

TalkingPoints-Raytown Quality Schools Software Services and Support Agreement (2022/2023)

1. Overview

This Software Services and Support Agreement (“Agreement” or “Contract”) is entered into by and between TalkingPoints, a California corporation and Raytown Quality Schools.

TalkingPoints product

TalkingPoints’ product is a two-way, multi-lingual texting platform that allows for fast, cheap and accessible communication between districts, schools and teachers with parents and students. Schools use a web application to send text messages to parents who receive them in their own languages as well as English. Parents can reply in their own languages, and receive both the English and the original version of the messages. Since TalkingPoints works via text messages, TalkingPoints is accessible for all parents who own a simple mobile phone.

TalkingPoints allows for instant translation (machine and human-driven) both outbound and inbound, opening up communication channel for parents who do not speak English. Schools can also send interactive messages drawn from pre-written text message programs, conduct surveys (with data visualization), send multiple-choice questions, send automatic follow up messages depending on how the parent replies. Analytics dashboards are also available to track engagement statistics of parents.

TalkingPoints organization

TalkingPoints is a non-profit organization with the mission to meaningfully connect teachers, parents and students across technological and language barriers to increase parent engagement. We believe that parent engagement is critical to student success, yet is often challenging. TalkingPoints helps change this to drive parent engagement through opening up communication channels that build relationships. TalkingPoints was born out of Startup Weekend Education Oakland that OUSD co-sponsored, and won the Teachers’ Pick Prize for Parent Engagement. Our product development has been heavily influenced by OUSD teachers. TalkingPoints was a top 10 finalist in the Google Impact Challenge: Bay Area in 2015. Our current philanthropic funders include Google.org, AT&T Aspire, Stanford University, Echoing Green and Walton Family Foundation.

2. Scope of work

TalkingPoints will license the use of its multi-lingual texting platform (“Software”) to select schools in Raytown Quality Schools for the 2022-2023 school year for 500 students.

This Agreement includes data import support, system maintenance, system support, and user support to Raytown Quality Schools for the length of the Agreement. It also includes ongoing system upgrades at no additional cost to Raytown Quality Schools.

3. Data import

TalkingPoints will import all Raytown Quality Schools data for the purposes of text message communication for the participating schools. This data can be obtained from a variety of

sources, which would include Raytown Quality Schools Student Information System (“SIS”) or prepopulated data files. TalkingPoints will import Raytown Quality Schools’s clean data at no additional cost, but Raytown Quality Schools and its schools will have access to online import tools if it wishes to control its own data imports. TalkingPoints will charge for any data clean up required. If Raytown Quality Schools opts to have TalkingPoints import its data, it will take a minimum of two (2) weeks and up to a maximum of six (6) weeks to import all data, provided that TalkingPoints has access to clean, high-quality data.

4. Fees and Payments

TalkingPoints’ fee breakdown for the 2022-2023 school year is as

follows: 2022-2023 school year

For up to 500 students

- \$13.80 per student for implementation and licensing the TalkingPoints

software. Total cost at \$6,900 (“Annual License Fee”) for the 2022-2023 school year.

Payment Schedule

The fees will be paid by Raytown Quality Schools within 30 days of receipt of an invoice from TalkingPoints (but no sooner than 30 days after execution of this Agreement by the parties). Invoices will be generated within 14 days of signing this Agreement and to be paid upfront for the minimum number of students, in this case 500 students, with additional payment with regards to additional students due at the start of each quarter.

(a) **Failure to Make Payment.** In the event Raytown Quality Schools fails to pay the Annual License Fee or other fees due hereunder when due it will constitute a material breach of this Agreement and, upon notice from TalkingPoints, Raytown Quality Schools agrees to immediately cease, and to cause Raytown Quality Schools Users to cease, using the Software and TalkingPoints will have no further obligation to provide any maintenance or support to Raytown Quality Schools or Raytown Quality Schools Users.

(b) **Taxes.** The fees in Statement of Work Section 4 do not include sales, use or similar taxes which may be applicable. District is solely responsible and liable for payment of all sales, use, excise, value added or similar taxes, duties or charges imposed by any federal, state or local government or jurisdiction with respect to any fees or other payments to be made by District to TalkingPoints under this Agreement, excluding taxes based on TalkingPoints’s overall net income.

(c) **Additional cost** If the recipient of the service incurs additional charges for receiving text messages, such as text message fees or data fees, then additional charges are payable by the recipient or District Users

5. Responsibilities

TalkingPoints is responsible for all development and provision of Software to Raytown Quality Schools and its schools, and for maintenance and support for the Software.

Raytown Quality Schools’s responsibilities are

- Selection of schools to participate in the initiative

- Providing access to contact information via SIS or otherwise for data import

6. Excluded Services

Other than the services outlined above, TalkingPoints is not responsible for any other activities, unless mutually agreed to in writing.

