

EDUCATION LAW 2-D DATA SHARING AND CONFIDENTIALITY AGREEMENT

Including

Waterford-Halfmoon Union Free School
District Bill of Rights for Data Security and Privacy
and
Supplemental Information about a Master Agreement between
Waterford-Halfmoon Union Free School District
and Gimkit

1. Purpose

(a) Waterford-Halfmoon Union Free School District (hereinafter “District”) and Gimkit (hereinafter “Vendor”) are parties to a contract or other written agreement pursuant to which Vendor will receive student data and/or teacher or principal data that is protected under New York Education Law Section 2-d and Part 121 of the Regulations of the Commissioner of Education (collectively referred to as “Section 2-d”) from the District for purposes of providing certain products or services to the District (the “Master Agreement”).

(b) This Exhibit supplements the Master Agreement to which it is attached, to ensure that the Master Agreement conforms to the requirements of Section 2-d. This Exhibit consists of a Data Sharing and Confidentiality Agreement, a copy of the District’s Bill of Rights for Data Security and Privacy signed by Vendor, and the Supplemental Information about the Master Agreement between the District and Vendor that the District is required by Section 2-d to post on its website.

(c) In consideration of the mutual promises set forth in the Master Agreement, Vendor agrees that it will comply with all terms set forth in the Master Agreement and this Exhibit. To the extent that any terms contained in the Master Agreement, or any terms contained in any other Exhibit(s) attached to and made a part of the Master Agreement, conflict with the terms of this Exhibit, the terms of this Exhibit will apply and be given effect. In addition, in the event that Vendor has online or written Privacy Policies or Terms of Service (collectively, “TOS”) that would otherwise be applicable to its customers or users of the products or services that are the subject of the Master Agreement between the District and Vendor, to the extent that any terms of the TOS, that are or may be in effect at any time during the term of the Master Agreement, conflict with the terms of this Exhibit, the terms of this Exhibit will apply and be given effect.

2. Definitions

As used in this Exhibit:

(a) “Student Data” means personally identifiable information, as defined in Section 2-d, from student records that Vendor may receive from the District pursuant to the Master Agreement.

(b) “Teacher or Principal Data” means personally identifiable information, as defined in Section 2-d, relating to the annual professional performance reviews of classroom teachers or principals that Vendor may receive from the District pursuant to the Master Agreement.

(c) “Protected Data” means Student Data and/or Teacher or Principal Data, to the extent applicable to the product or service actually being provided to the District by Vendor pursuant to the Master Agreement.

(d) “NIST Cybersecurity Framework” means the U.S. Department of Commerce National Institute for Standards and Technology Framework for Improving Critical Infrastructure Cybersecurity (Version 1.1).

3. **Confidentiality of Protected Data**

(a) Vendor acknowledges that the Protected Data it receives pursuant to the Master Agreement originates from the District and that this Protected Data belongs to and is owned by the District.

(b) Vendor will maintain the confidentiality of the Protected Data it receives in accordance with federal and state law (including but not limited to Section 2-d) and the District’s policy on data security and privacy. The District will provide Vendor with a copy of its policy on data security and privacy upon request.

4. **Data Security and Privacy Plan**

As more fully described herein, throughout the term of the Master Agreement, Vendor will have a Data Security and Privacy Plan in place to protect the confidentiality, privacy and security of the Protected Data it receives from the District.

Vendor’s Plan for protecting the District’s Protected Data includes, but is not limited to, its agreement to comply with the terms of the District’s Bill of Rights for Data Security and Privacy, a copy of which is set forth below and has been signed by the Vendor.

Additional components of Vendor’s Data Security and Privacy Plan for protection of the District’s Protected Data throughout the term of the Master Agreement are as follows:

(a) Vendor will implement all state, federal, and local data security and privacy requirements including those contained within the Master Agreement and this Data Sharing and Confidentiality Agreement, consistent with the District’s data security and privacy policy.

(b) Vendor will have specific administrative, operational and technical safeguards and practices in place to protect Protected Data that it receives from the District under the Master Agreement.

