of physical or mental injury, death or property damage resulting from TM's failure to comply with the requirements of this section or with Sections 1012.32 and 1012.465, Florida Statutes.

2.11 **Public Records.** The following provisions are required by Section 119.0701, Florida Statutes, and may not be amended. TM shall keep and maintain public records required by SBBC to perform the services required under this Agreement. Upon request from SBBC's custodian of public records, TM shall provide SBBC with a copy of any requested public records or to allow the requested public records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law. TM shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement's term and following completion of the Agreement if TM does not transfer the public records to SBBC. Upon completion of the Agreement, TM shall transfer, at no cost, to SBBC all public records in possession of TM or keep and maintain public records required by SBBC to perform the services required under the Agreement. If TM transfers all public records to SBBC upon completion of the Agreement, TM shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If TM keeps and maintains public records upon completion of the Agreement, TM shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to SBBC, upon request from SBBC's custodian of public records, in a format that is compatible with SBBC's information technology systems.

IF A PARTY TO THIS AGREEMENT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO ITS DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 754-321-1900, RECORDREQUESTS@BROWARDSCHOOLS.COM, RISK MANAGEMENT DEPARTMENT, PUBLIC RECORDS DIVISION, 600 SOUTHEAST THIRD AVENUE, FORT LAUDERDALE, FLORIDA 33301.

2.12 **Liability.** This section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.

(a) **By SBBC:** SBBC agrees to be fully responsible up to the limits of Section 768.28, Florida Statutes, for its acts of negligence, or its employees' acts of negligence when acting within the scope of their employment and agrees to be liable, up to the limits of Section 768.28, Florida Statutes, for any damages resulting from said negligence.

(b) **By TM:** TM agrees to indemnify, hold harmless and defend SBBC, its agents, servants and employees from any and all claims, judgments, costs, and expenses including, but not limited to, reasonable attorney's fees, reasonable investigative and discovery costs, court costs and all other sums which SBBC, its agents, servants and employees may pay or become obligated to pay on account of any, all and every claim or demand, or assertion of liability, or any claim or action founded thereon, arising or alleged to have arisen out of the products, goods or services furnished by TM, its agents, servants or employees; the equipment of TM, its agents, servants or employees while such equipment is on premises owned or controlled by SBBC; or the negligence of TM or the negligence of TM's agents when acting within the scope of their employment, whether such claims, judgments, costs and expenses be for damages, damage to property including SBBC's property, and injury or death of any person whether employed by TM, SBBC or otherwise.

2.13 **Insurance Requirements.** TM shall comply with the following insurance requirements throughout the term of this Agreement:

(a) **General Liability.** TM shall maintain General Liability insurance during the term of this Agreement with limits not less than \$1,000,000 per occurrence for Bodily Injury/ Property Damage; \$1,000,000 General Aggregate; and limits not less than \$1,000,000 for Products/Completed Operations Aggregate.

(b) **Professional Liability/Errors & Omissions.** TM shall maintain Professional Liability/Errors & Omissions insurance during the term of this Agreement with a limit of not less than \$1,000,000 per occurrence covering services provided under this Agreement.

(c) **Workers' Compensation.** TM shall maintain Workers' Compensation insurance during the term of this Agreement in compliance with the limits specified in Chapter 440, Florida Statutes, and Employer's Liability limits shall not be less than \$100,000/\$100,000/\$500,000 (each accident/disease-each employee/disease-policy limit).

(d) Auto Liability. TM shall maintain Owned, Non-Owned and Hired Auto Liability insurance with Bodily Injury and Property Damage limits of not less than \$1,000,000 Combined Single Limit.

(e) Acceptability of Insurance Carriers. The insurance policies required under this Agreement shall be issued by companies qualified to do business in the State of Florida and having a rating of at least A- VI by AM Best or Aa3 by Moody's Investor Service.

(f) Verification of Coverage. Proof of the required insurance must be furnished by TM to SBBC's Risk Management Department by Certificate of Insurance within fifteen (15) days of the date of this Agreement. To streamline this process, SBBC has partnered with EXIGIS Risk Management Services to collect and verify insurance documentation. All certificates (and any required documents) must be received and approved by SBBC's Risk Management Department before any work commences to permit TM to remedy any deficiencies. TM must verify its account information and provide contact details for its Insurance Agent via the link provided to it by email.

(g) Required Conditions. Liability policies must include the following terms on the Certificate of Insurance:

- 1) The School Board of Broward County, Florida, its members, officers, employees and agents are added as additional insured.
- 2) All liability policies are primary of all other valid and collectable coverage maintained by The School Board of Broward County, Florida.
- 3) Certificate Holder: The School Board of Broward County, Florida, c/o EXIGIS Risk Management Services, P.O. Box 4668-ECM, New York, New York 10163-4668.

(h) Cancellation of Insurance. TM is prohibited from providing services under this Agreement with SBBC without the minimum required insurance coverage and must notify SBBC within two (2) business days if required insurance is cancelled.

(i) SBBC reserves the right to review, reject or accept any required policies of insurance, including limits, coverage or endorsements, herein throughout the term of this Agreement.

2.14 Equal Opportunity Provision. The parties agree that no person shall be subjected to discrimination because of age, race, color, disability, gender identity, gender expression, marital status, national origin, religion, sex or sexual orientation in the performance of the parties' respective duties, responsibilities and obligations under this Agreement.

