

WOODBRIIDGE SCHOOL DISTRICT

STUDENT DATA PRIVACY AGREEMENT

SPECIAL TERMS AND CONDITIONS

THIS AGREEMENT (the "Agreement") is made effective as of this 22 day of FEBRUARY, 2019 (the "Effective Date") by and between the Woodbridge Board of Education (the "Board") and ACES - Educational Technology and Technology Services (the "Contractor") (collectively, referred to as the "Parties"). The Contractor is a contractor performing institutional services and functions that will require student information, student records and student-generated content ("student data"), to perform those services.

The Board and the Contractor have contracted for the Contractor to provide for school purposes include but are not limited to (the "Services");

- Medical consultation,
- Special education consultation or audit,
- Student data storage, maintenance, collection,
- Information technology consultation or audit,
- Behavior intervention/positive behavior intervention supports consultation or audit,
- Academic program consultation or audit (non-special education)
- Student data storage, maintenance, collection, analysis, or other services
- Other (explain) _____

The parties enter into this agreement for the above stated purpose and agree to abide by all the terms and conditions herein.

NOW THEREFORE, in consideration of the promises, conditions, representations, and mutual covenants contained herein, the receipt and sufficiency of which is acknowledged as evidenced below by the signatures of each of the parties hereto, the Board and the Contractor agree as follows:

SECTION I. DEFINITIONS

Terms and Interpretation: Certain terms used in this Agreement are defined in the Appendix attached hereto and made apart thereof. Terms other than those defined within this Agreement shall be given their plain English meaning, and those terms, acronyms, and phrases known in the information technology industry shall be interpreted in accordance with their generally known meanings. Unless the context otherwise requires, words importing the singular include the plural and vice-versa.

SECTION II. GENERAL PROVISIONS

- A. The Parties agree that both the Board and the Contractor shall comply with The Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 USC 1232g) (as amended) and its implementing regulations (34 CFR 99.1 - 99.67) (as amended) and as shall be amended from time to time. All student data created by students, teachers, and staff or student data, which is accessed or possessed by the Contractor by virtue of this contract, shall be classified as student data and is hereby afforded protection

under FERPA and its implementing regulations. The Board and Contractor also agree that student data is afforded certain protections under Connecticut state student privacy law as set forth in PA 16-189. Nothing in this Agreement shall be construed to allow either party to maintain, use, disclose or share student information as defined by FERPA in a manner prohibited by federal law or regulation or this agreement. For the purposes of this contract, the Contractor shall be considered as a "school official" under FERPA and is deemed to have a legitimate educational interest in the student data disclosed to the Contractor for the sole purpose of performing its obligations under this contract. The Board shall disclose information only to the extent disclosure is necessary for the Contractor to fulfill its contractual obligation herein and the Contractor shall only use or collect student data for the purposes set forth in this agreement.

- B. All student data provided or accessed pursuant to this Agreement is and remains under the control of the Board. All student data are not the property of, or under the control of, the Contractor. The Contractor acknowledges and agrees that at no time is the Contractor the owner of the student data. All student-generated content shall be the property of the student or the parent or legal guardian of the student. Nothing in this Agreement shall be construed to confer upon the Contractor any property right over student information, student records or student-generated content.
- C. The Board has the right to request a copy of the information maintained by the Contractor at any time and reserves the right to request the prompt return of any portion of the data files at any time and for any reason whatsoever.
- D. The Contractor shall not use student data for any purposes other than those authorized in this Agreement. The Contractor is specifically prohibited from using student data or unique identifiers contained therein for targeted advertising. The contractor is further prohibited from selling, renting, or trading student data unless part of a merger or acquisition of a successor operator.
- E. The Board may request that the Contractor delete student data in the Contractor's possession by sending a written request to the Contractor by either regular or electronic mail. The Contractor shall delete the requested student data within two (2) business days of receiving such a request and provide to the Board confirmation via electronic mail that the student data has been deleted in accordance with the request, the date of its deletion, and the manner in which it has been deleted. The confirmation shall contain a written assurance from the Contractor that proper disposal of the data has occurred in order to prevent the unauthorized access or use of student data and that deletion has occurred in accordance with industry standards/practices/protocols. The two (2) business days in which to delete the data may be modified by agreement of the parties if so warranted under attending circumstances.
- F. The Contractor shall have the right to use de-identified student data for these purposes only: (1) to maintain, support, improve, evaluate, develop, or diagnose the Company's website, online service, or mobile applications, or other websites, online services, or mobile applications owned by the Company; (2) to demonstrate or market the effectiveness of the Company's website, online service, or mobile application; (3) share student information for the improvement and development of websites, online services, or mobile applications designed for school purposes; (4) for adaptive learning purposes or customized student learning; (5) 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 (6) 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. The Contractor agrees not to attempt to re-identify de-identified data.

