

Adams 12 Five Star Schools Data Privacy Addendum

The provisions of this Data Privacy Addendum apply to any and all use of Houghton Mifflin Harcourt (“Contractor”) services by Adams 12 Five Star Schools and its employees and students, and this addendum is incorporated into any Independent Contractor Agreement and all end user or other contracts or agreements entered into by District employees and students with Contractor (collectively referred to as “Agreement”). This addendum supersedes the Agreement by adding to, deleting from and modifying the Agreement as set forth herein. To the extent any such addition, deletion or modification results in any conflict or inconsistency between the Agreement and this Addendum, the Addendum shall govern and the terms of the Agreement that conflict with this Addendum or are inconsistent with the Addendum shall be of no force or effect.

Covered Data

As used in this addendum, student personally identifiable information (“PII”) means any and all District-generated or provided (including any data generated or provided by District staff or students) data or information collected, maintained, generated or inferred that alone or in combination personally identifies an individual student or the student’s parent or family, in accordance with C.R.S. § 22-16-103(13) & 34 C.F.R. § 99.3. For the avoidance of doubt, PII does not include de-identified data that cannot identify, alone or in combination with other such data, an individual student or his/her parent or family.

Compliance with State and Federal Law

All data sharing, use, and storage will be performed in accordance with the requirements of the Family Educational Rights and Privacy Act of 1974 as amended, 20 U.S.C. § 1232g & 34 C.F.R. § 99 (“FERPA”) and C.R.S. § 22-16-101, *et seq.*

Contractor Obligations:

1. *Uses and Disclosures as Provided in the Agreement.* Contractor may use and disclose student PII provided by the District only for the purposes described in the Agreement and only in a manner that does not violate local or federal privacy regulations. Only the individuals or classes of individuals will have access to the data that need access to the student PII to do the work described in the Agreement. Contractor shall ensure that any subcontractors who may have access to student PII are bound by confidentiality obligations at least as protective as the provisions of the Agreement, and otherwise comply with all applicable federal and state laws pertaining to PII confidentiality.
2. *Nondisclosure Except as Provided in the Agreement.* Contractor shall not use or further disclose the student PII except as stated in and explicitly allowed by the Agreement and state and federal law. Contractor does not have permission to re-disclose data to any unauthorized subcontractor or other third party.
3. *Safeguards.* Contractor agrees to take appropriate administrative, technical and physical safeguards to reasonable designed to protect the security, privacy, confidentiality, and integrity of student PII. Contractor shall ensure that student PII is secured and encrypted to the greatest extent practicable during use, storage and/or transmission. Contractor agrees that student PII will be stored on equipment or systems located domestically.
4. *Reasonable Methods.* Contractor agrees to use “reasonable methods” to ensure to the greatest extent practicable that Contractor and all parties accessing data are compliant with state and federal law. Specifically, this means: 1) Only de-identified student PII may be used for the purposes of educational research or for other purposes other than the Work that are otherwise consistent with applicable federal and state law and Contractor’s Privacy Policy referenced *infra*, and 2) Contractor must protect student PII from re-identification, further disclosures, or other uses, except as authorized by the District in accordance with state and federal law. Approval to use student PII for one purpose does not confer approval to use it for another.