2.15 Annual Appropriation. The performance and obligations of SBBC under this Agreement shall be contingent upon an annual budgetary appropriation by its governing body. If SBBC does not allocate funds for the payment of services or products to be provided under this Agreement, this Agreement may be terminated by SBBC at the end of the period for which funds have been allocated. SBBC shall notify the other party at the earliest possible time before such termination. No penalty shall accrue to SBBC in the event this provision is exercised, and SBBC shall not be obligated or liable for any future payments due or any damages as a result of termination under this section.

2.16 **Excess Funds.** Any party receiving funds paid by SBBC under this Agreement agrees to promptly notify SBBC of any funds erroneously received from SBBC upon the discovery of such erroneous payment or overpayment. Any such excess funds shall be refunded to SBBC.

2.17 **Incorporation by Reference.** Attachment(s) A and B attached hereto and referenced herein shall be deemed to be incorporated into this Agreement by reference.

ARTICLE 3 – GENERAL CONDITIONS

3.01 **No Waiver of Sovereign Immunity.** Nothing herein is intended to serve as a waiver of sovereign immunity by any agency or political subdivision to which sovereign immunity may be applicable or of any rights or limits to liability existing under Section 768.28, Florida Statutes. This section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.

3.02 **No Third Party Beneficiaries.** The parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Agreement. None of the parties intend to directly or substantially benefit a third party by this Agreement. The parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against any of the parties based upon this Agreement. Nothing herein shall be construed as consent by an agency or political subdivision of the State of Florida to be sued by third parties in any matter arising out of any Agreement.

3.03 **Independent Contractor.** The parties to this Agreement shall at all times be acting in the capacity of independent contractors and not as an officer, employee or agent of one another. Neither party or its respective agents, employees, subcontractors or assignees shall represent to others that it has the authority to bind the other party unless specifically authorized in writing to do so. No right to SBBC retirement, leave benefits or any other benefits of SBBC employees shall exist as a result of the performance of any duties or responsibilities under this Agreement. SBBC shall not be responsible for social security, withholding taxes, contributions to unemployment compensation funds or insurance for the other party or the other party's officers, employees, agents, subcontractors or assignees.

3.04 **Default.** The parties agree that, in the event that either party is in default of its obligations under this Agreement, the non-defaulting party shall provide to the defaulting party (30) calendar days written notice to cure the default. However, in the event said default cannot be cured within said thirty (30) calendar day period and the defaulting party is diligently attempting in good faith to cure same, the time period shall be reasonably extended to allow the defaulting party additional cure time. Upon the occurrence of a default that is not cured during the applicable cure period, this Agreement may be terminated by the non-defaulting party upon thirty (30) calendar days notice. This remedy is not intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or future exercise thereof. Nothing in this section shall be construed to preclude termination for convenience pursuant to Section 3.05.

3.05 **Termination.** This Agreement may be canceled with or without cause by SBBC during the term hereof upon thirty (30) calendar days written notice to the other parties of its desire to terminate this Agreement. In the event of such termination, SBBC shall be entitled to a *pro rata* refund of any pre-paid amounts for any services scheduled to be delivered after the effective date of such termination. SBBC shall have no liability for any property left on SBBC's property by any party to this Agreement after the termination of this Agreement. Any party contracting with SBBC under this Agreement agrees that any of its property placed upon SBBC's facilities pursuant to this Agreement shall be removed within ten (10) business days following the termination, conclusion or cancellation of this Agreement and that any such property remaining upon SBBC's facilities after that time shall be deemed to be abandoned, title to such property shall pass to SBBC, and SBBC may use or dispose of such property as SBBC deems fit and appropriate.

3.06 **Compliance with Laws.** Each party shall comply with all applicable federal, state and local laws, SBBC policies, codes, rules and regulations in performing its duties, responsibilities and obligations pursuant to this Agreement.

3.07 **Place of Performance.** All obligations of SBBC under the terms of this Agreement are reasonably susceptible of being performed in Broward County, Florida and shall be payable and performable in Broward County, Florida.

3.08 **Governing Law and Venue.** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted exclusively to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida or to the jurisdiction of the United States District Court for the Southern District of Florida. Each party agrees and admits that the state courts of the Seventeenth Judicial Circuit of Broward County, Florida or the United States District Court for the Southern District of Florida shall have jurisdiction over it for any dispute arising under this Agreement.

3.09 **Entirety of Agreement.** This document incorporates and includes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

3.10 **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

3.11 **Assignment.** Neither this Agreement nor any interest herein may be assigned, transferred or encumbered by any party without the prior written consent of the other party. There shall be no partial assignments of this Agreement including, without limitation, the partial assignment of any right to receive payments from SBBC.

3.12 **Captions.** The captions, section designations, section numbers, article numbers, titles and headings appearing in this Agreement are inserted only as a matter of convenience, have no substantive meaning, and in no way define, limit, construe or describe the scope or intent of such articles or sections of this Agreement, nor in any way affect this Agreement and shall not be construed to create a conflict with the provisions of this Agreement.

3.13 **Severability.** In the event that any one or more of the sections, paragraphs, sentences, clauses or provisions contained in this Agreement is held by a court of competent jurisdiction to be invalid, illegal, unlawful, unenforceable or void in any respect, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect as if such invalid, illegal, unlawful, unenforceable or void sections, paragraphs, sentences, clauses or provisions had never been included herein.