- G. A student, parent, or legal guardian of a student may review Personally Identifiable Information (PII) contained in student information, student records, or student-generated Content and correct erroneous information by contacting the Contractor in writing (insert the Contractor's email address here) to discuss the correction of any such erroneous information. If the Contractor receives a request to review student data in the Contractor's possession directly from a student, parent, or guardian, the Contractor agrees to refer that individual to the Board and to notify the Board within two (2) business days of receiving such a request. The Contractor agrees to work cooperatively with the Board to permit a student, parent, or guardian to review personally identifiable information in student data that has been shared with the Contractor, and correct any erroneous information therein, by following the amendment procedures outlined in the Board's Confidentiality and Access to Education Records Policy 5125.
- H. Each Party shall use its best efforts to identify and prevent any unauthorized use or disclosure of any student data. Without limitation of the foregoing, each Party shall advise the other Party immediately in the event either Party learns, or has reason to believe, that any person who has had access to student data has violated the terms of this Agreement. Each Party also agrees that it will cooperate with the other Party in seeking injunctive or other equitable relief against any such identified person.

SECTION III. SECURING AND SAFEGUARDING CONFIDENTIALITY OF STUDENT DATA; PROTOCOLS FOR DISCOVERY OF DATA BREACHES

- A. Security and Safeguarding Information. The Company shall use security tools and technologies that meet or exceed industry standards in providing services under this Agreement. In the event that student data is no longer needed for the specific purpose for which it was provided, including any copies of the student data that may reside in system backups, temporary files, or other storage media, it shall be destroyed as per best practices for data destruction or returned to the Board using commercially reasonable care, security procedures and practices.

The Company shall implement current commercially reasonable and acceptable security measures and technologies to prevent unauthorized access to, or use, disclosure, or loss of student data. Such measures shall in no event be less stringent than those used by other companies providing services similar to the services or possessing similar type information. Such measures shall include, where appropriate, use of updated firewalls, virus screening software, logon identification and passwords, encryption, intrusion detection systems, logging of incidents, periodic reporting, and prompt application of current security patches, virus definitions, and other updates.

The Company shall implement and maintain security procedures and practices designed to protect student data from unauthorized access, destruction, use, modification or disclosure that, based on the sensitivity of the data and the risk from unauthorized access, and: (1) use technologies and methodologies that are consistent with the guidance issued pursuant to section 13402(h)(2) of Public Law 111-5 (the American Recovery and Reinvestment Act of 2009, which includes the HITECH Act), (2) maintain technical safeguards as it relates to the possession of student data in a manner consistent with the provisions of 45 CFR 164. 312 (the Health Insurance Portability and Accountability Act (HIPPA) "Technical Safeguards" section), and (3) otherwise meet or exceed industry standards. The security procedures and practices are detailed below and further detailed in The Company's Statement of Security.

The Contract shall restrict access to student data to only those employees that need to access the data in order for the Contractor to perform the agreed upon services. Information or student data collected and stored from and on behalf of the Board and its students shall be stored and maintained separately from the information of any other customers, school or user.

The Board retains the right to audit the security and privacy of student data. The Contractor shall notify the Board in writing about any changes that will affect the availability, security, storage, usage or disposal of student data.

