

KIDKARE BY MINUTE MENU DATA SHARING AGREEMENT

State Agency Agreement Draft

WHEREAS, the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g and its implementing regulations codified at 34 C.F.R 99. 1 et seq. and _____ [State specific PII legislation] make personally identifiable student information and other student level data in education records confidential and, subject to certain exceptions, prohibit the disclosure of such information to third parties and impose penalties, including criminal penalties, for unauthorized disclosures of such data to third parties,

WHEREAS, FERPA and its implementing regulations allow for an educational agency or institution to share personally identifiable student-level data with contractors performing work on their behalf,

WHEREAS, the _____ (STATE AGENCY - hereinafter referred to as “State”) and Minute Menu Systems, LLC (“KidKare”) (hereinafter referred to as “Contractor”) have entered into a contractual arrangement, pursuant to which Contractor will provide the services to State.

WHEREFORE, the State and Contractor do enter into this Agreement subject to the terms and conditions as specified herein.

This Data Sharing Agreement, upon execution, shall supersede and replace all other Data Sharing Agreements that are in existence between the _____ [STATE AGENCY] and Minute Menu Systems, LLC (“KidKare”).

1. Purpose of the Disclosure

In light of the National Association of State Procurement Officials (NASPO) ValuePoint Cooperative Purchasing Program, and pursuant to the agreement #AR2488 dated September 30, 2016 (the “Agreement”) between the State of Utah, Division of Purchasing, (the “Lead State”) and SHI International Corp. (“Contractor”), Contractor is permitted to provide the Cloud Solutions offered by Minute Menu Systems, LLC (“KidKare”) to third parties under the Agreement and as permitted pursuant that Cloud Partner Agreement dated _____ between Contractor and KidKare. KidKare, in providing Cloud Services via the Contractor, agrees to collect and use any data disclosed to it pursuant to this Data Sharing Agreement between _____ (the “State”) and Contractor for the purposes of providing a statewide data management system for participating agencies of the United States Department of Agriculture, Food and Nutrition Service’s Child and Adult Care Food Program (CACFP); the Summer Food Service Program (SFSP).

2. Data

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CACFP or SFSP Center Sponsors will utilize the software by which Contractor permissibly resells pursuant to that Cloud Partner Agreement (KidKare Food Program or Minute Menu CX) (the “Software”) to collect the following data necessary for implementing the referenced food programs (all information is collective through written parental consent):

- Children
 - Personal Details
 - First Name
 - Last Name
 - Birth Date
 - Address
 - Child Image (optional)
 - Schedule
 - Start Time
 - End Time
 - School
 - Name
 - Address
- Parents
 - Personal Details:
 - First Name
 - Last Name
 - Phone
 - Email
 - Address
 - SSN (optional)

The State shall have access to the data outlined above in order to implement the United States Department of Agriculture, Food and Nutrition Service’s Child and Adult Care Food Program (CACFP); and Summer Food Service Program (SFSP).

The State reserves the right to withhold any of the foregoing data if the State determines, in its sole discretion, that disclosure of such data would violate any provision of state or federal law; provided that the State acknowledges that withholding any such data may delay or fully prevent certain users from using the Software in whole or in part.

All data processed hereunder shall be processed and used in accordance with KidKare’s written information security policies, including but not limited to the KidKare Privacy Policy and Terms of Service. Users of the Software may be contacted by KidKare in accordance with the KidKare Privacy Policy and Terms of Service terms about offerings of KidKare, their user account, and any other essential and non-essential communications; provided, however, KidKare acknowledges that all users have the ability to opt out of non-essential communications from KidKare in using the Software platform.

3. Confidentiality

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This Agreement is entered into by Contractor and the State in accordance with the provisions of the Family Educational Rights and Privacy Act, 20 U.S.C. Section 1232(g), et seq., (FERPA) and _____ [STATE LEGISLATION] Contractor hereby acknowledges that all documents which include personally identifiable information contained in or derived from a student's education records are deemed confidential pursuant to FERPA and _____[STATE LEGISLATION] and will not be disclosed by Contractor to any third party. Nothing in this provision shall preclude the Contractor from subcontracting with third parties to perform work contemplated herein; however, the Contractor is responsible for ensuring that any such subcontractor(s) adhere to, and agree to be bound by, all provisions of this agreement, and that any contract with such subcontractor(s) shall explicitly make such subcontractor subject to the audit provisions contained herein.

Contractor shall retain the original version of the data at a single location and shall not make a copy or extract of the data available to anyone except personnel who have a need for the data to perform the services referenced in this agreement. Contractor shall maintain the data in hard copy or electronic form, in an area that has limited access only to Contractor's authorized personnel. Contractor shall not permit removal of the data from the limited access area. Contractor will ensure that access to the data maintained on computer files or databases is controlled by password protection. Contractor shall establish procedures to ensure that the target data cannot be extracted from a computer file or database by unauthorized individuals. Contractor shall maintain all printouts, discs, or other physical products containing student-level data in locked cabinets, file drawers, or other secure locations when not in use. Contractor shall, under supervision of the State, destroy the data provided to Contractor, including all copies, whether in electronic or hard copy form, when the services are completed or this Agreement is terminated, whichever occurs first.

