

NEW YORK EDUCATION LAW 2-D DATA PRIVACY AGREEMENT

MEDINA CENTRAL SCHOOL DISTRICT

AND

PEAR DECK, INC.

The Data Privacy Agreement ("DPA") is by and between the Medina Central School District ("EA"), an Educational Agency, and Pear Deck, Inc. ("Contractor"), collectively, the "Parties."

In order for the Contractor to provide certain services to the EA effective July 1, 2021 and continuing until June 30, 2022 pursuant to the Pear Deck Terms of Service (available at <https://www.peardeck.com/terms-of-service>) and Pear Deck Privacy Policy (available at <https://www.peardeck.com/privacy-policy>) (together the Pear Deck Terms of Service and the Pear Deck Privacy Policy, the "Service Agreement") and this DPA, the Contractor may receive personally identifiable information ("PII") regulated by several New York and federal laws and regulations, among them, the Family Educational Rights and Privacy Act ("FERPA") at 12 U.S.C. 1232g (34 CFR Part 99); Children's Online Privacy Protection Act ("COPPA") at 15 U.S.C. 6501-6502 (16 CFR Part 312); Protection of Pupil Rights Amendment ("PPRA") at 20 U.S.C. 1232h (34 CFR Part 98); the Individuals with Disabilities Education Act ("IDEA") at 20 U.S.C. 1400 et seq. (34 CFR Part 300); New York Education Law Section 2-d; and the Commissioner of Education's Regulations at 8 NYCRR Part 121. The Parties enter this DPA to address the requirements of New York law. Contractor agrees to maintain the confidentiality and security of PII in accordance with applicable New York, federal and local laws, rules and regulations.

1. **Definitions.** Capitalized terms shall have the meanings ascribed to such terms in the Service Agreement, unless otherwise explicitly defined below. Any additional terms in this DPA not specifically defined below or in the Service Agreement, shall be interpreted pursuant the meaning of such terms as set forth under Education Law § 2-d(1) and 8 NYCRR § 121.1.
 - a. **"Commercial or Marketing Purpose"** means the sale of Student Data; or its use or disclosure for purposes of receiving remuneration, whether directly or indirectly; the use of Student Data for advertising purposes, or to develop, improve or market products or services to students.
 - b. **"Encryption"** means methods of rendering Personally Identifiable Information unusable, unreadable, or indecipherable to unauthorized persons through the use of a technology or methodology specified or permitted by the Secretary of the United States department of health and human services in guidance issued under Section 13402(H)(2) of Public Law 111-5 (45 CFR § 164.304).
 - c. **"New York Education Law Section 2-d"** means Section 2-d of Article I of Title I of New York Consolidated Laws, Education Law, together with its implementing regulations in Part 121 of the Regulations of the New York Commissioner of Education.
 - d. **"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.

- e. **"Personally Identifiable Information"**, as applied to Student Data, means Personally Identifiable Information as defined in section 99.3 of Title 34 of the Code of 3 Federal Regulations implementing the Family Educational Rights and Privacy Act, 20 U.S.C 1232g ("**FERPA**"), and as applied to Teacher and Principal Data, means Personally Identifiable Information as set forth below. Personally Identifiable Information does not include Deidentified Information. Such information or data would no longer meet the definition of PII.
- f. **"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 and 3012-d.
- g. **"Student Data"** means Personally Identifiable Information from the student records of an educational agency.