7. Client Obligations

In order to fulfill the scope of services described herein, TalkingPoints relies on Raytown Quality Schools and its schools to provide timely, accurate and complete information, to cooperate reasonably with TalkingPoints and to timely complete all tasks assigned to Raytown Quality Schools pursuant to the mutually agreed project plan developed at the outset of the project.

8. Product Maintenance and Support

TalkingPoints agrees to provide maintenance and support of the TalkingPoints Software. Maintenance and support of the Software is provided at no additional cost to Raytown Quality Schools. However, TalkingPoints will not be responsible for, nor will it have any liability resulting from (a) modifications to or alterations of the Software or databases by Raytown Quality Schools or Raytown Quality Schools users, unless such modification or alteration is approved in writing by TalkingPoints, or (b) any failure of Raytown Quality Schools's or Raytown Quality Schools users' equipment or Software.

9. Term, Termination and Extension

The Term of this Agreement is from July 1, 2022 through June 30, 2023.

Either party may also terminate this Agreement at any time with written notice for any reason, provided that a pro-rata amount of fees are paid, based on time elapsed from signature of this Agreement until termination. In this event, TalkingPoints is not responsible for producing any of the deliverables under the Agreement. If Raytown Quality Schools terminates this

Agreement without cause as provided for in this paragraph, TalkingPoints will refund Raytown Quality Schools any prepaid fees covering the remainder of the effective term of the Agreement after the effective date of termination, as calculated on a daily pro rata basis.

Either party may terminate this Agreement prior to the expiration of the Term, effective immediately upon written notice to the other party, in the event of a material breach of this Agreement by the other party hereto, if such breach remains uncured for more than thirty (30) days after written notice thereof. In addition, either party may terminate this Agreement upon ten (10) days written notice to the other party upon the occurrence of any one or more of the following: (i) the institution by or against the other party of insolvency, receivership, or bankruptcy proceedings or any other proceedings for the settlement of the other party's debts; (ii) the other party making an assignment for the benefit of creditors; or (iii) the other party's dissolution. If Raytown Quality Schools terminates this Agreement as provided for in this

paragraph, TalkingPoints will refund Raytown Quality Schools any prepaid fees covering the remainder of the effective term of the Agreement after the effective date of termination, as calculated on a daily pro rata basis.

In addition, TalkingPoints may terminate this Statement of Work immediately upon written notification, if Raytown Quality Schools violates any of the Raytown Quality Schools Responsibilities, listed above. However, if TalkingPoints terminates this Agreement as provided for in this paragraph, TalkingPoints will refund Raytown Quality Schools any prepaid fees covering the remainder of the effective term of the Agreement after the effective date of termination, as calculated on a daily pro rata basis.

10. License of Software to District; Third Party Service

(a) **License**. Subject to the terms of this Agreement, TalkingPoints hereby grants to Raytown Quality Schools a limited, non-exclusive, non-sublicensable and non-transferrable license for Raytown Quality Schools employees and staff, and their students or parents or guardians (collectively, “*District Users*”) to use the Software during the Term with respect to each of the Raytown Quality Schools locations as selected by Raytown Quality Schools. The Raytown Quality Schools Users may not use the Software other than with respect to the locations set forth and defined as Raytown Quality Schools locations or for other than Raytown Quality Schools operations. Raytown Quality Schools is responsible for the actions of all Raytown Quality Schools Users, for ensuring that only authorized Raytown Quality Schools Users are provided access to the Software, and that access of Raytown Quality Schools Users authorized by Raytown Quality Schools is limited to that portion of the Software and Raytown Quality Schools Data (as defined below) as is reasonably necessary in order to fulfill the purposes of this Agreement. By agreeing to license the Software, Raytown Quality Schools is also agreeing to comply with the Privacy Policy as outlined in the TalkingPoints website (www.talkingpts.org) incorporated as an attachment to this Agreement

11. Ownership of Software; Third Party Materials

TalkingPoints and its licensors are and will remain the exclusive owners of all right, title and interest in and to the Software and all derivative works, and in the materials licensed by TalkingPoints from third parties (“*Third Party Materials*”), including but not limited to copyrights, patent rights, and trade secrets and all other intellectual property rights as may exist

now and/or hereafter come into existence, subject only to the rights of third parties in open source components and the limited license granted under this Agreement. In addition, TalkingPoints shall own any and all other ideas, concepts, themes, technology, algorithms, programming codes, documentation or other intellectual property or copyrightable material conceived, developed, created, written or contributed by TalkingPoints pursuant to this Agreement (“*Specific Developments*”). Raytown Quality Schools will have no rights in the Software, any derivative works, the Specific Developments or Third Party Materials, except the license and related rights expressly set forth in this Agreement. Raytown Quality Schools agrees not to (i) alter, merge, modify, adapt or translate the Software or Third Party Materials, or decompile, reverse-engineer, disassemble, or otherwise reduce the Software or Third Party Materials to a human-perceivable form, (ii) sell, rent, lease or sublicense the Software or Third Party Materials or (iii) create derivative works based upon the Software or Third Party Materials.