(c) Vendor will comply with all obligations contained within the section set forth in this Exhibit below entitled “Supplemental Information about a Master Agreement between Waterford-Halfmoon Union Free School District and Gimkit. Vendor’s obligations described within this section include, but are not limited to:

- (i) its obligation to require subcontractors or other authorized persons or entities to whom it may disclose Protected Data (if any) to execute written agreements acknowledging that the data protection obligations imposed on Vendor by state and federal law and the Master Agreement shall apply to the subcontractor, and
- (ii) its obligation to follow certain procedures for the return, transition, deletion and/or destruction of Protected Data upon termination, expiration or assignment (to the extent authorized) of the Master Agreement.

(d) Vendor has provided or will provide training on the federal and state laws governing confidentiality of Protected Data for any of its officers or employees (or officers or

employees of any of its subcontractors or assignees) who will have access to Protected Data, prior to their receiving access.

(e) Vendor will manage data security and privacy incidents that implicate Protected Data and will develop and implement plans to identify breaches and unauthorized disclosures. Vendor will provide prompt notification to the District of any breaches or unauthorized disclosures of Protected Data in accordance with the provisions of Section 5 of this Data Sharing and Confidentiality Agreement.

5. **Notification of Breach and Unauthorized Release**

(a) Vendor will promptly notify the District of any breach or unauthorized release of Protected Data it has received from the District in the most expedient way possible and without unreasonable delay, but no more than seven (7) calendar days after Vendor has discovered or been informed of the breach or unauthorized release.

(b) Vendor will provide such notification to the District by contacting Joel Richardson directly by email at jrichardson@whufsd.org or by calling 518-237-0800.

(c) Vendor will cooperate with the District and provide as much information as possible directly to Joel Richardson or his designee about the incident, including but not limited to: a description of the incident, the date of the incident, the date Vendor discovered or was informed of the incident, a description of the types of Protected Data involved, an estimate of the number of records affected, the schools within the District affected, what the Vendor has done or plans to do to investigate the incident, stop the breach and mitigate any further unauthorized access or release of Protected Data, and contact information for Vendor representatives who can assist affected individuals that may have additional questions.

(d) Vendor acknowledges that upon initial notification from Vendor, the District, as the educational agency with which Vendor contracts, has an obligation under Section 2-d to in turn notify the Chief Privacy Officer in the New York State Education Department (“CPO”). Vendor agrees not to provide this notification to the CPO directly unless requested by the District or otherwise required by law. In the event the CPO contacts Vendor directly or requests more information from Vendor regarding the incident after having been initially informed of the incident by the District, Vendor will promptly inform Joel Richardson or his designee.

6. **Additional Statutory and Regulatory Obligations**

Vendor acknowledges that it has the following additional obligations under Section 2-d with respect to any Protected Data received from the District, and that any failure to fulfill one or more of these statutory or regulatory obligations will be deemed a breach of the Master Agreement and the terms of this Data Sharing and Confidentiality Agreement:

(a) To limit internal access to Protected Data to only those employees or subcontractors that are determined to have legitimate educational interests within the meaning of Section 2-d and the Family Educational Rights and Privacy Act (FERPA); *i.e.*, they need access in order to assist Vendor in fulfilling one or more of its obligations to the District under the Master Agreement.

(b) To not use Protected Data for any purposes other than those explicitly authorized in this Data Sharing and Confidentiality Agreement and the Master Agreement to which this Exhibit is attached.

(c) To not disclose any Protected Data to any other party, except for authorized representatives of Vendor using the information to carry out Vendor’s obligations to the District and in compliance with state and federal law, regulations and the terms of the Master Agreement, unless:

- (i) the parent or eligible student has provided prior written consent; or
- (ii) the disclosure is required by statute or court order and notice of the disclosure is provided to the District no later than the time of disclosure,

unless such notice is expressly prohibited by the statute or court order.

(d) To maintain reasonable administrative, technical, and physical safeguards to protect the security, confidentiality, and integrity of Protected Data in its custody.

