

**Supplemental Agreement between the**

**Quogue Union Free School District**

**and**

**Canva Pty Ltd**

Supplemental Agreement dated this 1st day of December, 2022 between the Quogue Union Free School District (the “District”), located at 10 Edgewood Road Quogue NY, 11959, and Canva Pty Ltd (the “Contractor”) located at 110 Kippax Street, Surry Hills, NSW, Australia 2010.

WHEREAS, the District and Contractor have entered into a contract or other written agreement (hereinafter the “Agreement”) whereby the Contractor may receive Student Data or Teacher or Principal Data, as those terms are defined in Education Law §2-d and 8 NYCRR 121.1; and

WHEREAS, the District and Contractor wish to enter into an agreement in order to comply with Education Law §2-d and 8 NYCRR Part 121 (hereinafter “Supplemental Agreement”).

NOW THEREFORE, in consideration of the mutual promises below, the District and Contractor agree as follows:

1. Defined Terms: Unless otherwise indicated below or elsewhere in this Supplemental Agreement, all capitalized terms shall have the meanings provided in Education Law §2-d and Section 121.1 of the Regulations of the Commissioner of Education (hereinafter “Regulations”).

a. “Educational Agency” shall generally have the same meaning as the term Educational Agency at Education Law §2-d(1)(c) and Section 121.1(f), and in reference to the party to this Agreement shall mean the Quogue Union Free School District

b. “Third Party Contractor” shall mean 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 other 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. With reference to this agreement, “Third Party Contractor” shall be synonymous with “Contractor” and shall also include any and all subcontractors, persons or entities with whom the Contractor shares Student Data and/or Principal or Teacher Data pursuant to a contract or other 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.

- c. "Student" means any person attending or seeking to enroll in an Educational Agency.
- d. "Student Data" means Personally Identifiable Information of a "Student."
- e. "Eligible Student" means a Student who is eighteen years or older.
- f. "Parent" means a parent, legal guardian, or personal in parental relation to a Student.
- g. "Building Principal" or "Principal" means a building principal subject to annual performance evaluation review under Education Law §3012-c.
- h. "Classroom Teacher" or "Teacher" means a teacher subject to annual performance evaluation review under Education Law §3012-c.
- i. "Teacher or Principal Data" means Personally Identifiable Information from the records of an Educational Agency relating to the annual professional performance reviews of classroom teachers or principals that is confidential and not subject to release under the provisions of Education Law §3012-c.
- j. "Personally Identifiable Information" shall have the following meanings:
  - i. As applied to Student Data, shall mean Personally Identifiable Information as defined in 34 CFR 99.3 implementing the Family Educational Rights and Privacy Act (FERPA)
  - ii. As applied to Teacher or Principal Data, shall mean Personally Identifiable Information as that term is defined in Education Law §3012-c.
- k. "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). A copy of the NIST Cybersecurity Framework is available at the Office of Counsel, State Education Department, State Education Building, Room 148, 89 Washington Avenue, Albany, New York 12234.

2. The District has developed the Parents Bill of Rights for Data Privacy and Security, the terms of which are applicable to the Agreement between the District and Contractor and are incorporated into this Supplemental Agreement. The Parents Bill of Rights for Data Privacy and Security states:

### **PARENTS' BILL OF RIGHTS FOR DATA PRIVACY AND SECURITY**

Pursuant to New York State Education Law §2-d, parents, legal guardians and persons in parental relation to a student are entitled to certain rights with regard to their child's personally identifiable information, as defined by Education Law §2-d. This document contains a summary of such rights.

- 1) A student's personally identifiable information cannot be sold or released for any commercial purposes.
- 2) Parents/guardians have the right to inspect and review the complete contents of their child's educational records maintained by the Quogue Union Free Central School District.
- 3) State and Federal Laws protect the confidentiality of personally identifiable student 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 is stored or transferred.
- 4) A complete list of all student data elements collected by New York State is available for review at the following website:  
<http://www.p12.nysed.gov/irs/sirs/documentation/NYSEDstudentData.xlsx>  
Or by writing to:  
Office of Information & Reporting Services  
New York State Education Department  
Room 863 EBA,  
89 Washington Avenue  
Albany, NY 12234
- 5) Parents have the right to have complaints about possible breaches of student data addressed. Complaints should be directed to:  
Michael Zuccaro  
Data Protection Officer  
P.O. Box 957  
Quogue, N.Y. 11959  
[mzuccaro@quogueschool.com](mailto:mzuccaro@quogueschool.com)  
(631) 653-4285 ext. 503  
  
