

DATA SHARING AND CONFIDENTIALITY AGREEMENT
INCLUDING
Bill of Rights for Data Privacy and Security
AND
Vendor Information Regarding Data Privacy and Security

This Data Sharing and Confidentiality Agreement (the “Agreement”) is made and entered into by and between **Examgen Inc.** (the “Vendor”) and **West Valley Central School District**.

WHEREAS, West Valley Central School District and Vendor are parties to a contract or other written agreement (the “Contract”) pursuant to which the Vendor will receive student data and/or teacher or principal data (“Protected Data”) that is protected under New York Education Law Section 2-d and Part 121 of the Regulations of the Commissioner of Education (collectively referred to as “Section 2-d”) from WEST VALLEY CENTRAL SCHOOL DISTRICT for purposes of providing certain products or services to WEST VALLEY CENTRAL SCHOOL DISTRICT; and

WHEREAS, both WEST VALLEY CENTRAL SCHOOL DISTRICT and Vendor are desirous of fulfilling their respective obligations under New York Education Law Section 2-d;

NOW THEREFORE, in consideration of the mutual promises and covenants contained in the Contract, as well as, this Agreement the parties hereto mutually agree as follows:

1. Confidentiality

- a. Vendor, its employees, and/or agents agree that all information obtained in connection with the services provided for in the Agreement is deemed confidential information.
- b. Vendor further agrees to maintain the confidentiality of the Protected Data it receives in accordance with federal and state law and that any information obtained will not be revealed to any persons, firms or organizations.

2. Data Protections and Internal Controls

- a. Vendor acknowledges that it may receive and/or come into contact with personally identifiable information, as defined by New York Education Law Section 2-d, from records maintained by WEST VALLEY CENTRAL SCHOOL DISTRICT that directly relate to a student(s) (hereinafter referred to as “education record”).
- b. Vendor understands and acknowledges that it shall have in place sufficient protections and internal controls to ensure that information is safeguarded in accordance with applicable laws and regulations, and understands and agrees that it is responsible for complying with state data security and privacy standards for all personally identifiable information from education records, and it shall:
 1. Limit internal access to education records to those individuals that are determined to have legitimate educational interests; and

2. Not use the education records for any other purpose than those explicitly authorized in the Contract and/or Agreement; and
3. Maintain reasonable administrative, technical and physical safeguards to protect the security, confidentiality and integrity of education records in its custody; and
4. To use encryption technology to protect Protected Data in its custody while in motion or at rest, using a technology or methodology specified 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.

3. Data Security and Privacy Plan

- a. Vendor agrees to have a Data Security and Privacy Plan in place to protect the confidentiality, privacy and security of the Protected Data it receives from WEST VALLEY CENTRAL SCHOOL DISTRICT.
- b. Vendor understands and agrees that it is responsible for submitting a Data Security and Privacy Plan to WEST VALLEY CENTRAL SCHOOL DISTRICT prior to the start of the term of the Agreement, and it shall:
 1. Outline how all state, federal and local data security and privacy contract requirements will be implemented over the life of the contract consistent with WEST VALLEY CENTRAL SCHOOL DISTRICT's policy on data security and privacy, as adopted.
 2. Outline specific administrative, operational and technical safeguards and practices in place to protect Protected Data that it receives from WEST VALLEY CENTRAL SCHOOL DISTRICT under the Contract.
 3. Outline the training requirement established by the Vendor for all employees who will receive personally identifiable information from student records (hereinafter referred to as "student data").

4. Notice of Breach and Unauthorized Release

- a. In the event of a breach of this Agreement and unauthorized release of student data, the Vendor shall:
 1. Immediately notify WEST VALLEY CENTRAL SCHOOL DISTRICT in the most expedient way possible and without unreasonable delay, but no more than seven (7) calendar days after Vendor has discovered or been informed of the breach or authorized release.
 2. Advise WEST VALLEY CENTRAL SCHOOL DISTRICT as to the nature of the breach and steps Vendor has taken to minimize said breach.
- b. In the case of required notification to a parent or eligible student, the Vendor shall:
 1. Promptly reimburse WEST VALLEY CENTRAL SCHOOL DISTRICT for the full costs of such notification.

