



NORTHEAST OHIO NETWORK FOR EDUCATIONAL TECHNOLOGY

Data Security and Privacy Agreement

This Data Security and Privacy Agreement ("Agreement") is entered between the **Metropolitan Regional Service Council** ("MRSC" or "Provider"), which offers information technology services and support through its information technology center the **Northeast Ohio Network for Educational Technology** ("NEOnet"), and **School District Board of Education** ("Member District"), as verified by the signatures on the signature page below.

WHEREAS, Provider is organized as a regional council of governments pursuant to Revised Code Chapter 167 and operates an information technology center ("ITC"), which is part of the Ohio Education Computer Network ("OECN"), and which has been established by the State of Ohio to provide technology services to member school districts and other authorized user entities; and

WHEREAS, pursuant to terms of a Membership Agreement and in accordance with NEOnet's Bylaws and Policies, Provider provides information technology services and support to its public school district and chartered nonpublic school members that operate in the state of Ohio; and

WHEREAS, Member District is a member of Provider and procures software program(s), including software as a service ("SAAS") offering(s), as well as necessary hardware and product support services through Provider (collectively, "programs and services") that results in Provider having access to student personally identifiable information ("PII") and/or student education records as defined by R.C. §3319.321 and the Family Educational Rights and Privacy Act ("FERPA"), codified in 20 U.S.C. §1232g and regulations 34 C.F.R. Part 99; and

WHEREAS, Provider and Member District seek to memorialize Provider's duty to maintain as confidential and not disclose, except as set forth herein, Member District Data (including student PII and education records) that Provider may access and/or store while providing programs and services (including information technology support services) to Member District pursuant to a Member Agreement.

NOW THEREFORE, in consideration of the mutual agreements hereinafter set forth and for other good and valuable consideration, the parties hereto, intending to be legally bound, agree as follows:

I. Definitions

- A. "Member District Data" includes any data or information entered or exchanged through use of Provider's programs and services. Member District Data shall be at all times owned by and be the sole property of Member District.
- B. "Education Records" include any records recorded or maintained in any format that are directly related to a student and that are maintained by an educational agency or institution, or a party acting for or on behalf of the agency or institution, which is governed by 20 U.S.C. §1232g and regulations 34 C.F.R. Part 99.
- C. "Member District" includes the members of the Board of Education, its agents, employees, and representatives.

- D. "Personally Identifiable Information" ("PII") includes information and metadata that, alone or in combination, is linked or linkable to a specific student so as to 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. Personally identifiable information includes but is not limited to: (a) the student's name; (b) the name of the student's parent or other family members; (c) the address or phone number of the student or student's family; (d) personal identifiers such as the student's state-assigned student identifier, social security number, student number or biometric record; (e) indirect identifiers such as the student's date of birth, place of birth or mother's maiden name; and (f) demographic attributes, such as race, socioeconomic information, and gender.
- E. "Parties" shall collectively refer to the Member District and Provider.
- F. "Programs and services" collectively refer to any software programs, software as a service ("SAAS") and information technology services offered to members of the Metropolitan Regional Service Council that might involve the access, collection, storage, or communication of education records and PII. This might include, but is not necessarily limited, to the following programs: EMIS Shared Services; Infinite Campus; ProgressBook Shared Services; SameGoal; School Health Management Systems; and Student Online Registration Vendors (FinalForms, Registration Gateway, eSchool View, InfoSnap, and ComDoc).
- G. "Provider" includes the Metropolitan Regional Service Council which offers information technology services and support through its information technology center the Northeast Ohio Network for Educational Technology, and any employees, agents or contractors that provide services through or on behalf of MRSC.

II. TERM OF AGREEMENT

- A. This Agreement shall take effect immediately, and shall terminate upon either of the following events:
 - 1. Withdrawal of Member District from membership in the MRSC; or
 - 2. Member District ceases to utilize any software programs and/or services that might provide the Provider with access to student education records.

The provisions of this Agreement that pertain to Provider's duty to keep Member District Data confidential and not disclose it to third parties without Member District's express written authorization shall remain in effect after termination of this Agreement.

III. PROGRAMS AND SERVICES COVERED BY AGREEMENT

- A. This Agreement shall govern access, use, storage and destruction of Member District Data, including confidential student data and education records obtained through any program or service provided by Provider to Member District.
- B. Member District acknowledges it is solely responsible for selecting the programs and services that are offered by Provider through its Member Agreement. This Data Security and Privacy Agreement shall apply whenever Member District uses a program or service provided by or through Provider that might involve Provider having access to and/or a duty to maintain Member District Data, including student education records and PII.
- C. Member District acknowledges that some products and services provided by Provider are created and/or supported by a third party. Under such circumstances, this Agreement shall govern Provider's duties related to accessing and/or maintaining Member District Data. Member District is responsible for obtaining separate assurances from the third party as pertains to that party's duties and responsibilities to maintain Member District Data as confidential and not disclose it to unauthorized individuals/entities, as Member District deems appropriate. Upon request, Provider shall provide Member District with reasonable assistance in obtaining such assurance from the third party.

