## **DATA SHARING AND CONFIDENTIALITY AGREEMENT**

## This Data Sharing and Confidentiality Agreement (as amended, this “Agreement”) is effective as of Click or tap to enter a date. ("Effective Date") between the Providence Public School District, a department of the City of Providence (the “PPSD”) and Click or tap here to enter text.(the “the Data Receiver”) with a principle place of business located at Click or tap here to enter text..

**R E C I T A L S:**

**WHEREAS**, the Family Educational Rights and Privacy Act (20 U.S.C. § 1232g; 34 CFR Part 99) (as amended and in effect from time to time, and including any successor statute, “FERPA”) establishes a right of privacy for student data based on a rule of non-release of individually-identifiable data to anyone outside the student’s institution, or to persons inside the institution who have no legitimate need for the information, without the express written permission of the student or the student’s representative; and

**WHEREAS,** FERPA contains a limited exception to the general rule when information is to be used by organizations acting for the PPSD as school officials with a legitimate educational interest for the purposes of providing the professional services (see 20 U.S.C. § 1232g(b)(1)(F) and 34 C.F.R. § 99.31(a)(1)(i)(B)(*1*)); and

**WHEREAS,** the Data Receiver is performing a service or function for which the PPSD would otherwise use employees; and

**WHEREAS,** this Agreement is premised upon the relationship amongst the parties falling within the exception to FERPA related to independent contractors and/or consultants providing certain institutional services and functions on behalf of educational institutions; and

**WHEREAS,** the Data Receiver represents that it has the knowledge, skill and resources necessary to provide and maintain a data management system that is sufficiently secure and encrypted to protect confidential information; and

**WHEREAS,** the Data Receiver shall use and disclose data only in connection with the goals of this Agreement, as defined herein; and

**WHEREAS**, the goals of this Agreement includes the following:

1. Preserving the anonymity of student identities, including assurance that identifiable student data is not released to third parties, unless otherwise consistent with this Agreement;
2. Enhancing the ability of the PPSD and the Data Receiver to improve outcomes for students by allowing access to individual student records consistent with the requirements of the Family Educational Rights and Privacy Act (20 U.S.C. § 1232g; 34 CFR Part 99); and
3. Accurately measuring the PPSD and the Data Receiver’s progress toward improving student outcomes and indicators, and meeting established district goals and priorities

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**1. Incorporation of Recitals:** The matters recited above are hereby incorporated into and made part of this Agreement.

**2. Term of the Agreement:** This Agreement shall be effective as of the date written in the introductory paragraph and shall expire five years thereafter unless different terms are agreed to by the parties in writing. However, compliance with FERPA is subject to survival of any provisions in accordance with their specific terms.

**3. Purpose of the Agreement:** The purpose of this Agreement is to memorialize, and the parties hereby agree to, the following:

A. The Data Receiver shall provide certain institutional services and functions that require access to student educational records as a necessary part of efficiently and effectively providing the services; and

B. With respect to the use and maintenance of the Student Data and other educational records, the Data Receiver is subject to the requirements of 34 C.F.R. § 99.33(a) governing the use and re-disclosure of personally identifiable information from education records; and

C. The Data Receiver agrees that the sharing of data is contingent upon compliance with FERPA and its implementing regulations (34 C.F.R. § 99.30, *et seq.)*; and

D. The PPSD reserves the right to terminate any or all parts of the agreement with regard to the effort and cost adversely impacting the PPSD.

**4. Scope of the Agreement:**

A. The Data Receiver shall comply with all requirements of FERPA, including 34 C.F.R. § 99.31 (a)(6). Under this Agreement, the PPSD may allow access to and share both de-identified data and personally identifiable student data (such identifiable student data shall hereinafter be referred to as the “Student Data”) to the Data Receiver for use only as necessary to provide for the professional service or research request.

C. Student Data will be made available through the PPSD Office of Data & Assessment for school years Click or tap here to enter text.. Specific data elements to be included appear in Exhibit C.