3.14 **Preparation of Agreement.** The parties acknowledge that they have sought and obtained whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to herein expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

3.15 **Amendments.** No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by each party hereto.

3.16 **Waiver.** The parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof. Any party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement unless the waiver is in writing and signed by the party waiving such provision. A written waiver shall only be effective as to the specific instance for which it is obtained and shall not be deemed a continuing or future waiver.

3.17 **Force Majeure.** Neither party shall be obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, wars, sabotage, accident, flood, acts of God, strikes, or other labor disputes, riot or civil commotions, epidemics, pandemics, government regulations, and the issuance or extension of existing government orders of the United States, the State of Florida, or local county and municipal governing bodies, or by reason of any other matter or condition beyond the control of either party, and which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall lack of funds on the part of either party be deemed Force Majeure.

3.18 **Survival.** All representations and warranties made herein, indemnification obligations, obligations to reimburse SBBC, obligations to maintain and allow inspection and audit of records and property, obligations to maintain the confidentiality of records, reporting requirements, and obligations to return public funds shall survive the termination of this Agreement.

3.19 **Agreement Administration.** SBBC has delegated authority to the Superintendent of Schools or his/her designee to take any actions necessary to implement and administer this Agreement.

3.20 **Counterparts and Multiple Originals.** This Agreement may be executed in multiple originals, and may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same Agreement.

3.21 **Authority.** Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement on the date first above written.

FOR SBBC:

(Corporate Seal)

THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

ATTEST:

By _____
Donna P. Korn, Chair

Robert W. Runcie, Superintendent of Schools

Approved as to Form and Legal Content:

Office of the General Counsel

[THIS SPACE INTENTIONALLY LEFT BLANK; SIGNATURE PAGE FOLLOWS]

FOR TM:

(Corporate Seal)

ATTEST:

_____, Secretary

-or-
[Signature]
Witness
[Signature]
Witness

TERRACE METRICS, INC.

By [Signature]

Print Name: Rich Gilman

Title: President

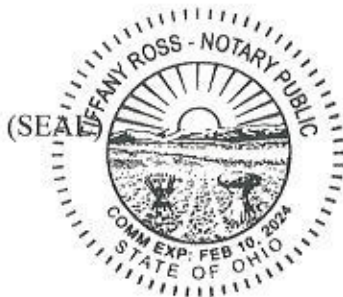
The Following Notarization is Required for Every Agreement Without Regard to Whether the Party Chose to Use a Secretary's Attestation or Two (2) Witnesses.

STATE OF Ohio

COUNTY OF Hamilton

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this 8/21/20 (date) by Richard Gilman (name of officer or agent, title of officer or agent) of Terrace Metrics Inc (name of corporation acknowledging), a Ohio (state or place of incorporation) corporation, on behalf of the corporation. He/she is personally known to me (underline if applicable) or has produced OH DL (type of identification) as identification and who did/ did not first take an oath this 21st day of August, 2020.

My Commission Expires:



[Signature]
Signature - Notary Public

Tiffany Ross
Notary's Printed Name

2/10/24
Notary's Commission No.

PROTECTION OF PUPIL RIGHTS AMENDMENT (PPRA) NOTICE

Pursuant to the Protection of Pupil Rights Amendment (PPRA) (20 USC §1232h; 34 C.F.R §98), parents, guardians, or eligible students (over the age of 18 or emancipated) have certain rights pertaining to surveys, the collection and use of information for marketing purposes, and certain physical exams.

PPRA RIGHTS

1. The right to give prior written consent before students are required to submit to surveys concerning "protected information" if the survey is funded in whole or in part by a program of the U.S. Department of Education. "Protected information" includes:
 - a. Mental or psychological problems of the student or student's family;
 - b. Sex behavior or attitudes;
 - c. Illegal, anti-social, self-incriminating, or demeaning behavior;
 - d. Critical appraisals of others with whom survey respondents have close family relationships;
 - e. Legally recognized privileged relationships, such as with lawyers, doctors, or ministers;
 - f. Income, other than as required by law to determine program eligibility

Pursuant to F.S. §1002.222, the District will not collect, obtain or retain information on political affiliation, voting history, religious affiliation or biometric information of a student or a parent or sibling of the student.

"Biometric information" means information collected from the electronic measurement or evaluation of any physical or behavioral characteristics that are attributable to a single person, including fingerprint characteristics, hand characteristics, eye characteristics, vocal characteristics, and any other physical characteristics used for the purpose of electronically identifying that person with a high degree of certainty.

2. The right to receive notice and an opportunity to opt a student out of participation in any other protected information survey, regardless of funding.
3. The right to receive notice and an opportunity to opt a student out of any non-emergency invasive physical exam or screening required as a condition of school attendance administered by the school or its agent, and not necessary to protect the immediate health and safety of a student.

Pursuant to F.S. §381.0056(4)(a)(6-9) and (6)(e), parents/guardians have the right to opt out of selected health screenings listed in Florida Administrative Code 64F-6.003(1-4) and the School Health Services Plan. These screenings – offered to students in selected grades – include vision, hearing, scoliosis, and body mass index (BMI), which is also referred to as "growth and development" and includes the calculation of height and weight.