2. Data Collection Transparency and Restrictions.

- a. Pear Deck acknowledges and agrees that under New York Education Law Section 2-d:
 - i. Personally Identifiable Information cannot be sold, or used or disclosed for any Commercial or Marketing Purpose;
 - ii. EA is responsible for working with the State of New York to ensure that a complete list of all student data elements collected by the State is available for public review through either a website or in writing;
 - iii. Parents have the right to inspect and review the complete contents of their child's education record in compliance with New York Education Law Section 2-d; and
 - iv. EA is responsible for addressing any parent complaints about providing a phone number, email address and mailing address for such complaints. The Contractor will cooperate with the EA in addressing and responding to any parent, student, teacher, or principal complaint challenging the accuracy of student data or teacher or principal data that may be in the possession of the Contractor.
 - v. Contractor has no property or licensing rights or claims of ownership to PII, and Contractor must not use PII for any purpose other than to provide the Services as otherwise set forth in the Service Agreement. Neither the Services provided nor the manner in which such Services are provided shall violate New York law.
- b. Pear Deck's Privacy Policy sets forth, among other things (i) how Pear Deck protects Personal Student Information (as defined in the Terms) and other Personally Identifiable Information; (ii) the list of Personal Student Information that Pear Deck collects in connection with its services; and (iii) the process for a parent to request their child's education records from Pear Deck;

3. Data Handling Restrictions and Requirements.

- a. Pear Deck acknowledges that, in compliance with New York Education Law Section 2-d and 8 NYCRR Part 121, it shall:
 - i. adopt technologies, safeguards and practices that align with the NIST Cybersecurity Framework;
 - ii. comply with EA's data security and privacy policy;
 - iii. limit internal access to Personally Identifiable Information to only those employees or sub-contractors that need access to provide the Pear Deck services;
 - iv. not use the Personally Identifiable Information for any purpose not explicitly authorized in the Terms;

- v. not disclose any Personally Identifiable Information to any other party without the prior written consent of the parent or eligible student: (i) except for authorized representatives of Pear Deck, such as a subcontractor or assignee to the extent they are carrying out obligations in connection with Pear Deck services and in compliance with the Terms, this DPA, and applicable state and federal law; or (ii) unless required by statute or court order and Pear Deck provides a notice of disclosure to School no later than the time the information is disclosed, unless providing notice of disclosure is expressly prohibited by the statute or court order;
- vi. maintain reasonable administrative, technical and physical safeguards to protect the security, confidentiality and integrity of Personally Identifiable Information in its custody;
- vii. use Encryption to protect Personally Identifiable Information in its custody while in motion or at rest;
- viii. not sell Personally Identifiable Information nor use or disclose it for any Commercial or Marketing purpose or facilitate its use or disclosure by any other party for any Commercial or Marketing purpose or permit another party to do so;
- ix. where it engages a subcontractor to perform its contractual obligations, the data protection obligations imposed on Pear Deck by state and federal law and contract shall apply to the subcontractor; and
- x. cooperate with educational agencies and law enforcement to protect the integrity of investigations into the breach or unauthorized release of personally identifiable information.

4. Bill of Rights for Data Privacy and Security.

- a. Pear Deck acknowledges that, pursuant to New York Education Law Section 2-d and 8 NYCRR Part 121, (i) EA must publish on its website a Parents Bill of Rights for data privacy and security that includes the supplemental information described in Section 4(b) ("Supplemental Information") concerning Pear Deck ("Bill of Rights"), and (ii) Contractor must sign and include a copy of the EA's Parents Bill of Rights (attached hereto as Exhibit 2) which incorporates the Supplemental Information (attached hereto as Exhibit 1).
- b. Supplemental Information for a third party contractor includes:
 - i. the exclusive purposes for which the Student Data or Teacher or Principal data will be used by the third-party contractor, as defined in the Service Agreement;
 - ii. how the third-party contractor will ensure that the subcontractors, or other authorized persons or entities to whom the third-party contractor will disclose the Student Data or Teacher or Principal Data, if any, will abide by all applicable data protection and security requirements, including but not limited to those outlined in applicable state and federal laws and regulations (e.g., FERPA; New York Education Law Section 2-d);
 - iii. the duration of the Service Agreement, including the contract's expiration date and a description of what will happen to the Student Data or Teacher or Principal Data upon expiration of the Service Agreement or other written agreement (e.g., whether, when and in what format it will be returned to the educational agency, and/or whether, when and how the data will be destroyed);
 - iv. if and how a parent, student, eligible student, teacher or principal may challenge the accuracy of the Student Data or Teacher or Principal Data that is collected;

- v. where the Student Data or Teacher or Principal Data will be stored, described in such a manner as to protect data security, and the security protections taken to ensure such data will be protected and data security and privacy risks mitigated; and
- vi. address how the data will be protected using Encryption while in motion and at rest.

