



DATA PROTECTION AGREEMENT

THE DATA PROTECTION AGREEMENT ("Agreement") is entered into between DOUGLAS COUNTY SCHOOL DISTRICT 0001, a Nebraska political subdivision, located in Douglas County, Nebraska, a/k/a Omaha Public Schools (hereinafter referred to as the "District") and _____ ("Partner Organization"). Hereafter, each may be referred to in the singular as, the "Party" or collectively, as the "Parties" in this Agreement.

WHEREAS, Partner Organization acknowledges and understands that the District is required to safeguard the privacy of its students' Education Records in a manner consistent with the mandates of the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g and the applicable regulations promulgated thereunder.

WHEREAS, Education Records may contain Personally Identifiable Information ("PII") as defined by Nebraska Financial Data Protection and Consumer Notification of Data Security Breach Act of 2006 ("NFDP"), Neb. Rev. Stat. §§87-801–87-808.

WHEREAS, FERPA prohibits the unauthorized disclosure of PII contained in students' Education Records to anyone without the express written consent of the student or the student's representative.

WHEREAS, FERPA has regulatory exceptions to the general rule of confidentiality and non-disclosure of individually-identifiable data and information to allow its disclosure and use by organizations acting as school officials under certain circumstances.

WHEREAS, should Partner Organization be identified as satisfying the criteria associated with one or more recognized FERPA exceptions, the District may disclose the requested data to Partner Organization, provided the purpose, scope, and duration are clearly set forth in writing and satisfy the terms and conditions of this Agreement.

WHEREAS, Partner Organization will provide to the District, and/or its participating schools on behalf of the District, specified services the District could otherwise use its employees to perform, Partner Organization acknowledges that for the purposes of this Agreement it will be designated as a "school official" with "legitimate educational interests" as those terms have been interpreted and defined under FERPA and similar Privacy Laws and regulations, and Partner Organization agrees to abide by FERPA and those laws while performing its service for the District.

WHEREAS, the services Partner Organization will provide to the District are described in the Service Agreement, identified below.

NOW, THEREFORE, the Parties enter into this Agreement governing the disclosure of personally identifiable student information and provision of services described herein.

SECTION I DEFINITIONS

A. "Confidential District Information" means any and all confidential or proprietary information of the District in any form, including, but not limited to, handwriting, print, computer media, video or audio tape, film, microfilm, and microfiche, and includes paper and electronic information. Confidential District Information includes all student or employee record information. Confidential District Information also includes all business, operational, and other information provided by District to Partner Organization hereunder, provided such information is marked or otherwise identified by District as confidential or proprietary, or is of a nature that Partner Organization knows or should know is confidential or proprietary. Confidential District Information includes Education Records and Personally Identifiable Information.

B. "Data Incident" means any access, acquisition, use or disclosure of Regulated Information by Partner Organization not authorized by law, this Agreement, or any other written agreements between District and Partner Organization related to Regulated Information.

C. "Education Records" has the same definition as in FERPA, 20 U.S. Code § 1232g(a)(4)(A), those records, files, documents, and other materials that (i) contain information directly related to a student; and (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.

D. "Personally Identifiable Information" or "PII" includes but is not limited to (a) student names; (b) names of a student's parent, guardian, or other family members; (c) addresses of students, their guardians, or other family members; (d) personal identifiers such as social security numbers, student numbers, or biometric records; (e) other indirect personal identifiers such as dates of birth, places of birth, and maiden names; (f) other information that, alone or in combination, is linked or linkable to a specific student that would allow a person to identify the student with reasonable certainty; (g) "medical information" as may be defined in state law; (h) "protected health information" as that term is defined in the Health Insurance Portability and Accountability Act, 45 CFR Part 160.103; (i) "nonpublic personal information" as that term is defined in the Gramm-Leach-Bliley Financial Modernization Act of 1999, 15 USC 6809; (j) credit and debit card numbers or access codes and other cardholder data and sensitive authentication data as those terms are defined in the Payment Card Industry Data Security Standards; (k) other financial account numbers, access codes, and driver's license numbers; (l) state- or federal-identification numbers such as passport, visa, or state identity card numbers; (m) "personally identifiable information" as may be defined in state law, including Neb. Rev. Stat. § 87-802; and (n) Education Records.