IV. DATA SECURITY AND PRIVACY, INCLUDING CONFIDENTIALITY OF RECORDS AND INFORMATION

- A. Provider shall exercise reasonable and ordinary care in preserving and protecting the confidentiality of Member District Data, including student education records and PII furnished by Member District.
- B. Provider shall store and maintain all Member District Data, including student education records and PII, that it receives from Member District in accordance with commercial best practices and pursuant to the Provider's Bylaws and Policies, as well as terms of the applicable Member Agreement. Provider's duties and responsibilities include implementation of appropriate administrative, physical, and technical safeguards to secure Member District Data from unauthorized access, disclosure, alteration, or use.
- C. Provider shall limit access to Member District Data, including student education records and PII, to only those employees, contractors and agents who need access to operate, develop, support or improve the programs and services offered by and/or through Provider. These individuals shall be bound by confidentiality rules and requirements and subject to discipline (including termination), as well as criminal prosecution, for failing to adhere to Provider's data security and privacy rules and obligations as set forth in this Agreement.
- D. Except as required by law, Provider agrees not to disclose any materials, information, or other data relating to the Member District, including education records and PII, to other individuals, corporate entities, districts, or governmental agencies, without prior written consent from the Member District.
- E. Provider affirms that all Member District Data shall be encrypted both in transmission and at rest.
- F. Except as required by law including but not limited to the Ohio public records laws, Member District agrees not to disclose any proprietary information or documentation obtained from Provider that is marked or otherwise designated by Provider as confidential.

V. REQUESTS FOR RECORDS

- A. Each Party shall cooperate with the other to properly respond in a timely manner to any subpoenas, warrants, legal orders, or parent or student requests to access education records.
- B. **Litigation Hold.** If Member District notifies Provider about threatened, pending, or current litigation that involves a matter(s) that relate(s) to records stored or maintained by Provider, Provider agrees to immediately preserve all electronically stored information, including electronic files and records, ("ESI") that relate to the matter(s) — i.e., implement a Litigation Hold. Member District will notify Provider of the specific records that must be preserved and/or the type/nature of the ESI to be preserved. Provider expressly recognizes its duty to preserve all ESI in response to a litigation hold request and agrees to comply with the request and maintain all relevant ESI until Member District notifies Provider in writing that the Litigation Hold has been lifted/released. If this Agreement expires or otherwise is terminated as specified herein, or becomes void, and a Litigation Hold is in place involving specific records and/or ESI, Provider shall delay the deletion of Member District Data, which includes such records/ESI, for a period of six (6) months so Member District can work with Provider to ensure the data covered by the Litigation Hold is duly preserved and its integrity maintained in accordance with the Litigation Hold in a manner acceptable to the applicable court and other party(ies) to the litigation. Provider shall not charge Member District any additional fees to maintain records pursuant to a Litigation Hold.

VI. RESPONSE TO SUSPECTED DATA BREACHES

- A. Each Party has an obligation to notify the other of any known or suspected security breaches of data or systems provided or maintained by Provider that might involve Member District Data, including student education records or PII.

- B. Upon receiving notice of a possible data breach, Provider will immediately initiate an investigation in accordance with industry recognized best practices. Provider will also take steps to prevent any further breach during the pendency of the investigation.
- C. If Provider determines that a data breach has occurred, it will promptly notify Member District in writing. Member District shall be responsible for notifying any individual whose education records or PII was involved, as well as any state or federal government agency or third-party entity, unless the Provider agrees in advance to provide said notice or is otherwise required by law to do so.
- D. In the event of a data breach that results in disclosure of Member District Data to an unauthorized party, after Provider completes its investigation and takes steps to prevent further disclosure of Member District Data, Provider shall provide Member District with a written investigation summary that details investigation findings (including the Member District Data that was disclosed, used and/or accessed) and when appropriate, steps that will be taken by the Parties to prevent a future breach.