D. The Student Data listed in Exhibit C will initially be made available through the PPSD Office of Data & Assessment. All subsequent requests for access to Student Data must be made to the Office of Data & Assessment. If the Student Data is for a select group of participating students that may have received some service or treatment, the Data Receiver must transfer a file via a secure file transfer process identifying the participating students.

E. The Data Receiver will provide a final report of results and/or present results for discussion with PPSD officials on or before Click or tap to enter a date.. If the Data Receiver plans to disseminate a report or article of any kind using PPSD data, the Data Receiver must provide the PPSD a manuscript or other draft of the proposed public disclosure at least 30 days prior to planned release. Within 15 business days following receipt thereof, the PPSD will notify the Data Receiver in writing if the proposed disclosure contains any confidential information and specify the portions of the proposed disclosure requiring redaction.

5. Compensation. This agreement is a non-financial understanding between the PPSD and the Data Receiver. No financial obligation by or on behalf of either of the parties is implied by a party’s signature at the end of this agreement.

6. Confidential Information, Dissemination, Ownership, Survival.

A. In accordance with FERPA and all other relevant laws, the Data Receiver shall comply with the following conditions:

i. “Confidential Information” means any and all information of a confidential nature that either party disclosed or otherwise made available to or learned by the parties under this Agreement, which is designated as “confidential” or “proprietary” or which, under all of the circumstances, ought reasonably to be treated as confidential, and includes, but is not limited to, Student Data and all PPSD student records and personnel records.

ii. Confidential Information of either party (and any derivative works thereof or modifications thereto) is and will remain the exclusive property of that party. Neither party shall possess or assert any lien or other right against or to Confidential Information of the other party. No Confidential Information of either party, or any part thereof [including, without limitation, any District Information (as defined below)], will be sold, assigned, leased, or otherwise disposed of to third parties by the other party or commercially exploited by or on behalf of the Data Receiver, its employees or agents.

iii. “District Information” means all information, in any form, furnished or made available directly or indirectly to the Data Receiver by PPSD or otherwise obtained by the Data Receiver from PPSD, including all information of PPSD or any PPSD affiliates to which the Data Receiver has had or will have access, whether in oral, written, graphic or machine-readable form.

iv. The Data Receiver acknowledges and agrees that PPSD’s Confidential Information includes confidential student and employee information that is protected by applicable law, including but not limited to, FERPA and the Health Insurance Portability and Accountability Act of 1996 Privacy and Security Rules, its implementing regulations and other applicable laws and regulations (“HIPAA”). The Data Receiver (and any associated personnel) may, by nature of the services, have the ability to defeat security provisions on PPSD devices and may, by the nature of their work, have access to systems and devices containing Confidential Information, but have no need to actually access such Confidential Information in order to perform services. The Data Receiver therefore agrees to use commercially reasonable efforts to avoid unnecessary exposure by associated personnel or others to Confidential Information. The Data Receiver further agrees to comply, and agrees to require its personnel to comply, with all applicable laws relating to the access, use and disclosure of Confidential Information.

v. During the course and scope of its services, the Data Receiver will gain knowledge of or have access, including electronic access, to or otherwise have disclosed to it, Student Data and other Confidential Information, and the Data Receiver understands that such access or disclosure is made only to the extent necessary to perform its duties within the course and scope of the Choose an item., and the Data Receiver and its personnel will use Confidential Information for no other purpose. The Data Receiver will disclose Student Data and other Confidential Information only to its personnel with a need to access such data as a necessary part of this agreement. The names of the persons to whom such information may be disclosed are listed on Exhibit A, which Exhibit A shall be updated by the Data Receiver as necessary to inform the PPSD of the persons having access to such information.

