**SERVICES AGREEMENT**

This Agreement made this _____day of_____by and between _____ <<VENDOR NAME>>, with a principal place of business at _____ << VENDOR ADDRESS>> (hereinafter "Contractor"), and the Nyack Union Free School District, with an address at 13A Dickinson Avenue, Nyack, New York 10960 (hereinafter the "School District").

**WHEREAS,** the School District issued a Request for Proposal for _____<<TYPE OF SERVICE>> on or about _____<< DATE OF PROPOSAL>>; and

**WHEREAS,** after reviewing the proposals received, on _____<< DATE OF PROPOSAL>>, the Board of Education of the School District accepted the proposal of _____ <<VENDOR NAME>>, for _____<<TYPE OF SERVICE>> services for the _____<< SCHOOL YEAR OF AWARDED CONTRACT>> at the rate of _____<< INITIAL RATE(S) AWARDED>> ;

**NOW, THEREFORE**, in consideration of the mutual promises and covenants contained in this Agreement, the Parties mutually agree as follows:

1. Services. The School District hereby engages Contractor to perform the following services: <<LIST SERVICES>>

Contractor shall work cooperatively with the School District to provide researched-based, educationally appropriate services to the School District's students and residents. Contractor shall be responsible for the administration and management of Contractor's officers, employees and agents providing the above-described services to the School District and its students and residents. Contractor shall obtain and maintain any permits, licenses, registrations and/or approvals of governmental authorities required to provide the above-described services. Contractor represents

and warrants that staff who will provide services under this Agreement will have the requisite knowledge and skills to provide the above-described services and all licenses and/or certifications required by Federal, New York State, Local and School District statutes, rules, regulations, policies and orders to provide the above-described services in a public school setting and will maintain such skills, certifications, licenses and qualification throughout the term of this Agreement. Contractor shall provide the School District with documentation of such certifications, licenses and qualifications of the Contractor's employees, officers, owners and/or agents that will be providing the above-described services to the School District pursuant to this Agreement.

Contractor recognizes that this Agreement does not grant Contractor the exclusive right to perform the above-described services for the School District and that the School District may enter into agreements with other contractors for the same or similar services.

2. Qualification Documentation. Contractor shall maintain and provide, upon request of the School District, documentation showing that each individual providing services to the School District pursuant to this Agreement has: <<INSERT QUALIFICATIONS>>

3. Approval of School District. All individuals providing services to the School District pursuant to his Agreement shall be subject to approval by the School District. The School District reserves the right to reject the placement of any individual provided to it by Contractor, at any time, consistent with applicable law. The School District reserves the right to utilize other staffing methods should Contractor be unable to promptly supply sufficient School District approved individuals to meet the service needs of the School District.

4. Parental Consent and Prescriptions. The School District is responsible for obtaining the consent of the parent(s) and/or guardian(s) of the School District's students and residents for evaluations and/or, to extent necessary, services. The School District is also responsible for obtaining the prescriptions necessary for the provision of services.

5. Compensation. For the services described in Paragraph "1" of this Agreement, Contractor shall be compensated at the rate of _____<<INSERT RATE(S)>>

a. Payment pursuant to this Agreement is dependent upon the satisfactory completion of the services by Contractor, faithful compliance with the Agreement by Contractor, and the submission of invoices following completion of the services in monthly intervals to the School District.

b. Contractor shall not be paid for any scheduled sessions, meetings, observations and/or evaluations for which Contractor's officers, employees, owners and/or agents fail to appear no matter the reason for the failure.

c. Except as otherwise stated above, the above compensation is inclusive of any and all of the expenses incurred by Contractor in performing the above-described services for the School District, including, without limitation, for such things as travel, copying expenses, postage, facsimile and telephone charges, mobile/cellular telephone service charges. The above compensation also is inclusive of any fees, fines, licenses, certificates, certifications, bonds or taxes required of or imposed against Contractor or its officers, employees or agents in connection with the performance of the above-described services.

d. There shall be no charge to the students or their families or anyone other than the School District for the services provided pursuant to this Agreement.

6. Duration. This Agreement shall be in full force and effect commencing on _____and terminating on _____ regardless of when it is actually signed, unless terminated sooner in accordance with the provisions of this Agreement. The Parties may agree to extend the Agreement at a negotiated rate not to exceed the computed annual National CPI (using December CPI released in January), which extension shall be contingent upon the qualified voters of the School District approving the School District's budget for the extension period.

7. Independent Contractor Status. Contractor and the individuals it supplies shall not be considered as having employee status with the School District. Contractor enters into this Agreement and will remain throughout the term hereof an independent contractor of the School District. Nothing contained in this Agreement shall be deemed to create a partnership, joint venture or other similar relations between the School District and Contractor. Contractor and Contractor's officers, employees and/or agents are retained by the School District only for the purposes and to the extent set forth in this Agreement. Contractor acknowledges that it will not hold itself, its officers, employees and/or agents out as employees of the School District.

a. Contractor, its officers, employees and/or agents shall not be entitled to any rights or benefits afforded to the School District's employees, including, without limitation, disability or unemployment insurance, workers' compensation, medical insurance, sick

leave, retirement or any other employment benefit. Contractor is responsible for providing, at Contractor's sole expense, disability, unemployment, workers' compensation and all other forms of insurance, training, permits and licenses for Contractor and for Contractor's officers, employees and/or agents, if any. Contractor, its officers, employees and/or agents shall not assert any claim for additional benefits of any nature, including, but not limited to, unemployment compensation benefits, by reason of the services to be performed pursuant to this Agreement.