Or to:  
Chief Privacy Officer  
New York State Education Department  
89 Washington Avenue  
Albany, NY 12234  
Email: [CPO@mail.nysed.gov](mailto:CPO@mail.nysed.gov)
- 6) Each contract with a third-party contractor which will receive student data, or teacher or principal data will include information addressing the following:
  - a. The exclusive purposes for which the student data or teacher or principal data will be used.
  - b. How the third-party contractor will ensure that the subcontractors, persons or entities that the third-party contractor will share the student data or teacher or principal data with, if any, will abide by data protection and security requirements.
  - c. When the agreement expires and what happens to the student data or teacher and principal data upon expiration of the agreement.

- d. If and how a parent/guardian, student, a student over eighteen years of age, teacher or principal may challenge the accuracy of the student data or teacher or principal data that is collected.
  - e. Where the student data or teacher or principal data will be stored, and the security protections taken to ensure such data will be protected, including whether such data will be encrypted.
- 7) Third-party contractors are also required to:
- a. provide training on federal and state law governing confidentiality to any officers, employees, or assignees who have access to student data or teacher or principal data;
  - b. limit internal access to education records to those individuals who have a legitimate educational interest in such records;
  - c. not use educational records for any other purpose than those explicitly authorized in the contract;
  - d. not disclose personally identifiable information to any other party
    - (i) without the prior written consent of the parent/guardian or eligible student; or
    - (ii) unless required by statute or court order and the third-party contractor provides a notice of the disclosure to the New York State Education Department, board of education, or institution that provided the information no later than the time the information is disclosed, unless providing notice of the disclosure is expressly prohibited by the statute or court order;
  - e. maintain reasonable administrative, technical and physical safeguards to protect the security, confidentiality and integrity of personally identifiable student information in its custody;
  - f. use encryption technology to protect data while in motion or in its custody from unauthorized disclosure as specified in Education Law §2-d;
  - g. notify the Quogue Union Free School District of any breach of security resulting in an unauthorized release of student data or teacher or principal data, in the most expedient way possible and without unreasonable delay;
  - h. provide a data security and privacy plan outlining how all state, federal and local data security and privacy contract requirements will be implemented over the life of the contract;
  - i. provide a signed copy of this Bill of Rights to the Quogue Union Free School District thereby acknowledging that they are aware of and agree to abide by this Bill of Rights.
- 8) This Bill of Rights is subject to change based on regulations of the Commissioner of Education and the New York State Education Department's Chief Privacy Officer, as well as emerging guidance documents.
3. As required by Education Law §2-d(3)(c) and Section 121.3 of the Regulations, the District has developed the following "supplemental information" for the Agreement with the Contractor:

- a. Student Data and/or Teacher or Principal Data which the Contractor comes into possession as part of its Agreement with the District shall be used for the following exclusive purpose(s): Student Data and/or Teacher or Principal Data will be used by Contractors to provide the Service (Canva for Education – a visual online design tool) pursuant to the Agreement.
  - b. The Contractor will ensure that any and all subcontractors, persons or entities that the Contractor may share the Student Data and/or Principal or Teacher Data with will abide by the terms of the Agreement, this Supplemental Agreement, and the data protection and security required by applicable law.
  - c. The duration of this agreement coincides with the duration of the parties' underlying Agreement, which is currently set to expire on thirty-six (36) months from the Effective Date. When the Agreement between the District and the Contractor expires or terminates, the Contractor shall allow District, its Students, Teachers and Principals to access the platform to extract any Data. Thereafter Contractor will dispose of and/or delete all Data within a reasonable time following the expiration of termination of the Agreement.
  - d. Parents, students, teachers, or principals who seek to challenge the accuracy of PII will do so by contacting the District. If a correction to data is deemed necessary, the District will notify the Contractor. The Contractor agrees to facilitate such corrections within 30 calendar days of receiving the District's written request.
  - e. The District and the Contractor hereby agree that the Student Data and/or Principal or Teacher Data shall be stored in the following manner: The Contractor will store and process District Data in compliance with applicable regulations and in accordance with commercial best practices, including appropriate administrative, physical and technical safeguards, to secure district Data from unauthorized access, disclosure, alteration and use. The Contractor will use industry standard and up-to-date security tools and technologies such as anti-virus protections and intrusion detection methods in providing services pursuant to the Agreement. The Contractor will conduct periodic risk assessments and remediate any identified security vulnerabilities in a timely manner. Contractor encrypts PII transmitted between customers and the application over public networks using TLS 1.2 or higher. PII stored on Contractor's server is encrypted using AES 256 or stronger.
  - f. The Contractor hereby affirms that it has adopted technologies, safeguards, and practices that align with the NIST Cybersecurity Framework.
4. As required by Education Law §2-d(5)(e), the Contractor hereby agrees that any officers or employees of the Contractor, including any subcontractors or assignees, who have access to Student Data or Teacher or Principal Data will have or will receive training on the applicable Federal and New York State laws governing confidentiality of Student Data and/or Principal or Teacher Data prior to receiving access.
  5. As required by Education Law §2-d(5)(f), the Contractor hereby agrees that it shall:

a. Limit internal access to education records to those individuals that are determined to have legitimate educational interests;

b. Not use the educational records for any other purposes than those explicitly authorized in the Agreement or this Supplemental Agreement;

c. Except for authorized representatives of the Contractor to the extent they are carrying out the Agreement or this Supplemental Agreement, not disclose any Personally Identifiable Information to any other party:

i. Without the prior written consent of the Parent or Eligible Student; or

ii. Unless required by statute or court order and the party provides a notice of the disclosure to the State Education Department, District Board of Education, or institution that provided the information no later than the time the information is disclosed, unless providing notice of the disclosure is expressly prohibited by the statute or court order.

d. maintain reasonable administrative, technical and physical safeguards to protect the security, confidentiality and integrity of personally identifiable student information in its custody;

6. Breach and unauthorized release of Personally Identifiable Information:

a. In accordance with Education Law §2-d(6) and Section 121.11 of the Regulations, the Contractor shall be required to notify the District of any breach of security resulting in an unauthorized release of Student Data and/or Principal or Teacher Data by the Contractor or its subcontractors or assignees in violation of applicable state or federal law, the Parents Bill of Rights for Student Data Privacy and Security, the data privacy and security policies of the District and/or binding contractual obligations relating to data privacy and security, in the most expedient way possible and without unreasonable delay. The District shall, upon notification by the Contractor, be required to report to the Chief Privacy Officer, who is appointed by the State Education Department, any such breach of security and unauthorized release of such data.

b. In the case of an unauthorized release of Student Data, the District shall notify the Parent or Eligible Student of the unauthorized release of Student Data that includes Personally Identifiable Information from the student records of such Student in the most expedient way possible and without unreasonable delay. In the case of an unauthorized release of Teacher or Principal Data, the District shall notify each affected Teacher or Principal of the unauthorized release of data that includes Personally Identifiable Information from the Teacher or Principal's annual professional performance review in the most expedient way possible and without unreasonable delay.

c. In the case of notification to a Parent, Eligible Student, Teacher or Principal due to the unauthorized release of student data by the Contractor, or its subcontractors or

assignees' violation of applicable data privacy laws, the Contractor shall promptly reimburse the educational agency for the full cost of such notification, as required by Education Law §2-d(6)(c).

7. Miscellaneous:

a. The District and Contractor agree that if applicable laws change and/or if the Commissioner of Education implements Regulations which affects the obligations of the parties herein, this Agreement shall be deemed to incorporate such changes as necessary in order for the District and the Contractor to operate in compliance with the amendment or modified requirements under the applicable laws or regulations.

b. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits the District to comply with the applicable laws or regulations.

c. Nothing express or implied in this Agreement is intended to confer upon any person other than the District, Contractor and their respective successors and assigns any rights, remedies, obligations or liabilities.

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement.

CANVA PTY LTD

QUOGUE UNION FREE SCHOOL DISTRICT

DocuSigned by:  
By: Jason Wilmot  
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By: [Signature]

Print Name: Jason Wilmot

Print Name: Michael Zuccaro

Title: Head of Education

Title: Assistant to the Supt.

Date: December 2, 2022

Date: 12/2/22