

**AGREEMENT**  
**FOR THE PROTECTION OF STUDENT DATA PRIVACY**  
**BY AND BETWEEN**  
**THE NORWALK BOARD OF EDUCATION**  
**AND**  
**Norwalk Housing Authority**

This Agreement entered on this 22<sup>nd</sup> day of December, 2016 between the **NORWALK BOARD OF EDUCATION** ("the Board"), with an address of 125 East Avenue, Norwalk, Connecticut, 06851, acting herein by Steven Adamowski, Ph.D., Superintendent of Schools, and **Norwalk Housing Authority** ("the Contractor"), a Connecticut corporation, with an address of **24 ½ Monroe Street** acting herein by **Curtis O. Law** its **Executive Director**

WHEREAS, the Board and the Contractor have entered into a written agreement dated December 22, 2016 ("the Contract") pursuant to which the Contractor will be given access to and possession of student information, student records and/or student-generated content (collectively referred to as "Student Data"); and

WHEREAS, the parties acknowledge that Public Act No. 16-189 protects the privacy of personally identifiable information belonging to a student, materials created by a student and student records maintained by a school district (collectively, "Student Data") to ensure that Student Data is protected and remains secure, private and confidential; and

WHEREAS, the parties further acknowledge that the Family Educational rights and Privacy Act, 20 U.S.C. 1232g and its implementing regulations protects the privacy of student education records by requiring parental or eligible student consent as a prerequisite to an educational institution releasing information contained in a student's education record; and

WHEREAS, the parties hereby declare their intention to maintain and secure the privacy and confidentiality of such Student Data in compliance with applicable state and federal laws and regulations.

NOW, THEREFORE, in order to achieve this stated goal of ensuring the privacy, security and confidentiality of the Norwalk Public Schools' Student Data the parties agree as follows.

**I. DEFINITIONS:**

A. The following definitions shall apply to this Agreement and the subject matter discussed herein.

- (1) "**Contractor**" means an Operator (as defined herein) or consultant that is in possession of or has access to Student Data, as a result of a contract with the

Norwalk Public Schools and/or the Norwalk Board of Education. For purposes of this Agreement Contractor shall mean **Norwalk Housing Authority**, as identified above;

- (2) **"Operator"** means any person who (a) operates an Internet web site, online service or mobile application with actual knowledge that such Internet web site, online service or mobile application is used for school purposes and is designed and marketed for school purposes, to the extent it is engaged in the operation of such Internet web site, online service or mobile application, and (b) collects, maintains or uses student information;
- (3) **"Consultant"** means a professional who provides noninstructional services, including, but not limited to, administrative, planning, analysis, statistical or research services, to the Norwalk Public Schools and/or the Norwalk Board of Education pursuant to a contract or written agreement;
- (4) **"Student information"** means personally identifiable information or material of a student in any media or format that is not publicly available and is any of the following: (a) created or provided by a student or the parent or legal guardian of a student, to the Operator in the course of the student, parent or legal guardian using the Operator's Internet web site, online service or mobile application for school purposes, (b) created or provided by an employee or agent of the Norwalk Public Schools or the Norwalk Board of Education to an Operator for school purposes, or (c) gathered by an Operator through the operation of the Operator's Internet web site, online service or mobile application and identifies a student, including, but not limited to, information in the student's records or electronic mail account, first or last name, home address, telephone number, date of birth, electronic mail address, discipline records, test results, grades, evaluations, criminal records, medical records, health records, Social Security number, biometric information, disabilities, socioeconomic information, food purchases, political affiliations, religious affiliations, text messages, documents, student identifiers, search activity, photographs, voice recordings, survey responses or behavioral assessments;
- (5) **"Student record"** means any information directly related to a student that is maintained by the Norwalk Public Schools and/or the Norwalk Board of Education, the State Board of Education or the Connecticut Department of Education or any information acquired from a student through the use of educational software assigned to the student by a teacher or employee of a local or regional board of education, except "student record" does not include de-identified student information allowed under the contract to be used by the Contractor to (a) improve educational products for adaptive learning purposes and customize student learning, (b) demonstrate the effectiveness of the Contractor's products in the marketing of such products, and (c) develop and improve the Contractor's products and services;