b. Contractor, its officers, employees and/or agents, shall not be entitled to assert any claim to entitlements pursuant to any collective bargaining agreement now or hereafter in effect between the School District and any of its employees.

c. The School District shall not be responsible to pay Contractor for any expenses paid or incurred for the services provided under this Agreement unless specifically provided for elsewhere in this Agreement or agreed to in a writing signed by both parties.

d. As an independent contractor, Contractor retains full responsibility for complying with income reporting and other requirements by federal, state and/or local tax laws. Because Contractor is an independent contractor, the School District will not make deductions from payments to Contractor for income taxes, social security, unemployment insurance, workers' compensation or other employment/payroll taxes. The School District will issue a 1099 form at the end of each taxable period for monies paid to Contractor. Contractor shall be responsible for paying, when due, all income or other taxes incurred as a result of the compensation paid by the School District to Contractor for services provided under this Agreement. Contractor will indemnify the School District for any tax liability, interest, and/or penalties imposed upon the School District by any taxing authority based upon the School District's failure to withhold any amount from the payments for tax purposes.

e. The School District shall make no payments and shall not report Contractor's services to any State retirement system for purposes of pension credit.

8. Principal Contact Person. The principal contact person of the School District shall be the Assistant Superintendent for Finance and Operations and all correspondence, reports and inquiries regarding this Agreement shall be directed to the Assistant Superintendent for Finance and Operations.

9. Invoices. Contractor will submit an invoice for services rendered on a monthly basis, and payment to Contractor shall be made within thirty days following the date the School District receives the invoice. The invoice shall include the dates on which services were rendered, who rendered the services, a description of services rendered on each date, the number of the purchase order issued to Contractor for the _____ school year, and the fees payable. If the School District disputes an invoice or any part thereof, the School District shall have the right to withhold

payment pending the resolution of such dispute. Payment of any invoice shall not preclude the School District from making claim for any adjustment for services found not to have been rendered at all or found not to have been rendered in accordance with this Agreement. Payment of any invoice shall not be deemed as an acceptance and does not act as a waiver of the School District's rights or prevent the School District from availing itself of any remedy or course of action it has at law or in equity at a later date.

10. Right to Examine Records. The School District shall have the right to examine any and all accounting records of Contractor, its officers, employees and/or agents as they pertain to the services provided pursuant to this Agreement.

11. Confidential Information. Contractor understands that its officers, employees and agents who perform the services required by this Agreement will have access to or acquire confidential personally identifiable student information in possession of the School District, including, but not limited to student directory information; student records; and student data or assessment information. It is agreed that the definition of confidential information includes all documentary, electronic or oral personally identifiable student information made known to Contractor through any activity related to this Agreement, except information available to Contractor from third parties on an unrestricted basis. Contractor agrees, its officers, employees and/or agents shall keep all confidential information in a secure place and further agrees not to publish, communicate, divulge, use, or disclose, for their own benefit or for the benefit of another, either during or after the performance of this Agreement, the content of such confidential information, directly or indirectly to any third-party, except as explicitly provided for in this Agreement or as explicitly authorized in writing by the Principal Contact Person of the School District. Contractor understands that any unauthorized disclosure, publication and/or communication of such confidential information shall be considered a breach of this Agreement. Contractor agrees that if it receives a request for disclosure of confidential information obtained from the School District, including but not limited to student data as defined by New York Education Law Section 2-d, pursuant to a statute, subpoena or court order, it shall notify the School District prior to disclosing the School District's confidential information, unless providing notice of the disclosure is expressly prohibited by the statute, subpoena or court order. Contractor shall comply with requirements of the Data Security and Privacy Plan set forth in the Addendum to this Agreement, which Data Security and Privacy Plan is incorporated by reference into and made a

part of this Agreement. In the event that Contractor fails to comply with the Data Security and Privacy Plan, Contractor may be terminated immediately upon written notice to Contractor. The parties further agree that the terms and conditions set forth in this Confidentiality section shall survive the expiration and/or termination of this Agreement.

12. Termination.

a. This Agreement may be terminated by the School District with or without cause upon thirty (30) days prior written notice to Contractor. Upon such termination, Contractor shall be paid for all work performed in accordance with this Agreement through the date of termination. Contractor shall not be entitled to any additional payments, whether on account of lost profits or otherwise. In the event of termination, Contractor shall cooperate with the School District in winding down any activities under this Agreement, and all reports, or other documentation due to the School District from Contractor shall be promptly completed.

b. This Agreement may be terminated for cause by the School District in the event of a breach of this Agreement by Contractor (*e.g.*, failing to meet and complete schedules), upon five (5) days' written notice from the School District to Contractor, unless a shorter period of time is specifically provided for elsewhere in this Agreement. In the event of such termination, the School District shall only be responsible to pay for services actually rendered by Contractor in full compliance with this Agreement prior to the termination and may deduct from such sums owed any costs incurred by the School District as a result of Contractor's breach. Breach of this Agreement by Contractor authorizes the School District to purchase services elsewhere and charge the full increase in cost to Contractor.

