



Confidentiality Agreement

This Confidentiality Agreement (“Agreement”) is entered into by and between the West Contra Costa Unified School District (“District”) and _____ (“Vendor”), whose address is _____, for the purpose of permitting Vendor to perform services for the District for period covering _____ through _____. The District and Vendor may be referred to herein individually as “Party” and collectively as “Parties.”

RECITALS

WHEREAS, the District, a California public school district and recipient of public funds, maintains records protected from disclosure by various laws, including without limitation the Family Educational Rights and Privacy Act (20 U.S.C. § 1232g) (“FERPA”), FERPA’s implementing regulations (34 C.F.R. §§ 99.1-99.67) (“FERPA Regulations”), Education Code § 49073 et seq., and Article I § 1 of the California Constitution (collectively the “Confidentiality Laws”); and

WHEREAS, Vendor, in the course of providing services to the District as contractor and as authorized by law, may be provided access to records protected from disclosure by the Confidentiality Laws; and

WHEREAS, § 99.31 of the FERPA Regulations permits the District to disclose protected records to a contractor with a legitimate educational interest in the record, provided that the contractor (1) performs an institutional service or function for which the District would otherwise use employees, (2) is under the direct control of the District with respect to the use and maintenance of education records, and (3) is subject to the requirements of § 99.33(a) of the FERPA Regulations governing the use and redisclosure of personally identifiable information from education records; and

WHEREAS, the Parties desire for Vendor to comply with all Confidentiality Laws to ensure the prevention of any unauthorized disclosure of all confidential records and information of the District.

NOW, THEREFORE, the Parties agree as follows:

AGREEMENT

1. **Intent.** This Agreement is entered into for the purpose of complying with applicable law, and shall be so construed. Accordingly, Vendor hereby acknowledges and affirms its compliance with the Confidentiality Laws, and any other law relating to the confidentiality and privacy of records. Moreover, Vendor hereby agrees that Vendor and Vendor’s officers, employees, and agents (collectively referred to herein as “Vendor’s Personnel”) shall comply

with all applicable law relating to the subject matter of this Agreement, including without limitation the Confidentiality Laws.

2. Confidential Information. The District, in its sole and absolute discretion, may choose to provide Vendor and Vendor's Personnel with access to records that are protected from disclosure by various laws ("Confidential Information"), provided that the access may lawfully be given under the applicable Confidentiality Laws. The District, in its sole and absolute discretion, may provide Vendor with access to Confidential Information that is protected from disclosure by FERPA if Vendor has a legitimate educational interest pursuant to § 99.31 of the FERPA Regulations. In the event that the District, in its sole and absolute discretion, permits Vendor access to Confidential Information, Vendor and Vendor's Personnel shall hold the Confidential Information in trust for the District's benefit, and shall, in addition to any other obligation imposed by this Agreement or law, utilize the utmost care at all times to adopt and follow practices and procedures to prevent the unauthorized disclosure of any Confidential Information.

3. Nondisclosure. Should District, in its sole and absolute discretion, choose to permit Vendor and Vendor's Personnel access to Confidential Information, Vendor acknowledges and agrees that Vendor and Vendor's Personnel shall use the Confidential Information solely in connection with performance by Vendor of the services provided to the District, and shall not use the Confidential Information for any other purpose without the prior written consent of the District. Vendor acknowledges and agrees that Vendor will not disclose Confidential Information to any other person or entity without the prior consent of the parent or eligible student, except that Vendor's Personnel may use the Confidential Information, but only for the purposes for which the disclosure was made. In no event shall Vendor or its Personnel disclose or permit the disclosure of Confidential Information, or any files, compilations, studies, reports, or analyses that contain personally identifiable information ("Derivative Product"), to any person that is not a Party to this Agreement without the prior written consent of District. Vendor shall not distribute, disclose, or disseminate any Confidential Information to any person, except that Vendor may disclose Confidential Information to Vendor's Personnel if necessary to perform Vendor's Personnel's function. Disclosure to Vendor's Personnel shall be limited to Confidential Information that is necessary to perform Vendor's Personnel's services and that is related to the legitimate educational interest for which the Confidential Information was disclosed.

4. Subpoenas and Judicial Orders. Notwithstanding any other term of this Agreement, Vendor may disclose Confidential Information received from District when required to do so by law, judicial body or government agency, provided that Vendor complies with applicable law in doing so. If Vendor or Vendor's Personnel are served with any subpoena, court order, or other legal process seeking disclosure of Confidential Information, Vendor shall provide

District notice of the subpoena, court order, or other legal process within forty-eight (48) hours of receipt or upon a shorter time frame as necessary so that District may exercise any applicable legal rights and remedies. In no event shall Vendor or Vendor's Personnel voluntarily disclose Confidential Information without a subpoena, court order, or other legal process unless and until Vendor has given all required notices to and received any consent required from the District, parent and/or eligible student. Vendor agrees and acknowledges that a violation of this paragraph shall be a material breach of this Agreement.