12. User Compliance With Applicable Laws

District administrators may access, monitor, use, or disclose Raytown Quality Schools data in Raytown Quality Schools user accounts.. The School represents and warrants that it will comply with all applicable laws, and further, that its disclosure of any information to TalkingPoints,

does not and will not violate any applicable laws or FERPA). The School/District will not disclose any information to TalkingPoints that is protected health information ("PHI") subject to the Health Information Portability and Accountability Act ("HIPAA").

13. Software Implementation, Data Conversion, Hosting and Training Services

TalkingPoints agrees to provide the services associated with the implementation of the Software, data conversion, hosting and training of Raytown Quality Schools employees on the use of the Software as follows:

- (a) **Task List.** A preliminary list of tasks and associated targeted completion dates are set forth on **Exhibit A** attached hereto, and incorporated as if fully set forth herein.
- (b) **Hosting.** The Software and Raytown Quality Schools's data will be hosted on TalkingPoints's servers (included in the Annual License Fee).
- (c) **Importing of Data.** TalkingPoints will assist Raytown Quality Schools with importing Raytown Quality Schools's data into the Software within 45 business days after TalkingPoints is provided reasonable access to usable Raytown Quality Schools Data.
- (d) **Initial Training.** TalkingPoints will provide up to five (5) days of initial training to Raytown Quality Schools in the basic use of the Software to be presented as both parties mutually agree.

14. Ownership and Control of Raytown Quality Schools Data

Raytown Quality Schools will retain ownership of, and the ability to control, all Raytown Quality Schools data imported into the Software ("***Raytown Quality Schools Data***"). Raytown Quality Schools Data includes pupil records, as defined in California Education Code §49073.1(d)(5) ("***Pupil Records***"). TalkingPoints may, however, internally use Raytown Quality Schools Data that has been de-identified in order to improve its educational products. Upon the expiration or termination of this Agreement, to the extent Raytown Quality Schools Data resides on

TalkingPoints servers, TalkingPoints agrees to assist in the transfer all Raytown Quality Schools Data back to Raytown Quality Schools in an industry standard open format, such as CSV, at no charge.

15. Responsibilities of Raytown Quality Schools Raytown Quality Schools agrees to prepare and furnish to TalkingPoints upon request such information as is reasonably requested by TalkingPoints in order for TalkingPoints to perform its obligations under this Agreement.

16. TalkingPoints Software Maintenance and Support TalkingPoints agrees to provide maintenance and support of the Software. Such maintenance and support will include coverage in the form of bug fixes and other corrections to the Software; telephone and e-mail support for questions regarding operations of the Software; change the Software as necessary to incorporate upgrades and new features; support to Raytown Quality Schools in resolving problems/errors resulting from misuse or hardware/software failure; and telephone or web conferences with Raytown Quality Schools to address future growth or modifications to the Software. Maintenance and support of the Software is provided at no additional cost to Raytown Quality Schools. TalkingPoints' maintenance of the Software will be at complete discretion of TalkingPoints other than bug fixes. TalkingPoints is not responsible for, nor will it have any liability resulting from, (a) modifications to or alterations of the Software or databases by Raytown Quality Schools or Raytown Quality Schools Users, unless such modification or alteration is approved in writing by TalkingPoints, or (b) any failure of Raytown Quality Schools or Raytown Quality Schools Users equipment or software or (c) quality of the translation services

as provided by the Software.

17. Confidentiality

(a) **Confidential Information Defined.** Each party (the “*Disclosing Party*”) may from time to time during the Term disclose to the other party (the “*Receiving Party*”) certain information regarding the Disclosing Party’s business, including technical, marketing, financial, employee, planning, and other confidential or proprietary information (“*Confidential Information*”). The Software, Third Party Materials and related know-how, technology, system designs, layouts, software, concepts, techniques, data and files will be considered Confidential Information of TalkingPoints. Raytown Quality Schools Data will be considered Confidential Information of Raytown Quality Schools.

(b) **Protection of Confidential Information.** The Receiving Party will protect the Disclosing Party’s Confidential Information from unauthorized use, access, or disclosure in the same manner as the Receiving Party protects its own confidential or proprietary information of a similar nature and with no less than reasonable care. Raytown Quality Schools acknowledges that the Software is maintained as a trade secret by TalkingPoints, and agrees to use reasonable care in preserving such secrecy, including making such information available only to those Raytown Quality Schools Users required to have access in order to fulfill the purposes of this Agreement.

(c) **Exceptions.** The Receiving Party’s obligations under this section with respect to any Confidential Information of the Disclosing Party will terminate if the Receiving Party can demonstrate that such information: (i) was already known to the Receiving Party at the time of disclosure by the Disclosing Party; (ii) is disclosed to the Receiving Party by a third party who had the right to make such disclosure without any confidentiality restrictions; (iii) is, or through

no fault of the Receiving Party has become, generally available to the public; or (iv) is independently developed by the Receiving Party without access to, or use of, the Disclosing Party’s Confidential Information. In addition, the Receiving Party will be allowed to disclose Confidential Information of the Disclosing Party to the extent that such disclosure is (i) approved in writing by the Disclosing Party, (ii) necessary for the Receiving Party to enforce its rights under this Agreement in connection with a legal proceeding; or (iii) required by law or by the order of a court or similar judicial or administrative body, provided that the Receiving Party notifies the Disclosing Party of such required disclosure promptly and in writing and cooperates with the Disclosing Party, at the Disclosing Party’s reasonable request and expense, in any lawful action to contest or limit the scope of such required disclosure.