13. Insurance. Contractor shall maintain, in full force and effect, during all times this Agreement is in force, the types and amounts of insurance specified in the Insurance Agreement signed by Contractor on _____, which is attached hereto as Exhibit A and incorporated herein by reference as if its contents were explicitly stated herein. Contactor shall warrant that the individuals providing services in the School District pursuant to this Agreement are and will continue at all times to be covered by current and valid malpractice insurance, have submitted a completed Employment Eligibility Verification (Form 1-9), and are eligible to work in the School District's schools.

14. Compliance with Law. Contractor shall comply, at its own cost and expense, with all applicable Federal, State, and local statutes, rules, regulations, and ordinances including, but not limited to, the New York State Safe Schools Against Violence in Education (SAVE)

legislation, the Protection of People with Special Needs Act (PPSNA), the Federal Family Educational Rights and Privacy Act ("FERPA") and Section 2-d of the New York State Education.

a. Contractor shall obtain and maintain any necessary permits, licenses, registration and/or approvals of governmental authorities that are applicable to the services to be provided pursuant to this Agreement and any that are required by the New York State Department of Education, the Board of Education and/or the School District.

b. Contractor shall adhere to all requirements, protocols, policies and regulations of the School District and the New York State Education Department (including but not limited to the Commissioner of Education) applicable to the services to be provided hereunder.

c. Contractor acknowledges and agrees that it and its employees may be subject to fingerprinting and a criminal history record check as may be required by the SAVE legislation and other sections of the Education Law of the State of New York. In such event, Contractor agrees to cooperate with the School District and to complete any and all necessary forms or procedures to obtain required fingerprinting and criminal history checks, all at no cost or expense to the School District.

d. Contractor further agrees and understands that all individuals providing services under this Agreement who will have direct contact with students must be cleared by the New York State Education Department prior to providing services to the School District's students. Appropriate written proof of such clearance shall be provided to the School District prior to such individuals providing services to the School District's students. In the event that Contractor utilizes an individual who is required to and who has not obtained fingerprinting clearance with the New York State Education Department, the School District shall have the right to immediately terminate this Agreement.

e. Contractor shall comply with all laws and guidance relative to COVID-19 and/or other communicable diseases. Contractor shall perform the services required by this Agreement in conformance with any (1) Federal, New York State or local Executive Order, (2) any New York State Commissioner of Education and/or Commissioner of Health determinations, and (3) guidance issued by the Center for Disease Control and Prevention or any New York State or local department or agency, which Executive Orders, determinations and guidance shall include but not be limited to the cleaning and disinfecting of surfaces, the use of face masks or coverings, the use of proper personal protection equipment, screening, testing, vaccinations, reporting, tracing and social distancing protocols. Contractor's compliance with this paragraph shall not result in any additional cost to the School District.

f. In performing the Services required herein, Contractor shall be responsible for providing all personal protective equipment for its officers, employees and

agents and any other equipment and/or materials reasonably deemed necessary to prevent the spread of COVID-19 and/or other communicable diseases. Contractor's compliance with this paragraph shall not result in any additional cost to the School District.

15. Indemnification. To the maximum extent permitted by law, Contractor agrees that it shall defend, indemnify and hold harmless the School District, its employees, officers, agents and Board of Education for all loss, costs, damages and expenses, including attorneys' fees, judgments, fines and amounts paid in settlement in connection with a terminated, pending or completed claim, liability, action, suit or proceeding of whatever name or nature as the same may relate, in any manner, to the services provided by Contractor and its employees, officers, directors, and agents to the School District pursuant to this Agreement, including but not limited to any act, error or omission, misstatement, misleading statement, neglect or breach of duties by Contractor or any of its officers, directors, agents or employees taken or made with respect to this Agreement. Said indemnification and defense shall apply to any claim, liability, suit, proceeding and action in which the School District, its employees, officers, agents and/or Board of Education may be named as a party that arises from or relates to the services provided by Contractor pursuant to this Agreement, notwithstanding that Contractor may deem said claim, liability, suit, proceeding or action frivolous or without merit. The obligations contained in this paragraph are in addition to and in no way limit or constrain the obligations in the Hold Harmless Agreement notarized on _____, which is attached hereto as Exhibit B and incorporated herein by reference.

16. Work Made for Hire. Any work first developed by Contractor under this Agreement and prepared by Contractor for the School District shall be deemed property of the School District as a work made for hire.

17. Incidents. Contractor shall notify the School District promptly of any problems. situations or incidents that occur during the provision of services.

18. No Discrimination. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, Contractor agrees it shall not discriminate against any employee or applicant for employment or individual associated with the School District because of race, creed, color, sex, national origin, sexual orientation, gender identity or expression, age, disability, predisposing genetic characteristics, military status, familial status, marital status, status as a

victim of domestic violence or any other basis protected by law. The services provided pursuant to this Agreement shall be provided without regard to a student's actual or perceived race, creed, color, weight, gender, sex, sexual orientation, national origin, ethnic group, religion, religious practice, or disability.

19. No Assignment. Contractor may not assign, transfer, subcontract or convey any of its respective rights or obligations under this Agreement without the prior written consent of the School District, which consent may be withheld for any reason whatsoever or for no reason. Contractor shall request written authorization from the School District before proposing to have any individual as an independent contractor to provide any of the services that are the subject of this Agreement.