- B. Response to Data Breaches.** Upon the discovery of any breach of security that results in the unauthorized release, disclosure, or acquisition of student information, student records, or student-generated content, or suspicion that such a breach may have occurred, the Contractor must:
- (1) Provide initial notice to the Board as soon as possible but not later than forty-eight (48) hours after such discovery (“Initial Notice”). The Initial Notice shall be delivered to the Board by electronic mail and shall include the following information: Date and time of the breach; names of the student(s) whose student data was released, disclosed or acquired; the nature and extent of the breach; and the Contractor’s proposed plan to investigate and remediate the breach.
 - (2) Upon discovery by the Contractor of a breach of student data, exclusive of directory information, the Contractor shall conduct an investigation and restore the integrity of its data systems and, without unreasonable delay, but not more than thirty (30) days after such discovery, shall provide the Board with a more detailed notice of the breach, including but not limited to the date and time of the breach; name(s) of the student(s) whose student data was released, disclosed or acquired; nature of and extent of the breach; and measures taken to ensure that such a breach does not occur in the future.
 - (3) Upon discovery by the Contractor of a breach which results in the release, disclose, or acquisition “directory information”, the Contractor shall conduct an investigation and restore the integrity of its data systems and, without unreasonable delay, but not more than sixty (60) days after such discovery, shall provide the Board with a more detailed notice of the breach, including but not limited to the date and time of the breach; name(s) of the student(s) whose student data was released, disclosed or acquired; nature of and extent of the breach; and measures taken to ensure that such a breach does not occur in the future.
 - (4) The Contractor agrees to cooperate with the Board with respect to investigation of the breach and to reimburse the Board for costs associated with responding to the breach, including but not limited to the costs relating to notifications as required by Public Act 16-189.
- C. Response to Legal Orders, Demands, or Requests for Data.** If the Contractor receives a subpoena, warrant, or other legal order, demand, or request seeking student data maintained by the Contractor, the Contractor will promptly provide a copy of the request to the Board. The Contractor shall promptly supply the Board with copies of records or information response to the subpoena, warrant, other legal order, demand or request, and will cooperate with the Board’s reasonable requests in connection with its response. A failure to supply the Board with any student data within a reasonable time that has been requested by the Board constitutes a material breach of this Agreement. No student data may be disclosed by the Contractor in response to any subpoena, warrant, or other legal order or demand in the absence of written notice to the Board and a reasonable opportunity to allow the Board or student or parent to seek protective orders to protect the student data from disclosure.
- D. Audits.** The Board reserves the right in its sole discretion to perform audits of the Contractor’s data protection practices at its expense to ensure compliance with the terms of this Agreement. The Contractor shall cooperate with all reasonable requests in the performance of any such audits.

E. **Cessation of Contractor's Business.** In the event of the Contractor's cessation of operations, Contractor shall promptly return all student data to the Board in an organized, manageable manner and subsequently erasing and/or otherwise destroying any student data, be it digital, archival or physical form, including without limitation any copies of the data or any portions thereof that may reside in system backups, temporary file or other storage media and/or are otherwise still in Contractor's possession and/or in the possession of any subcontractors, or agents to which the Contractor may have transferred student data or any portion thereof, in a manner consistent with technology best practice and industry standards for secure data disposal methods such that Contractor and/or any of its subcontractors or agents are no longer in possession of any student work belonging to the Board or and to ensure that the student data cannot be recovered and are securely destroyed. Contractor also will provide inventory of its student data destruction, and with written certification, including an inventory of all student data returned to the Board, within fifteen (15) days of Contractor's cessation of operations.