5. Breach. If Confidential Information in the possession of Vendor is accessed without authorization, or if a system maintained by Vendor containing Confidential Information is breached, Vendor shall notify the District in writing without delay. Vendor shall be solely responsible for compliance with any legally required notifications resulting from the breach, including without limitation notifications to affected persons, and Vendor shall reimburse the District for all reasonable costs of any notification the District, in its sole discretion, deems appropriate, regardless of whether the notification is mandated by law.
6. Indemnity. To the furthest extent permitted by California law, Vendor shall, at its sole expense, defend, indemnify, and hold harmless the District, the State of California, and their agents, representatives, officers, consultants, employees, volunteers, and trustees (the "indemnified parties") from any and all demands, losses, liabilities, claims, suits, and actions (the "claims") of any kind, nature, and description, including, but not limited to, personal injury, death, property damage, and consultants and/or attorneys' fees and costs, directly or indirectly arising out of, connected with, or resulting from the performance of this Agreement, unless the claims are caused wholly by the sole negligence or willful misconduct of the indemnified parties.
7. Return and Destruction of Materials. Vendor shall immediately return any and all Confidential Information and Derivative Product upon District's request. In addition, Vendor shall immediately return or destroy, as instructed by the District, all Confidential Information and Derivative Product upon the termination of this Agreement, the termination of all agreements for which the disclosure of any Confidential Information to Vendor is authorized, or when any Confidential Information is no longer needed for the purpose for which it was obtained, whichever is earlier. Nothing in this Agreement authorizes Vendor to maintain Confidential Information or Derivative Product beyond the time period reasonably needed to complete performance of the services provided to the District.
8. Disclosure to Third Parties. Pursuant to § 99.67 of the FERPA Regulations, if the Department of Education finds that Vendor improperly discloses personally identifiable information from education records in violation of § 99.33 of the FERPA Regulations or fails to provide the notification required under § 99.33 of the FERPA Regulations, then

Vendor shall be prohibited from accessing any personally identifiable information from education records for at least five (5) years.

9. Vendor Employees. Vendor shall require all of Vendor's Personnel to comply with the terms of this Agreement, all applicable laws relating to the subject matter of this Agreement, and all lawful instructions given to Vendor by the District relating to the subject matter of this Agreement.
10. Further Assurances and Instructions. The Parties shall execute all documents and do any and all further acts as may be necessary to implement and carry out the intent of this Agreement, and to comply with applicable law. Vendor acknowledges that, to the extent it receives education records, it must be under the direct control of the District with respect to the use and maintenance of the education records. Accordingly, Vendor shall comply with all lawful instructions from the District relating to the use and maintenance of all education records.
11. Digital Services and Software. To the extent that this Agreement qualifies as a contract (1) to provide services, including cloud-based services, for the digital storage, management, and retrieval of pupil records, or (2) to provide digital educational software that authorizes a third-party provider of digital educational software to access, store, and use pupil records for the purposes of Education Code § 49073.1, the Parties agree as follows:
 - 11.1. *Ownership.* All pupil records/education records are Confidential Records, and to the extent that Confidential Records are disclosed by the District to Vendor, those Confidential Records shall remain the property of and subject to the control of the District. To the extent that Vendor possesses Confidential Information, it shall hold the Confidential Information in trust for the benefit of the District and shall comply with all lawful instructions from the District regarding the Confidential Information.
 - 11.2. *Pupil Access.* Notwithstanding the foregoing, pupils may retain possession and control of their own pupil-generated content, if applicable, by submitting a request to Vendor or the District. Upon receipt of pupil's request, the recipient Party shall promptly notify the other Party of the request, and the Parties shall work cooperatively to effectuate the pupil's request. Vendor shall comply with all lawful instructions from the District relating to the request, including without limitation the effectuation of the request.
 - 11.3. *Vendor Personal Use Prohibited.* Vendor and Vendor's Personnel shall not use any Confidential Information for any purpose other than those required or specifically permitted by this Agreement.