20. Cooperation in the Event of Litigation. In the event that any claim, demand, suit or other legal proceeding arising out of any matter relating to this Agreement is made or instituted by any person against the School District, Contractor, shall, at its own cost and expense, provide the School District with all reasonable information and assistance in the defense or other disposition thereof.

21. Notices. Any and all notices, demands or other communications required or desired to be given hereunder by either party shall be in writing and shall be validly given or made to the other party if personally served or if deposited in the United States mail, certified or registered, postage prepaid, return receipt requested and addressed to the party, as set forth above. If such notice, demand or other communication is served personally, it shall be effective immediately. If such notice, demand or other communication is given by mail, the same shall be effective when received, but in any event, it shall be effective no later than five (5) days after deposit in the United States mail addressed to the party to whom such notice, demand or other communication is to be given, at the address set forth above. Either party hereto may change its address for purposes of this paragraph by written notice given in the manner provided above.

22. No Waiver of Default. No failure by the School District to insist upon the strict performance of any term, covenant, agreement or provision of this Agreement or to exercise any right or remedy upon a breach thereof, and no acceptance by the School District of any services during the continuance of any such breach, shall constitute a waiver of any such breach or of any such term, covenant, agreement or provision.

23. Cumulative Rights. The rights and remedies provided by this Agreement are cumulative and the use of one right or remedy by a party shall not preclude or waive the right to use any other remedy.

24. Entire Understanding. This Agreement constitutes the entire understanding and agreement between the parties and any and all prior agreements, commitments, understandings and representations are superseded and are of no further force and effect. No amendment, change or modification of this Agreement shall be valid unless in writing, signed by both parties hereto.

25. Conflicts of Interest. Contractor hereby warrants that there is no conflict of interest between Contractor's other employment, if any, or other contracts, if any, and the activities to be performed hereunder. Contractor shall advise the School District if a conflict of interest arises in the future.

26. Not Excluded from Participation. Contractor represents and warrants, as a material term of this Agreement that neither it nor any of its employees, who will perform services under this Agreement, is/are

a. Currently excluded from participation in federal or state health care programs

b. the subject of any pending exclusion proceeding; or

c. the subject of an adjudication or determination that it/they have committed any action that could subject Contractor to exclusion from governmental programs (collectively, "exclusion activity").

Additionally, Contractor agrees that, as a continuing obligation of this Agreement, Contractor will

a. maintain, and produce to the School District upon its request documentation evidencing quarterly exclusion checks with:

   i. the United States Department of Health and Human Services Office of the Inspector General List of Excluded Individuals or Entities,

   ii. General Services Administration Federal Excluded Party List System (or any successor system), and

   iii. New York State Department of Health's Office of Medicaid Office of the Inspector General List of Restricted, Terminated or Excluded Individuals or Entities; and

b. report in writing to the School District any exclusion activity involving Contractor or any of its employees as soon as practicable after Contractor learns of such exclusion activity.

This Agreement may be terminated immediately upon notice that Contractor has been the subject of any exclusion activity defined above or if the representations and warranties made above are false or the subject of breach.

27. Governing Law. This Agreement and all claims relating to or arising out of this Agreement shall be governed by, construed, interpreted and enforced in accordance with the laws of the State of New York without regard to conflict of laws principles. Each of the parties agrees to submit to the jurisdiction of the courts of the State of New York, County of Rockland or the Federal Court located in New York State whose jurisdiction includes the County of Rockland. As such, the parties agree that any action related to this Agreement shall be litigated in such courts and waives any defense it may have with regards to improper venue or *forum non conveniens*.

28. Construction. This Agreement has been arrived at mutually and is not to be construed against any party hereto as being the drafter hereof or causing the same to be drafted. The language in all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning and not strictly for or against either party. Section headings in this Agreement are for convenience only and are not to be construed as part of this Agreement in any way or limiting or amplifying the provisions hereof. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the identification of the person or persons, entity or entities may require.

29. Requisite Provisions. Each and every provision of law and clause required by law to be inserted herein shall be deemed to be inserted herein and the Agreement shall be read and enforced as though it were included herein, and, if through a mistake or otherwise, any such provision is not inserted or is not correctly inserted then upon the application of either party, this Agreement shall be physically amended forthwith to make such insertion.

30. Severability. If for any reason a court of competent jurisdiction finds any provision of this Agreement to be invalid or unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible, and the other provisions of this Agreement will remain in full force and effect.

31. Record Retention. Both parties shall comply with all record retention requirements applicable under law to the records pertaining to this Agreement.

32. Survival. All provisions of this Agreement that would reasonably be expected to survive the termination or expiration of this Agreement shall do so.

33. Advertising. Contractor shall not advertise or publish as a form of an endorsement, the fact that the School District has entered into an agreement with Contractor, without the School District's prior written approval except to the extent necessary to comply with proper requests for information from an authorized representative of the federal, state or local government.

34. Counterparts. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. Electronic or facsimile signatures shall be deemed valid and binding.