4. The right to receive notice and an opportunity to opt a student out of activities involving the collection, disclosure, or use of personal information obtained from students for marketing or to sell or otherwise distribute the information to others. This does not include information collected from students for the exclusive purpose of developing, evaluating, or providing educational products or services for, or to, students and educational institutions.
5. The right to inspect, upon request and prior to administration or use (a) protected information surveys of students, and surveys created by a third party, (b) instruments used to collect personal information from students for any marketing, sales, or other distribution purposes, and (c) instructional material used as part of the educational curriculum.
6. These rights transfer from the parents/guardians to a student who is 18 years old or an emancipated minor under Florida law.

PRIVACY AND NOTIFICATION

The District will ensure that student privacy is protected in the administration of protected information surveys and the collection, disclosure, or use of personal information for marketing, sales, or other distribution purposes.

The District will directly notify parents of their PPRA rights at least annually at the start of each school year and after any substantive changes. Direct notification includes, but is not limited to, the Code Book of Student Conduct, mail, e-mail, in-person, or by acknowledgment form. The District will also directly notify parents of students who are scheduled to participate in the specific activities or

surveys noted above and will provide an opportunity for the parent to opt his or her child out of participation of the specific activity or survey. The District will make this notification to parents at the beginning of the school year if the District has identified the specific or approximate dates of the activities or surveys at that time. For surveys and activities scheduled after the school year starts, parents will be provided reasonable notification of the planned activities and surveys and will be provided an opportunity to opt their child out of such activities and surveys and to review any pertinent surveys.

Those who believe their rights have been violated may file a complaint with the Family Policy Compliance Office, U.S. Department of Education, 400 Maryland Avenue, S.W., Washington, D.C. 20202. If you wish to discuss and try to resolve any PPRA concerns before contacting the Family Policy Compliance Office, you may contact the SBBC Privacy Officer at 754-321-1914.

PPRA PROCEDURES

1. To inspect surveys, instruments used to collect personal information, and instructional materials, parents/guardians must submit their requests in writing to the school. Such inspection must be conducted in-person under the supervision of designated staff and at the location designated by the school principal.
2. Prior to the administration of protected information surveys, principals or designated District staff will provide direct notification (including but not limited to mail, e-mail, in-person, or by acknowledgement form) to parents, guardians, or eligible students and provide the required consent forms. All completed forms must be returned to the child's school.
3. Principals or designated staff will directly send parents opt out forms for any instruments used to collect personal information for marketing, sales or distribution purposes. All completed forms must be returned to the child's school.
4. All surveys containing protected information and all instruments used to collect personal information for marketing, sales, or distribution will be administered in a manner that protects students' privacy.
5. Regarding non-invasive health screenings, parents/guardians choosing to opt out must complete the Health Screening Opt-Out Form in the Code Book of Student Conduct and submit this form to the school in the time frames listed on the form.
6. Parents will be provided reasonable advance notification of (a) the administration of protected information surveys of students, (b) the collection, disclosure, or use of personal information from students for marketing, sales, or distribution, and (c) any non-emergency, invasive physical examination or screening. Notification of items (a), (b), and (c) shall occur at the beginning of the school year if the dates of surveys and activities have been identified, or after the school year starts if the dates are not available earlier, as long as parents have the opportunity to opt their child out.

HIPAA BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("*Agreement*") is made and entered into as of this _____ day of _____, 2020 the "*Effective Date*", by and between

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

(hereinafter referred to as "*SBBC*" or "*Covered Entity*"),
a body corporate and political subdivision of the
State of Florida, whose principal place of
business is
600 Southeast Third Avenue, Ft Lauderdale, Fl. 33301

and

TERRACE METRICS, INC.

(hereinafter referred to as
"Business Associate"), whose
principal place of business is
1122 Herschel Avenue, Cincinnati, OH, 45208.

WHEREAS, by virtue of some of the services that Business Associate performs for SBBC, Business Associate may be a "business associate," as that term is defined in 45 C.F.R. §160.103; and

WHEREAS, SBBC and Business Associate may share Protected Health Information ("PHI") (as defined below) in the course of their relationship; and

WHEREAS, SBBC and Business Associate understand that, with respect to coverages subject to regulation under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), they are subject to the requirements governing business associates, including but not limited to the Privacy Rule and the Security Rule (both defined below) of HIPAA, the Health Information Technology for Economic and Clinical Health Act of 2009 ("HITECH"), the Omnibus Rule of 2013, and applicable Florida law, any of which may be amended from time to time or supplemented by new legislation or guidance (hereinafter collectively referred to as "Business Associate Requirements"); and

WHEREAS, SBBC and Business Associate intend to fully comply with current and future Business Associate requirements and mutually desire to outline their individual responsibilities with respect to Protected Health Information ("*PHI*") as mandated by the "Privacy Rule", the "Security Rule", and the HITECH Act; and

WHEREAS, SBBC and Business Associate understand and agree that the Business Associate requirements require SBBC and Business Associate to enter into a Business Associate Agreement which shall govern the use and/or disclosure of PHI and the security of Electronic PHI ("ePHI").