E. "Privacy Laws" means all applicable state, federal, and local privacy confidentiality and security laws (including related regulations, orders, or findings) which govern any Confidential District Information including, but not limited to: FERPA, COPPA, the Protection of Pupil Rights Amendment ("PPRA") (20 U.S.C. § 1232h; 34 CFR Part 98), as currently in effect or as amended from time to time, including any successor statutes and implementing regulations and rules, and the NFDP, specifically Neb. Rev. Stat. § 87-808.

F. "Regulated Information" means Personally Identifiable Information and Education Records.

G. "Temporary Employees" means personnel employed and provided by Partner Organization to District for its supplemental staffing needs, including contractors, subcontractors, vendors, and suppliers of Partner Organization.

SECTION II CONFIDENTIAL DISTRICT INFORMATION

A. Ownership of Data and Information. The disclosure of Confidential District Information to Partner Organization is not an assignment of ownership of the Confidential District Information to Partner Organization. The District retains ownership of all such information. Confidential District Information may only be re-disclosed by Partner Organization to a third-party with the prior written approval of the District.

B. Confidentiality. Partner Organization agrees to maintain the confidentiality of Confidential District Information provided by District to Partner Organization hereunder.

1. Partner Organization agrees to restrict access to Confidential District Information only to authorized representatives who (i) require access in the course of their assigned duties and responsibilities in connection with this Agreement, and (ii) have been informed of the provisions set forth in this Agreement.

2. The confidentiality obligations regarding the Confidential District Information shall not apply to any material or information that (i) is or becomes a part of the public domain through no act or omission by the Partner Organization, (ii) is independently developed by employees of the Partner Organization without use or reference to the Confidential District Information, (iii) is disclosed to the Partner Organization by a third party that, to the Partner Organization's knowledge, was not bound by a confidentiality obligation, (iv) is demanded by a lawful order from any court or anybody empowered to issue such an order, or (v), is requested by operation of law. With respect to (iv) or (v) above, Partner Organization agrees to provide notice to the District in a timely manner to allow the District to object to such disclosure should the District choose to do so.

3. Notwithstanding anything herein to the contrary and only to the extent consistent with the Privacy Laws, District hereby grants to Partner Organization a non-exclusive, royalty-free, nontransferable, revocable, limited license during the Term or any Renewal Term of this Agreement to collect, access, and use Confidential District Information provided Partner Organization: (1) collects, accesses, and uses Confidential District Information only as necessary and solely for meeting Partner Organization's performance obligations under this Agreement; (2) keeps records of any Partner Organization disclosures of Confidential District Information, including the names of the parties to which Partner Organization may have disclosed Confidential District Information and the legitimate interests under this Agreement or the Privacy Laws which such parties requested or obtained the Confidential District Information from Partner Organization; (3) destroys the Confidential District Information when it is no longer needed by Partner Organization for meeting its performance obligations under this Agreement; and (4) otherwise complies with the Privacy Laws.

C. Limited Disclosure, Access and Use. Partner Organization will abide by any and all conditions imposed by the District on the disclosure of Confidential District Information, including any de-identified or derived data from such information provided by the District, and agrees to manage and maintain it in accordance with the Privacy Laws.

1. Partner Organization and its officers, employees, and agents receiving Confidential District Information agrees to hold such information in strict confidence and use the information only for the limited purpose for which the disclosure was made.

2. Partner Organization affirms that its services will be conducted in a manner that does not disclose the Confidential District Information to anyone who is not an authorized representative of Partner Organization.

3. Partner Organization agrees not to use the Confidential District Information for any purpose other than the purposes for which the disclosure was sought from the District and made to Partner Organization.