- c. Vendor will cooperate with WEST VALLEY CENTRAL SCHOOL DISTRICT and provide as much information as possible directly to WEST VALLEY CENTRAL SCHOOL DISTRICT about the incident, including but not limited to:
1. The description of the incident;
 2. The date of the incident;
 3. The date Vendor discovered or was informed of the incident;
 4. A description of the types of Protected Data involved;
 5. An estimate of the number of records affected;
 6. The schools within WEST VALLEY CENTRAL SCHOOL DISTRICT affected;
 7. What the Vendor has done or plans to do to investigate the incident, stop the breach and mitigate any further unauthorized access or release of Protected Data; and
 8. The contact information for Vendor representatives who can assist affected individuals that may have additional questions.
- d. The Vendor shall indemnify and hold WEST VALLEY CENTRAL SCHOOL DISTRICT harmless from any claims arising from its breach within the Data Sharing and Confidentiality Agreement confidentiality and data security and privacy standards provision.
- e. Vendor acknowledges that upon initial notification from Vendor, WEST VALLEY CENTRAL SCHOOL DISTRICT, as the educational agency with which Vendor contracts, has an obligation under Section 2-d to in turn notify the Chief Privacy Officer in the New York State Education Department (“CPO”). Vendor agrees not to provide this notification to the CPO directly unless requested by WEST VALLEY CENTRAL SCHOOL DISTRICT or otherwise required by law. In the event the CPO contacts Vendor directly or requests more information from Vendor regarding the incident after having been initially informed of the incident by WEST VALLEY CENTRAL SCHOOL DISTRICT, Vendor will promptly inform WEST VALLEY CENTRAL SCHOOL DISTRICT of the same.

Vendor Information

Vendor understands that as part of WEST VALLEY CENTRAL SCHOOL DISTRICT's obligations under New York Education Law Section 2-d, Vendor is responsible for providing WEST VALLEY CENTRAL SCHOOL DISTRICT with Vendor information (see Vendor Information for Data Privacy and Security) to include:

- a. Exclusive purposes for which the student data will be used;

The Teachers' or Principal name and email address will be used for the purpose of setting up Teachers' User Accounts and Principal or Other District Personnel Designated for the Setup Admin Account and to provide support or email updates regarding Examgen Online.

When the Student Component is released the Student Data, will be the Students' Name, Student ID, Assignments, Grades, and an email (optional) if school is emailing assignments for the purpose of setting up students account.

- b. How Vendor will ensure that subcontractors, persons or entities that Vendor will share the student data with, if any, will abide by data protection and security requirements;

Examgen will provide training and reviews for its officers, employees, and or any 3rd Party that handles any personally identifiable information according to the federal and state law governing confidentiality of such data prior to receiving access to that data. This will be held periodically throughout the year.

- c. That student data will be returned or destroyed upon expiration of the Agreement;

On or before the date the Contract expires, protected data will be exported to the School District in CSV format and/or destroyed by the Contractor as directed by the School District.

- d. If and how a parent, student, or eligible teacher may challenge the accuracy of the student/teacher data that is collected; and

A parent, student, eligible student, teacher or principal may challenge the accuracy of the student data or teacher or principal data that is collected by filing a *written request* with the *Principal of their school*. Then the Principal can contact the *Districts Data Privacy Officer* who in turn can *contact* the **Examgen's CEO, Lykourgos Masouras**, by **Calling 315-471-2215, Email luke@examgen.com, or Mail: Examgen Inc, 1201 E Fayette St, Syracuse, NY 13210.**

- e. Where the student 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, including whether such data will be encrypted.