VII. TRANSFER AND DESTRUCTION OF MEMBER DISTRICT DATA UPON TERMINATION

- A. In the event that this Agreement is terminated, Provider will provide reasonable assistance to Member District concerning extraction of any data or records that it maintained on behalf of Member District during the term of this Agreement.
- B. It is Member District's responsibility to ensure that all data is transferred within a six-month period of time, unless the Parties mutually agree in writing to an extension.
- C. Once all data and records are transferred to Member District, Provider shall securely delete/destroy all Member District Data, including student education records and PII, that it retains within sixty (60) days of receiving a written request from Member District. This includes deletion/destruction of any records from Provider's main system, any backup systems, and any records maintained on a drive or storage device.
- D. Provider will confirm, in writing, to Member District once Member District Data is permanently deleted/destroyed.

VIII. NOTICES

- A. All notices permitted or required to be given to either of the parties to this Agreement shall be in writing and shall be deemed given or delivered when: (a) delivered by hand or (b) mailed, if sent by regular mail or other express delivery service (receipt requested), in each case to the appropriate addresses set forth below (or to such other addresses as the party may designate by notice to the other party hereto):

1. If to Provider:

Name: Matthew Gdovin
 Address: 700 Graham Road
 City/State/Zip: Cuyahoga Falls, Ohio. 44221
 Phone: 330-926-3902
 Facsimile: 330-926-3901
 E-mail: Gdovin@neonet.org

2. If to The Member District:

Name:

Address:

City/State/Zip:

Phone:

Facsimile:

E-mail:

IX. GENERAL PROVISIONS

- A. **Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors, assigns, heirs and personal representatives. Neither Party shall assign any right, obligation, or duty, in whole or in part, nor of any other interest hereunder, without the prior written consent of the other Party, which shall not be unreasonably withheld.
- B. **Waiver, Discharge, etc.** This Agreement may not be released, discharged, changed, or modified in any manner, except by an instrument in writing signed by both Parties. The failure of either party to enforce at any time any of the provision(s) of this Agreement shall in not be construed to be a waiver of any provision(s), nor in any way to affect the validity of this Agreement or any part hereof or the right of either party hereto to enforce each such provision. No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach.
- C. **Captions.** The captions in this Agreement are inserted only as a matter of convenience and as a reference, and in no way define, limit or describe the scope or intent of this Agreement or any of the provisions hereof.
- D. **Rights of Persons Not Parties.** Nothing contained in this Agreement shall be deemed to create rights in persons not parties hereto.
- E. **Liability.** The Member District and Provider shall each assume liability for loss, costs or damages resulting from the negligence of either of them, but shall not be liable for any loss, costs or damages resulting from the negligence of the other party.
- F. **Severability.** If any provision of this Agreement or the application thereof to any persons or circumstances shall, for any reason or to any extent, be held invalid or unenforceable, the remainder of this Agreement and the application of such provision to such other persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law.
- G. **Entire Agreement.** This Agreement, together with the documents referred to herein, shall constitute the entire agreement between the parties with respect to the subject matter hereof and shall supersede all previous negotiations, commitments and writing with respect to such subject matter.
- H. **Counterparts.** This Agreement may be executed in several counterparts, all of which taken together shall constitute one single agreement between the parties hereto.
- I. **Construction.** This Agreement and its validity, interpretation and effect shall be construed in accordance with and governed by the laws of the State of Ohio. If any ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring any party by virtue of authorship of any specific provisions of the Agreement. When used in this Agreement, the word "including" shall mean including without limitation. Unless the context requires otherwise, any reference to the masculine, feminine and neuter genders include one another.

- J. **Compliance with Law.** Each Party agrees to comply with all local, state, and federal governmental laws and regulations applicable to the Services contemplated by this Agreement.
- K. **Governing Law.** This Agreement shall be governed and construed under the laws of the State of Ohio, and exclusive venue for any dispute arising hereunder shall be in Summit County, Ohio, or in the United States District Court for the Northern District of Ohio.
- L. **Fully Understand and Freely Enter.** The undersigned hereby acknowledge that they have read and understand the foregoing. The Parties to this Agreement also acknowledge that the execution of this Agreement is a free and voluntary act, done in belief that the Agreement is fair and reasonable. Finally, the Parties acknowledge that they have had the right and opportunity to consult with and obtain the advice of independent legal counsel of the parties' own choosing in the negotiation and execution of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on the date first set forth above.

THE MEMBER DISTRICT:

**CITY SCHOOL DISTRICT
BOARD OF EDUCATION**

Signature of Authorized Representative of Member District

Date

Printed name of Authorized Representative of Member District

THE PROVIDER:

METROPOLITAN REGIONAL SERVICE COUNCIL

Signature of Officer or Manager for Provider

Date

Matthew Gdovin

Printed name of Officer or Manager for Provider