5. *Confidentiality.* Contractor agrees to protect student PII according to acceptable standards and no less rigorously than they protect their own confidential information.
6. *Reporting.* Contractor shall report to the District as soon as possible but in no case longer than 5 days of Contractor becoming aware of any use or disclosure of the student PII in violation of the Agreement or applicable law.
7. *Data Destruction.* With the exception of long term tape backups which cannot be accessed in a commercially reasonable manner for data destruction purposes, student PII must be destroyed in a secure manner or returned to the District at the formal, written request of the District. Contractor agrees to send a written certificate that the data was properly destroyed or returned within 30 days of the District's written request... Contractor shall destroy student PII in such a manner that it is permanently irretrievable in the normal course of business.
8. *Minimum Necessary.* Contractor attests that the student PII requested represents the minimum necessary information for the services as described in the Agreement and that only necessary individuals or entities who are familiar with and bound by this addendum will have access to the student PII in order to perform the work.
9. *Authorizations.* When necessary, Contractor agrees to secure individual authorizations to maintain or use the student PII in any manner beyond the scope or after the termination of the Agreement.
10. *Data Ownership.* The District is the data owner. Contractor does not obtain any right, title, or interest in any of the data furnished by the District.
11. *Misuse or Unauthorized Release.* Contractor shall as soon as possible but in no case later than 5 days notify the District upon discovering the misuse or unauthorized release of student PII held by Contractor or one of its subcontractors, regardless of whether the misuse or unauthorized release is the result of a material breach of the Agreement.
12. *Data Breach.* Contractor will as soon as possible but in no case later than 5 days notify the District upon the discovery of any data breach. Insofar as the District then notifies the affected parties, potentially including affected students, Contractor shall cooperate with the District in effecting those notification efforts, and further, where the data breach is the result of the negligence or misconduct of Contractor and not that of the District, Contractor shall provide to the District translated versions of written notices in the following languages: Spanish, Vietnamese, Chinese, Hmong, Farsi, French, Arabic, Somali, and Korean.

Prohibited Uses

Contractor shall not sell student PII; use or share student PII for purposes of targeted advertising; or use student PII to create a personal profile of a student other than for accomplishing the purposes described in the Agreement.

Notwithstanding the previous paragraph, Contractor may use student PII to ensure legal or regulatory compliance or take precautions against legal liability; respond to or participate in the judicial process; protect the safety of users or others on Contractor's website, online service, or application; or investigate a matter related to public safety. Contractor shall notify the District as soon as possible of any use described in this paragraph.

School Service Contract Provider Additional Provisions

If Contractor is a School Service Contract Provider – defined in C.R.S. § 22-16-103 as an entity that enters into a contract with the District to provide a website, online service, or application that is designed and marketed primarily for using in a school and collects, maintains or uses student personally identifiable information – the following provisions shall apply:

1. *Data Collection Transparency and Privacy Policy.* Contractor shall provide clear information that is understandable by a layperson explaining the types of data elements of student PII that Contractor collects, how Contractor collects student PII, and how Contractor uses and shares the student PII. The information must include all types of student PII that Contractor collects regardless of whether it is initially collected or ultimately held individually or in the aggregate. Contractor shall provide the District with a link to the information on a webpage maintained and updated by Contractor so that the District may post the link on its website. District acknowledges that Contract may satisfy this provision by continuing to maintain the HMH Privacy Policy for K-12 Platforms (currently available at <http://www.hmhco.com/common/privacy-policy-for-k-12-learning-platforms>), which HMH may update from time to time.
2. *Notice Before Making Changes to Privacy Policy.* Contractor shall provide notice to the District via email addressed to Mr. Beau Foubert, Executive Director of Curriculum & Instruction, at Beau.Foubert@adams12.org, or by other means reasonably calculated to provide adequate notice to District officials before making material changes to Contractor's privacy policy that affects student PII.
3. *Access to Student PII.* Upon request by the District, Contractor agrees to provide in a readable electronic format a copy of all student PII maintained by the Contractor for individual students.
4. *Correction of Inaccurate Student PII.* Contractor shall facilitate access to and correction of any factually inaccurate student PII in response to a request for correction that the District receives.
5. *Grounds for Termination.* Contractor understands that any breach by Contractor or any subcontractor of this addendum, state or federal law regarding student PII, or the Contractor's privacy policy described above, may be grounds for termination of the Agreement in accordance with C.R.S. § 22-16-107(2)(a).

IN WITNESS WHEREOF, the parties have executed this addendum contemporaneously with the Agreement:

Adams 12 Five Star Schools

By: Cindy Roth
Signature

Cindy Roth, Buyer
Name and Title

Houghton Mifflin Harcourt

CONTRACTOR: Publishing Company

Nicole Genova
Signature

Nicole Genova, Director, Business Desk
Name and Title

125 High Street
Address

Boston, MA 02110
City, State, Zip

04-1456030
Tax ID

05/08/2017
Date