The Personal Identifiable Information (PII) is secured by using the Amazon Web Services (AWS) which is stored on a Relational Database Service (RDS). AWS regularly runs tests and verifies the effectiveness of security. Security Groups are used to restrict connection to your databases to one IP Address and Amazon EC2 Instances. Firewall settings prevent any database access except through these two restricted connections. By default, data at rest is encrypted using an XTS-AES-256 block cipher. In Transit, Examgen uses SSL/HTTPS Securities.

5. Termination or Expiration of Contract and/or Agreement

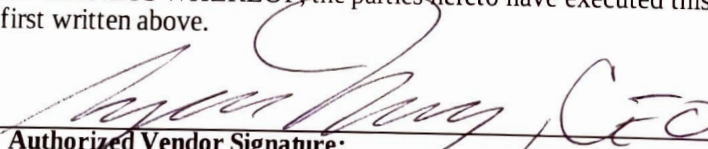
- a. Upon termination of the Agreement, Vendor shall return or destroy all confidential information obtained in connection with the services provided therein and/or student data. Destruction of the confidential information and/or student data shall be accomplished utilizing an approved method of confidential destruction, including, shredding, burning or certified/witnessed destruction of physical materials and verified erasure of magnetic media using approved methods of electronic file destruction. The parties further agree that the terms and conditions set forth herein shall survive the expiration and/or termination of the Agreement.
- b. If requested by WEST VALLEY CENTRAL SCHOOL DISTRICT, Vendor will assist WEST VALLEY CENTRAL SCHOOL DISTRICT in exporting all Protected Data previously received back to WEST VALLEY CENTRAL SCHOOL DISTRICT for its own use, prior to deletion, in such formats as may be requested by WEST VALLEY CENTRAL SCHOOL DISTRICT.
- c. In the event the Contract is assigned to a successor Vendor (to the extent authorized by the Contract), the Vendor will cooperate with WEST VALLEY CENTRAL SCHOOL DISTRICT as necessary to transition Protected Data to the successor Vendor prior to deletion.
- d. Neither Vendor nor any of its subcontractors or other authorized persons or entities to whom it has disclosed Protected Data will retain any Protected Data, copies, summaries or extracts of the Protected Data, or any de-identified Protected Data, on any storage medium whatsoever. Upon request, Vendor and/or its subcontractors or other authorized persons or entities to whom it has disclosed Protected Data, as applicable, will provide WEST VALLEY CENTRAL SCHOOL DISTRICT with a certification from an appropriate officer that these requirements have been satisfied in full.

PARENTS' BILL OF RIGHTS FOR DATA PRIVACY AND SECURITY

The West Valley Central School District is committed to protecting the privacy and security of student, teacher, and principal data. In accordance with New York Education Law § 2-d, the District wishes to inform 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 the State is available for public review at: <http://www.p12.nysed.gov/irs/sirs/documentation/NYSEDstudentData.xlsx>, or by writing to the Office of Information & Reporting Services, New York State Education Department, Room 863 EBA, 89 Washington Avenue, Albany, New York 12234.
- 5) Parents have the right to submit complaints about possible breaches of student data addressed. Complaints should be directed in writing to WEST VALLEY CENTRAL SCHOOL DISTRICT Data Privacy Officer, 5359 School Street, West Valley, New York 14171 or by using the form available at the following website: <https://www.wvalley.wnyric.org/Page/874>. Complaints may also be directed in writing to Chief Privacy Officer, New York State Education Department, 89 Washington Avenue, Albany, New York 12234 or by using the form available at the following website: <http://www.nysed.gov/data-privacy-security/report-improper-disclosure>.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the day and year first written above.


Authorized Vendor Signature:

Lykourgos Masouras

12/10/20
Date


Authorized West Valley Central School District Signature:

12/16/20

Date

APPENDIX

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 West Valley Central School District has entered into agreements with certain third-party contractors. Pursuant to such agreements, third-party contractors may have access to "student data" and/or "teacher or principal data," as those terms are defined by law.