- 11.4 *Correction of Information.* A parent, legal guardian, or eligible pupil may review personally identifiable information in the pupil's records and correct erroneous information by submitting a request to Vendor or the District. Upon receipt of the request, the recipient Party shall promptly notify the other Party of the request, and the Parties shall work cooperatively to effectuate the pupil's request. Vendor shall comply with all lawful instructions from the District relating to the request, including without limitation the effectuation of the request.
- 11.5 *Ensuring Confidentiality.* Without limiting or narrowing any obligation to preserve confidentiality found elsewhere in this Agreement or applicable law, Vendor shall, at a minimum, take the following actions to ensure the security and confidentiality of Confidential Information: (1) Vendor shall regularly train Vendor's Personnel regarding their security and confidentiality obligations; (2) Vendor shall obligate Vendor's Personnel to effectuate and abide by the terms of this Agreement; (3) Vendor shall comply with industry standards regarding information security; and (4) Vendor shall only permit trained and qualified personnel access to Confidential Information.
- 11.6 *Unauthorized Disclosure Notification.* In the event of an unauthorized disclosure of Confidential Information, the Vendor shall notify the District of the breach. Thereafter, District shall notify the affected parent, legal guardian, or eligible pupil in conformance with applicable law and this Agreement.
- 11.7 *Non-Retention Certification.* Vendor certifies that, in accordance with this Agreement, Confidential Information shall not be retained or available to Vendor or Vendor's Personnel upon the completion of Vendor's services for which the disclosure was authorized. This certification may be enforced by any lawful means, including, without limitation, through civil or administrative action. This paragraph shall not apply to pupil-generated content if the pupil chooses to establish or maintain an account with Vendor for the purpose of storing that content.
- 11.8 *Joint-Compliance.* The Parties shall work cooperative to jointly ensure compliance with FERPA. Vendor shall comply with all lawful instructions from the District relating to compliance with FERPA and the FERPA Regulations. Compliance includes without limitation permitting District, upon District's request, to inspect the Confidential Information and Derivative Product.
- 11.9 *Targeted Advertising.* Vendor shall not use personally identifiable information in Confidential Information and Derivative Product to engage in targeted advertising.

12. Injunctive Relief. Vendor acknowledges and agrees that any breach or threatened breach by Vendor or Vendor's Personnel of this Agreement will cause serious and irreparable harm to the District that cannot be adequately compensated by monetary damages and that the District may seek injunctive relief from an appropriate court to protect the District from harm without necessity of bond or other security.
13. Law & Forum. This Agreement shall be governed by and the rights, duties, and obligations of the Parties shall be determined and enforced in accordance with the laws of the State of California. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in the California county in which the District's administrative offices are located.
14. Term & Termination. This Agreement shall take effect upon its execution by both Parties and shall remain in effect until terminated by either Party upon written notice or as otherwise described herein ("Term"). In the event that either Party elects to terminate this Agreement, Vendor must return or destroy the Confidential Information in the manner described in the paragraph entitled "Return and Destruction of Materials" of this Agreement. Notwithstanding the forgoing, Vendor's obligation to maintain the confidentiality of the Confidential Information shall survive the Term of this Agreement.
15. Severability. If any term, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force and effect and shall not be affected, impaired, or invalidated in any way.
16. No Third Parties Benefited. Nothing in this Agreement, express or implied, is intended to confer upon any person or entity, other than the Parties and their respective successors and assigns, any rights or benefits under or by reason of this Agreement. This Agreement is for the sole benefit of the Parties.
17. Integration. It is expressly understood and agreed that this Agreement contains the entire agreement and understanding of the Parties concerning the specific subject matter of this Agreement, and merges, supersedes and replaces all prior discussions, understandings, negotiations, agreements, representations, conditions, warranties, covenants, and all other communications between the Parties, whether written or oral, relating to the matters covered by this Agreement.
18. Waiver. No provision herein may be waived unless in writing and signed by the Party or Parties whose rights are thereby waived. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein. This Agreement may be modified or amended only by written agreement executed by the Parties.

- 19. Assignment. The obligations of the Vendor pursuant to this Agreement shall not be assigned by the Vendor without the express written permission of the District.
- 20. Notices. Any notice to a Party required or permitted to be given under this Agreement shall be deemed to have been given, served, and received if given in writing and either personally delivered or deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by overnight delivery service, or facsimile transmission, addressed as follows:

To District
West Contra Costa Unified School
District
Information Technology Services
1300 Potrero Avenue
Richmond, CA 94804
ATTN: Chief Technology Officer

To Vendor
Vendor Name _____
Vendor Dept. if Applicable _____
Address _____
City _____ State ____ Zip _____
Attn: _____

- 21. Headings. The section headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

**WEST CONTRA COSTA UNIFIED
SCHOOL DISTRICT**

Vendor Name

Signature

Signature

Print Name/Title

Print Name/Title

Date

Date