SECTION VI. GENERAL

1. **Modification or Amendment.** No modification or amendment of this Agreement shall be valid unless in writing signed by the parties hereto. No modification or amendment of any terms of this Agreement shall be binding unless the same is in writing and signed by both parties and all necessary approvals have been obtained. Such express modification or amendment, if made, shall be effective only in the specific instance and for the specific purpose set forth in such signed writing.
2. **Choice of Law.** This Agreement shall be governed by the laws of the State of Connecticut without regard to its principles of conflicts of laws. The laws of the State of Connecticut shall govern the validity of this Agreement, the construction of its terms, and the interpretation of the rights and duties of the parties hereto.
3. **Choice of Forum.** The parties agree that any and all disputes arising from or relating to the Agreement, including its formation and validity, shall be settled in the State of Connecticut. Each of the parties irrevocably consents to the exclusive personal jurisdiction of the state courts located in Connecticut, as applicable, for any matter arising out of or relating to this Agreement.
4. **Waiver.** The failure of either party to require performance by the other party of any provision of this Agreement shall neither affect the full right to require such performance at any subsequent time, nor shall the waiver by either party of a breach of any provision of this Agreement be taken or held to be a waiver of the provision itself.
5. **Attorneys' Fees.** The prevailing party shall have the right to collect from the other party its reasonable costs and necessary disbursements and attorneys' fees incurred in enforcing this Agreement, in addition to any other relief to which such party may be entitled, in any action at law or in equity (including arbitration).
6. **Notice.** Any notice permitted or required under this Agreement shall be made in writing and shall be served by personal service, by confirmed electronic delivery, or by certified, or registered or express U.S. mail, postage and charges prepaid, to the parties at the addresses below:

If to the Board: Superintendent of the Woodbridge School District, 40 Beecher Road South, Woodbridge, CT 06525.

If to the Contractor (name, address and electronic address).

Any Party hereto may change its address for purposes of this paragraph by written notice given in the manner provided herein and shall be deemed changed when so delivered personally, confirmed by electronic delivery, or if mailed via U.S. Mail two (2) days after the date of any such delivery.

7. **Entire Understanding.** This Agreement, and any schedules or documents attached and incorporated by reference, constitute the entire understanding and agreement of the parties, and any and all prior agreements, understandings, and representations are hereby terminated and canceled in their entirety and are of no further force and effect.
8. **Relationship of Parties.** Both Parties agree that they are independent entities. Nothing in this Agreement shall be construed to create a partnership, joint venture, or agency relationship between the Parties. Each Party is responsible for the supervision, management, and direction of its own employees. Each Party is responsible for the payment of compensation to its employees and for any injury to them occurring in the course of their employment for which their employer is responsible and neither Party shall be responsible for the supervision, management, and direction of the employees of the other Party.
9. **Headings.** Section headings and captions are not intended to be a full and accurate description of the contents hereof. Headings are: (a) inserted for purposes of convenience; (b) not part of the Agreement; and (c) will be given no force or effect in construing or interpreting this Agreement of any of its provisions.
10. **Liability.** The Contractor shall be liable for any and all damages, costs and attorney's fees which the Town of Woodbridge and/or the Board may incur as a result of any claims, suits and judgments against the Town of Woodbridge and the Board which arise out of the acts or omissions of the Contractor, its employees, servants, representative or agents during the terms of this Agreement. Any provisions in the Contractor's terms of service, terms and conditions of use, license agreement and/or privacy policies by which the Town of Woodbridge and/or the Board is specifically releasing the Contractor from liability are hereby deleted in their entirety.
11. **All Rights/intellectual Property Rights.** All rights, including intellectual property rights, shall remain the exclusive property of the Board and/or the student, as applicable, and Contractor is a limited, nonexclusive license solely for the purpose of performing its obligations as outlined in this Agreement. This Agreement does not give the Contractor any rights, implied or otherwise, to Data Files or any portion thereof, content or intellectual property, except as expressed in this Agreement. This includes, without limitation, the right to sell or trade the Data Files or any portion thereof. Any provisions to the contrary in the Contractor's privacy policy, terms of service, terms and conditions or use and/or license agreement are hereby deleted in their entirety.
12. **Assignment.** Contractor shall not assign any of its rights under this Agreement, or delegate the performance of any of its duties hereunder, without the prior written consent of the Board, which approval may be withheld at the Board's sole discretion.
13. **Severability.** The provisions of this Agreement are independent of one another, and the invalidity of any provision or portion thereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision hereof. If any unlawful and/or unenforceable provision would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect.
14. **Electronic Notice and Posting of Contract Execution.** The Board must provide electronic notice to the parent or legal guardian of an affected student within five (5) business days of executing this Agreement with Contractor. The notice shall: (1) state that the Agreement has been executed and the date of execution;

(2) provide a brief description of the Agreement and its purpose; and (3) state what student information, student records, or student-generated content may be collected as a result of the Agreement. The Board shall post such notice and the Agreement on its website.