Each contract the District enters into with a third-party contractor where the third party contractor receives student data or teacher or principal data will include the following information:

- 1) *The exclusive purposes for which the student data or teacher or principal data will be used;*
- 2) *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;*
- 3) *When the agreement expires and what happens to the student data or teacher or principal data upon expiration of the agreement;*
- 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; and*
- 5) *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, including whether such data will be encrypted.*

VENDOR INFORMATION REGARDING DATA PRIVACY AND SECURITY

Vendor: Examgen Inc. Product: Examgen Online

Collects: Student Data Teacher or Principal Data Does not collect either

Educational agencies including the West Valley Central School District are required to *post information about third-party contracts on the agency's website* with the Parents Bill of Rights. To that end, please complete the table below with information relevant to NYS Education Law 2-d and Part 121.3 of the Commissioner's Regulations. Note that this applies to all software applications and to mobile applications ("apps").

Part 1: Exclusive Purposes for Data Use

The exclusive purposes for which the student data (or teacher or principal data) will be used by the third-party contractor:

The Teachers' or Principal name and email address will be used for the purpose of setting up Teachers' User Accounts and Principal or Other District Personnel Designated for the Setup Admin Account and to provide support or email updates regarding Examgen Online.

When the Student Component is released the Student Data, will be the Students' Name, Student ID, Assignments, Grades, and an email (optional) if school is emailing assignments for the purpose of setting up students account.

Part 2: Subcontractor Oversight Details – Select the appropriate option below.

This contract has no subcontractors.

This contract has subcontractors. As such, the third-party contractor will take the following steps to ensure that any subcontractors, assignees, or other agents who see, or receive, this protected data are contractually required to obey the same data protection and security requirements that the third-party contractor is required to obey under state and federal law:

Part 3: Contract Lifecycle Practices

The contract expires on 12/6/2021 unless renewed or automatically extended for a term pursuant to the agreement. When the contract expires, protected data will be deleted by the contractor, via shredding, returning of data, mass deletion, and upon request, may be exported for use by Sa before deletion.

Part 4: Student Educational Records / Improper Disclosure

A. For information on FERPA (Family Educational Rights and Privacy Act), which is the federal law that protects the privacy of student education records, visit the U.S. Department of Education FERPA website.

B. A complaint or report of improper disclosure may be completed by submitting the Improper Disclosure Report form.

Part 5: Security Practices

A. Protected data provided to the contractor will be stored: (include *where* and *how*)

The Personal Identifiable Information (PII) is secured by using the Amazon Web Services (AWS) which is stored on a Relational Database Service (RDS). AWS regularly runs tests and verifies the effectiveness of security. Security Groups are used to restrict connection to your databases to one IP Address and Amazon EC2 Instances. Firewall settings prevent any database access except through these two restricted connections. By default, data at rest is encrypted using an XTS-AES-256 block cipher. In Transit, Examgen uses SSL/HTTPS Securities.

B. The security protections taken to ensure data will be protected that align with the NIST Cybersecurity Framework and industry best practices include:

The data stored on the Amazon Web Services (AWS) in the Relational Database Service (RDS) have been validated by third-party testing performed against the NIST 800-53 Revision 4 controls, as well as additional FedRAMP requirements. The Data in the Examgen Online Application, will be *Password Protected* per the *NIST Password Standards and Guidelines* and the *Data Accessed is Restricted* as follows: Assigned District Administrators and Examgen Administrators, who have been trained according to the federal and state law governing confidentiality, view all data; Assigned School Administrators will have access to only their schools data, Teachers assigned will only have access to their class/classes data, and when the Student Component is released the Students will only have access to their assignments.

Part 6: Encryption Practices

By checking this box, contractor certifies that data encryption is applied in accordance with NYS Education Law Section 2-d 5(f)(5).