(d) **Return of Confidential Information.** In addition to TalkingPoints’s obligations under Section 13, promptly upon the written request of the Disclosing Party following termination of this Agreement, the Receiving Party will either, at Disclosing Party’s option, return to the Disclosing Party or destroy all Confidential Information of the Disclosing Party in the Receiving Party’s possession or control and certify in writing that it has fully complied with its obligations under this Section.

(e) **Use of Confidential Information.** The Receiving Party will not use Confidential Information of the Disclosing Party for any purpose prohibited by law or other than as required or specifically permitted by this Agreement. TalkingPoints further agrees it will not use any personally identifiable information in Raytown Quality Schools Data to engage in or facilitate targeted advertising.

(f) **Injunctive Relief.** Because monetary damages may not be sufficient to remedy a violation of

the provisions of this section, a Disclosing Party shall be entitled, upon becoming aware of any such violation and without waiving any other rights or remedies it may have, to seek injunctive or other equitable relief it may deem appropriate.

(g) Non-Retention Certification. TalkingPoints certifies that, in accordance with this Agreement, Pupil Records shall not be retained or available to TalkingPoints or its employees or agents upon completion of the terms of this Agreement. This certification may be enforced by any lawful means, including, without limitation, through civil action.

18. Privacy and Collection of District Data

(a) Compliance with Law. TalkingPoints and Raytown Quality Schools each represents and warrants that it, and its officials, agents, employees and subcontractors have and will continue to receive training so as to be familiar with the provisions of the Family Educational Rights and Privacy Act (“*FERPA*”), Children’s Online Protection & Privacy Act (“*COPPA*”) and equivalent state provisions, and each party agrees that it will comply with such provisions and take all reasonable measures necessary to protect student education records from unauthorized acquisition or release. In the event that any unauthorized acquisition or release of student education records occurs, each party agrees to advise the other promptly upon discovery of such unauthorized acquisition or release and, if required by law, Raytown Quality Schools will notify the affected parent, legal guardian or student (if at least 18 years of age), as applicable, in writing of such unauthorized acquisition or unauthorized release. TalkingPoints acknowledges that Pupil Records must be protected and will take all legally required actions, including the designation and training

of responsible individuals, to ensure the security and confidentiality of Pupil Records. TalkingPoints will identify those employees and subcontractors who will have access to Pupil Records and ensure such individuals receive appropriate instructions as to how to comply with the security and confidentiality requirements of this Agreement with respect to Pupil Records. TalkingPoints warrants that all Pupil Records will be encrypted in transmission using a minimum of 128 bit AES encryption. In addition, TalkingPoints will use industry-standard and up -to-date security tools and technologies such as anti-virus protections and intrusion detection methods in providing services under this Agreement. The parties agree that the commitments agreed to in this section are to ensure compliance with California Education Code Section 49073.1. If TalkingPoints experiences an unauthorized acquisition or release of Raytown Quality Schools’s student education records, other than through the fault of Raytown Quality Schools, TalkingPoints shall take reasonable steps to immediately limit and mitigate such breach, including immediately notifying Raytown Quality Schools.

(b) Sharing of Raytown Quality Schools Data. TalkingPoints will not share Raytown Quality Schools Data with, or disclose it to, any third party except (i) as directed by Raytown Quality Schools or Raytown Quality Schools Users, (ii) to Raytown Quality Schools Users as contemplated by this Agreement, (iii) to TalkingPoints’s subcontractors who need access to fulfill TalkingPoints’s obligations under this Agreement and who have agreed to maintain the confidentiality of such information or (iv) as required by applicable law. When TalkingPoints believes that any disclosure is required by applicable law, it shall promptly notify Raytown Quality Schools prior to the disclosure and give Raytown Quality Schools a reasonable opportunity to object to the disclosure.

TalkingPoints complies with applicable laws regarding online advertising and will not serve behaviorally targeted Ads. Advertising by companies other than TalkingPoints is not permitted on the Services.

(c) Storage and Process. TalkingPoints will store and process Raytown Quality Schools Data in accordance with commercially reasonable practices, including appropriate administrative,

physical, and technical safeguards, to secure such data from unauthorized access, disclosure, alteration, and use.

(d) Right to Correct. A parent, legal guardian, or student who has reached 18 years of age may review personally identifiable information in the student's education records and correct erroneous information by serving a written request for access or description of the erroneous information and written request for correction upon Raytown Quality Schools and furnishing Raytown Quality Schools, upon request, such information as is reasonably requested to respond to the request. Raytown Quality Schools is responsible for correcting all such erroneous information and TalkingPoints agrees to fully cooperate with Raytown Quality Schools to make such corrections.