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE 1 – RECITALS

1. **Definitions.** When used in this Agreement and capitalized, the following terms have the following meanings:
- (a) **“Breach”** has the same meaning as that term is defined in §13400 of the HITECH Act and shall include the unauthorized acquisition, access, use, or disclosure of PHI that compromises the security or privacy of such information.
 - (b) **"Business Associate"** shall mean Business Associate named above and shall include all successors, assigns, affiliates, subsidiaries, and related companies.
 - (c) **“Designated Record Set”** has the same meaning as the term “designated record set” in 45 CFR §164.501, which includes enrollment, payment, billing, claims adjudication and case or medical management record systems maintained by or for a health plan, or other information used in whole or part by or for the Plan to make decisions about individuals.
 - (d) **“EDI Rule”** shall mean the Standards for Electronic Transactions as set forth at 45 CFR Parts 160, Subpart A and 162, Subpart A and I through R.
 - (e) **“Electronic PHI”** or “ePHI”, shall mean PHI that is transmitted by or maintained in electronic media.
 - (f) **"HIPAA"** means the Health Insurance Portability and Accountability Act of 1996.
 - (g) **“HITECH Act”** means the Health Information Technology for Economic and Clinical Health Act of 2009.
 - (h) **"Individual"** shall have the same meaning as the term "Individual" in 45 C.F.R. §160.103 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. §164.502(g).
 - (i) **“Minimum Necessary”** means the least amount of PHI needed to accomplish the intended purpose of the use or disclosure.
 - (j) **“Omnibus Rule”** means the HIPAA Omnibus Rule of 2013.
 - (k) **"Privacy Rule"** shall mean the Standards for Privacy of Individually Identifiable Health Information as set forth in 45 C.F.R. Parts 160 and 164, subparts A and E.
 - (l) **"Protected Health Information" or "PHI"** shall have the same meaning as the term "protected health information" in 45 C.F.R. §160.103 (as amended by the HITECH Act) limited to the information created or received by Business Associate from or on behalf of SBBC.

ARTICLE 1 – RECITALS

- (m) "**Required by Law**" shall have the same meaning as the term "required by law" in 45 C.F.R. §164.103.
- (n) "**Secretary**" shall mean the Secretary of the Department of Health and Human Services or his or her designee.
- (o) "**Security Rule**" shall mean the Standards for Security of ePHI as set forth in 45 C.F.R. Parts 160 and 164 Subpart C.
- (p) "**Unsecured PHI**" shall mean PHI that is not secured through the use of a technology or methodology specified by the Secretary in guidance or as otherwise defined in §13402(h) of the HITECH Act.

Terms used but not defined in this Agreement shall have the same meaning as those terms in 45 C.F.R. §§ 164.103 and 164.501 and the HITECH Act.

ARTICLE 2 – SPECIAL CONDITIONS**2. Obligations and Activities of Business Associate Regarding PHI.**

- (a) Business Associate agrees to not use or further disclose PHI other than as permitted or required by this Agreement or as Required by Law.
- (b) Business Associate agrees to comply with the "Minimum Necessary" rule when using, disclosing, or requesting PHI, except when a specific exception applies under HIPAA or the HITECH Act.
- (c) Business Associate agrees to use appropriate safeguards and comply, where applicable, with the HIPAA Security Rule to prevent use or disclosure of the PHI other than as provided for by this Agreement.
- (d) Business Associate agrees to report to SBBC, as soon as reasonably practicable, any impermissible use or disclosure of PHI it becomes aware of, and any use or disclosure of PHI not provided for by this Agreement. Any report of breach should be in substantially the same form as Exhibit A hereto.
- (e) Business associate shall promptly inform SBBC of a Breach of Unsecured PHI within the next business day of when Business Associate knows of such Breach
- (f) For the Breach of Unsecured PHI in its possession:
 1. Business Associate will perform a Risk Assessment to determine if there is a low probability that the PHI has been compromised. Business Associate will provide SBBC with documentation showing the results of the Risk Assessment. The Risk Assessment will consider at minimum the following factors:

ARTICLE 2 – SPECIAL CONDITIONS

- a. The nature and extent of the PHI involved, including the types of identifiers and the likelihood of re-identification;
 - b. The unauthorized person who used the PHI or to whom the disclosure was made;
 - c. Whether the PHI was actually acquired or viewed; and
 - d. The extent to which the risk to the PHI has been mitigated.
2. Business Associate will prepare and distribute, at its own cost, any and all required notifications under Federal and Florida law, or reimburse SBBC any direct costs incurred by SBBC for doing so.
 3. Business Associate shall be responsible for all fines or penalties incurred for failure to meet Breach notice requirements pursuant to Federal and/or Florida law.
- (g) Business Associate agrees to ensure that, and obtain assurance from, any and all agents, including sub-contractors (excluding entities that are merely conduits), to whom it provides PHI, to agree to the same restrictions and conditions that apply to Business Associate with respect to such information. All agents and subcontractors engaged by the Business Associate that create, maintain, receive or transmit PHI must comply with the HIPAA Rules, including the rules to extend the requirements to the agent's or subcontractor's subcontractors.
- (h) Business Associate agrees to provide SBBC access, at the request of SBBC, and in the time and manner designated by SBBC, to PHI in a Designated Record Set, in order for SBBC to meet the requirements under 45 C.F.R. § 164.524.
- (i) Business Associate agrees to amend PHI in a Designated Record Set at SBBC's, or an Individual's, direction pursuant to 45 C.F.R. § 164.526, in the time and manner designated by SBBC. Business Associate agrees to make internal practices, policies, books and records relating to the use and disclosure of PHI available to SBBC, or at the request of SBBC to the Secretary, in a time and manner as designated by SBBC or the Secretary, for purposes of the Secretary determining SBBC's compliance with the Privacy Rule. Business Associate shall immediately notify SBBC upon receipt or notice of any and all requests by the Secretary to conduct an investigation with respect to PHI received from SBBC.
- (j) Business Associate agrees to document any and all disclosures of PHI and information related to such disclosures that are not excepted under 45 C.F.R. § 164.528(a)(1) as would be reasonably required for SBBC to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528.
- (k) Business Associate agrees to provide to SBBC or an Individual, in a time and manner designated by SBBC, information collected in accordance with paragraph (j) above,