4. The approval to use the Confidential District Information for one purpose does not confer approval to use the Confidential District Information for another or different purpose. Partner Organization shall not use any Confidential District Information, whether or not it is de-identified or aggregated, for any other commercial purpose than to provide the services which District has purchased from Partner Organization.

5. Partner Organization shall not store or transmit any Confidential District Information outside U.S. territory.

6. Upon termination, cancellation, expiration, or other conclusion of this Agreement, Partner Organization shall return all Confidential District Information to the District, or if return is not feasible, destroy any and all such information, except that backup files made in the normal course of business may be retained per Partner Organization's data retention policy, for regulatory compliance. Partner may destroy the Confidential District Information when it is no longer needed for purposes for which it was disclosed or as authorized in this Agreement. Partner Organization shall confirm the date that any Confidential District Information was returned or destroyed by delivering to the District the certificate attached hereto as Attachment 1.

D. Reporting of Unauthorized Disclosures of Regulated Information

1. Partner Organization shall, as soon as possible, but in no event more than five (5) business days of discovery, report to the District any Data Incident. Partner Organization's written report shall identify (i) the nature of the Data Incident, (ii) what information was used or disclosed, (iii) who or what was the cause of the Data Incident, (iv) who may have had access to any Confidential District Information, PII, or Regulated information, (v) what Partner Organization has done or shall do to mitigate harm from the Data Incident, and (vi) what corrective action Partner Organization has taken or shall take to prevent future similar Data Incidents. Partner Organization shall provide such other information, including a written report, as reasonably requested by the District. Partner Organization shall ensure that Temporary Employees comply with the terms of this section.

2. Partner Organization shall fully and completely cooperate with any investigation undertaken by the District to investigate, identify, remediate, or provide notification to affected individuals should any Data Incident occur.

3. In its sole discretion, the District may immediately terminate this Agreement, along with any other agreements with Partner Organization which incorporate this Agreement, if it determines it is not possible to repair or correct the Data Incident.

E. Information Security Safeguards. Partner Organization shall, at all times that it accesses, stores, transmits, maintains or processes Confidential District Information have in place reasonable and appropriate administrative, physical, and technical safeguards to protect the confidentiality, integrity, and availability of such information. These industry standard controls will include at a minimum: access controls, including multifactor authentication to the systems and accounts which will house the Student Records; audit records; malware and virus protection; system, network, computer, and application protections; employee training as to cybersecurity threats; and encryption of all data at rest, including on any device or system including USB drive, internal or removable hard drive, or any cloud-based platform; and, encryption of all data in transit, including the transfer of any data via email or to/from cloud storage platform. Any encryption processes or procedures shall meet the requirements of Federal Information Processing Standard 140-2.

F. Industry Standard Datacenter Audit. On an annual basis, Partner Organization will have an SSAE-18 (or its successor standard), ISO, or other nationally recognized technology controls audit conducted, and any audit report should specifically address the controls of the systems in which any Confidential District Information, PII, or Regulated Information are housed, and related control objectives of Partner Organization. Such audit shall be performed by a third party experienced in performing system security audits. Partner Organization shall promptly provide District with a copy of the results of the audit upon District's written request. If such audit report indicates any deficiencies in the security standards utilized by Partner Organization, then Partner Organization shall provide District with a response to each identified deficiency, and shall promptly undertake, at Partner Organization's expense, to remedy any material deficiencies, and shall report to District when such material deficiencies have been remedied.

SECTION III SPECIAL PROVISIONS RELATED TO EDUCATION RECORDS

A. Purpose. Partner Organization, by providing certain institutional services and functions on behalf of the District, may require access to a student's Education Records to effectively deliver its services. Partner Organization further agrees to be under the direct control of the District with respect to the maintenance of student Education Records relating to the governance, use, and re-disclosure of Personally Identifiable Information, which will be in accordance with, and contingent upon compliance with FERPA and the Children's Online Privacy Protection Act ("COPPA") (15 U.S.C. §§ 6501–6506).