5. Data Security and Privacy Plan.

- a. Contractor currently has and shall maintain and adhere to a data security and privacy plan (attached hereto as Exhibit 3) in accordance with Education Law § 2-d and 8 NYCRR Part 121 that, at a minimum:
 - i. outlines how Pear Deck implements applicable state, federal, and local data security and privacy requirements under the Service Agreement, consistent with EA's data security and privacy policy;
 - ii. specifies the administrative, operational and technical safeguards and practices it has in place to protect Personally Identifiable Information it receives under the Service Agreement;
 - iii. demonstrates that it complies with the requirements in New York Education Law Section 2-d and 8 NYCRR Section 121.3(c) to provide its Supplemental Information for the Bill Rights;
 - iv. specifies how its officers or employees and its assignees who have access to Student Data, or Teacher or Principal Data under the Terms receive or will receive training on the federal and state laws governing confidentiality of such data prior to receiving access;
 - v. specifies whether it will utilize sub-contractors to perform the Pear Deck Services, and, if so, how it will manage those relationships and contracts to ensure Personally Identifiable Information is protected;
 - vi. specifies how it will manage data security and privacy incidents that implicate Personally Identifiable Information, including specifying any plans to identify breaches and unauthorized disclosures, and to promptly notify School;
 - vii. describes whether, how and when data will be returned to School, transitioned to a successor contractor, at EA's option and direction, deleted or destroyed by the Contractor when the Service Agreement expires or is terminated; and
 - viii. acknowledges that the obligations of this DPA shall continue and shall not terminate for as long as the Contractor or its subcontractors retain PII or retain access to PII

6. Reports and Notifications of Breach and Unauthorized Release.

- a. The Contractor acknowledges and agrees that, pursuant to New York Education Law Section 2-d and 8 NYCRR Part 121, it must (a) promptly notify the EA of any breach or unauthorized release of Personally Identifiable Information in the most expedient way possible and without unreasonable delay but no more than (7) seven calendar days after the discovery of such breach and otherwise in accordance with New York Education Law Section 2-d; (b) must cooperate with School and law enforcement to protect the integrity of investigations into the such breach or unauthorized release of Personally Identifiable Information; and (c) pay for or promptly reimburse the EA for the full cost of notifying a

parent, eligible student, teacher, or principal of an unauthorized release of Personally Identifiable Information attributed to the Contractor.

- b. The Contractor will cooperate with the EA, the Chief Privacy Officer ("CPO"), and any law enforcement agencies if appropriate to protect the integrity of investigations into the breach or unauthorized release of PII. The Contractor may be subject to civil penalties as described in New York Education Law Section 2-d and 8 NYCRR Part 121.

7. Miscellaneous

- a. This DPA is solely between the Parties and shall have no effect upon the Service Agreement for any other individual or entity. In the event of a conflict between and among the terms and conditions of this DPA, including all Exhibits attached hereto and incorporated herein and the Service Agreement, the terms and conditions of this DPA shall govern and prevail, shall survive the termination of the Service Agreement in the manner set forth herein so long as the Contractor or its subcontractors retain PII or retain access to PII, and shall supersede all prior communications, representations, or agreements, oral or written, by the Parties relating thereto. If any provision of this DPA is invalid or unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect. Any violation or breach of this DPA shall, except as otherwise prohibited by law, be subject to all disclaimers and limitations on liability as set forth in the Service Agreement.
- b. This DPA may be executed in one or more counterparts, all of which shall be considered one and the same document, as if all parties had executed a single original document, and may be executed utilizing an electronic signature and/ or electronic transmittal, and each signature thereto shall be and constitute an original signature, as if all parties had executed a single original document.