(e) Social Security Numbers. Raytown Quality Schools agrees that it will not collect or store as part of Raytown Quality Schools Data or otherwise any social security numbers.

(f) Data Governance Addendum for District Data of the Raytown C-2 School District. TalkingPoints agrees in totality to the Data Governance Addendum put forth by Raytown Quality Schools in Exhibit A.

19. TalkingPoints Warranty

(a) Software Warranty. TalkingPoints warrants to Raytown Quality Schools that the Software as delivered, will materially comply with the published specifications of TalkingPoints for such Software. TalkingPoints's obligations under this warranty are limited to providing Raytown Quality Schools with a copy of corrected Software. TalkingPoints does not warrant that the operation of the Software will be uninterrupted or error-free. IN PARTICULAR, FOR PURPOSES OF THE FOREGOING WARRANTY, TALKINGPOINTS AND Raytown Quality Schools ACKNOWLEDGE THAT THE SOFTWARE IS NOT AND CANNOT BE MADE TO BE 100% ACCURATE, AND THAT ANY ERRORS OR FAILURE TO PERFORM SHALL NOT BE DEEMED A BREACH OF SUCH WARRANTY UNLESS THEY ARE SIGNIFICANT AND NOT TO BE EXPECTED IN LIGHT OF THE LIMITATIONS OF SOFTWARE OF THIS TYPE.

(b) No Other Warranty. EXCEPT AS EXPRESSLY SET FORTH ABOVE and in the Data Governance Addendum, TALKINGPOINTS DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, WITH REGARD TO ALL TECHNOLOGY, THIRD PARTY MATERIALS, SOFTWARE OR DERIVATIVE WORKS PROVIDED OR OTHERWISE LICENSED TO Raytown Quality Schools IN CONNECTION WITH THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE AND NON-INFRINGEMENT.

20. Rights in Law and Equity Remain

The foregoing rights to terminate as set forth in Section 9, above, are in addition to, not in lieu of, all other rights and remedies which may be available to either party under this Agreement, at law and/or in equity.

21. Miscellaneous

(a) Governing Law & Venue. This Agreement will be governed by, and construed and enforced in accordance with, the substantive laws of the State of Missouri, without regard to its principles of conflicts of laws. The Jackson County Superior Court shall have jurisdiction over any litigation initiated to enforce or interpret this Agreement.

(b) Relationship of the Parties. Nothing contained in this Agreement will be construed as creating any agency, partnership, or other form of joint enterprise between the parties. The relationship between the parties will at all times be that of independent contractors. Neither party will have authority to contract for or bind the other in any manner whatsoever. This Agreement confers no rights upon either party except those expressly granted herein.

(c) Interpretation. This Agreement will be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The headings in this Agreement are for reference only and will not affect the interpretation of this Agreement.

(d) No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or will confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

(e) Limitation of Liability. Except as stated in the Data Governance Addendum, in no event will either party be liable to the other party or to any third party for any incidental, special, indirect, exemplary, punitive or consequential damages arising out of or relating to this Agreement, including any damages for business interruption, loss of use, or lost or damaged data, whether arising out of breach of contract, tort (including negligence) or otherwise, even if such party or any of its authorized representatives has been advised of the possibility of such damages. Each party's aggregate liability arising out of or relating to this Agreement for any damages, costs, judgments, expenses or loss resulting from any claims, demands, or actions arising out of or relating to this Agreement will not exceed the fees paid or due payable by Raytown Quality Schools to TalkingPoints during the preceding twelve (12) months pursuant to this Agreement. Raytown Quality Schools also agrees that the TalkingPoints Software is not intended or designed for use in high-risk activities or highly-sensitive information, or in any situation where failure of delivery or limited performance (including translational quality of the Software) or any error in the Software could lead to death, damage to property, personal injury or where other damages could result if an error occurred. Notwithstanding the foregoing, this Limitation of Liability Section 21(e) shall have no effect on or applicability to the indemnification obligations as set forth in Section 21(f), below.

(f) Indemnification: TalkingPoints agrees to hold harmless, indemnify, and defend Raytown Quality Schools and its officers, agents, and employees from any and all claims or losses accruing or resulting from injury, damage, or death of any person, firm, or corporation in connection with the performance of this Agreement. TalkingPoints also agrees to hold harmless, indemnify, and defend Raytown Quality Schools and its elective board, officers, agents, and employees from any and all claims or losses incurred by any supplier, contractor, or subcontractor furnishing work, services, or materials to TalkingPoints in connection with the performance of this Agreement. This provision survives termination of this Agreement.

(g) Force Majeure. Neither party will be liable to the other for any delay or failure to perform due to causes beyond its reasonable control. Performance times will be considered extended for a period of time equivalent to time lost because of any such delay by providing prompt written notice of such expected delay to the other party.

