

AGREEMENT<sup>1</sup>  
*Regarding*  
*Data Privacy and Security*  
*In Accordance with Section 2-d of the New York Education Law*

This Agreement entered into by between **TestOut Corporation**, with its principal place of business located at 50 S Main Street, Pleasant Grove, UT 84062 ("Contractor"), and **Dutchess Board of Cooperative Educational Services**, with its principal place of business located at 5 BOCES Road, Poughkeepsie, NY 12601 ("Dutchess BOCES"). Upon being executed by Contractor's and Dutchess BOCES's authorized representatives, this Agreement shall be deemed to be in full force and effect.

**WHEREAS**, DUTCHESS BOCES is an educational agency within the meaning of New York State Education Law, Section 2-d ("Section 2-d"), and Contractor is a third party contractor within the meaning of Section 2-d; and

**WHEREAS**, Contractor and its authorized officers, employees, students and agents shall have access to "student personally identifiable information (PII)," "student data" and/or "teacher or principal data" regulated by Section 2-d; and

**WHEREAS**, the provisions of this Agreement are intended to comply with Section 2-d in all respects. To the extent that any term of the Agreement conflicts with a Contractor general term or data security policy, the terms of this Agreement shall apply and be given effect.

**NOW, THEREFORE**, it is mutually agreed, as follows:

**1. Confidential Information**

1.1 Contractor agrees that in performing its services with the DUTCHESS BOCES, Contractor may have access to confidential information in the possession of DUTCHESS BOCES, including student, teacher or principal personally identifiable information ("PII"). For the purposes of this Agreement, it is agreed that the definition of Confidential Information includes all documentary, electronic or oral information made known to Contractor or developed or maintained by Contractor

---

<sup>1</sup> To be used for Contractor/Vender services with a purchase order or other means of agreement that fall under the definition of (1) a contract or other written agreement and (2) a third-party contractor under Education Law 2-d.

A *contract or other written agreement* means a binding agreement between an educational agency and a third-party, which shall include but not be limited to an agreement created in electronic form and signed with an electronic or digital signature or a click wrap agreement that is used with software licenses, downloaded and/or online applications and transactions for educational technologies and other technologies in which a user must agree to terms and conditions prior to using the product or service. See, Part 121.1 (d).

A *third-party contractor* is defined as any person or entity, other than an educational agency, that receives student data or teacher or principal data from an educational agency pursuant to a contract or written agreement for purposes of providing services to such educational agency, including but not limited to data management or storage services, conducting studies for or on behalf of such educational agency, or audit or evaluation of publicly funded programs. Such term shall include an educational partnership organization that receives student and/or teacher or principal data from a school district to carry out its responsibilities pursuant to Education Lw 211-e and is not an educational agency, and a not-for-profit corporation or other nonprofit organization, other than an educational agency. See, Part 121.1(s).

through any activity related to its services. This Confidential information includes student, teacher and/or principal data (as defined, but not limited to those described under Section 2-d, including names, emails, personal addresses, or other PII which may be tracked across networked platforms or through social media).

1.2 Contractor agrees to comply with Section 2-d, and the corresponding regulations promulgated by the Commissioner of Education of New York (“Commissioner”) thereunder, and relevant DUTCHESS BOCES policies. In addition, Contractor agrees to comply with any changes in Section 2-d, the Commissioner’s regulations and relevant DUTCHESS BOCES policy that may be amended or modified during the term of the Agreement.

1.3 Upon expiration of the services, without a successor agreement in place, Contractor shall assist DUTCHESS BOCES in exporting all student, teacher and/or principal data previously received by Contractor from, or developed on behalf of, DUTCHESS BOCES, and Contractor shall, at the request of DUTCHESS BOCES, either securely delete any student, teacher and/or principal data remaining in Contractor's possession or return the student, teacher and/or principal data to DUTCHESS BOCES. If student, teacher and/or principal data is to be maintained by Contractor for any lawful purpose, such data shall remain in an encrypted format and shall be stored on systems maintained by Contractor in a secure data facility located within the United States.

1.4 The parties further agree that the terms and conditions set forth in this Confidential Information section and all of its subparts shall survive the expiration and/or termination of the Agreement.

## **2. Challenges to Data**

In the event that a student's parent or an eligible student wishes to challenge the accuracy of student data (pertaining to the particular student) that may include records maintained, stored, transmitted, and/or generated by Contractor pursuant to the Agreement, the challenge will be processed in accordance with the procedures of DUTCHESS BOCES.

A teacher or principal who wishes to challenge the accuracy of data pertaining to the teacher or principal personally, which is disclosed to Contractor pursuant to the Agreement, shall do so in accordance with the procedures for challenging APPR data, as established by DUTCHESS BOCES.

## **3. Training**

Contractor represents and warrants that any of its officers, employees, and/or assignees who will have access to student, teacher and/or principal data pursuant to the service will receive training on the federal and state laws governing confidentiality of such student, teacher and/or principal data, prior to obtaining initial or any further access to such data.

## **4. Use/Disclosure of Data**

4.1 Contractor shall not sell or use for any commercial purpose student, teacher and/or principal data that is received by Contractor pursuant to the services provided or developed by Contractor to fulfill its responsibilities pursuant to the services to be provided with the exception that the data may be used by the Contractor for commercial purposes if it is in non-targeted, encrypted, or anonymized form.

