

STUDENT DATA PRIVACY AGREEMENT FOR PHOTOGRAPHIC SERVICES

This Student Data Privacy Agreement for Photographic Services dated July 19, 2018 2018 (hereinafter "Agreement") is by and between the City of Cambridge, through its School Department known as the Cambridge Public Schools ("CPS") and O'Connor Studios ("Contractor"), a contractor performing institutional services and functions that will require student data to perform those services and functions.

1. The Contractor shall be responsible for providing photography services to elementary, middle and/or high school students and their families by taking individual and class photographs of students which students and their families may purchase as well as providing photographs of students to the school district for purposes of placing in each student's record and on student identification cards and for yearbooks and internal-use-only student directories (hereinafter "the Services"). The scope and pricing and other terms relating to the Services will be set out in a separate agreement between CPS and Contractor. In the course of performing the Services, Contractor will obtain the following confidential student records and/or confidential student record information that contain personally identifiable student records, data and/or information as well as confidential school district staff identification numbers: Student Name, Student School, Student Homeroom, Student ID, Staff Name, Staff Homeroom, Staff School, Staff IDN (collectively, "Data Files").

CPS and Contractor acknowledge and agree that this Agreement is for the purpose of sharing Data Files between the parties in a manner consistent with the Family Educational Rights and Privacy Act of 1974 ("FERPA") and Massachusetts student record regulations, 603 C.M.R. 23.00 ("State Regulations"). The Data Files will be used by the Contractor's employees to populate student data for the purpose of delivering these Services. Contractor further acknowledges and agrees that all copies of such Data Files, including any modifications or additions to data from any source that contains personally identifiable information regarding individual students, are subject to the provisions of this Agreement in the same manner as the original Data Files. The ability to access or maintain Data Files and/or any personally identifiable student data contained therein under this Agreement shall not under any circumstances transfer from Contractor to any other party except that Contractor may assign this Agreement in its entirety, including any related Data Files, to any successor in interest that agrees to be bound by this Agreement in case of a merger or sale transaction. Disaggregated Data Files will not be re-released by the Contractor to its collaborating partners without the express written consent of the parent/guardian of the student. Contractor will not conduct any research studies with any of the Data Files that it receives from CPS. For the avoidance of doubt, Contractor may exercise its rights and obligations under this Agreement through its authorized employees and subcontractors.

2. Contractor acknowledges and agrees that it is providing institutional services or functions for CPS and that it is under direct control of CPS with respect to the use and maintenance of Data Files in connection with these Services. Contractor additionally

acknowledges and agrees that at no point in time is the Contractor the owner of the Data Files. Ownership rights are maintained by CPS and CPS reserves the right to request the prompt return of any portion of the Data Files and/or all Data Files at any time for any reason whatsoever. Contractor further acknowledges and agrees that it shall adhere to the requirements set forth in both federal and state law regarding the use and re-disclosure of the Data Files, including without limitation, any student data and/or personally identifiable information contained within the Data Files. Contractor also acknowledges and agrees that it shall not make any re-disclosure of any Data Files, including without limitation, any student data and/or personally identifiable information contained in the Data Files, without the express written consent of CPS. Additionally, Contractor agrees that only authorized employees and subcontractors of the Contractor directly involved in delivering the Services shall have access to the Data Files and that it and its employees and subcontractors shall protect the confidentiality of the Data Files in such a way that prevents access to the Data Files.