35. Authority to Enter Agreement. The undersigned representative of Contractor hereby represents and warrants that the undersigned is the owner or an officer, director, or agent of Contractor with full legal rights, power and authority to enter into this Agreement on behalf of Contractor and to bind Contractor with respect to the obligations enforceable against Contractor in accordance with its terms.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

| **<<INSERT VENDOR NAME>>** | **NYACK UNION FREE SCHOOL DISTRICT** |
|---|---|
| _____ | _____ |
| Signature | Signature |
| _____ | _____ |
| Print Name | Print Name |
| _____ | _____ |
| Print title | Print title |
| _____ | _____ |
| Date | Date |

# EXHIBIT A

# INSURANCE AGREEMENT

# NYACK PUBLIC SCHOOLS

13A Dickinson Avenue -Nyack -NY -10960

## ***INSURANCE AGREEMENT*** – Professional Consultants

1. Notwithstanding any terms, conditions or provisions, in any other writing between the parties, the consultant hereby agrees to effectuate the naming of the District as an Additional Insured on the Professional Consultant's insurance policies, with the exception of workers' compensation and N.Y. State disability insurance.

2. The policy naming the district as an additional insured shall:

   a. Be an insurance policy from an A.M. Best A-rated or better insurer, licensed to conduct business in New York State. A New York licensed and admitted insurer is strongly preferred. The decision to accept non-licensed and non-admitted carriers lies exclusively with the District.

   b. State that the organization's coverage shall be primary and non-contributory coverage for the District, its Board, employees and volunteers.

   c. Additional Insured status must be provided to the District by standard or other endorsements that extend coverage to the District (CG 20 26) or equivalent. A completed copy of the endorsement must be attached to the Certificate of Insurance.

3. Certificates of Insurance

   a. The certificate of insurance must describe the specific services provided (e.g., Psychiatry, Occupational Therapy, Nursing, Physician, etc.) covered by the liability policies. Such policies must also provide coverage for claims of negligent hiring, training, and supervision and which may arise in the context of sexual molestation, abuse, harassment, or similar sexual misconduct; sub-limits below policy limits for such coverage are acceptable solely at the discretion of the District.

   b. A copy of the declaration page of the liability and umbrella policies with a list of endorsements and forms shall be provided to the District upon request.

4. The professional consultant agrees to indemnify the district for any applicable deductibles and self-insured retentions.

5. Minimum Required Insurance: Insurance coverage as indicated must be obtained and kept in force:

   a. Commercial General Liability Insurance
   $1,000,000 per occurrence/ $2,000,000 Aggregate
   The general aggregate shall apply on a per-project basis where applicable.

   b. Automobile Liability
   $1,000,000 combined single limit for owned, hired and borrowed and non-owned motor vehicles.

c. Workers' Compensation, Employers Liability
Statutory Workers' Compensation (C-105.2, U-26.3) and NYS Disability Insurance (DB-120.1) for all employees. Proof of coverage must be on the approved specific form, as required by the New York State Workers' Compensation Board. ACORD certificates are not acceptable. A person seeking exemption must file a CE-200 Form with the state. This form can be completed and submitted directly to the WC Board online by using the link below:

https://www.businessexpress.ny.gov/app/answers/cms/a_id/2263/kw/CE

d. Professional Errors and Omissions
$2,000,000 per occurrence/$2,000,000 aggregate for the professional acts of the consultant performed under the contract for the District. If written on a 'claimsmade' basis, the retroactive date must re-date the inception of the contract or agreement. Coverage shall remain in effect for two years following the completion of work.

e. Umbrella/Excess Insurance:
$1,000,000 each Occurrence and Aggregate. Umbrella/Excess coverage shall be on a follow form basis over the required General Liability and Professional Liability coverage.

6. Professional Consultant acknowledges that failure to obtain such insurance on behalf of the District constitutes a material breach of contract. The Professional Consultant is to provide the District with a certificate of insurance, evidencing the above requirements have been met, prior to the commencement of work.

Company Name: _____

Representative Name (Print): _____

Authorized Signature: _____

Title: _____

Date: _____

Email: _____

Telephone: _____

# EXHIBIT B

# HOLD HARMLESS AGREEMENT

NYACK PUBLIC SCHOOLS

13A Dickinson Avenue · Nyack, NY · 10960

**HOLD HARMLESS AGREEMENT-CONTRACTOR/CONSULTANT**

_____ hereby agrees to defend, indemnify and
(Name of Contractor)

hold harmless Nyack UFSD from and against any and all liability, loss, damage, claim or action (including costs and attorney's fees) for bodily injury and property damage, to the extent permissible by law, arising out of operations performed or services provided by the contractor/vendor under the contract.

CONTRACTOR:

Print Name: _____

Signature: _____

Title: _____

State of _____

County of _____

_____ being duly sworn and says that he/she is
(Name)
_____ of _____
(Title) (Name of Organization)

and that all statements therein contained are true and correct.

Subscribed and sworn to before me this _____ day of _____ 20_____.