4.2 Contractor shall use the student, teacher and/or principal data, records, or information solely for the exclusive purpose of and limited to that necessary for the Contractor to perform the duties and services required. Such services include, but are not limited to **educational software**. Contractor shall not collect or use educational records of DUTCHESS BOCES or any student, teacher and/or principal data of DUTCHESS BOCES for any purpose other than as explicitly authorized in this Agreement.

4.3 Contractor shall ensure, to the extent that it receives student, teacher and/or principal data pursuant to the Agreement, that it will not share Confidential Information with any additional parties, including an authorized subcontractor or non-employee agent, without prior written consent of DUTCHESS BOCES.

## **5. Contractor's Additional Obligations under Section 2-d and this Agreement**

Contractor acknowledges that, with respect to any student, teacher and/or principal data received through its relationship with DUTCHESS BOCES pursuant to this Agreement it is obliged to maintain a Data Security & Privacy Plan, and fulfill the following obligations:

- execute, comply with and incorporate as Exhibit “A” to this Addendum, as required Section 2-d, the Parents’ Bill of Rights for Data Privacy and Security developed by DUTCHESS BOCES;
- store all data transferred to Contractor pursuant to the Agreement by DUTCHESS BOCES, in an electronic format on systems maintained by Contractor in a secure data facility located within the United States or hard copies under lock and key;
- limit internal access to student, teacher and/or principal data to Contractor's officers, employees and agents who are determined to need such access to such records or data to perform the services;
- not disclose student, teacher and/or principal data to any other party who is not an authorized representative of Contractor using the information to carry out Contractor's obligations, unless: (I) the other party has the prior written consent of the applicable student's parent or of the eligible student; or (II) the other party has the prior written consent of the applicable teacher or principal; or (III) the disclosure is required by statute or court order, and notice of the disclosure is provided to DUTCHESS BOCES no later than five business days before such information is required or disclosed (unless such notice is expressly prohibited by the statute or court order);
- use reasonable administrative, technical and physical safeguards that align with the NIST Cybersecurity Framework and are otherwise consistent with industry standards and best practices, including but not limited to encryption, firewalls and password protection as specified by the Secretary of the United States Department of HHS in any guidance issued under P.L. 111-5, Section 13402(H)(2), to protect the security, confidentiality and integrity

of student and/or staff data of DUTCHESS BOCES while in motion or in custody of Contractor from unauthorized disclosure;

- not mine Confidential Information for any purposes other than those agreed to in writing by the Parties. Data mining or scanning of user content for the purpose of advertising or marketing to students or their parents is prohibited; notify DUTCHESS BOCES, in the most expedient way possible and without unreasonable delay, of any breach of security resulting in an unauthorized release of any PII. In addition, Contractor shall take immediate steps to limit and mitigate the damage of such security breach or unauthorized release to the greatest extent practicable, and promptly reimburse DUTCHESS BOCES for the full cost of any notifications DUTCHESS BOCES makes as a result of the security breach or unauthorized release. Contractor further acknowledges and understands that Contractor may be subject to civil and criminal penalties in accordance with Section 2-d for violations of Section 2-d and/or this Agreement.
- understand that any breach of the privacy or confidentiality obligations set forth in this Addendum may, at the sole discretion of DUTCHESS BOCES, result in DUTCHESS BOCES immediately terminating this Agreement; and
- familiarize its applicable officers, employees and agents with this Agreement and with the "Parents' Bill of Rights for Data Privacy and Security."

The Contractor acknowledges that failure to fulfill these obligations shall be a breach of the Agreement.

6. Except as specifically amended herein, all of the terms contained in the Agreement are hereby ratified and confirmed in all respects, and shall continue to apply with full force and effect.

**IN WITNESS WHEREOF**, Contractor and DUTCHESS BOCES execute this 2-d Agreement as follows:

*Contractor Name:*

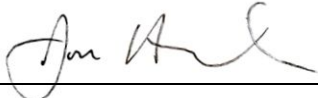
DUTCHESS BOCES

By: Jon Holland

By: MARK STEIN

Title: CISO

Title: Director of Technology

Signature: 

Signature: 

Date: 07/22/2021

Date: 07/23/21

## **Exhibit "A"**

### **Parents' Bill of Rights for Data Privacy and Security**

Dutchess BOCES hereby sets forth the following Parents' Bill of Rights for Data Privacy and Security. This information will be updated as additional regulatory guidance becomes available from the State Education Department.

1. A student's personally identifiable information cannot be sold or released for any commercial purposes. Parents have the right to inspect and review the complete contents of their child's education record. This right of inspection of records is consistent with the federal Family Educational Rights and Privacy Act (FERPA). Under the more recently adopted regulations (Education Law §2-d), the rights of inspection are extended to include data, meaning parents have the right to inspect or receive copies of any data in their child's educational record;
2. State and federal laws protect the confidentiality of personally identifiable information, 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 are stored or transferred;
3. A complete list of all student data elements collected by the State is available for public review at <http://www.p12.nysed.gov/irs/sirs/documentation/NYSEDstudentData.xlsx>;
4. Parents have the right to have complaints about possible breaches of student data addressed. You may contact the District Superintendent Dr. Richard Hooley with any such complaints by mailing him at 5 BOCES Road, Poughkeepsie NY 12601.