(h) Assignment: The obligations of TalkingPoints under this Agreement shall not be assigned by TalkingPoints without the express prior written consent of Raytown Quality Schools.

(i) Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: TalkingPoints certifies to the best of his/her/its knowledge and belief, that it and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency according to Federal Acquisition Regulation Subpart 9.4, and by signing this contract, certifies that this vendor does not appear on the Excluded Parties List (<https://www.sam.gov/>)

(j) Incorporation of Recitals and Exhibits: The Recitals and each exhibit attached hereto are hereby incorporated herein by reference. TalkingPoints agrees that to the extent any recital or 10

document incorporated herein conflicts with any term or provision of this Agreement, the terms and provisions of this Agreement shall govern.

(k) Integration/Entire Agreement of Parties: This Agreement constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations, and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both Parties.

(l) Counterparts: This Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.

(m) Due Authority of Signatories. Each individual signing this Agreement on behalf of a party represents and warrants that he or she has been duly authorized by appropriate action of such party to execute, and thereby bind such party to, this Agreement.

(n) Contract Contingent on Governing Board Approval: Raytown Quality Schools shall not be bound by the terms of this Agreement until it has been formally approved by Raytown Quality Schools's Governing Board, and no payment shall be owed or made to TalkingPoints absent that formal approval. This Agreement shall be deemed approved when it has been signed by the Board of Education, and/or the Superintendent as its designee.

(o) Agreement Publicly Posted: This Agreement, its contents, and all incorporated documents are public documents and will be made available by Raytown Quality Schools to the public online via the Internet. IN WITNESS WHEREOF, the parties have entered into this Agreement as of the Effective Date.

TalkingPoints

Dimetri Duckrey

Name: Dimetri Duckrey

October 25th, 2022

Title: Partner Success Manager

Name: _____

Raytown Quality Schools

Chris Greiner

Chris Greiner

11/1/22

Title: Chief Academic Officer

Date: _____

EXHIBIT A**Data Governance Addendum for District Data of the Raytown C-2 School District**

This Agreement is between TALKINGPOINTS (COMPANY) and Raytown Quality Schools (District) and is effective as of the Effective Date.

Definitions.

- **FERPA**: means the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g(a)(4)(A)(ii), 1232g(b)(1), as amended from time to time.
- **Security Breach (Security Incident)**: means actual evidence of a confirmed unauthorized acquisition of, access to, or unauthorized use of any Student Education Record(s), Personally Identifiable Information, User Data or other district confidential information.
- **Personally Identifiable Information (PII)**: includes but is not limited to (a) student's name; (b) name of the student's parent or other family members; (c) address of the student or student's family; (d) a personal identifier, such as the student's social security number, student number, or biometric record; and (e) other indirect personal identifiers, such as the student's date of birth, place of birth, and mother's maiden name; (f) Other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or (g) "medical information" as may be defined in state law; "protected health information" as that term is defined in the Health Insurance Portability and Accountability Act, 45 CFR Part 160.103; (h) nonpublic personal information as that term is defined in the Gramm-Leach Bliley Financial Modernization Act of 1999, 15 USC 6809; (i) credit and debit card numbers and/or access codes and other cardholder data and sensitive authentication data as those terms are defined in the Payment Card Industry Data Security Standards; (j) other financial account numbers, access codes, driver's license numbers; (k) and state- or federal-identification numbers such as passport, visa or state identity card numbers; (l) personally identifiable information as defined by COPPA, including but not limited to online contact information like an email address or other identifier that permits someone to contact a person directly (for example, an IM identifier, VoIP identifier, or video chat identifier), screen name or user name where it functions as online contact information, telephone number, persistent identifier that can be used to recognize a user over time and across different sites (including a cookie number, an IP address, a processor or device serial number, or a unique device identifier), a photo, video, or audio file containing a child's image or voice, geolocation information sufficient to identify a street name and city or town; or other information about the child or parent that is collected from the child and is combined with one of these identifiers.
- **Student Education Record**: means identifiable information, including but not limited to PII, of Subscriber's students that may be considered part of an educational record as defined by FERPA, district policy, and any applicable state law.
- **Anonymized Data**: means any Student Education Record rendered anonymous in such a manner that the student is no longer identifiable. For example, this includes non identifiable student assessment data and results, and other metadata, testing response times, scores (e.g. goals, RIT), NCES codes, responses, item parameters, and item sequences that result from the Services.

- **De-identified Data (Pseudonymized Data)**: means a Student Education Record processed in a manner in which the Student Education Record can no longer be attributed to a specific student without the use of additional information, provided that such additional information is kept separately using technical and organizational measures. Attributions may include, but are not limited to: name, ID numbers, date of birth, demographic information, location information, and/or any other unique metadata.
- **User Data**: any data provided by the District or collected from the District or authorized users, PII, metadata, user content and/or any data part of a student education record that is not anonymized or de-identified.