_____
Signature of Notary

Notary Public, County of _____

# EXHIBIT C

# RATE SCHEDULE

# ADDENDUM

# DATA SECURITY AND PRIVACY PLAN

**[THIS ADDENDUM IS ONLY REQUIRED IF THE CONTRACTOR WILL HAVE ACCESS TO OR RECEIVE PERSONALLY IDENTIFIABLE STUDENT DATA/INFORMATION AND/OR CONFIDENTIAL TEACHER OR PRINCIPAL APPR DATA]**

# ADDENDUM

# DATA SECURITY AND PRIVACY PLAN

_____, having offices at _____

(hereinafter "Third-party Contractor") and Nyack Union Free School District, having offices at 13A Dickinson Avenue, Nyack, New York 10960 (hereinafter "School District") hereby agree to make this Data Security and Privacy Plan part of their Agreement for services (the "Agreement") and attach it as an Addendum to that Agreement.

1. Definitions: Terms used in this Data Security and Privacy Plan (the "Plan") shall have the same meanings as those found in New York Education Law Section 2-d(1) and the Regulations of the New York Commissioner of Education at Section 121.1 of Title 8 of the New York Codes, Rules and Regulations (8 NYCRR § 121.1), unless more broadly defined herein.

2. Confidential Information. Third-party Contractor understands that in performing its Agreement with the School District, Third-party Contractor, its employees, officers, agents and subcontractors may have access to confidential information in the possession of the School District, including, but not limited to names, facts or information about individuals, businesses and families. Third-party Contractor may also have access to or acquire confidential information, potentially including student data, student directory information, student records, teacher or principal data, personnel information and records, information regarding sensitive, confidential or internal School District matters and other protected information. For purposes of this Plan and the Agreement, it is agreed that the definition of Confidential Information includes all documentary, electronic or oral information made known to Third-party Contractor through

any activity related to the Agreement, except information available to Third-party Contractor from third parties on an unrestricted basis. Third-party Contractor understands that any unauthorized disclosure, publication and/or communication of such Confidential Information shall be considered a breach of this Plan and the Agreement. Third-party Contractor agrees that if he/she/it receives a request for disclosure of confidential information obtained from the School District, including but not limited to student data or teacher or principal data as defined by New York Education Law Section 2-d, pursuant to a statute, subpoena or court order, he/she/it shall notify the School District prior to disclosing the School District's confidential information, unless providing notice of the disclosure is expressly prohibited by the statute, subpoena or court order.

3. Without limiting any of the foregoing statements, Third-party Contractor further agrees:

a. To execute, comply with and incorporate as Exhibit "1" to this Plan, as required by New York State Education Law Section 2-d and its implementing regulations, the Parents' Bill of Rights for Data Privacy and Security developed by the School District;

b. To adopt technologies, safeguards and practices that align with the NIST Cybersecurity Framework;

c. To comply with the data security and privacy policy of the School District, New York Education Law Section 2-d and Part 121 of the Regulations of the Commissioner of Education as well as any changes to the policy, law and regulations that may be enacted, adopted and/or become effective during the term of the Agreement;

d. Not to sell, use or disclose personally identifiable student, teacher or principal data or information for any marketing or commercial purpose or facilitate its use or disclosure by any other party for any marketing or commercial purpose or permit another party to do so;

e. Not to use the education records of the School District or any personally identifiable student, teacher and/or principal information or data of the School District, as those terms are defined in Education Law Section 2-d and Part 121 of

the Regulations of the Commissioner of Education, for any purpose other than those explicitly authorized in this Plan or the Agreement;

f. To use and maintain reasonable administrative, technical and physical safeguards and practices that align with the NIST Cybersecurity Framework and are otherwise consistent with industry standards and best practices, including but not limited to encryption technology, firewalls and password protection, to protect the security, confidentiality and integrity of personally identifiable student, teacher and/or principal information or data of the School District while in motion or in the custody of Third-party Contractor from unauthorized disclosure as prescribed by state and federal law, regulations, and the Agreement and the Third-party Contractor represents and warrants that it has the following safeguards and practices in place to protect personally identifiable information that it receives, maintains, stores, transmits or generates pursuant to the Agreement:

   i. [insert list or description of safeguards and practices of the Third-party Contractor]

g. To limit internal access within Third-party Contractor to personally identifiable student, teacher and principal information and data of the School District to only those officers, directors, employees, or authorized sub-contractors or assignees of the Third-party Contractor that are determined to need access to such records or data to perform the services set forth in the Agreement;

h. To use encryption **[can insert requirement for specific encryption methodology or standard]**

to protect personally identifiable student, teacher and or principal information or data of the School District in Third-party Contractor's custody while in motion or at rest from unauthorized disclosure;

i. Not to disclose any personally identifiable student, teacher or principal information or data of the School District, as those terms are defined in Education Law Section 2-d and Part 121 of the Regulations of the Commissioner of Education, directly or indirectly, to any other party who is not an officer, director, employee or authorized subcontractor or assignee of the Third-party Contractor using the data or information to carry out Third-party Contractor's obligations under the Agreement in compliance with New York State and federal law, regulations, and the Agreement, unless

   i. the other party has the prior written consent of the applicable student's parent/guardian or of the eligible student; or

ii. the other party has the prior written consent of the applicable teacher or principal; or

iii. the disclosure to the other party is required by statute, subpoena or court order and the Third-party Contractor provides a notice of disclosure to the New York State Education Department or the School District no later than the time the information is disclosed, unless providing notice of disclosure is expressly prohibited by the statute, subpoena or court order;

