

Appendix R
NEW YORK STATE EDUCATION DEPARTMENT'S
DATA PRIVACY APPENDIX FOR CONTRACTS

ARTICLE I: DEFINITIONS

As used in this Data Privacy Appendix ("DPA"), the following terms shall have the following meanings:

1. **Breach:** The unauthorized acquisition, access, use, or disclosure of Personal Information in a manner not permitted by New York State and federal laws, rules and regulations, or in a manner that compromises its security or privacy, or by or to a person not authorized to acquire, access, use, or receive it, or a Breach of Contractor's security that leads to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to Personal Information.
2. **Disclose:** To permit access to, or the release, transfer, or other communication of Personal Information by any means, including oral, written or electronic, whether intended or unintended.
3. **Personal Information:** Information concerning a natural person which, because of name, number, personal mark, or other identifier, can be used to identify such natural person.
4. **Services:** Services provided by Contractor pursuant to the Agreement with the NYS Education Department to which this DPA is attached.
5. **Subcontractor:** Contractor's non-employee agents, consultants, volunteers and/or any person or entity funded through the Agreement who is engaged in the provision of Services pursuant to an agreement with or at the direction of the Contractor.

ARTICLE II: PRIVACY AND SECURITY OF PERSONAL INFORMATION

1. **Compliance with Law.**

Contractor may receive Personal Information regulated by several New York and federal laws and regulations, among them, the Family Educational Rights and Privacy Act at 12 U.S.C. § 1232g (34 CFR Part 99); Children's Online Privacy Protection Act at 15 U.S.C. §§ 6501-6502 (16 CFR Part 312); Protection of Pupil Rights Amendment at 20 U.S.C. § 1232h (34 CFR Part 98); the Individuals with Disabilities Education Act at 20 U.S.C. § 1400 et seq. (34 CFR Part 300); the New York Education Law at § 2-d (8 NYCRR Part 121); the New York General Business Law at article 39-F; and the New York Personal Privacy Protection Law at Public Officers Law article 6-A. Contractor agrees to maintain the confidentiality and security of Personal Information in accordance with applicable New York, federal and local laws, rules and regulations.

2. Data Privacy and Security.

- (a) Contractor must not use Personal Information for any purpose other than to provide the Services. Contractor shall adopt and maintain industry standard administrative, technical and physical safeguards, measures and controls to manage privacy and security risks and protect Personal Information in a manner that complies with New York State, federal and local laws, rules and regulations.
- (b) Contractor may be required to undergo an audit of its privacy and security safeguards, measures and controls, or in lieu of performing an audit, provide NYSED with an industry standard independent audit report on Contractor's privacy and security practices that is no more than twelve months old.

3. Contractor's Employees and Subcontractors.

- (a) Contractor shall only disclose Personal Information to Contractor's employees and Subcontractors who need to know the Personal Information to provide the Services and the disclosure of Personal Information shall be limited to the extent necessary to provide such Services. Contractor shall ensure that all such employees and Subcontractors comply with the terms of this DPA.
- (b) Contractor must ensure that each Subcontractor is contractually bound by a written agreement that includes confidentiality and data security obligations equivalent to, consistent with, and no less protective than, those found in this DPA.
- (c) Contractor shall examine the data privacy and security measures of its Subcontractors prior to utilizing the Subcontractor. If at any point a Subcontractor fails to materially comply with the requirements of this DPA, Contractor shall: notify NYSED and remove such Subcontractor's access to Personal Information; and, as applicable, retrieve all Personal Information received or stored by such Subcontractor and/or ensure that Personal Information has been securely deleted and destroyed in accordance with this DPA. In the event there is an incident in which the Subcontractor compromises Personal Information, Contractor shall follow the Data Breach reporting requirements set forth herein.
- (d) Contractor shall take full responsibility for the acts and omissions of its employees and Subcontractors.
- (e) Other than Contractor's employees and Subcontractors, Contractor must not disclose Personal Information to any other party unless such disclosure is required by statute, court order or subpoena, and the Contractor makes a reasonable effort to notify NYSED of the court order or subpoena in advance of compliance but in any case, provides notice to NYSED no later than the time the Personal Information is disclosed, unless such disclosure to NYSED is expressly prohibited by the statute, court order or subpoena.

- (f) Contactor shall ensure that all its employees and Subcontractors who have access to Personal Information have received or will receive training on the federal and state laws governing confidentiality of such data prior to receiving access.

4. Data Return and Destruction of Data.

- (a) Contractor is prohibited from retaining Personal Information or continued access to Personal Information or any copy, summary or extract of Personal Information, on any storage medium (including, without limitation, in secure data centers and/or cloud-based facilities) whatsoever beyond the term of the Agreement unless such retention is either expressly authorized by the Agreement, expressly requested in writing by NYSED for purposes of facilitating the transfer of Personal Information to NYSED, or expressly required by law.
- (b) When the purpose that necessitated the receipt of Personal Information by Contractor has been completed or Contractor's authority to have access to Personal Information has expired, Contractor shall ensure that as applicable, all Personal Information (including without limitation, all hard copies, archived copies, electronic versions, electronic imaging of hard copies) as well as any and all Personal Information maintained on behalf of Contractor in a secure data center and/or cloud-based facilities that remain in the possession of Contractor or its Subcontractors is securely deleted and/or destroyed in a manner that does not allow it to be retrieved or retrievable, read or reconstructed. Hard copy media must be shredded or destroyed such that Personal Information cannot be read, or otherwise reconstructed, and electronic media must be cleared, purged, or destroyed such that the Personal Information cannot be retrieved. Only the destruction of paper Personal Information, and not redaction, will satisfy the requirements for data destruction. Redaction is specifically excluded as a means of data destruction.
- (c) Upon request by NYSED, Contractor may be required to provide NYSED with a written certification of the secure deletion and/or destruction of Personal Information held by the Contractor or Subcontractors to the contact and address for notifications set forth in the Agreement.
- (d) To the extent that Contractor and/or its Subcontractors continue to be in possession of any de-identified data (i.e., data that has had all direct and indirect identifiers removed), they agree not to attempt to re-identify de-identified data and not to transfer de-identified data to any party.

5. Data Breach.

- (a) Contractor shall promptly notify NYSED of any Breach of Personal Information in the most expedient way possible and without unreasonable delay, but no later than

seven (7) business days after discovery of the Breach. Notifications required pursuant to this section must be in writing, given by personal delivery, e-mail transmission (if contact information is provided for the specific mode of delivery), or by registered or certified mail, and must to the extent available, include a description of the Breach which includes the date of the incident and the date of discovery; the types of Personal Information affected and the number of records affected; a description of Contractor's investigation; and the name of a point of contact. Notifications required by this section must be sent to NYSED at the contact provided for contract related notifications with a copy to the Chief Privacy Officer, NYS Education Department, 89 Washington Avenue, Albany, New York 12234.

- (b) Contractor agrees that it will cooperate with NYSED, and law enforcement where necessary, in any investigations into a Breach. Any costs incidental to the required cooperation or participation of the Contractor will be the sole responsibility of the Contractor if such Breach is attributable to Contractor or its Subcontractors.
- (c) Contractor shall promptly notify the affected individuals of any breach. Such notice shall be made using one of the methods prescribed by § 899-aa(5) of the New York General Business Law.

6. Termination.

The confidentiality and data security obligations of Contractor under this DPA shall continue for as long as Contractor or its Subcontractors retain Personal Information or access to Personal Information and shall survive any termination of the Agreement to which this DPA is attached.