- (6) **“Student-generated content”** means any student materials created by a student including, but not limited to, essays, research papers, portfolios, creative writing, music or other audio files or photographs, except “student-generated content” does not include student responses to a standardized assessment;
- (7) **“Directory information”** has the same meaning as provided in 34 CFR 99.3, as amended from time to time;
- (8) **“School purposes”** means purposes that customarily take place at the direction of a teacher or a local or regional board of education, or aid in the administration of school activities, including, but not limited to, instruction in the classroom, administrative activities and collaboration among students, school personnel or parents or legal guardians of students;
- (9) **“Student”** means a person who is a resident of the State and (a) enrolled in a preschool program participating in the state-wide public school information system, pursuant to section 10–10a of the general statutes, (b) enrolled in grades kindergarten to twelve, inclusive, in a public school, (c) receiving special education and related services under an individualized education program, or (d) otherwise the responsibility of the Board;
- (10) **“Targeted advertising”** means presenting an advertisement to a student where the selection of the advertisement is based on student information, student records or student-generated content or inferred over time from the usage of the Operator’s Internet web site, online service or mobile application by such student or the retention of such student’s online activities or requests over time for the purpose of targeting subsequent advertisements. “Targeted advertising” does not include any advertising to a student on an Internet web site that such student is accessing at the time or in response to a student’s response or request for information or feedback;
- (11) **“De-identified student information”** means any student information that has been altered to prevent the identification of an individual student; and
- (12) **“Persistent unique identifier”** means a unique piece of information that can be used to recognize a user over time and across different Internet web sites, online services or mobile applications and is acquired as a result of the use of a student’s use of an Operator’s Internet web site, online service or mobile application.

**II. AGREEMENTS AND UNDERSTANDINGS:**

A. The parties hereby agree to and acknowledge the following:

- (1) Under no circumstances shall any Student Data (which includes student information, student records and student-generated content) be considered or

become the property or under the control of the Contractor. The parties understand and acknowledge that all student-generated content and Student Data shall be the property of the student and the parent or legal guardian of the student.

- (2) The Board may at any time request the deletion of Student Data in the possession of the Contractor by written notice sent in accordance with the requirements of Paragraph IV.E., which notice shall identify the Student Data to be deleted and the method of such deletion, and may request confirmation of such deletion from the Contractor.
- (3) A student, parent or legal guardian of a student may at any time review personally identifiable information contained in Student Data and correct or request to have corrected any erroneous information.
- (4) In the event of an unauthorized release, disclosure or acquisition of Student Data, the Contractor shall notify the Board in writing, in accordance with the provisions of section 4 of Public Act No. 16-189. Such notice shall be sent immediately, in compliance with Article VI, paragraph E herein and shall contain the date and time (if known) of such unauthorized release; the content and information released and the parties who received such Student Data, if known.
- (5) Student Data shall not be retained or available to the Contractor upon completion of the contracted services. Contractor shall act to extinguish or return to the Board all such Student Data unless a student, parent or legal guardian of the student concerned chooses to establish or maintain an electronic account with the Contractor for the purpose of storing student-generated content.
- (6) The Contractor and the Board shall both be responsible for complying with the Family Educational Rights and Privacy Act of 1974, 20 USC 1232g, as the same may be amended from time to time.

### **III. RESPONSIBILITIES OF THE CONTRACTOR:**

- A. The Contractor shall be responsible for implementing and maintaining all appropriate security procedures and practices to ensure the security and confidentiality of all Student Data to which it has access, from unauthorized access, destruction, use, modification and disclosure. Further, the Contractor shall not use Student Data for any purposes not authorized by the terms of the Contract. Based on the sensitivity of the Student Data and the risk from unauthorized access, Contractor shall use technologies and methodologies that are consistent with the guidance issued pursuant to section 13402(h)(2) of Public Law 111-5, as amended from time to time, (2) maintain technical safeguards as it relates to the possession of student records in a manner consistent with the provisions of 45 CFR 164.312, as amended from time to time, and (3) otherwise meet or exceed prevailing industry standards and standards of practice.