j. To impose on any sub-contractor engaged by Third-party Contractor, with the consent of the School District, to perform any of its obligations under the Agreement the requirement to comply with all the confidentiality and data privacy and security obligations imposed on Third-party Contractor in the Agreement and by state and federal law and regulations, including but not limited to Section 2-d of New York State Education Law and Part 121 of the Regulations of the New York State Commissioner of Education;

k. In the event that a student's parent or guardian or an eligible student seeks to challenge the accuracy of student data pertaining to the particular student, which data may include records maintained, stored, transmitted or generated by the Third-party Contractor pursuant to this Agreement, the challenge will be directed to the School District and processed in accordance with the School District's procedures;

l. In the event that a teacher or principal seeks to challenge the accuracy of teacher or principal data pertaining to the particular teacher or principal, which data may include records maintained, stored, transmitted or generated by the Third-party Contractor pursuant to this Agreement, the challenge will be directed to the School District and processed in accordance with the procedures the School District has established for challenging annual professional performance review ("APPR") data;

m. To immediately notify the School District in the most expedient way possible and without unreasonable delay and in no event more than seven (7) calendar days after discovering that any personally identifiable information of the School District, its employees, students, teachers, principals or administrators is breached and/or released without authorization;

n. To take immediate steps to limit and mitigate to the greatest extent practicable the damages arising from any breach or unauthorized release of any personally identifiable information of the School District, its employees, students, teachers, principals or administrators;

o. In the event of a breach or unauthorized release of any personally identifiable data or information of the School District, its employees, students, teachers or administrators by or attributable to Third-party Contractor, Third-party Contractor must pay for or promptly reimburse the School District for the full cost of any

notifications the School District makes as a result of the breach or unauthorized release;

p. To cooperate with the School District and other parties to protect the integrity of investigations into the breach or unauthorized release of personally identifiable data or information.

q. Parents and/or guardians of students attending the School District's schools have the right to inspect and review the complete contents of their child's education record, which may include records maintained, stored, transmitted, and/or generated by Third-party Contractor; and

r. In the event Third-party Contractor breaches any of the privacy and confidentiality provisions of this Plan or the Agreement, the School District, at its sole discretion, may immediately terminate the Agreement.

4. Outline/describe how the Third-party Contractor will implement all state, federal and local data security and privacy requirements over the term of the Agreement in a manner that is consistent with the data security and privacy policy of the School District:

5. Confidentiality Training. Third-party Contractor acknowledges that federal and state laws protect the confidentiality of personally identifiable information of the School District's students as well as its teachers and principals. Prior to obtaining access or any further access to personally identifiable information of the School District's students, teachers and principals, Third-party Contractor represents and warrants that any officers, employees, subcontractors or agents of Third-party Contractor, who will have access to student, teacher and/or principal data

of the School District, have received or will receive training on the federal and state laws governing confidentiality of such data from/by [insert how the training was or will be done]

6. The Third-party Contractor represents and warrants that the information contained in the Supplemental Information portion of the Parents' Bill of Rights for Data Privacy and Security of the School District with respect to the Agreement, as stated in Exhibit 1 to this Plan, is accurate.

7. Will the Third-party Contractor utilize sub-contractors in the performance of the Agreement? (check one)

☐ Yes

☐ No

If Yes, how will the Third-party Contractor manage the sub-contractors to ensure personally identifiable data and information is protected?

8. Describe how the Third-party Contractor will manage data privacy and security incidents that involve personally identifiable data or information, including but not limited to (a) what actions are taken to check for and identify data breaches and unauthorized disclosures of

personally identifiable information or data and (b) how the School District will be notified promptly of any data breaches and unauthorized disclosures of personally identifiable data or information?

9. Upon the expiration or termination of the Agreement, if requested by the School District, the Third-party Contractor will assist the School District in exporting all student, teacher or principal data previously received by the Third-party Contractor or generated by the Third-party Contractor pursuant to the Agreement. In addition all information and data of the School District remaining in the possession of the Third-party Contractor will be (check those that are applicable and fill in required information):

☐ Returned to the School District by [date] in the following format(s):

☐ Securely delete and/or destroyed by [date] in the following manner:

☐ Other – explain

☐ If student data or teacher or principal data is to be maintained by Third-party Contractor for any lawful purpose, such data shall remain in an encrypted format and shall be stored on systems maintained by Third-party Contractor in a secure data facility located within the United States.

10. It is understood that further revisions to this Plan or the Agreement may be necessary to ensure compliance with New York State Education Law Section 2-d if School District policies are adopted or revised or if New York Education Law Section 2-d and Part 121 of the Regulations of the Commissioner of Education are amended. Third-party Contractor and the School District agree to take such additional steps as may be necessary at that time to facilitate compliance with New York Education Law Section 2-d and Part 121 of the Regulations of the Commissioner of Education.

11. The parties further agree that the terms and conditions set forth in this Plan shall survive the expiration and/or termination of the Agreement.

12. The undersigned representative of Third-party Contractor hereby represents and warrants that the undersigned is the owner or an officer, director, or agent of Third-party Contractor with full legal rights, power and authority to enter into this Addendum on behalf of Third-party Contractor and to bind Third-party Contractor with respect to the obligations enforceable against Third-party Contractor in accordance with its terms.

