

NEW YORK EDUCATION LAW 2-D RIDER

Please check this information for accuracy and make any edits necessary. The Vendor Name and Vendor Contact Name MUST be the full, legal names.

Vendor Name

Vendor Contact Name

Vendor Email Address

Vendor Phone Number

Vendor Fax Number

This is a Rider to the contract (including any terms of services or terms of use or any other policies, terms, agreements, or understandings referenced therein) between the Brookhaven-Comsewogue Union Free School District (“the District”) and [INSERT NAME OF CONTRACTOR] (“the Contractor”), that is being entered into for a [INSERT LENGTH OF AGREEMENT]-year term for the purchase and use of [INSERT SPECIFIC NAME OF APPLICATION/SOFTWARE] pursuant to the attached quote (“the Contract”)(collectively, the Contract and Rider are referred to as “the Agreement”).

To the extent that the provisions of this Rider and the annexed Data Privacy Agreement are inconsistent with any terms set forth in the Contract, the provisions of this Rider and the annexed Data Privacy Agreement will control.

AGREEMENT dated as of

between the Brookhaven-Comsewogue Union Free School District (“the District”)

and

(“the Service Provider”)

to which this Rider is attached, the provisions of this Rider will control. The Contract and this

Rider are collectively hereinafter referred to as “the Agreement.”

from

to

Plan for Security and Protection of Personally Identifiable Information

“District Data” means all information obtained by the Contractor from the District or by the Contractor in connection with the Services provided by the Contractor pursuant to this Agreement, including but not limited to business, administrative and financial data, intellectual property, student and personnel data, and metadata. The term, “District Data” does not include any information made publicly available by the District, except student and personnel data which will be considered “District Data” regardless of whether or not it is made public.

“Personally Identifiable Information” or “PII” includes, but is not limited to: (i) a person’s name or address or the names or addresses of a student’s parents or other family members; (ii) any personal identifier (e.g., SSN, student number or biometric record); (iii) indirect identifiers (e.g., date of birth, place of birth, or mother’s maiden name); (iv) other information that alone or in combination is linked or linkable to a specific individual and would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances to identify the individual with reasonable certainty; and (v) any information requested by a person who the District or Contractor reasonably believes knows the identity of the person to whom a record relates.

The Contractor represents and warrants that it will comply with all District policies and State, federal and local laws, regulations, rules and requirements related to the confidentiality, security and privacy of District Data.

The Contractor represents and warrants that District Data received by the Contractor will be used only to perform Contractor’s obligations pursuant to the Agreement and for no other purpose.

The Contractor represents and warrants that it will only collect data from the District or District employees or other End Users (the term “End Users” means the individuals authorized by the District to access and use services provided by the Contractor pursuant to the Agreement) that is necessary to fulfill the Contractor’s duties pursuant to the Agreement.

The Parties agree that all rights including all intellectual property rights in and to District Data

will remain the exclusive property of the District and that the Contractor has a limited, non-exclusive license to use District Data solely to perform the Services pursuant to the Agreement.

If the Contractor has access to District Data that is subject to the Family Educational Rights and Privacy Act ("FERPA"), the Contractor acknowledges that for purposes of the Agreement it will be designated as a "school official" with a "legitimate educational interest" pursuant to FERPA and its implementing regulations, and the Contractor agrees to abide by the limitations and requirements imposed on school officials.

The Contractor must execute and deliver the Data Privacy Agreement annexed hereto as Exhibit A simultaneously with the execution and delivery of this Rider. The terms of the Data Privacy Agreement are hereby incorporated into this Rider.

All the provisions of this Paragraph will survive the expiration or sooner termination of the Agreement.

Indemnification by the District: If the Contract has any provision that requires the District to indemnify, defend and/or hold harmless the Contractor, such provision will be void and have no force or effect.

Entire Agreement/No End User Agreements: The Agreement contains the entire agreement of the parties with respect to the subject matter thereof and supersedes any and all other agreements, understandings and representations, written or oral, by and between the parties. In the event that any part of the Agreement references terms of service or terms of use or any other policies, terms, agreements or understandings, the applicable policies, terms, agreements or understandings are those that were in effect on the date of the Contract, unless the applicable policies, terms, agreements or understandings were modified pursuant to Paragraph 6 of this Rider. In the event that the Consultant requires District employees or other End Users to enter into terms of use agreements or other agreements or understandings, whether electronic, click-through, verbal or in writing, those agreements and/or understandings will be null, void and without effect, and the terms of the Agreement will apply.

Termination: The Agreement may be terminated by the District immediately upon the Contractor's breach of the Contractor's obligations set forth in paragraph 1 of this Rider. Upon termination of the Agreement, the Contractor is not entitled to any further payments hereunder. This Agreement may be terminated, at any time, by the District for convenience upon 30 calendar days' written notice to the Contractor. Upon termination of this Agreement for convenience by the District, the Contractor is entitled to receive all sums due, accrued and unpaid as of the date of termination.