B. The Contractor shall not use (1) Student Data for any purposes other than those authorized pursuant to the Contract, or (2) personally identifiable information contained in Student Data to engage in targeted advertising.

#### **IV. RESPONSIBILITIES OF AN OPERATOR:**

A. Any person or entity that is an Operator, as such term is defined in Paragraph I.A.(2) hereof, shall (1) implement and maintain security procedures and practices that meet or exceed industry standards and that are designed to protect Student Data from unauthorized access, destruction, use, modification or disclosure, and (2) delete any Student Data within a reasonable amount of time if a student, parent or legal guardian of a student or a member or representative of the Board or Norwalk Public Schools, who has the right to control such Student Data requests the deletion of such Student Data.

B. An Operator shall not knowingly:

- (1) Engage in (a) targeted advertising on the Operator's Internet web site, online service or mobile application, or (b) targeted advertising on any other Internet web site, online service or mobile application if such advertising is based on any Student Data or persistent unique identifiers that the Operator has acquired because of the use of the Operator's Internet web site, online service or mobile application for school purposes;
- (2) Collect, store and use Student Data or persistent unique identifiers for purposes other than the furtherance of school purposes;
- (3) Sell, rent or trade Student Data unless the sale is part of the purchase, merger or acquisition of an Operator by a successor Operator and the Operator and successor Operator shall continue to be subject to the provisions of this section regarding Student Data; or
- (4) Disclose Student Data unless the disclosure is made:
  - (a) in furtherance of school purposes of the Internet web site, online service or mobile application, provided the recipient of the Student Data uses such Student Data to improve the operability and functionality of the Internet web site, online service or mobile application and complies with subsection (1) of this Section IV;
  - (b) to ensure compliance with federal or state law or regulations or pursuant to a court order;
  - (c) in response to a judicial order;

(d) to protect the safety or integrity of users or others, or the security of the Internet web site, online service or mobile application;

(e) to an entity hired by the Operator to provide services for the Operator's Internet web site, online service or mobile application, provided the Operator contractually (i) prohibits the entity from using Student Data for any purpose other than providing the contracted service to, or on behalf of, the Operator, (ii) prohibits the entity from disclosing Student Data provided by the Operator to subsequent third parties, and (iii) requires the entity to comply with the requirements of this Section IV; or (f) for a school purpose or other educational or employment purpose requested by a student or the parent or legal guardian of a student, provided such Student Data is not used or disclosed for any other purpose.

C. An Operator may use Student Data:

(a) to maintain, support, improve, evaluate or diagnose the Operator's Internet web site, online service or mobile application;

(b) for adaptive learning purposes or customized student learning;

(c) to provide recommendation engines to recommend content or services relating to school purposes or other educational or employment purposes, provided such recommendation is not determined in whole or in part by payment or other consideration from a third party; or

(d) to respond to a request for information or feedback from a student, provided such response is not determined in whole or in part by payment or other consideration from a third party.

D. An Operator may use de-identified Student Data or aggregated Student Data (a) to develop or improve the Operator's Internet web site, online service or mobile application, or other Internet web sites, online services or mobile applications owned by the Operator, or (b) to demonstrate or market the effectiveness of the Operator's Internet web site, online service or mobile application.

E. An Operator may share aggregated Student Data or de-identified Student Data for the improvement and development of Internet web sites, online services or mobile applications designed for school purposes.