vi. The Student Data will not be accessible by any person other than the Data Receiver and directly associated personnel who require such access to conduct activities for the PPSD under this agreement. The Data Receiver shall provide and evaluate services in a manner that does not permit personal identification of parents and students by anyone other than personnel of the Data Receiver authorized by this Agreement with legitimate educational interests.

vii. The Data Receiver shall require and maintain an appropriate confidentiality agreement (Exhibit B) from each of the personnel listed in Exhibit A with access to Confidential Information, including Student Data. The Data Receiver will permit access to Confidential Information only to its personnel who require such access in order to develop, exchange, maintain, analyze, and evaluate information.

viii. The data shall be securely stored under lock and key in the Data Receiver Office, which is located at Click or tap here to enter text.. If the Data Receiver uses a data management system that is an electronic database for storing Student Data, then such data must be secured and protected in a manner that would be considered consistent with industry standards at a minimum, and all managers and other persons with access to such data must meet the FERPA requirements of persons having access to such data (e.g. each such person must require such access in order to conduct activities for the PPSD under an existing Research Request/MOU/Consulting Services Agreement), must be listed in Exhibit A, and must sign the confidentiality agreement in Exhibit B.

ix. Neither The Data Receiver nor any of its personnel may release confidential data or results if such data or results include individual person, District- or state-identifiable data or results, either directly or inferentially, unless agreed by the parties in writing on a case by case basis. The Data Receiver shall not publish, present, or use reports that include a cell size of less than ten (10). Reports must mask these cells in an effort to preserve confidentiality. No release of reports or information based on any Confidential Information will include any personally identifiable information, as defined under FERPA. Such information is currently defined as:

(a) The student's name;

(b) The name of the student's parent(s) or other family members;

(c) The address of the student or student's family;

(d) A personal identifier, such as the student's social security number, student number, or biometric record;

(e) Other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name;

(f) Other information that, alone or in combination, is linked or linkable to a specific student or family that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student or family with reasonable certainty; or

(g) Information requested by a person whom the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates.

x. The Data Receiver obligations to comply with FERPA requirements will survive the termination of this Agreement.

xi. At no cost to the party that owns the Confidential Information, the other party shall upon (a) request by the owner at any time, and (b) upon termination or expiration of this Agreement, securely eliminate or return promptly in the format and on the media in use as of the date of request, all or any requested portion of Confidential Information that may be in the other party’s possession or control. Notwithstanding the foregoing and subject to any restrictions imposed by applicable law, the parties may each retain a copy of the other’s Confidential Information (but excluding any student or employee data) solely for archival purposes and in connection with any dispute between the parties. At that time, The Data Receiver must sign the Certification of Destruction of PPSD Student Data in Exhibit D.

xii. Notwithstanding the terms of this Agreement, the parties may disclose Confidential Information if disclosure is required by law in response to a valid order of a court of competent jurisdiction or authorized government agency, provided that the disclosing party must provide the other party prompt notice of the order and reasonably cooperate with efforts to obtain a protective order or otherwise limit disclosure.

xii. The parties will each cooperate fully in resolving any actual or suspected acquisition or misuse of Confidential Information.

**7. Security and Data Breach**

A. The Data Receiver shall take reasonable security precautions and protections to ensure that persons not authorized to view the data do not gain access to the data. Reasonable security precautions and protections include, but are not limited to:

i. Creating, distributing, and implementing data governance policies and procedures which protect PPSD data through appropriate administrative, technical, and physical security safeguards, and outline staff responsibilities for maintaining data security;

ii. Encrypting all District data carried on mobile computers/devices;

iii. Encrypting District data before it is transmitted electronically;

iv. Requiring that users be uniquely identified and authenticated before accessing District data;

v. Establish and enforce well-defined data privilege rights which restrict users’ access to the data necessary for them to perform their job functions;

vi. Ensuring that all staff accessing District data sign an affidavit of nondisclosure, attached as Exhibit A, and maintain copies of signed affidavits;

vii. Securing access to any physical areas/electronic devices where sensitive data are stored;

viii. Installing a firewall to permit or deny network transmissions based upon a set of rules;

ix. Installing anti-virus software to protect the network.

