



400 Walberta Road
Syracuse, New York 13219-2214

KATIE HARMON
Director of Educational Technology

Phone (315) 426-3000
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To Whom it May Concern:

Attached you will find the agreement between Westhill Central School District and Newsela concerning NYS Ed Law and Regulations 121, Data Security and Privacy. Please review the agreement and return signed to Katie Harmon, Director of Educational Technology via email. Page four contains lines for signatures, page nine contains information needed from you highlighted in yellow.

If you have any questions or concerns, Ms. Harmon can be reached at:

(p) 315-426-3200 x 3270

(e) kharmon@westhillschools.org

LICENSING AGREEMENT

This Agreement, made this 7/1/2020, by and between Newsela Inc., having offices at 620 8th Ave 21st floor, New York, NY 10018, United States (“Vendor”), and Westhill Central School District, having an office at 400 Walberta Road, Syracuse, New York 13219 (“School District”) (collectively “Parties”).

In consideration of the mutual promises and covenants contained herein, the parties agree as follows:

1 Services. Vendor shall perform the services set forth in this Agreement, as described in Addendum C (the “Services”). Vendor shall provide the Services at the School District location or on a remote basis, as agreed to by the Parties. Vendor warrants that the Services provided hereunder will be performed in a good and workmanlike manner.

License. Vendor hereby grants to School District, including to all School District’s authorized users, a non-exclusive, non-sublicensable, non-assignable and royalty-free license to access and use the service (the “Services”) solely for School District’s operations in accordance with the terms of this Agreement.

2 Term of Services. This Agreement begins on the Effective Date and will continue until terminated (the “Term”).

3 Termination. This Agreement may be terminated as follows:

- (a) By the School District upon thirty (30) days’ prior written notice to Vendor;
- (b) By the School District immediately in the event of breach by the Vendor; and
- (c) By either Party upon written mutual agreement.

5. Protection of Confidential Data. Vendor shall provide its Services in a manner which protects Student Data (as defined by 8 NYCRR 121.1(q)) and Teacher or Principal Data (as defined by 8 NYCRR 121.1(r)) (hereinafter “Confidential Data”) in accordance with the requirements articulated under Federal, State and local laws and regulations, including but not limited to the foregoing:

- (a) Vendor will adopt technologies, safeguards and practices that align with the NIST Cybersecurity Framework.
- (b) Vendor will comply with the School District Data Security and Privacy Policy, Education Law § 2-d, and 8 NYCRR §121.
- (c) Vendor will limit internal access to personally identifiable information to only those employees or sub-contractors that need access to provide the contracted services.
- (d) Vendor will not use the personally identifiable information for any purpose not explicitly authorized in this Agreement.
- (e) Vendor will not disclose any personally identifiable information to any other party without the prior written consent of the parent or eligible student, unless otherwise authorized pursuant to applicable law.
- (f) Vendor will maintain reasonable administrative, technical and physical safeguards to protect the security, confidentiality and integrity of personally identifiable information in its custody.
- (g) Vendor will use encryption to protect personally identifiable information in its custody while in motion or at rest.
- (h) Vendor will not sell personally identifiable information 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) In the event Vendor engages a subcontractor to perform its contractual obligations, the data protection obligations imposed on the Vendor shall apply to the subcontractor.

6. Data Breach. In the event that Confidential Data is accessed or obtained by an unauthorized individual, Vendor shall provide notification to the School District without unreasonable delay and not more than seven calendar days after the discovery of such breach. Vendor shall follow the following process:

- (a) The security breach notification shall be titled “Notice of Data Breach,” shall be clear, concise, use language that is plain and easy to understand, and to the extent available, shall include: a brief description of the breach or unauthorized release; the dates of the incident and the date of discovery; a description of the types of Confidential affected; an estimate of the number of records affected; a brief description of the vendors investigation or plan to investigate; and contact information for representatives who can assist the School District with additional questions.

- (b) The Vendor shall also prepare a statement for parents and eligible students which provides information under the following categories: “What Happened,” “What Information Was Involved,” “What We Are Doing,” “What You Can Do,” and “For More Information.”
- (c) Where a breach or unauthorized release of Confidential Data is attributed to Vendor, and/or a subcontractor or affiliate of Vendor, Vendor shall pay for or promptly reimburse the School District for the cost of notification to parents and eligible students of the breach.
- (d) Vendor shall cooperate with the School District and law enforcement to protect the integrity of investigations into the breach or unauthorized release of Confidential Data.
- (e) Vendor further acknowledges and agrees to have a written incident response plan that is consistent with industry standards and federal and state law for responding to a data breach, breach of security, privacy incident or unauthorized acquisition or use of Protected Data or any portion thereof. Upon request, Vendor shall provide a copy of said written incident response plan to the School District.