F. Nothing in this section shall be construed to:

(1) limit the ability of a law enforcement agency to obtain Student Data from an Operator as authorized by law or pursuant to a court order;

- (2) limit the ability of a student or the parent or legal guardian of a student to download, export, transfer or otherwise save or maintain Student Data;
- (3) impose a duty upon a provider of an interactive computer service, as defined in 47 USC 230, as amended from time to time, to ensure compliance with this section by third-party information content providers, as defined in 47 USC 230, as amended from time to time;
- (4) impose a duty upon a seller or provider of an electronic store, gateway, marketplace or other means of purchasing or downloading software applications to review or enforce compliance with this section on such software applications;
- (5) limit an Internet service provider from providing a student, parent or legal guardian of a student or local or regional board of education with the ability to connect to the Internet;
- (6) prohibit an Operator from advertising other Internet web sites, online services or mobile applications that are used for school purposes to parents or legal guardians of students, provided such advertising does not result from the Operator's use of Student Data; or
- (7) apply to Internet web sites, online services or mobile applications that are designed and marketed for use by individuals generally, even if the account credentials created for an Operator's Internet web site, online service or mobile application may be used to access Internet web sites, online services or mobile applications that are designed and marketed for school purposes.

**V. BREACH OF SECURITY:**

**A. As to a Contractor**

- (1) Upon the discovery of a breach of security that results in the unauthorized release, disclosure or acquisition of Student Data, excluding any directory information contained in such Student Data, a Contractor shall promptly, and no later than thirty (30) days after such discovery, notify the designated representative of the Board of such breach of security. During such thirty-day period, the Contractor shall either (a) conduct an investigation to determine the nature and scope of such unauthorized release, disclosure or acquisition, and the identity of the student(s) whose Student Data is involved in such unauthorized release, disclosure or acquisition, or (b) restore the reasonable integrity of the Contractor's data system.
- (2) Upon the discovery of a breach of security that results in the unauthorized release, disclosure or acquisition of directory information or Student Data, a Contractor shall notify, without unreasonable delay, but not more than sixty (60) days after such discovery, the Board of such breach of security. During such

sixty-day period, the Contractor shall either (a) conduct an investigation to determine the nature and scope of such unauthorized release, disclosure or acquisition, and the identity of the students whose directory information or Student Data is involved in such unauthorized release, disclosure or acquisition, or (b) restore the reasonable integrity of the Contractor's data system.

- (3) Upon receipt of notice of a breach of security under subdivisions (1) or (2) of this subsection, the Board shall electronically notify, not later than forty-eight (48) hours after receipt of such notice, the student and the parents or guardians of the student whose Student Data is involved in such breach of security. The Board shall also post notice of such breach on its Internet web site.

**B. As to an Operator**

- (1) Upon the discovery of a breach of security that results in the unauthorized release, disclosure or acquisition of Student Data, an Operator in possession of or maintaining Student Data as a result of a student's use of such Operator's Internet web site, online service or mobile application, shall (a) promptly, but no later than thirty (30) days after such discovery, notify the student or the parents or guardians of such student of any breach of security that results in the unauthorized release, disclosure or acquisition of Student Data, excluding any directory information contained in such Student Data, of such student, and (b) promptly, but no later than sixty (60) days after such discovery, notify the student or the parents or guardians of such student of any breach of security that results in the unauthorized release, disclosure or acquisition of directory information, student records or student-generated content of such student. During such thirty-day or sixty-day period, the Operator shall either (a) conduct an investigation to determine the nature and scope of such unauthorized release, disclosure or acquisition, and the identity of the students whose Student Data are involved in such unauthorized release, disclosure or acquisition, or (b) restore the reasonable integrity of the Operator's data system.

**VI. GENERAL TERMS**

A. The laws of the State of Connecticut shall govern the rights and duties of the Contractor and the Board.

B. If any provision of this Agreement or the application of this Agreement is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions or applications of the Agreement which can be given effect without the invalid provision or application.

C. Mutual Indemnification. The parties agree to indemnify, defend and hold each other harmless from and against any and all claims, demands, losses, fines and petitions of any nature that arise out of a breach of this Agreement by the indemnifying