3. Contractor also acknowledges and agrees to:
 - (i) use personally identifiable student data shared under this Agreement for no purpose other than in connection with and through the provision of the Services.
 - (ii) use reasonable methods, consistent with industry standards, to protect the Data Files and/or any personally identifiable student data contained therein from re-disclosure.
 - (iii) except as provided in this Agreement, not share the Data Files and/or any personally identifiable student data received under this Agreement with any other entity without prior written approval from CPS.
 - (iv) not copy; reproduce or transmit the Data Files and/or any personally identifiable student data contained therein, except as necessary to fulfill the Services.
 - (v) not re-disclose, transfer or sell the Data Files and/or any portion thereof.
 - (vi) except for the specific purpose of providing the Services detailed above in paragraph 1 of this Agreement, not to use the Data Files and/or any portion thereof to market or otherwise advertise directly to students and/or their parents/guardians.
 - (vii) not to use the Data Files and/or any portion thereof to inform, influence or guide marketing or advertising efforts or to develop a profile of a student or group of students for any commercial or other purposes.
 - (viii) not to use the Data Files and/or any portion thereof contained therein for the development of commercial products or services apart from the Services themselves.

- (ix) not to mine the Data Files and/or any portion thereof for any purposes other than those agreed to by the parties.
- (x) notify the Chief Information Officer for CPS in writing within three (3) days of its determination that it has experienced a data breach, breach of security or unauthorized acquisition or use of any Data Files and/or personally identifiable student data contained therein. Contractor agrees that said notification shall include, to the extent feasible, the date or approximate dates of such incident and the nature thereof, the specific scope of said breach (i.e., what data was accessed, used, released or otherwise breached, including the names of individual students that were affected by said breach) and what actions or steps with respect to the incident that Contractor plans to take or has taken in response to said breach. Additionally, Contractor agrees to adhere to all requirements in the Massachusetts Data Breach law and in federal law with respect to a data breach related to the Data Files, including, when appropriate or required, the required responsibilities and procedures for notification and mitigation of any such data breach. Contractor further acknowledges and agrees to have a written incident response plan that reflects best practices and is consistent with industry standards and federal and state law for responding to a data breach, breach of security, privacy incident or unauthorized acquisition or use of Data Files or any portion thereof, including personally identifiable information and agrees to provide CPS, upon request, with a copy of said written incident response plan, which may be redacted to remove the Contractor's confidential information.
- (xi) not provide any Data Files or any personally identifiable data contained therein to any party ineligible to receive student records and/or student record data and information protected by FERPA and State Regulations or prohibited from receiving personally identifiable from any entity under 34 CFR 99.31(a)(6)(iii).
- (xii) to maintain backup copies, backed up at least daily, of Data Files in case of Contractor system failure or any other unforeseen event resulting in loss of Data Files.
- (xiii) to, upon receipt of a written request from CPS, promptly provide CPS with any specified portion of the Data Files within three (3) business days of receipt of said request.
- (xiv) to, upon receipt of a written request from CPS, immediately begin the process of returning all Data Files over to CPS and subsequently erasing and/or otherwise destroying, in a manner consistent with technology best practices and industry standards for secure data disposal methods, any Data Files, be it digital or physical form, still in Contractor's possession such that Contractor is no longer in possession of any Data Files belonging

to CPS and to provide CPS with any and all Data Files in Contractor's possession, custody or control within seven (7) days of receipt of said request.

- (xv) to, in the event of the Contractor's cessation of operations, promptly return all Data Files to CPS in an organized, manageable manner and subsequently erasing and/or otherwise destroying any Data Files, be it digital or physical form, still in Contractor's possession, in a manner consistent with technology best practices and industry standards for secure data disposal methods, such that Contractor is no longer in possession of any Data Files belonging to CPS and provide CPS with written certification, including an inventory of its Data Files destruction and inventory of all Data Files returned to CPS with fifteen (15) days of Contractor's cessation of operations.
- (xvi) not use, disclose, compile, transfer, sell the Data Files and/or any portion thereof to any third party or other entity or allow any other third party or other entity to use, disclose, compile, transfer or sell the Data Files and/or any portion thereof.
- (xvii) in the event that the Contractor and/or any of its subcontractors or agents to which the Contractor may have transferred Data Files or any portion thereof has technology or storage media that has failed and needs to be replaced or serviced, to ensure that all Data Files or any portions thereof that are contained therein are sanitized, erased and/or otherwise destroyed in a manner consistent with technology best practice and industry standards for secure data disposal methods. Contractor also will provide CPS with a written certification (including an inventory of related Data Files, if reasonably available) within fifteen (15) days of any such occurrence.
- (xviii) to delete CPS Data Files in a manner consistent with technology best practice and industry standards for secure data disposal methods, that it collects or receives under this Agreement once the Services referenced in this Agreement lapses.
- (xix) to, upon receipt of a litigation hold request from CPS, immediately implement a litigation hold and preserve all documents and data relevant identified by CPS and suspend deletion, overwriting, or any other possible destruction of documentation and data identified in, related to, arising out of and/or relevant to the litigation hold.
- (xx) upon receipt of a request from CPS, allow CPS to audit the security and privacy measures that are in place to ensure protection of the Data Files or any portion thereof.