B. Minimum Necessary. In order to perform the service(s) described in the Service Agreement, the Partner Organization agrees that it will limit the collection and/or utilization of Education Records to the minimum necessary.

C. Qualified FERPA Exception. Partner Organization understands and agrees that the purpose and contemplated use of the Education Records disclosed by the District is solely to provide the educational services for, or on behalf of the District described herein. The Partner Organization shall be designated a "school official" according to FERPA and District policy, as an organization to which the District has outsourced institutional services or functions for which the District would otherwise utilize its own employees. The Partner Organization acknowledges that it is under the direct control of the District for the purposes of use and maintenance of Education Records disclosed pursuant to this Agreement, and that the Partner Organization agrees to comply with the applicable provisions of FERPA in order to safeguard the confidentiality of Education Records and student information.

D. Redisclosure. Education Records may only be re-disclosed by Partner Organization to a third party with the prior written approval of the District, in accordance with this Agreement, or in compliance with FERPA and its regulations.

E. Remedies, Penalties, Indemnification. The failure to comply with the requirements of FERPA or COPPA could subject Partner Organization and third parties to penalties under state and federal law. Partner Organization acknowledges there may be no adequate remedy at law for any breach of its obligations hereunder, that any such breach will result in irreparable harm to the District, and therefore, that upon any such breach or threatened breach, the District shall be entitled to seek appropriate equitable relief including specific performance and any additional remedies the law may allow, including injunctive relief.

SECTION IV INDEMNIFICATION

A. Partner Organization will indemnify, defend, and hold harmless District and District's affiliates, officers, directors, and employees from and against any third-party claims, demands, causes of action, judgments, damages, liabilities, costs, and expenses (including reasonable attorney's fees) arising from or relating to Partner Organization's or any of Partner Organization's employees (including Temporary Employees), agents, contractors, or representatives unauthorized use, misuse, or illegal use of Confidential District Information, Education Records, or Personally Identifiable Information, or for any breach of this Agreement by Partner Organization. The District and any indemnified party shall cooperate and comply with the reasonable requests of Partner Organization in connection with the defense of any such claim. The receipt or providing such assistance is not a waiver of any alleged breach nor does the acceptance of such assistance constitute a waiver of any such breach by the District. Partner Organization shall control the defense and settlement of any such claim.

B. If Partner Organization's conduct triggers any third-party notice requirements under applicable Privacy Laws, Partner Organization shall indemnify the District for any actual and reasonable notification-related costs incurred by the District.

SECTION V GENERAL TERMS AND CONDITIONS

A. Coordination with Partner Organization Authorized Representatives. During the term of this Agreement, Partner Organization will fully coordinate all of its services provided hereunder with the District through its designated authorized representative.

1. The authorized representative signatory below has authority to bind Partner Organization to the terms and conditions of this Agreement.

2. The authorized representative signatory shall also be responsible for requiring Partner Organization personnel and other authorized representatives of Partner Organization accessing information from District records to execute affidavits of nondisclosure or other documentation indicating that each person will be held accountable for the proper management, use, and protection of all information and records provided by District.

B. Temporary Employees. Partner Organization shall ensure that Temporary Employees comply with the same terms and conditions set forth in this Agreement.

C. Examination of Records.

1. Partner Organization will keep true and complete records of any and all data received, exchanged, and shared between and amongst its employees, agents, subcontractors, and volunteers pursuant to this Agreement. Upon reasonable request, Partner Organization shall provide access to such records to District at a mutually agreed time.

2. Partner Organization agrees that it will keep and preserve all business records and reports created during the course of this Agreement for at least three (3) years from the date of receipt under this Agreement, except that Confidential District Information shall be returned or destroyed in accordance with the provisions of Section II.F.6 of this Agreement. Notwithstanding the foregoing, any reports generated under Section II, Subsection D (Reporting of Unauthorized Disclosures of Regulated Information), shall be preserved for a minimum of five (5) years.