Conditions. Terms used herein shall have the same meaning as in the **CONTRACT** unless otherwise specifically provided. To the extent that Company is permitted, under the applicable terms of the Agreement, to subcontract or otherwise delegate its duties and obligations under the Agreement, Company is likewise permitted to subcontract or delegate the performance of corresponding duties and obligations contained in this exhibit, provided however that Company will remain ultimately responsible for such duties and obligations. To the extent that any provision of the **CONTRACT, Terms of Service or Privacy Policy** conflict with or contradict with this addendum, in letter or spirit, the provisions of this addendum shall prevail.

Designation: **Raytown Quality Schools** hereby designates TalkingPoints as a “school official” with “legitimate educational interests” in the District’s records, as those terms have been defined under FERPA and its implementing regulations, and Company agrees to abide by the FERPA limitations and requirements imposed upon school officials. Company and District acknowledge that Company will create, access, secure, and maintain Student Education Records to perform the Services as further outlined in **CONTRACT**. Company shall not resell Student Education Records or use Student Education Records for targeted student advertising or disclose to third parties any Student Education Records without the written consent of District. District grants permission to Company and its contractors that have executed confidentiality agreements to use Student Education Records for maintaining and providing the Services.

Compliance with Federal and State Confidentiality and Privacy Laws: Company and the District agree and understand that this Agreement must be in compliance with all federal and state confidentiality and privacy laws which includes, but is not limited to: the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99); Protection of Pupil Rights Amendment (“PPRA”) (20 U.S.C. § 1232h; 34 CFR Part 98), all of them which may be in effect or amended from time to time, including any successor statute and its implementing regulations and rules. In the event of a conflict between this Agreement and the Confidentiality Laws, the Confidentiality Laws shall control. In the event of a conflict between FERPA and all other Confidentiality Laws, FERPA will control absent clear statutory authority on controlling law.

- Company shall be responsible for the timing, content, and costs of such legally required notifications that arise as a result of Company’s failure to comply with its obligations as a Service Provider under COPPA, FERPA or other applicable laws. Furthermore, Company shall be responsible for the cost of investigating the above non-compliance, as well as the payment of actual, documented costs including

reasonable legal fees, audit costs, fines, and other fees imposed against the District as a result of the non-compliance.

Data Governance:

Limited Collection, Disclosure, Access and Use:

- **Confidentiality:** Company and its officers, employees, and agents agrees to hold district data in strict confidence and use the data only for the limited purpose outlined in the **CONTRACT**.
- **Non-Disclosure:** Company affirms that its services will be conducted in a manner that does not disclose Customer data to anyone who is not an authorized representative of the Company.
- **Data Collection:** Company will only collect data necessary to fulfill its duties as outline in this Agreement.
- **Data Use:** Company will use data only for the purpose of fulfilling its duties and providing services under this Agreement, and for improving services under this Agreement. The approval to use District data for one purpose does not confer approval to use the data for another or different purpose.
- **Access Records:** Company will keep true and complete records of any and all data received, exchanged and shared between and amongst its employees, agents, subcontractors and volunteers.
- **Subprocessors (Contractors and Agents):** Company shall enter into written agreements with all Subprocessors performing functions pursuant to this Agreement, whereby the Subprocessors agree to protect District User Data in a manner consistent with the terms of this Agreement.
- **De-Identified Data:** De-identified information may be used by the Company for the purposes of development, research, and improvement of educational sites, services, or applications, as any other member of the public would be able to use de-identified data. The Company and District agree that the Company cannot successfully de-identify information if there are fewer than twenty (20) students in the samples of a particular field or category of information collected, i.e., twenty students in a particular grade, twenty students of a particular race, or twenty students with a particular disability. Company agrees not to attempt to re-identify de-identified User Data and not to transfer de-identified User Data to any party unless (a) that party agrees in writing not to attempt re-identification, (b) Company can guarantee that the party has not been provided any other de-identified information, that in combination with other provided information can be used to re-identify User Data and (c) prior written notice has been given to the District who has provided prior written consent for such transfer.
- **Company Access to District Data.** The parties agree that Company shall exclusively limit its employees, contractors, and agents' access to and use of District data to those individuals who have a legitimate need to access District data in order to provide required support of the system or services to the District under the Agreement. Company warrants that all of its employees, contractors, or agents who have such access to confidential District data will be properly vetted, including background checks, to ensure that such individuals have no significant criminal history.
 - **Employee Obligation:** Company shall require all employees and agents who have access to Student Data to comply with all applicable provisions of this Agreement. Company agrees to require and maintain an appropriate confidentiality agreement

from each employee or agent with access to District Data.

- Employee Training: Company shall provide periodic security training to those of its employees who operate or have access to the system.

Data Storage/Maintenance. The parties agree that all data collected or held by Company (including but not limited to District students' names and other information) shall be stored within the United States of America. No data may be stored or backed up outside of the continental United States.

Data Security: Company shall maintain and process all data in a secure manner using industry best practices regarding technical, physical, and administrative safeguards. Company utilize appropriate administrative, physical and technical safeguards to secure data from unauthorized access, disclosure, and use. Company will conduct periodic risk assessments and remediate any identified security vulnerabilities in a timely manner.