ARTICLE 2 – SPECIAL CONDITIONS

to permit SBBC to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528.

- (l) Business Associate agrees to use or disclose PHI pursuant to the request of SBBC; provided, however, that SBBC shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by SBBC.
- (m) Business Associate agrees to mitigate, to the extent practicable, any and all harmful effects that are known to Business Associate of a use or disclosure of PHI, or a Breach of Unsecured PHI, by Business Associate in violation of the requirements of this Agreement, the Privacy Rule, the Security Rule, the HITECH Act or HIPAA generally.
- (n) Business Associate shall provide SBBC with a copy of any notice of privacy practices it produces in accordance with 45 C.F.R. § 164.520, as well as any and all changes to such notice.
- (o) Business Associate, if performing a function that applies to Covered Entity, agrees to comply with the requirements that apply to the Covered Entity.

3. Permitted Uses and Disclosures of PHI by “Business Associate”.

- (a) Except as otherwise limited by this Agreement, Business Associate may use or disclose PHI to perform functions, activities or services for, or on behalf of, SBBC pursuant to any Agreements for services between the parties provided that such use or disclosure would not violate the Privacy Rule if done by SBBC.
- (b) Except as otherwise limited by this Agreement, Business Associate may use PHI for the proper management and administration of Business Associate and to carry out the legal responsibilities of Business Associate.
- (c) Except as otherwise limited by this Agreement, Business Associate may disclose PHI for the proper management and administration of Business Associate and to carry out the legal responsibilities of Business Associate if: (i) such disclosure is Required by Law, or (ii) Business Associate obtains reasonable assurances from the person to whom the information is disclosed that such information will remain confidential and used or further disclosed only as Required by Law or for the purposes for which it was disclosed to the person, and the person agrees to notify Business Associate of any and all instances of which it is aware that the confidentiality of the information has been breached.
- (a) Except as otherwise limited by this Agreement, Business Associate may use PHI to provide Data Aggregation services to SBBC as permitted by 42 C.F.R. § 164.504(e)(2)(i)(B).

ARTICLE 2 – SPECIAL CONDITIONS**4. Obligations of SBBC Regarding PHI.**

- (a) SBBC shall provide Business Associate with the notice of privacy practices that SBBC produces in accordance with 45 C.F.R. § 164.520, as well as any changes to such notice.
- (b) SBBC shall provide Business Associate with any and all changes in, or revocation of, authorization by an Individual to use or disclose PHI, if such changes affect Business Associate's permitted or required uses and disclosures.
- (c) SBBC shall notify Business Associate of any and all restrictions to the use or disclosure of PHI that SBBC has agreed to in accordance with 45 C.F.R. § 164.522.
- (b) SBBC and its representatives shall be entitled to audit Business Associate from time-to-time to verify Business Associate's compliance with the terms of this Agreement. SBBC shall provide Business Associate written notice at least ten (10) business days prior to the audit described in this paragraph. SBBC shall be entitled and enabled to inspect the records and other information relevant to Business Associate's compliance with the terms of this Agreement. SBBC shall conduct its review during the normal business hours of Business Associate, as the case may be, and to the extent feasible without unreasonably interfering with Business Associate's normal operations.

5. Security of Electronic Protected Health Information.

- (a) Business Associate has implemented policies and procedures to ensure that its receipt, maintenance, or transmission of "electronic protected health information" (as defined in 45 C.F.R. §160.103) ("ePHI") on behalf of SBBC complies with the applicable administrative, physical, and technical safeguards required for protecting the confidentiality and integrity of ePHI in 45 C.F.R. Part 160 and 164 subpart C.
- (b) Business Associate agrees that it will ensure that its agents or subcontractors agree to implement the applicable administrative, physical, and technical safeguards required to protect the confidentiality and integrity of ePHI pursuant to 45 C.F.R. Part 164.
- (c) Business Associate agrees to report to SBBC all Security Incidents (as defined by 45 C.F.R. Part 164.304 and in accordance with applicable Florida law) of which it becomes aware. Business Associate agrees to report the Security Incident to SBBC as soon as reasonably practicable, but not later than 10 business days from the date the Business Associate becomes aware of the incident.
- (d) SBBC agrees and understands that SBBC is independently responsible for the security of ePHI in its possession or for ePHI that it receives from outside sources including Business Associate.