D. Modification. This Agreement shall only be modified in writing signed by duly authorized representatives of both Partner Organization and the District. All requests for modifications should be directed to the authorized representative of the District and Partner Organization.

E. Notice. Any notice this Agreement requires must be in writing and will be effective only if sent by certified U.S. mail, return receipt requested, or via electronic mail, to an authorized representative provided in this Agreement, which is as follows:

Partner Organization: _____

District: Bryan Dunne
bryan.dunne@ops.org

With Copies to: Megan Neiles-Brasch
Megan.Neiles-Brasch@ops.org
Office of the General Counsel
Omaha Public Schools
3215 Cuming Street
Omaha, NE 68131

F. Term. The effective date begins on the next business day that follows after each authorized representative of Partner Organization and the District executes this Agreement and it shall expire at the time Partner Organization no longer provides its services or is terminated in accordance with this Agreement; provided, however, a lapse or stoppage of services by Partner Organization as a result of the District's school year ending that timely resumes with the commencement of the next District school year shall not be construed or interpreted as the termination of this Agreement; furthermore, at the beginning of each school year, upon re-execution by each authorized representative of the District and Partner Organization, the parties mutually agree this Agreement is revived according to the same, or any amended terms and conditions contained herein.

G. Subcontractors. Partner Organization shall require any subcontractor to comply with the provisions of this Agreement, including, but not limited to, to use the same care to protect the confidentiality, integrity, and availability of such records as Partner Organization will use. Upon

termination of any contractor or subcontractor agreement or engagement Partner Organization shall ensure all Confidential District Information, PII, or Regulated Information, in possession of any contractor or subcontractor will either be destroyed or returned, and Partner Organization will provide documentation of destruction or return of such records to the District. In no circumstances should a non-US based contractor or subcontractor be provided access to District information without prior approval of the District.

H. Termination. The District may terminate this Agreement for convenience with thirty (30) days' prior written notice with brief description of the reason for the termination to the Partner Organization.

I. Compliance with Federal and State Confidentiality and Privacy Laws. Partner Organization and the District agree and understand this Agreement must be in compliance with all relevant Privacy Laws. In the event of a conflict between this Agreement and any Privacy Laws, Privacy Laws shall control. In the event of conflict or uncertainty interpreting controlling law regarding the collection, access, use, or disclosure of Regulated Information, a party will resolve the uncertainty or conflict in favor of prohibiting the collection, access, use, or disclosure of such information.

J. Compliance with District Policies. Partner Organization agrees to comply with the applicable written District Board of Education policies, which hereafter by this reference are incorporated into and enforceable under this Agreement.

K. Governing Law and Jurisdiction. In the event that any disputes arise from this Agreement, the parties agree to submit such disputes to the state or federal courts located within Douglas County, Nebraska, and such courts shall have exclusive jurisdiction over the disputes. The parties agree that Nebraska law will govern such disputes that arise from this Agreement, without regard to rules regarding conflicts of law.

L. Independent Contractor. The parties are independent contractors in their relationship to one another and are not, by virtue of this Agreement or otherwise, made agents, employees, employers or joint venturers of one another. Neither party shall have authority to bind the other. In furtherance of the foregoing, and not in limitation thereof, no Partner Organization employee (including Temporary Employees), contractor, representative, or agent shall be entitled to participate in any group insurance program or to take advantage of any other rights, privileges or employee benefit plans established for employees of the District. The District shall not be obligated to pay employment taxes on or make withholdings in connection with compensation paid to any Partner Organization employee, contractor, representative, or agent. Partner Organization is responsible for all such taxes related to such compensation paid hereunder, including any federal and state income tax, employment tax, social security, or any other obligations under laws or requirements of governmental bodies, and shall indemnify the District against any taxes, liabilities, penalties or costs incurred by the District arising out of any failure of Partner Organization to pay such taxes or from reclassification of any Partner Organization employee, contractor, representative, or agent from an independent contractor to an employee of the District. The District will not reimburse Partner Organization for, or provide Partner Organization or Partner Organization's employees, representatives, or agents with, any form of insurance benefits, pension benefits, vacation or holiday benefits or any other benefits or expenses whatsoever.