B. The Data Receiver shall report all known or suspected breaches of PPSD data, in any format, to the PPSD Office of Data & Assessment immediately, but no later than twenty-four (24) hours. As soon as possible, but no later than two (2) business days, a report will also need to be delivered that shall include, but not be limited to, the following:

i. the name, job title, and contact information of the person reporting the incident; and

ii. the name, job title, and contact information of the person who discovered the incident; and

iii. date and time the incident was discovered; and

iv. nature of the incident (e.g., system level electronic breach, an electronic breach of one computer or device, or a breach of hard copies of records; and

v. a description of the information lost or compromised; and

vi. name of electronic system and possible interconnectivity with other systems; and

vii. storage medium from which information was lost or compromised; and

viii. controls in place to prevent unauthorized use of the lost or compromised information; and

ix. number of individuals potentially affected; and

x. whether law enforcement was contacted and all relevant details.

**8. Indemnification.** The Data Receiver shall defend, indemnify and hold harmless the PPSD, and its elected and appointed officials, officers, directors, employees and agents from any loss, claim, damage, expense or liability (including attorneys’ and other litigation fees and costs) that result from the Data Receiver’s negligent or willful misconduct or gross negligence.

**9. Representations and Warranties of the Parties.**

A. The Data Receiver agrees that PPSD makes no warranty concerning the accuracy of the Confidential Information, including the Student Data, provided. The Data Receiver represents that it has the knowledge, skill and resources necessary to provide and maintain a web-based data management system that is sufficiently secure and encrypted to protect confidential information.

B. The parties are and shall remain in compliance with all applicable federal, state and municipal statutes, laws, ordinances and regulations relating to this Agreement, as amended from time to time, including, but not limited to, FERPA, HIPPA, the Privacy Act of 1974, as amended, any others relating to privacy, confidentiality of student education records and non-discrimination.

C. Each party has taken all action necessary for the approval and execution of the Agreement, and execution by the persons signing on behalf of both parties is duly authorized and has been made with complete and full authority to commit both parties to all terms and conditions of this Agreement which shall constitute valid, binding obligations of each party.

## **10. Governing Law.** The laws of the State of Rhode Island and applicable federal laws govern this agreement and its interpretation. Jurisdiction and venue for any dispute relating to this Agreement will rest exclusively with the state courts or federal courts of Rhode Island.

## **11. Conflict of Terms.** If there is a conflict between the terms of this Agreement and any underlying agreement between the parties, the terms of this Agreement prevail. No term in any other document, including an invoice, purchase order, or work order, modifies this Agreement.

## **12. Books and Records.** PPSD, and other related State and Federal government agencies as necessary, have the right to review all of the Data Receiver’s policies and procedures relating to Data Receiver’s compliance with this Agreement. PPSD may exercise that right at least once each year. Additionally, from time to time, PPSD may request an attestation of the Data Receiver’s compliance with this Agreement and applicable laws. If PPSD requests that attestation, the Data Receiver will provide it within fourteen (14) days of the request. The Data Receiver will provide the form of the attestation described above. Under this Section, the records include all policies, procedures, and internal audits relating to this Agreement. PPSD will give the Data Receiver at least five (5) business days’ advance notice of a review and will conduct the review at the Data Receiver’s place of business during normal business hours.

## **13. Amendments.** No amendment or waiver of any provision of this Agreement, nor consent to any departure by any party from, or any addition to, the written terms of this Agreement, is effective unless such amendment, waiver, or consent is in writing, executed by both parties, and specifically identifies itself as an amendment, waiver, or consent, as the case may be, to this Agreement. In any event, any waiver or consent is effective only as to the specific addressee, in the specific instance, and for the specific purpose given. No failure or delay in exercising any right or remedy, or in requiring the satisfaction of any condition, under this Agreement, and no act, omission or course of dealing between the parties, operates as a waiver or estoppel of any right, remedy, or condition.