Notices: Any notices required or permitted to be given pursuant to the terms of the Agreement must be in writing and either personally delivered or sent by nationally recognized overnight carrier to the parties at the following addresses:

To the Contractor:

To the District:

Comsewogue School District

290 Norwood Avenue

Port Jefferson Station, New York 11776

Attention: Superintendent of Schools

With a copy to:

Lamb & Barnosky, LLP

534 Broadhollow Road, Suite 210

P.O. Box 9034

Melville, New York 11747

Attention: Lindsay T. Crocker, Esq.

If the notice is sent by personal mail, it will be deemed delivered upon receipt and if sent by registered or certified mail, it shall be deemed delivered 3 days after so mailing.

Modification: The Agreement may not be changed by any District Employee or other End User. The Agreement may not be changed orally, electronically, by click-through agreement, or by continued use. The Agreement may only be changed by an agreement in writing signed by the District. Any waiver of any term, condition or provision of the Agreement will not constitute a waiver of any other term, condition or provision, nor will a waiver of any breach of any term, condition or provision constitute a waiver of any subsequent or succeeding breach.

Governing Law, Choice of Forum and Waiver of Jury Trial: The Agreement is subject to, governed by, enforced according to and construed according to the laws of the State of New York, without regard to the conflicts of laws provisions thereof. Notwithstanding the arbitration provisions in the Contract, if any, the parties agree that any dispute arising under the Agreement will be litigated in a New York State Court in Suffolk County, New York. The parties each waive trial by jury in any action concerning the Agreement.

No Assignment: In accordance with the provisions of New York General Municipal Law § 109, the Contractor is hereby prohibited from assigning, transferring, conveying, subletting or otherwise disposing of the Agreement, or of the Contractor's rights, title, or interest in the Agreement, or the Contractor's power to execute the Agreement to any other person or corporation without the previous consent in writing from the District.

Third-Party Beneficiaries: There are no third-party beneficiaries in the Agreement.

Execution: This Rider may be executed in one or more counterparts, all of which shall be considered one and the same agreement. This Rider may be executed by facsimile or PDF signature, each of which shall constitute an original for all purposes.

If applicable, this Rider may be executed by electronic signature, which will be effective to bind a party to this Rider. The parties agree that an electronic signature will be deemed: (i) to be "written" or "in writing," (ii) to have been signed and (iii) to constitute a record established and maintained in the ordinary course of business and an original written record when printed from electronic files. Such paper copies or "printouts," if introduced as evidence in any judicial, arbitral, mediation or administrative proceeding, will be admissible as between the parties to the same extent and under the same conditions as other original business records created and maintained in documentary form. Neither party will contest the admissibility of true and accurate copies of documents signed by electronic signature on the basis of the best evidence rule or as not satisfying the business records exception to the hearsay rule.

Notwithstanding the execution of this Rider or any other term or condition of this Rider, it will not become effective unless and until the Contract between the parties is in full force and effect.

I understand that by checking this box, I agree, and it is my intent, to sign this Agreement by affixing my electronic signature below and submitting the Agreement to the District. I understand that my signing and submitting the Agreement to the District in this fashion is the legal equivalent of having placed by handwritten signature on the submitted Agreement. I also confirm that I am authorized to sign legally binding agreements on behalf of [pipe:5].

I agree

[pipe:60]

By:

Name:

Title

EXHIBIT A

The following terms "Contractor", "Consultant" or "Service Provider" as below may be used interchangeably and refer to the vendor.

AGREEMENT BETWEEN [pipe:5] ("the Service Provider") and the BROOKHAVEN-COMSEWOGUE UNION FREE SCHOOL DISTRICT ("the District")

TERM: [pipe:9] to [pipe:10]

BROOKHAVEN-COMSEWOGUE DISTRICT'S PARENTS' BILL OF RIGHTS REGARDING DATA PRIVACY AND SECURITY

PARENTS' BILL OF RIGHTS FOR DATA PRIVACY AND SECURITY

Pursuant to New York State Education Law §2-d, parents (including legal guardians or persons in parental relationships) and eligible students (students 18 years of age and older) are entitled to certain rights. This document contains a plain-English summary of such rights.