15. Termination/Student Data. The student data provided to the Contractor shall not be retained or available to the Contractor upon completion of the services contracted for herein unless a student, parent or legal guardian of a student chooses to establish or maintain an electronic account with the Contract for the purpose of storing student-generated content.

IN WITNESS WHEREOF the Parties have executed this Agreement effective as of the date first written above and each Party warrants that its respective signatory whose signature appears below is duly authorized by all necessary and appropriate corporate action to execute this Agreement on behalf of such Party. The parties hereto agree that facsimile signatures shall be as effective as if originals, however original signatures are preferred.

Both parties have read, understand, and fully agree with all terms and execute this Agreement as set forth below:

WOODBRIIDGE BOARD OF EDUCATION

By: Robert F. Gilbert
Superintendent

Signature: 

[Contractor]

By: [Insert Name of signatory on behalf of Contractor if Contractor is not an individual and is a company or entity]

Title of Signatory DIRECTOR, EDUCATIONAL TECHNOLOGY & TECHNOLOGY SERVICES

Signature: Wanda Scanlon Wagner
WANDA SCANLON WAGNER

APPENDIX – CERTAIN DEFINITIONS

1. Personally Identifiable Information (“PII”). The Family Educational Rights and Privacy Act (“FERPA”) defines PII to include direct identifiers (such as a student’s or other family member’s name) and indirect identifiers (such as a student’s date of birth, place of birth, or mother’s maiden name). Indirect identifiers, metadata about students’ interaction with an app or service, and even aggregate information can be considered PII under FERPA if a reasonable person in the school community could identify individual students based on the indirect identifiers together with other reasonably available information, including other public information. 20 U.S.C. 1232g; 34 CFR 99. Under FERPA, education records include records, files documents, and other materials that (A) contain information directly related to a student; and (B) are maintained by an educational agency or institution or by a person acting for such agency or institution.
2. Student Information. 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 website, online service or mobile application for school purposes; (B) created or provided by an employee or agent of a local or regional board of education to an operator for school purposes; or (C) gathered by an operator through the operation of the operator’s website, 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.
3. Student Record. Student record means any information directly related to a student that is maintained by a local or regional board of education, the Connecticut 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.
4. Student-Generated Content. 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. All student-generated content shall be the property of the student or parent or legal guardian.
5. Consultant. A consultant means a professional who provides non-instructional services, including, but not limited to, administrative, planning, analysis, statistical, or research services to a local or regional board of education pursuant to a contract with such local or regional board of education.
6. Targeted Advertising. 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 website, 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 a website that such student is accessing at the time or in response to a student's response or request for information or feedback.

7. **De-identified Student Information.** De-identified student information means any student information or Customer Data that has been altered to prevent the identification of an individual student. De-identified data will have all direct and indirect personal identifiers removed. This includes, but is not limited to, name, ID numbers, date of birth, demographic information, location information, and school ID. Company agrees not to attempt to re-identify de-identified data.
8. **School Purposes.** 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. **Directory Information.** Information contained in the education records of a student that would not generally be considered harmful or an invasion of privacy if disclosed. Typically, directory information includes information such as name, address, telephone listing, date and place of birth, participation in officially recognized activities and sports, and dates of attendance. Directory information does not include a student's social security number or student ID number that can be used to gain access to educational records. A school may disclose directory information to third parties without consent if it has given public notice of the types of information which it has designated as directory information, the parent's or eligible student's right to restrict the disclosure of such information, and the period of time within which a parent or eligible student has to notify the school in writing that he or she does not want any or all of those types of information designated as directory information. 34 CFR § 99.3 and 34 CFR § 99.37.