IN WITNESS WHEREOF, the parties have executed this Addendum on [insert date on which Addendum is signed].

| **NYACK UNION FREE SCHOOL DISTRICT** | INSERT NAME OF THIRD-PARTY CONTRACTOR |
|---|---|
| By: _____ | By: _____ |
| Name: | Name: |
| Title: _____ | Title: _____ |

## EXHIBIT 1

### Parents' Bill of Rights for Data Privacy and Security

In accordance with New York State Education Law Section 2-d, the Nyack Union Free School District (the "District") hereby sets forth the following Parents' Bill of Rights for Data Privacy and Security, which is applicable to all students and their parents and legal guardians.

(1) State and federal laws, such as New York State Education Law Section 2-d ("Section 2-d") and the Family Educational Rights and Privacy Act ("FERPA") protect the confidentiality of personally identifiable information. Subject to certain exceptions (See Regulation 5500-R), Section 2-d and FERPA assures the confidentiality of student records with respect to "third parties," and provides parents with the right to consent to disclosures of personally identifiable information contained in their child's education records.

(2) A student's personally identifiable information cannot be sold or released for any marketing or commercial purposes by the District or any third party contractor.

(3) Personally identifiable information includes, but is not limited to:

i. The student's name;

ii. The name of the student's parent or other family members;

iii. The address of the student or student's family;

iv. A personal identifier, such as the student's social security number, student number, or biometric record;

v. Other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name;

vi. Other information that, alone or in combination, is linked or linkable to a specific student that would 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; or

vii. Information requested by a person who the District reasonably believes knows the identity of the student to whom the education record relates.

(4) Personally identifiable student information will be collected and disclosed only as necessary to achieve educational purposes in accordance with state and federal laws.

(5) In accordance with FERPA, Section 2-d and Nyack Public Schools Board of Education Policy number 5500 "Student Records", parents have the right to inspect and review the

complete contents of their child's education record.

(6) The District has the following safeguards in place to protect student data, a Fortinet firewall, Intrusion Detection System, AES (Advanced Encryption Standard 256) bit for VPN encryption, SHA (Secure Hashing Algorithm) for VPN message integrity and file and folder security settings to restrict access and passwords protocol, including personally identifiable information stored or transferred by the District.

(7) New York State, through the New York State Education Department, collects a number of student data elements for authorized uses. A complete list of all student data elements collected by the State is available for public review, at http://www.nysed.gov/data-privacy-security/student-data-inventory or may be obtained by writing to the Office of Information & Reporting Services, New York State Education Department, Room 863 EBA, 89 Washington Avenue, Albany, NY 12234.

(8) Parents have the right to submit complaints about possible breaches and unauthorized disclosures of personally identifiable student data addressed. Any such complaint should be submitted, in writing, to: Nyack Public Schools, Attn: Data Protection Officer, 13A Dickinson Ave, Nyack, NY 10960 or by email to dnicolosi@nyackschools.org. Complaints may also be directed to the Chief Privacy Officer of the New York State Education Department online at http://www.nysed.gov/data-privacy-security/report-improper-disclosure or by mail to Chief Privacy Officer, New York State Education Department, 89 Washington Avenue, Albany NY 12234, or by email to Privacy@mail.nysed.gov.

Signature: _____

Printed Name: _____

Date: _____

**Supplemental Information for Agreement with _____** (hereinafter "Third-party Contractor").

The Third-party Contractor will provide the following information and Nyack Public School District (the " District") will review and approve or require revision of this Supplemental Information until it is acceptable to the District.

(1) The personally identifiable student data or teacher or principal data (collectively, "the Data") received by the Third-party Contractor will be used exclusively for the following purpose(s):

(2) The Third-party Contractor will ensure that all subcontractors and other authorized persons or entities to whom student data or teacher or principal data will be disclosed will abide by all applicable data protection and security requirements, including those mandated by New York State and federal laws and regulations, by the following means:

(3) The Agreement with the Third-Party Contractor will be in effect from _____(date) to _____ (date). Upon the expiration of the Agreement, all student data or teacher or principal data remaining in Third-party Contractor's possession will be (check those that are applicable and fill in required information):

a. ☐ Returned to the District by _____ [date] in the following format: _____.

b. ☐ Securely deleted or destroyed by _____ [date] in the following manner: _____.

c. ☐ Other – explain

d. ☐ If any of the Data is to be maintained by Third-party Contractor for any lawful purpose, such Data shall remain in an encrypted format and shall be stored on systems maintained by Third-party Contractor in a secure data facility located within the United States.

(4) A parent, student, teacher or principal can challenge the accuracy of the Data received by or generated by the Third-party Contractor in writing addressed to Nyack Public Schools, Attn: Data Protection Officer, 13A Dickinson Ave, Nyack, NY 10960 or by email to dnicolosi@nyackschools.org.

(5) Describe where the Data will be stored (in a manner that will protect data security) and the security protections that will be taken by the Third-party Contractor to ensure the Data will be protected (*e.g.*, offsite storage, use of cloud service provider, etc.):

(6) Third-party Contractor will use the following encryption technology to protect the Data while in motion or at rest in its custody:

| **NYACK UNION FREE SCHOOL DISTRICT** | INSERT NAME OF THIRD-PARTY CONTRACTOR |
|---|---|
| By: _____ | By: _____ |
| Name: | Name: _____ |
| Title: _____ | Title: _____ |