1. A student's personally identifiable information cannot be sold or released for any commercial purposes. PII, as defined by Education Law § 2-d and the Family Educational Rights and Privacy Act ("FERPA"), includes direct identifiers such as a student's name or identification number, parent's name, or address; and indirect identifiers such as a student's date of birth, which when linked to or combined with other information can be used to distinguish or trace a student's identity. Please see FERPA's regulations at 34 CFR § 99.3 for a more complete definition.
2. Parents and/or eligible students have the right to inspect and review the complete contents of their child's educational records maintained by the Comsewogue School District. This right may not apply to parents of an eligible student.
3. State and Federal Laws such as New York Education Law § 2-d, the Commissioner of Education's Regulations at 8 NYCRR Part 121, FERPA, the Children's Online Privacy Protection Act, the Protection of Pupil Rights Amendment, and the Individuals with Disabilities Education Act protect the confidentiality of a student's PII.
4. Safeguards associated with industry standards and best practices, including, but not limited to, encryption, firewalls, and password protection must be in place when data is stored or transferred.
5. A complete list of all student data elements collected by New York State is available for review at the following website:

<http://www.p12.nysed.gov/irs/sirs/documentation/NYSEDstudentData.xlsx>

The list may also be made available by writing to:

Chief Privacy Officer
New York State Education Department
89 Washington Avenue
Albany, NY 12234

6. Parents have the right to have complaints about possible breaches of student data addressed. Complaints should be directed to:

Data Protection Officer
Comsewogue School District

290 Norwood Ave

Port Jefferson Station, NY 11776 Phone: 631-474-8100

jpolychronakos@comsewogue.k12.ny.us

Complaints may also be submitted to the New York State Education Department at: www.nysed.gov/data-privacy-security/report-improper-disclosure or by contacting the State's Chief Privacy Officer at:

New York State Education Department

89 Washington Avenue

Albany, NY 12234

518-474-0937

privacy@nysed.gov.

7. Each contract with a third-party contractor which will receive student data, or teacher or principal data will include information addressing the following:

- a. The exclusive purposes for which the student data or teacher or principal data will be used.
- b. How the third-party contractor will ensure that the subcontractors, persons or entities that the third-party contractor will share the student data or teacher or principal data with, if any, will abide by data protection and security requirements.
- c. When the agreement expires and what happens to the student data or teacher and principal data upon expiration of the agreement.
- d. If and how a parent, student, eligible student, teacher or principal may challenge the accuracy of the student data or teacher or principal data that is collected; and
- e. Where the student data or teacher or principal data will be stored, and the security protections taken to ensure such data will be protected, including how such data will be encrypted.

8. Third-party contractors are also required to:

- a. Provide training on federal and state law governing confidentiality to any officers, employees, or assignees who have access to student data or teacher or principal data;
- b. Limit internal access to education records to those individuals who have a legitimate educational interest in such records.
- c. Not use educational records for any other purpose than those explicitly authorized in the contract;
- d. Not disclose PII to any other party (i) without the prior written consent of the parent or eligible student; or (ii) unless required by statute or court order and the third-party contractor provides a notice of the disclosure to the District's board of education no later than the time the information is disclosed, unless providing notice of the disclosure is expressly prohibited by the statute or court order;

- e. Maintain reasonable administrative, technical and physical safeguards to protect the security, confidentiality and integrity of PII in its custody;
 - f. Use encryption technology to protect data while in motion or in its custody from unauthorized disclosure as specified in Education Law §2-d;
 - g. Notify Comsewogue School District of any breach of security resulting in an unauthorized release of student data or teacher or principal data, in the most expedient way possible and without unreasonable delay;
 - h. Provide a data security and privacy plan outlining how all state, federal and local data security and privacy contract requirements will be implemented over the life of the contract;
 - i. Provide a signed copy of this Bill of Rights to the Comsewogue School District thereby acknowledging that they are aware of and agree to abide by this Bill of Rights.
9. Parents and/or eligible have the right to be notified in accordance with applicable laws and regulations if a breach or unauthorized release of PII occurs.
10. District workers who handle PII will receive annual training on applicable federal and State laws, regulations, policies and safeguards which will be in alignment with industry standards and best practices to protect PII.
11. This Bill of Rights is subject to change based on regulations of the Commissioner of Education and the New York State Education Department's Chief Privacy Officer, as well as emerging guidance documents.

This Bill of Rights will be included with every contract entered into by the District with an outside contractor if the contractor will receive student data or teacher or principal data. This Bill of Rights will be supplemented to include information about each contract that the District enters into with an outside contractor receiving confidential student data or teacher or principal data, including the exclusive purpose(s) for which the data will be used, how the contractor will ensure confidentiality and data protection and security requirements, the date of expiration of the contract and what happens to the data upon the expiration of the contract, if and how the accuracy of the data collected can be challenged, where the data will be stored and the security protections that will be taken.

“District Data” means all information obtained by the Consultant from the District or by the Consultant in connection with the services provided by Consultant pursuant to the Agreement, including but not limited to business, administrative and financial data, intellectual property, student and personnel data, and metadata. The term, “District Data” does not include any information made publically available by the District, with the exception of Personally Identifiable Information from student and personnel data.