Data Encryption. In conducting data transactions and transfers with the District, Company will ensure that all such transaction and transfers are encrypted.

Data Portals. Company warrants and represents that all of its data portals are secured through the use of verified digital certificates.

Data Breach. Company agrees that it will implement industry best practices in administrative, physical and technical safeguards designed to secure User Data and District from unauthorized access, disclosure, or use, which may include, where commercially reasonable or to the extent required by Law, data encryption, firewalls, and physical access controls to buildings and files. In the event Company has a reasonable, good faith belief that an unauthorized party has accessed, or had disclosed to it, User Data that the District provided Company or that Company collected from District or its authorized users, ("Security Incident"), then Company will promptly (within five (5) business days), subject to applicable confidentiality obligations and any applicable law enforcement investigation, or if required by Law in such other time required by such Law, notify the District and will use reasonable efforts to cooperate with the District's investigation of the Security Incident.

- If, due to a Security Incident which is caused by the acts or omissions of Company or its agents, employees, or contractors, any third-Party notification of such real or potential data breach is required under law, Company shall be responsible for the timing, content, and costs of such legally-required notifications. With respect to any Security Incident which is not due to the acts or omissions of Company or its agents, employees, or contractors, Company shall nevertheless reasonably cooperate in the District's investigation and third-party notifications, if any, at the District's direction and expense.
- Company shall be responsible for the cost of investigating any Security Incident determined to be caused by the acts or omissions of Company or its agents, employees, or contractors, as well as the payment of actual, documented costs including reasonable legal fees, audit costs, fines, and other fees imposed against the District as a result of a Security Incident.
- Company shall also be required to outline for the District the steps and processes that Company will take to prevent post-employment data breaches by Company employees after their employment with Company has been terminated.
- Company further acknowledges and agrees to have a written incident response plan that reflects best practices and is consistent with industry standards and federal and state law for responding to a data breach, breach of security, privacy incident or unauthorized acquisition or use of User Data or any portion thereof, including personally identifiable information and agrees to provide Customer, upon request, with a copy of said written incident response plan.

Cyber Security Insurance. Company will provide to the District a certificate of insurance including Cyber Security Insurance coverage for Data Breach.

Data Dictionary. Company will provide the District with a data inventory that inventories all data fields and delineates which fields are encrypted within Company's platform maintaining collected District data.

Data Ownership. The parties agree that, notwithstanding Company's possession of or physical control over District data, the District maintains ownership and control of all data that the District provides to Company or that Company collects from the District and/or authorized users. Company further agrees that District data cannot be used by Company for marketing, advertising, or data mining, or shared with any third parties unless allowed by law and expressly authorized by the District in writing.

- **Parent Access:** District has established procedures by which a parent, legal guardian, or eligible student may review education records and correct erroneous information. Company shall cooperate and respond within ten (10) days to the District's request for User Data and/or Education Records held by Company to view or correct as necessary. In the event that a parent or other individual contacts the Company to review any User Data, Company shall refer the parent or individual to the District, who will follow the necessary and proper procedures regarding the requested information.
- **Third Party Access:** Should a Third Party, including, but not limited to law enforcement, former employees of the District, current employees of the District, and government entities, contact Company with a request for data held by the Company pursuant to the Services, the Company shall redirect the Third Party to request the data directly from the District and shall cooperate with the District to collect the required information. Company shall notify the District in advance of a compelled disclosure to a Third Party, unless legally prohibited.

Data Handling in the Event of Termination. In the event that the parties terminated their agreement for the provision of Company's services, upon written request any District data within Company's possession or control must be provided to the District and all other copies of the data must be de-identified/deleted. De-identified data will have all direct and indirect personal identifiers removed, including but not limited to names, addresses, dates of birth, social security numbers, family information, and health information. Furthermore, Company agrees not to attempt to re-identify de-identified data and not to transfer de-identified data to any party unless that party agrees not to attempt re-identification. If District data is disclosed without de-identifying the same as required herein, written notice shall be provided to the District. If District data is restored from a back-up after the parties' termination of their agreement for Company's services, then that data must also be de-identified/deleted.

Company Visits to District Property. The parties recognize that certain Company employees, contractors, or agents may visit the District's property in order to obtain the necessary information for the provision of Company's services. In the event that a Company employee must be unsupervised on District's property, the parties agree that, before any such visits to the District occur, all visiting Company employees, contractors, or agents must clear both criminal and child abuse & neglect background checks. Company further warrants and agrees that its employees, contractors, or agents who visit the District will not have contact or interact with the District's students. Company will indemnify, defend, and hold the District, its board members, administrators, employees and agents harmless from and against liability for any and all claims, actions, proceedings, demands, costs, (including reasonable attorneys' fees), damages, and liabilities resulting directly, from the acts and/or omissions of Company and/or its employees, contractors, or agents, subcontractors in connection with visits to the District's property as described herein.