**14. Execution.** This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original but all of which together shall constitute one (1) and the same instrument. A signature sent via facsimile or e-mail of a .pdf document shall be considered an original signature for purposes of executing this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date:

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| --- | --- |
|  | PROVIDENCE PUBLIC SCHOOL DEPARTMENT    By:  Craig Creller  Acting Chief of Data & Assessment    \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  As authorized signee on behalf of  Javier Montañez  Superintendent |
|  | By:  Charles A. Ruggerio, Esq.  On Behalf of City Solicitor Jeffrey Dana, Esq.  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Approved as to form and correctness. |
|  | Click or tap here to enter text.    By:  Click or tap here to enter text.  Click or tap here to enter text.    \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

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## EXHIBIT A

**Organization Personnel Authorized to Access Student Data**

|  |  |  |
| --- | --- | --- |
| **Personnel Name:** | **Title:** | **Purpose for Accessing Data:** |
|  |  | - |
|  |  | - |
|  |  | - |
|  |  | - |
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|  |  | - |

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## EXHIBIT B

**Confidentiality Agreement**

I, the undersigned, understand that during the course of my work, I may be given access to confidential, privileged, or proprietary PPSD student information in order to perform my responsibilities in a manner that meets PPSD’s needs and enhances the delivery of service. By signing this document, I am agreeing to comply with all regulations and laws established to protect confidential information. I understand that accessing or releasing confidential information and/or records or causing this to occur outside the course of my assigned duties would constitute a violation of this agreement. I understand that proven violation of this agreement can result in termination of my access to information and may result in action being taken against me in my capacity as an employee or agent of the Data Receiver.

“Confidential Information” means any and all information of either party disclosed or otherwise made available to or learned by the parties under this Agreement, which is designated as “confidential” or “proprietary” or which, under all of the circumstances, ought reasonably to be treated as confidential, and includes, but is not limited to, Student Data and all PPSD student records and personnel records.

I agree to:

• Maintain confidential information and not reveal it to clients, colleagues, or others with whom I interact without procuring the necessary releases or authorizations.

• Utilize information disclosed to me solely for the purpose of completing the scope of work set forth in the Choose an item..

• The information, including any material support containing information, will remain the exclusive property of the PPSD. The Data Receiver will not acquire any right, title, license, or interest on or to the information.

**The Data Receiver:**

|  |  |  |  |
| --- | --- | --- | --- |
| Print Name: | Click or tap here to enter text. | Date: | Date |
| Title: | Click or tap here to enter text. |  |  |
| Organization/ Agency: | Click or tap here to enter text. |  |  |
| Signature: |  |  |  |

Copy must be kept on file at organization/agency and original sent to PPSD.

## EXHIBIT C

**Data Elements Requested**

|  |  |  |
| --- | --- | --- |
| **DATA ELEMENT** | **TIME FRAME** | **NOTES** |
| **Student Demographics** |  |  |
|  |  |  |
| **Enrollment Information** |  |  |
|  |  |  |
| **Attendance Data** |  |  |
|  |  |  |
| **Behavioral Data** |  |  |
|  |  |  |
| **Assessment Data** |  |  |
|  |  |  |
| **Survey Data** |  |  |
|  |  |  |
| **Grading Data** |  |  |
|  |  |  |
| **Staff Data** |  |  |
|  |  |  |
| **Other Data** |  |  |
|  |  |  |

## EXHIBIT D

**Certification of Destruction of PPSD Data**

I, Insert Name., as an officer of Insert Organization.do hereby acknowledge and certify the destruction of private and confidential student, family, and/or staff information provided by PPSD as part of the Data Sharing and Confidentiality Agreement or the Services Agreement in accordance with federal and state law and under penalty of perjury.

**The Data Receiver:**

Print Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Organization/Agency: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_