Use of District Data by Consultant. The District Data received by the Consultant will be used only to perform Consultant’s obligations pursuant to the Agreement and for no other purpose.

Storage and Security Protections. The Consultant will store and process District Data in compliance with Education Law § 2-d(5) and applicable regulations of the Commissioner of Education, if any, as the same may be amended from time to time, and in accordance with commercial best practices, including appropriate administrative, physical, and technical safeguards, to secure District Data from unauthorized access, disclosure, alteration and use.

The Consultant will use legally-required, industry-standard and up-to-date security tools and technologies such as anti-virus protections and intrusion detection methods in providing services pursuant to the Agreement. Consultant will conduct periodic risk assessments and remediate any identified security vulnerabilities in a timely manner.

The following paragraphs describe (in such a manner as to protect data security) the specific storage methods and security protections used by the Consultant to protect District Data:

Click the checkbox below to view the instructions for the following questions:

Show/Hide

INSTRUCTIONS FOR PARENTS BILL OF RIGHTS

Exhibit B contains information required by New York Education Law § 2-d and includes information that makes up part of the mandated Plan for Protection of Personally Identifiable Information. It should contain detailed information about data storage and security measures. The Consultant must describe the ways it will store District Data and the specific security protections that will be used by the Consultant to protect District Data. Please note that these descriptions are part of a publically accessible document and must be written in a manner that will protect the Consultant's data security.

Below, we list examples for each storage/security category set forth in Exhibit B. These are only examples and the Consultant must describe the specific storage methods and security protections it uses (again, the description must be written in a manner that will protect the Consultant's data security). The amount of information included should not be limited by the space provided.

Examples:

(a) Storage of Electronic Data:

- In the Cloud (specify types, private or public, etc.)
- On Consultant's server

(b) Storage of Non-Electronic Data:

- Files stored in locked filing cabinets

(c) Personnel/Workforce Security Measures:

- Describe internal policies regulating access to information and sharing information amongst coworkers
- Describe policies relating to the requirement to return all data and property to the Consultant upon an employee's separation from employment

(d) Account Management and Access Control:

- Use of unique user-IDS
- Use of passwords that are regularly and frequently updated
- Use of automatic techniques to terminate a session upon specific conditions (e.g., idle time)
- Policy to disable employee accounts upon termination from employment

(e) Physical Security Measures:

- Describe security barriers and access controls (e.g., locking of doors, desks and filing cabinets)
- Describe visitor policies (e.g., visitors are escorted at all times when visiting information processing and storage facilities)

(a) Storage of Electronic Data:

(b) Storage of Non-Electronic Data:

(c) Personnel/Workforce Security Measures:

(d) Physical Security Measures:

(e) Account Management and Access Control:

(f) All electronic District Data will be protected by the Consultant through the use of encryption technology in compliance with New York Education Law § 2-d(5)(f)(5).

3. Subcontractors. Please make ONE selection:

- The Service Provider will utilize subcontractors.
- The Service Provider will not utilize subcontractors.

4. Sharing Information with Other Persons and Entities. The Service Provider will only share District Data with entities or persons authorized by the Agreement. To the extent that District Data will be shared by the Service Provider with other authorized entities or persons not employed by Service Provider, the Service Provider will ensure that those persons or entities

will be required to agree in writing that it/they will comply with all terms of the Agreement's Plan for Security and Protection of Personally Identifiable Information, and any other Agreement provision relating to confidentiality of records and data security and privacy, including, but not limited to this Exhibit A.

5. Destruction/Return of Data. Upon the termination of the Agreement for any reason, the Service Provider will, as directed by the District in writing, securely destroy ("securely destroy" means taking actions that render data written on physical (e.g., hard copy) or electronic media unrecoverable by both ordinary and extraordinary means) or return all District Data received by the Service Provider as soon as reasonably possible. The District's decision will be made in connection with all applicable laws, including the New York Arts and Cultural Affairs Law and the Records Retention and Disposition Schedule ED-1. In connection with the secure destruction of any District Data, the Service Provider will provide a certificate of destruction (form and substance satisfactory to the District) to the District.

6. Challenge to Accuracy of Data. A parent or guardian, student, teacher or principal can challenge the accuracy of the Data received by the Service Provider by following applicable law (e.g., Family Educational Rights and Privacy Act), employment agreements, and policies, rules and regulations. If the Service Provider receives a challenge to the accuracy of Data from a parent or guardian, student, teacher or principal, the Service Provider will notify the District in writing. The Service Provider will not amend any Data without a written request from the District.

THE SERVICE PROVIDER

By:

Name:

Title:

Date

Admin Section - Used for Comsewogue Approval

The information above is approved

Yes
No

Name of Person Approving the Contract

Signature