(e) To use encryption technology to protect Protected Data in its custody while in motion or at rest, using a technology or methodology specified by the Secretary of the U.S. Department of Health and Human Services in guidance issued under Section 13402(H)(2) of Public Law 111-5.

(f) To adopt technologies, safeguards and practices that align with the NIST Cybersecurity Framework.

(g) To comply with the District's policy on data security and privacy, Section 2-d and Part 121.

(h) To not sell Protected Data nor use or disclose it for any marketing or commercial purpose or facilitate its use or disclosure by any other party for any marketing or commercial purpose or permit another party to do so.

(i) To notify the District, in accordance with the provisions of Section 5 of this Data Sharing and Confidentiality Agreement, of any breach of security resulting in an unauthorized release of Protected Data by Vendor or its assignees or subcontractors in violation of applicable state or federal law, the District's Bill of Rights for Data Security and Privacy, the District's policies on data security and privacy, or other binding obligations relating to data privacy and security contained in the Master Agreement and this Exhibit.

(j) To cooperate with the District and law enforcement to protect the integrity of investigations into the breach or unauthorized release of Protected Data.

(k) To pay for or promptly reimburse the District for the full cost of notification, in the event the District is required under Section 2-d to notify affected parents, students, teachers or principals of a breach or unauthorized release of Protected Data attributed to Vendor or its subcontractors or assignees.

WATERFORD-HALFMOON UNION FREE SCHOOL DISTRICT

Parents'/Guardians' Bill of Rights for Data Privacy and Security (revised 7/2020)

The Waterford-Halfmoon Union Free School District is committed to protecting the privacy and security of student, faculty, and staff data. In accordance with New York Education Law Section 2-D the District establishes the following Parents'/Guardians' Bill of Rights for Data Privacy and Security:

1. A student's personally identifiable information cannot be sold or released for any commercial purposes. The term "student" refers to any person attending or seeking to enroll in the Waterford-Halfmoon Union Free School District; and the term "personally identifiable information (PII)" uses the definition provided in FERPA. Under FERPA, personally identifiable information of PII includes, but is not limited to:
 - Student's name
 - Name of the student's parent/guardian or other family members
 - Address of the student or student's family
 - A personal identifier - including but not limited to the student's social security number, student ID number, or biometric record
 - Other indirect identifiers such as the student's date of birth, place of birth, or mother's maiden name
 - Other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty.
 - Information requested by a person who the educational agency or institution

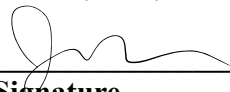
reasonably believes knows the identity of the student to whom the education record relates.

2. Parents/Guardians have the right to inspect and review the complete contents of their child's educational record.
3. State and federal laws protect the confidentiality of personally identifiable information, and the District safeguards that information with industry standards and best practices, including but not limited to, encryption, firewalls, and password protection.
4. The New York State Education Department collects student data from school districts for authorized uses. A complete list of all student data elements is available for public review at: <http://www.nysed.gov/common/nysed/files/programs/student-data-privacy/collected-data-elements.pdf>
5. Parents have the right to submit complaints about possible breaches or student data. Complaints or questions should be directed in writing to: Data Protection Officer, Waterford-Halfmoon Union Free School District, 125 Middletown Road, Waterford, NY 12188. Complaints to NYSED should be addressed to: Chief Privacy Officer, New York State Education Department, 89 Washington Avenue, Albany NY 12234 - email address cpo@mail.nysed.gov
6. Parents will be notified in accordance with applicable laws and regulations if a breach or unauthorized release of their student's PII occurs.
7. Waterford-Halfmoon School District faculty and staff that handle PII will receive training on applicable state and federal laws, the educational agency's policies, and safeguards associated with industry standards and best practices that protect PII.
8. The Waterford-Halfmoon School District contracts with vendors that receive PII will address statutory and regulatory data privacy and security requirements.

FOR THE VENDOR:

Jeffrey Osborn

Name (Print)



Signature

Co-Founder

Title

8/11/20

Date

FOR THE DISTRICT:

Joel Richardson

Name (Print)

Joel Richardson (Electronic Signature)

Signature

**Data Protection Officer
Title**

Date