ARTICLE 2 – SPECIAL CONDITIONS**6. Compliance with EDI Rule.**

Business Associate agrees that it will comply with all applicable EDI standards. Business Associate further agrees that it will use its best efforts to comply with all applicable regulatory provisions in addition to the EDI Rule and the Privacy Rule that are promulgated pursuant to the Administrative Simplification Subtitle of HIPAA.

7. Subsequent Legislative or Regulatory Changes.

Any and all amendments to the laws or regulations affecting the Privacy Rule, Security Rule, the HITECH Act, Omnibus Rule, or HIPAA shall be deemed to amend this Agreement and be incorporated without further action of the parties.

8. Amendment.

The parties shall amend this Agreement, as is necessary, so that SBBC remains in compliance with any future changes to the Privacy Rule, the Security Rule, the HITECH Act and HIPAA. The parties may amend this Agreement for any other reasons as they deem appropriate. This Agreement shall not be amended except by written instrument executed by the parties.

9. Term and Termination.

(a) *Term.* This Agreement shall be effective upon the execution of all parties and shall remain in effect until such time as SBBC exercises its rights of termination under section 9(b) or 9(c) and until the requirements of Section 9(d) below are satisfied. The rights and obligations of Business Associate under Section 9(d) shall survive termination of this Agreement.

(b) *Termination for Convenience.* This Agreement may be terminated without cause and for convenience by SBBC during the term thereof upon thirty (30) days written notice to Business Associate.

(c) *Termination for Cause by SBBC.* Upon SBBC's knowledge of a material breach by Business Associate, SBBC shall provide an opportunity for Business Associate to cure the breach. If Business Associate does not cure the breach within thirty (30) days from the date that SBBC provides notice, SBBC shall have the right to terminate this Agreement, the Service Agreement, or both, by providing thirty (30) days advance written notice of such termination to Business Associate.

SBBC may terminate this Agreement without penalty or recourse to SBBC if SBBC determines that Business Associate has violated a material term of this Agreement.

Upon Business Associate knowledge of a material breach by SBBC, Business Associate shall provide an opportunity for SBBC to cure the breach. If SBBC does not cure the breach within thirty (30) days of the date that Business Associate provides notice of such breach to SBBC, Business Associate shall

ARTICLE 2 – SPECIAL CONDITIONS

have the right to terminate this Agreement, the Service Agreement, or both, by providing thirty (30) days advance written notice of such termination to SBBC.

- (d) ***Effect of Termination.*** Upon termination of this Agreement for any reason, Business Associate shall return or destroy all PHI received from SBBC, or created or received by Business Associate on behalf of SBBC. Business Associate shall not retain any copies of the PHI except to the extent that the destruction or return of the PHI is infeasible. Business Associate shall provide to SBBC written notification of the conditions that make return or destruction of the PHI infeasible. If it is determined by SBBC that the return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that SBBC explicitly authorizes in writing for so long as Business Associate maintains such PHI.

10. Indemnification.

- (a) **By SBBC:** SBBC agrees to be fully responsible for its acts of negligence or its agent's acts of negligence when acting within the scope of their employment and agrees to be liable for any damages resulting from said negligence.
- (b) **By Business Associate:** Business Associate agrees to indemnify, hold harmless and defend SBBC, its agents, servants and employees from any and all claims, judgments, costs and expenses including, but not limited to, reasonable attorney's fees, reasonable investigative and discovery cost, court costs and all other sums which SBBC, its agents, servants and employees must pay or become obligated to pay on account of any, all and every claim or demand, or assertion of liability, or any claim or action founded thereon, arising or alleged to have arisen out of the products, goods, or services furnished by Business Associate, its agents, servants or employees; the equipment of Business Associate, its agents, servants or employees while such equipment is on premises owned or controlled by SBBC; or the negligence of Business Associate's agents when acting within the scope of their employment or agency, whether such claims, judgments, costs and expenses be for damages, damage to property including Business Associate's property, and injury or death of any person whether employed by Business Associate, SBBC or otherwise.

11. No Waiver of Sovereign Immunity.

Nothing contained herein is intended to serve as a waiver of sovereign immunity by any agency or political subdivision to which sovereign immunity may be applicable or as a waiver of limits to liability or rights existing under Section 768.28, Florida Statutes.

ARTICLE 3 – GENERAL CONDITIONS**12. No Third Party Beneficiaries.**

The parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Agreement. The parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against any of the parties based upon this Agreement. Nothing herein shall be construed as consent by an agency or political subdivision of the State of Florida to be sued by third parties in any matter arising out of any contract.

13. Non-Discrimination.

The parties shall not discriminate against any employee or participant in the performance of the duties, responsibilities and obligations under this Agreement because of age, color, disability, gender identity, gender expression, national origin, marital status, race, religion, sex or sexual orientation.

14. Records.

Each party shall maintain its own respective records and documents associated with this Agreement in accordance with the records retention requirements applicable to public records. Each party shall be responsible for compliance with any public documents request served upon it pursuant to Section 119.07, Florida Statutes, and any resultant award of attorney's fees for non-compliance with that law.

15. Preparation of Agreement.

The parties acknowledge that they have sought and obtained whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to herein expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

16. Waiver.

The parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof. Any party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

17. Compliance with Laws.

Each party shall comply with all applicable federal and state laws, codes, rules and regulations in performing its duties, responsibilities and obligations pursuant to this Agreement.