M. Work Eligibility. Pursuant to Neb. Rev. Stat. §§ 4-108 through 114, Partner Organization shall use a federal electronic verification program authorized by the Illegal Immigration Reform

and Immigration Responsibility Act of 1996, 8 U.S.C. §1324 ("E-verify Program" or an equivalent federal program designated by the Department of Homeland Security or other authorized federal agency) to verify the work eligibility status of new employees physically performing services within the State of Nebraska.

N. Non-Discrimination. Partner Organization agrees to abide by the requirements of the following as applicable: Title VI and VII of the Civil Rights Act of 1964, as amended by the Equal Opportunity Act of 1972 and the Pregnancy Discrimination Act of 1978, Federal Executive Order 11246, the Federal Rehabilitation Act of 1973, as amended, the Vietnam Era Veteran's Readjustment Assistance Act of 1974, Title IX of the Education amendments of 1972, the Age Act of 1972, the Americans With Disabilities Act of 1990, the Genetic Information Nondiscrimination Act of 2008, and the Nebraska Fair Employment Practice Act, Neb. Rev. Stat. §48-1122. Partner Organization agrees not to discriminate in its employment practices, and will render services under this Agreement without regard to race, color, national origin, religion, sex (including pregnancy), marital status, sexual orientation, disability, age, genetic information, gender identity, gender expression, citizenship status, veteran status, political affiliation or economic status. Any act of discrimination committed by Partner Organization or failure to comply with these statutory obligations when applicable shall be grounds for termination of this Agreement.

O. Survival of Certain Provisions. The terms and conditions of this Agreement and any exhibits and attachments that by reasonable implication contemplate continued performance, rights, or compliance beyond expiration or termination of the Agreement survive the Agreement and will continue to be enforceable.

P. No Agency Created. Partner Organization agrees and understands that no authority exists through this Agreement permitting Partner Organization to enter into any third party contract, assume any obligation, or make any representation to third parties on behalf of, or which may bind the District.

Q. Authorized Representative. Partner Organization certifies that the individual signing below on its behalf is fully authorized to do so, is fully authorized to bind and commit Partner Organization to the obligations set forth herein, and that no other consents or authorizations are needed to bind Partner Organization to the terms of this Agreement.

R. Contract Documents. This Agreement consists of the following attachments which are incorporated herein and made a part hereof by reference which are found after the signature page:

1. Attachment 1, Certification of Destruction/Return of Confidential District Information.

Partner Organization hereby signifies its acceptance of the terms and conditions of this Agreement.

Service Agreement: _____

[signature page to follow]

Agreed to:

By: _____

Name: _____

Title: _____

Date: _____

Agreed to:

Douglas County School District 0001
a/k/a Omaha Public Schools

3215 Cuming Street
Omaha, Nebraska 68131

By: _____

Name: _____

Title: President, Board of Education

Date: _____

Attest:

By: _____

Title: Secretary, Board of Education



Attachment 1
Certification of Destruction/Return of Confidential District Information

I\We, _____, as the authorized representative(s) of the Partner Organization (identified below) do hereby acknowledge and certify under penalty of perjury that

[check one]:

_____ (a) the Confidential District Information provided Partner Organization pursuant to the District Data Protection Agreement was destroyed. Further, all Regulated Information was destroyed by: (a) shredding; (b) permanently erasing and deleting; (c) degaussing; or (d) otherwise modifying the Confidential Information in such records to make it unreadable, unreconstructable, and indecipherable through any means, in accordance with NIST 800-88 or an equivalent standard.

_____ (b) the Confidential District Information provided Partner Organization pursuant to the District Data Protection Agreement has been returned.

Print Name: _____ Date: _____

Title: _____

Partner Organization/Agency: _____

Signature: _____

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