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Signed and Agreed:

For and on behalf of Medina Central School District ("School")

Signature: Anthony S. Moreno
Name: Anthony S. Moreno
Title: Data Protection Officer
Dated: 4/26/21

For and on behalf of Pear Deck, Inc. ("Pear Deck")

DocuSigned by:
Signature: Chloe Chavez
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Name: Chloe Chavez
Title: Associate Corporate Counsel
Dated: 4/26/2021

Notice and Contact Information for Paragraph 6:

Medina CSD Data Protection Officer (DPO)

Name: Anthony Moreno

Email: amoreno@medinacsd.org

Phone: 585-798-1534

Address: 1 Mustang Drive, Medina, NY 14103

EXHIBIT 1**BILL OF RIGHTS FOR DATA PRIVACY AND SECURITY – SUPPLEMENTAL INFORMATION**

Pursuant to Education Law § 2-d and Section 121.3 of the Commissioner's Regulations, the Medina Central School District is required to post information to its website about its contract with third-party contractors that will receive Personally Identifiable Information (PII) for the purposes of fulfilling the terms of a Service Agreement with the District.

Supplemental Information for a third party contractor includes:

- **Name of Contractor** – Pear Deck, Inc.
- **The exclusive purposes for which the Student Data or Teacher or Principal Data will be used by the third-party contractor, as defined in the contract;**

Please see Privacy Policy listing the exclusive purposes for which the Student Data (and, to the extent that Pear Deck maintains any Teacher or Principal Data to the extent that Pear Deck maintains such data) will be used by Pear Deck). The Pear Deck Privacy Policy is available at <https://www.peardeck.com/privacy-policy>

- **How the third-party contractor will ensure that the subcontractors, or other authorized persons or entities to whom the third-party contractor will disclose the Student Data or Teacher or Principal Data, if any, will abide by all applicable data protection and security requirements, including but not limited to those outlined in applicable state and federal laws and regulations (e.g., FERPA; New York Education Law Section 2-d);**

Please see Pear Deck's Data Privacy Policy at <https://www.peardeck.com/privacy-policy> Pear Deck provides training to employees, and ensures that its subcontractors and other authorized persons or entities to which Pear Deck will disclose Student Data (and to the extent that Pear Deck maintains any Teacher or Principal Data), are properly trained to abide by all applicable data protection and security requirement pursuant to the DPA with Medina CSD and federal and state law and regulations. The onboarding process for new employees and on an annual basis for existing employees includes proper training on the handling of PII. Pear Deck will use subcontractors to help operate some of the Services such as a database provider. Pear Deck will take steps designed to ensure that the subcontractors, or other authorized persons or entities to which Pear Deck will disclose Student Data (and to the extent that Pear Deck maintains any such data Teacher or Principal Data), are properly trained by: **1)** Conducting diligence and evaluating the security practices of subcontractors that can access Student Data (and, to the extent that Pear Deck maintains any such Teacher or Principal Data). **2)** Requesting verification of compliance with security and privacy standards aligned with state and federal law. **3)** Evaluating the contractual safeguards of subcontractors of Student Data (and to the extent that Pear Deck maintains any such Teacher or Principal Data).

- **The duration of the contract, including the contract's expiration date and a description of what will happen to the Student Data or Teacher or Principal Data upon expiration of the contract or other written agreement (e.g., whether, when and in what format it will be**

returned to the educational agency, and/or whether, when and how the data will be destroyed);

At the termination or expiration of the Service Agreement, Pear Deck may deidentify certain PII, thus having aggregate data that is not defined as PII. Student PII (and, to the extent that Pear Deck maintains any Teacher or Principal Data), shall transfer such PII back to the EA and/or delete or destroy the PII as directed in writing by the EA. Pear Deck will act upon a School's documented instructions to transfer the Student Data (and any Teacher or Principal Data) to the EA and take reasonable efforts to complete such requests in a commercially reasonable amount of time as agreed to by the Parties. Pear Deck acknowledges that the obligations of the DPA shall continue and shall not terminate for as long as the Contractor or its subcontractors retain PII or retain access to PII.