18. Binding Effect.

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

ARTICLE 3 – GENERAL CONDITIONS

19. Assignment.

Neither this Agreement nor any interest herein may be assigned, transferred or encumbered by any party without the prior written consent of the other party. There shall be no partial assignments of this Agreement including, without limitation, the partial assignment of any right to receive payments from SBBC.

20. Force Majeure.

Neither party shall be obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, wars, sabotage, accident, flood, acts of God, strikes, or other labor disputes, riot or civil commotions, or by reason of any other matter or condition beyond the control of either party, and which cannot be overcome by reasonable diligence and without unusual expense (“Force Majeure”). In no event shall a lack of funds on the part of either party be deemed Force Majeure.

21. Place of Performance.

All obligations of SBBC under the terms of this Agreement are reasonably susceptible of being performed in Broward County, Florida and shall be payable and performable in Broward County, Florida.

22. Notices.

When any of the parties desire to give notice to the other, such notice must be in writing, sent by U.S. mail, postage prepaid, addressed to the party for whom it is intended at the place last specified; the place for giving notice shall remain such until it is changed by written notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for giving notice:

To SBBC: Superintendent of Schools
The School Board of Broward County, Florida
600 Southeast 3rd Avenue
Fort Lauderdale,
Florida 33301

With a Copy to: Director of Student Assessment and Research
The School Board of Broward County, Florida
600 Southeast Third Avenue
Fort Lauderdale, Florida 33301

With a Copy to: Privacy Officer
Risk Management Department
The School Board of Broward County, Florida
600 S.E. 3rd Avenue, 11th Floor
Ft. Lauderdale, FL
33301

ARTICLE 3 – GENERAL CONDITIONS

To Business Associate: Kathleen Chard
Terrace Metrics, Inc.
1122 Herschel Ave. Cincinnati, OH 45208

With a Copy to: Denis Deters
Terrace Metrics, Inc.
1122 Herschel Ave. Cincinnati, OH 45208

23. Severability.

In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, unlawful, unenforceable or void in any respect, the invalidity, illegality, unenforceability or unlawful or void nature of that provision shall not affect any other provision and this Agreement shall be considered as if such invalid, illegal, unlawful, unenforceable or void provision had never been included herein.

24. Captions.

The captions, section numbers, title and headings appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such articles or sections of this Agreement, nor in any way effect this Agreement and shall not be construed to create a conflict with the provisions of this Agreement.

25. Authority.

Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

26. No Waiver of Rights, Powers and Remedies.

The parties agree that each requirement, duty, right and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof. Any party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement unless the waiver is in writing and signed by the party waiving such provision. A written waiver shall only be effective as to the specific instance for which it is obtained and shall not be deemed a continuing or future waiver.

27. Regulatory References.

A reference in this Agreement to any part of the Privacy Rule, the Security Rule, the HITECH Act, or HIPAA shall refer to the most current form of legislation, and shall incorporate any future amendments.

ARTICLE 3 – GENERAL CONDITIONS

28. Governing Law.

This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida.

29. Entire Agreement.

This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this Agreement. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the date first above written.

FOR SBBC:

(Corporate Seal)

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

By _____
Donna P. Korn, Chair

ATTEST:

Robert W. Runcie, Superintendent of Schools

Approved as to Form and Legal Content:

Office of the General Counsel

[THIS SPACE INTENTIONALLY LEFT BLANK; SIGNATURE PAGE FOLLOWS]

FOR BUSINESS ASSOCIATE

TERRACE METRICS, INC.

[Handwritten Signature]

Signature

By: Richard Gilman, President

Print Name and Title

[Handwritten Signature]

Witness

[Handwritten Signature]

Witness

The Following Notarization is Required for Every Agreement with two (2) witness signatures.

STATE OF Ohio

COUNTY OF Hamilton

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this 8/21/20 (date) by Richard Gilman (name of officer or agent, title of officer or agent) of President of Terrace Metrics Inc (name of corporation acknowledging), a Ohio (state or place of incorporation) corporation, on behalf of the corporation. He/she is personally known to me or has produced OHDL (type of identification) as identification and who did/ did not first take an oath this 21 day of August, 2020.

My Commission Expires:

[Handwritten Signature]

Signature - Notary Public

Tiffany Ross

Notary's Printed Name

2/10/2024

Notary's Commission No.

(SEAL)



EXHIBIT A

NOTIFICATION TO THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA ABOUT A BREACH OF UNSECURED PROTECTED HEALTH INFORMATION

This notification is made pursuant to Section 2(d) of the Business Associate Agreement between THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA ("SBBC") and _____ (Business Associate).

Business Associate hereby notifies SBBC that there has been a breach of unsecured (unencrypted) protected health information (PHI) that Business Associate has used or has had access to under the terms of the Business Associate Agreement.

Description of the breach: _____

Date or date range of the breach: _____

Date of the discovery of the breach: _____

Number of individuals affected by the breach: _____

The types of unsecured PHI that were involved in the breach (such as full name, Social Security number, date of birth, home address, account number, or disability code): _____

Description of what Business Associate is doing to investigate the breach, to mitigate losses, and to protect against any further breaches: _____

Recommended steps the individuals whose information was breached should take to protect themselves from potential harm resulting from the breach: _____

Contact information to ask questions or learn additional information:

Name: _____

Title: _____

Address: _____

Email Address: _____

Phone Number: _____