4. Restrictions on Use

Contractor shall not use the data for any purpose not expressly permitted in this Agreement without the prior written approval of the _____[TITLE OF SIGNATOR/APPROVING OFFICIAL]. Contractor cannot disclose any document, whether in hard copy or electronic form, or otherwise disclose to any third party any student-level data or information in any form whatsoever or under any circumstances which would directly or indirectly makes a student's identity easily traceable. Nothing in this provision shall preclude the Contractor from subcontracting with third parties to perform work contemplated herein as described in the foregoing section.

Any questions by Contractor regarding the implementation of this Agreement shall be directed to:

[INSERT STATE AGENCY COUNSEL CONTACT INFORMATION HERE]

5. Indemnification

Contractor shall defend, indemnify and hold harmless the State and any and all of the State's directors, officers, officials, employees, agents, contractors and representatives against and from any and all costs, expenses, damages, injury or loss, including reasonable attorney's fees, to which they or any of them may be subject from Contractor's and/or any student, teacher or any other third party as a result, directly or indirectly, of any disclosure of data by the State pursuant to this Agreement or any re-disclosure of such data by Contractor.

6. Ownership

Any records, reports, documents, materials, and/or products created or developed by Contractor with the data provided under this Agreement shall be the property of the State. Any work undertaken by Contractor pursuant to this Agreement shall be work made for hire, and the contractor hereby transfers and assigns to the State any intellectual property rights, including but not limited to the copyright of any records, reports, documents, materials or products created or developed by Contractor in connection with the performance of this Agreement. No records, reports, documents, materials or products created or developed under this Agreement can be distributed free or for profit without explicit written approval from the _____[TITLE OF SIGNATOR/APPROVING OFFICIAL

7. Audits

Pursuant to in _____ (insert state regulation), the Contractor shall permit the State or its authorized representatives to carry out security or audit checks pertaining to Contractor's security and usage of PII. Contractor shall cooperate with the State. The State or its authorized representatives shall have access at all reasonable times on working days during working hours at Contractor's business premises to Contractor's employees, together with records, books and correspondence and other papers and documentation or media of every kind in possession of Contractor and Contractor's employees pertaining to this Agreement that are necessary for the State to carry out such security and audit checks. The State or its authorized representatives shall have the right to reproduce and/or retain copies at its expense of any of the aforementioned information and documents.

8. Security Breach

As used in this Agreement "Security Breach" means any act or omission that compromises either the security, confidentiality or integrity of personally-identifiable student information or the physical, technical, administrative or organizational safeguards put in place by Contractor that relate to the protection of the security, confidentiality or integrity of PII, or (ii) receipt of a complaint in relation to the privacy practices of Contractor

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or a breach or alleged breach of this Agreement relating to such privacy practices.

Contractor shall take commercially reasonable steps and best efforts, in accordance with industry standards, to prevent security breaches. Contractor shall also take commercially reasonable steps, in accordance with industry standards, to immediately remedy any security breach and prevent any further security breach at Contractor's expense in accordance with standard industry practices and applicable law.

Contractor shall:(i) provide the state with the name and contact information for an employee of Contractor who shall serve as the State's primary security contact and shall be available to assist State twenty-four (24) hours per day, seven (7) days per week as a contact in resolving issues and fulfilling obligations associated with a security breach; (ii) immediately notify State in writing of a security breach after Contractor becomes aware of it; and

Immediately following Contractor's notification to the State of a security breach, Contractor and the State shall coordinate with each other to investigate the security breach. Contractor agrees to fully cooperate with State in State's handling of the matter, including, without limitation: (i) assisting with any investigation; (ii) providing the State with physical access to the facilities and operations affected;(iii) facilitating interviews with Contractor's employees and others involved in the matter; and (iv) making available all relevant records, logs, files, data reporting and other materials required to comply with applicable law or industry standards and as otherwise required by the State and (v) providing any notices to persons or organizations affected by the security breach as required by law and as required by the State.

9. Liaison Officials

The State's liaison and the Contractor's liaison for the implementation of this Agreement and for receipt of all notices or other communications required or permitted under this Agreement is:

[INSERT STATE AGENCY COUNSEL CONTACT INFORMATION]

(Include Contractor's contact, title, address, e-mail and telephone number)

10. Term of Agreement

This Agreement shall begin on enter beginning date and shall terminate on enter ending date. The effective date of this Agreement may be extended only if an amendment to that effect is duly executed by the parties and approved by the necessary authorities prior to said termination date. If either party informs the other that an extension of this Agreement is deemed necessary, an amendment may be prepared by one party for appropriate action by the other party.

11. Termination for Convenience

The State may terminate this Agreement at any time by giving Contractor written notice of such termination.

12. Assignment of Contract

Contractor shall not assign any interest in this Agreement by assignment, transfer, or novation, without prior written consent of the State.

13. Jurisdiction, Venue and Governing Law

Exclusive jurisdiction and venue for any and all suits between the State and Contractor arising out of, or related to, this Agreement shall be in the [INSERT GOVERNING BODY – GEOGRAPHIC]. The laws of the State of _____, without regard to _____ law on conflicts of law, shall govern this Agreement.

14. Survival

Contractor's obligation under Clauses 1, 3, 4, 5, 6, and 13 shall survive expiration and/or termination of this Agreement. Contractor's obligations under Clauses 7 and 8 shall survive expiration and/or termination of this Agreement until Contractor has fully complied with its obligation to destroy data as set forth herein.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day indicated below.

Name/Title
[Executing Department Within State Agency]

Name/Title
Minute Menu, LLC