- **If and how a parent, student, eligible student, teacher or principal may challenge the accuracy of the Student Data or Teacher or Principal Data that is collected;**

Please see Pear Deck's Data Privacy Policy at <https://www.peardeck.com/privacy-policy> on the procedures for how an eligible student or parent may challenge the accuracy of Student Data (and to the extent that Pear Deck maintains any Teacher or Principal Data) that may be in Pear Deck's possession. Any challenges can also be filed with the District's Data Protection Officer (DPO). The Contractor and the EA will coordinate efforts to address and respond to such challenges.

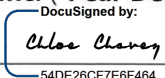
- **Where the Student Data or Teacher or Principal Data will be stored, described in such a manner as to protect data security, and the security protections taken to ensure such data will be protected and data security and privacy risks mitigated; and**

Student Data (and to the extent that Pear Deck maintains any Teacher or Principal Data) will be stored in industry-leading databases.

- **Address how the data will be protected using Encryption while in motion and at rest.**

Student Data (and to the extent that Pear Deck maintains any Teacher or Principal Data) will be protected using encryption in motion and at rest via SSL.

Pear Deck, Inc. ("Pear Deck")

Signature: 
DocuSigned by:
Chloe Chavez
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Name: Chloe Chavez

Title: Associate Corporate Counsel

Dated: 4/26/2021

EXHIBIT 2**PARENTS' BILL OF RIGHTS FOR DATA PRIVACY AND SECURITY**

The Medina Central School District is committed to protecting the privacy and security of student data and teacher and principal data. In accordance with New York Education Law Section 2-d and its implementing regulations, the District informs the school community of the following:

- 1) A student's personally identifiable information cannot be sold or released for any commercial purposes.
- 2) Parents have the right to inspect and review the complete contents of their child's education record.
- 3) 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 is stored or transferred.
- 4) A complete list of all student data elements collected by New York State is available for public review at the following website <http://www.nysed.gov/student-dataprivacy/student-data-inventory> or by writing to the Office of Information and Reporting Services, New York State Education Department, Room 865 EBA, 89 Washington Avenue, Albany, New York 12234.
- 5) Parents have the right to have complaints about possible breaches of student data addressed. Complaints should be directed in writing to Privacy Complaint, Chief Privacy Officer, New York State Education Department, 89 Washington Avenue, Albany, New York 12234. Complaints may also be submitted using the form available at the following website <http://www.nysed.gov/student-data-privacy/form/report-improper-disclosure>.

Supplemental Information Regarding Third-Party Contractors

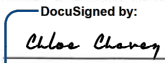
In the course of complying with its obligations under the law and providing educational services to District residents, the Medina Central School District has entered into agreements with certain third-party contractors. Pursuant to these agreements, third-party contractors may have access to "student data" and/or "teacher or principal data," as those terms are defined by law and regulation.

For each contract or other written agreement that the District enters into with a third-party contractor where the third-party contractor receives student data or teacher or principal data from the District, the following supplemental information will be included with this Bill of Rights:

- 1) The exclusive purposes for which the student data or teacher or principal data will be used by the third-party contractor, as defined in the contract;
- 2) How the third-party contractor will ensure that the subcontractors, or other authorized persons or entities to whom the third-party contractor will disclose the student data or teacher or principal data, if any, will abide by all applicable data protection and security requirements, including but not limited to those outlined in applicable laws and regulations (e.g., FERPA; Education Law Section 2-d);

- 3) The duration of the contract, including the contract's expiration date, and a description of what will happen to the student data or teacher or principal data upon expiration of the contract or other written agreement (e.g., whether, when, and in what format it will be returned to the District, and/or whether, when, and how the data will be destroyed);
- 4) If and how a parent, student, eligible student, teacher, or principal may challenge the accuracy of the student data or teacher or principal data that is collected;
- 5) Where the student data or teacher or principal data will be stored, described in a manner as to protect data security, and the security protections taken to ensure the data will be protected and data privacy and security risks mitigated; and
- 6) Address how the data will be protected using encryption while in motion and at rest.

Pear Deck, Inc. ("Pear Deck")

Signature:  _____
DocuSigned by:
Chloe Chavez
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Name: Chloe Chavez

Title: Associate Corporate Counsel

Dated: 4/26/2021