7. Indemnification. Vendor shall at all times (both during and after the Term of this Agreement), indemnify, defend and hold harmless the School District, its agents, employees, and students (collectively for purposes of this Section, “the School District”), from and against any and all settlements, losses, damages, costs, reasonable counsel fees and all other expenses to the extent arising from (a) Vendor’s failure to comply with the terms of this Agreement; and/or (b) the negligent operations, acts or omissions of the Vendor.

8. Compliance with Laws. Vendor, its employees and representatives shall at all times comply with all applicable Federal, State and local laws, rules and regulations.

9. Independent Relationship. It is expressly intended by the Parties hereto, and Vendor hereby specifically warrants, represents and agrees, that Vendor and the School District are independent entities. The Parties intend that this Agreement is strictly between two independent entities and does not create an employer/employee relationship for any purpose. Vendor shall perform the duties contemplated by this Agreement as an independent entity, to whom no benefits shall accrue except for those benefits expressly set forth in this Agreement.

10. Assignment. This Agreement is binding upon the Parties and their respective successors and assigns, but Vendor’s obligations under this Agreement are not assignable

without the prior written consent of the School District. Any assignment without the School District's consent shall be null and void. Notwithstanding the foregoing or anything to the contrary in this Agreement, Vendor shall have the right without consent to assign this Agreement or rights hereunder or delegate obligations (a) to any affiliate of Vendor, or (b) to any third party that has acquired all or substantially all of its assets or business, whether by merger, acquisition, transfer, reorganization or otherwise; provided that any such assignment or delegation to any affiliate or third party acquirer is conditioned upon assignee's assumption of all obligations and liabilities of the Vendor hereunder.

11. Governing Law. This Agreement and any Services provided hereunder shall be governed by the laws of the State of New York both as to interpretation and performance, without regard to its choice of law requirements. Each party consents and submits, for any dispute arising out of or relating to this Agreement or the transactions contemplated hereby, to the sole and exclusive jurisdiction of the state and federal courts located in the county in which the School District is located.

12. Public Inspection of Agreement. Vendor acknowledges and agrees that this Agreement and all documents Vendor provides to School District as required herein, are public records and may at all times be subject to public inspection.

13. Waiver. No delay or omission of the School District to exercise any right hereunder shall be construed as a waiver of any such right and the School District reserves the right to exercise any such right from time to time, as often as may be deemed expedient.

14. Addendums. The following Addendums are attached hereto and incorporated herein:

- Addendum A: Westhill CSD Parents' Bill of Rights for Data Privacy and Security
- Addendum B: Parents' Bill of Rights – Supplemental Information Addendum


15. Severability. Should any part of this Agreement for any reason be declared by any court of competent jurisdiction to be invalid, such decision shall not affect the validity of any remaining portion, which remaining portion shall continue in full force and effect as if this Agreement had been executed with the invalid portion hereof eliminated, it being the intention of the Parties that they would have executed the remaining portion of this Agreement without including any such part, parts or portions which may for any reason be hereafter declared invalid.

16. Entire Agreement. This Agreement and its attachment constitute the entire Agreement between the Parties with respect to the subject matter hereof and shall supersede all previous negotiations, commitments and writings. It shall not be released, discharged, changed or modified except by an instrument in writing signed by a duly authorized representative of each of the Parties.

IN WITNESS WHEREOF, the parties have signed this Agreement intending to be legally bound.

Newsela, Inc.

Westhill Central School District

By:  DocuSigned by:
Chris Mezzatesta
B4D98E5C0C40438...

By: 

Name: Chris Mezzatesta

Name: Katie Harmon

Title: Chief Customer Officer

Title: Director of Technology

Date: 7/13/2020

Date: 6/26/2020

Addendum A

Westhill CSD PARENTS' BILL OF RIGHTS FOR DATA PRIVACY AND SECURITY

Parents and eligible students can expect the following:

1. A student's personally identifiable information (PII) cannot be sold or released for any commercial purpose.
2. The right to inspect and review the complete contents of the student's education record stored or maintained by an educational agency.
3. State and federal laws, such as NYS Education Law §2-d and the Family Educational Rights and Privacy Act, that protect the confidentiality of a student's PII, and safeguards associated with industry standards and best practices, including but not limited to, encryption, firewalls, and password protection, must be in place when data is stored or transferred.
4. A complete list of all student data elements collected by NYSED is available for public review at www.nysed.gov/data-privacy-security, and by writing to: Chief Privacy Officer, New York State Education Department, 89 Washington Avenue, Albany, NY 12234.
5. The right to have complaints about possible breaches and unauthorized disclosures of student data addressed. Complaints may be submitted to NYSED online at www.nysed.gov/data-privacy-security, by mail to: Chief Privacy Officer, New York State Education Department, 89 Washington Avenue, Albany, NY 12234, by email to privacy@nysed.gov, or by telephone at 518-474-0937.
6. To be notified in accordance with applicable laws and regulations if a breach or unauthorized release of their student's PII occurs.
7. Educational agency workers 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. Educational agency contracts with vendors that receive PII will address statutory and regulatory data privacy and security requirements.

"Parent" means a parent, legal guardian, or person in parental relation to a student. These rights may not apply to parents of eligible students defined as a student eighteen years or older.

"Eligible Student" means a student 18 years and older.

"Personally identifiable information," as applied to student data, means personally identifiable information as defined in section 99.3 of title thirty-four of the code of federal regulations

implementing the family educational rights and privacy act, section twelve hundred thirty-two-g of title twenty of the United States code, and, as applied to teacher or principal data, means "personally identifying information" as such term is used in subdivision ten of section three thousand twelve-c of this chapter.

Information about other state and federal laws that protect student data such as the Children's Online Privacy Protection Act, the Protection of Pupil Rights Amendment, and NY's Personal Privacy Protection Law can be found at

<http://www.nysed.gov/student-data-privacy/federal-laws-protect-student-data>.

Addendum B

PARENTS' BILL OF RIGHTS – SUPPLEMENTAL INFORMATION ADDENDUM

1. **EXCLUSIVE PURPOSES FOR DATA USE:** The exclusive purposes for which “student data” or “teacher or principal data” (as those terms are defined in Education Law Section 2-d and collectively referred to as the “Confidential Data”) will be used by Newsela, Inc. (the “Contractor”) are limited to the purposes authorized in the contract between the Contractor and Westhill Central School District (the “School District”) dated _____ (the “Contract”).

2. **SUBCONTRACTOR OVERSIGHT DETAILS:** The Contractor will ensure that any subcontractors, or other authorized persons or entities to whom the Contractor will disclose the Confidential Data, if any, are contractually required to abide by all applicable data protection and security requirements, including but not limited to those outlined in applicable state and federal laws and regulations (e.g., Family Educational Rights and Privacy Act (“FERPA”); Education Law §2-d; 8 NYCRR Part 121).

3. **CONTRACT PRACTICES:** The Contract commences and expires on the dates set forth in the Contract, unless earlier terminated or renewed pursuant to the terms of the Contract. Within 120 days of the date the Contract expires, protected data will be exported to the School District in JSON format and/or destroyed by the Contractor as directed by the School District.

4. **DATA ACCURACY/CORRECTION PRACTICES:** A parent or eligible student can challenge the accuracy of any “education record”, as that term is defined in the FERPA, stored by the School District in a Contractor’s product and/or service by following the School District’s procedure for requesting the amendment of education records under the FERPA. Teachers and principals may be able to challenge the accuracy of APPR data stored by School District in Contractor’s product and/or service by following the appeal procedure in the School District’s APPR Plan. Unless otherwise required above or by other applicable law, challenges to the accuracy of the Confidential Data shall not be permitted.

5. **SECURITY PRACTICES:** Confidential Data provided to Contractor by the School District will be stored within AWS S3 and AWS RDS; file storage is located in AWS’ US-East 1. The measures that Contractor takes to protect Confidential Data will align with the NIST Cybersecurity Framework including, but not necessarily limited to, disk encryption, file encryption, firewalls, and password protection.

6. **ENCRYPTION PRACTICES:** The Contractor will apply encryption to the Confidential Data while in motion and at rest at least to the extent required by Education Law Section 2-d and other applicable law.

ADDENDUM C SERVICES

“Services” provided: Newsela provides content at differentiated consumption levels along with integrated assessments via www.newsela.com (the “Website”), the Newsela mobile application (“App”) and any other websites or applications of Newsela, Inc. Services include ongoing upgrading of the consumption level algorithm, communications with teachers and administrators in support of their use of the product, as well as the benefits of related research and development, improvements and supplements supporting the Newsela offerings, the Website and/or the App (collectively, the “Services”)