- (xxi) cooperate fully with CPS and any local, state, or federal agency with oversight authority/jurisdiction in connection with any audit or investigation of the Contractor and/or delivery of Services to students and/or CPS, and shall provide full access to Contractor's facilities, staff, agents and CPS Data Files and all records pertaining to the Contractor, CPS Data Files and delivery of Services to CPS. Failure to cooperate shall be deemed a material breach of this Agreement.
- (xxii) not assign, subcontract or in any way transfer any interest in this Agreement without the prior written consent of CPS.
- (xxiii) Contractor agrees that it will not use the Data Files, even if in a de-identified form for internal product development and improvement and/or research.

4. Contractor certifies under the penalties of perjury that it complies with all federal and state laws, regulations and rules as such laws may apply to the receipt, storing, maintenance or access to personal information, including without limitation, all standards for the protection of personal information of residents of the Commonwealth and maintaining safeguards for personal information. Contractor hereby further certifies under penalties of perjury that it has a written comprehensive information security program that is in compliance with the provisions of 201 C.M.R. 17.00 *et seq.* Further, the Contractor hereby certifies under the penalties of perjury that it shall fully comply with the provisions of the federal Family Educational Rights and Privacy Act, 20 U.S.C. §1232g and regulations promulgated thereunder and Massachusetts student records law and regulations, including without limitation, 603 C.M.R. 23.00 *et seq.*, and to fully protect the confidentiality of any student data and/or personally identifiable information provided to it or its representatives. Contractor further represents and warrants that it has reviewed and complied with all information security programs, plans, guidelines, standards and policies that apply to the work it will be performing, that it will communicate these provisions to and enforce them against its subcontractors and will implement and maintain any other reasonable and appropriate security procedures and practices necessary to protect personal information and/or student record information from unauthorized access, destruction, use, modification, disclosure or loss. Contractor also represents and warrants that if personal information and/or student record information is to be stored on a laptop or other mobile electronic device, that such electronic devices (not including camera) are encrypted and that all such devices will be scanned at the completion of any contract or service agreement to ensure that no personal information and/or student record information is stored on such electronic devices.

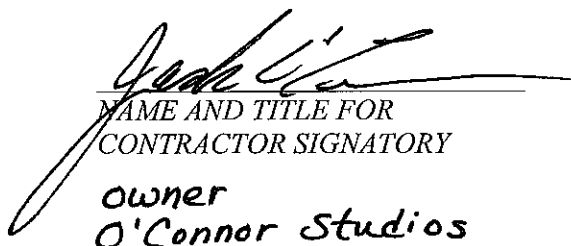
5. Contractor represents that it is authorized to bind to the terms of this Agreement, including confidentiality and destruction of Data Files and any personally identifiable student data contained therein, all related or associated institutions, individuals, employees or subcontractors who may have access to the Data Files and/or any personally identifiable student data contained therein, or may own, lease or control equipment or facilities of any kind where the Data Files and any personally identifiable student data contained therein is stored, maintained or used in any way.

IN WITNESS WHEREOF, and in consideration of the mutual covenants set forth herein and for other good and valuable consideration, and intending to be legally bound, each party has caused this Agreement to be duly executed as a Massachusetts instrument under seal as of the day and year first written above.

CAMBRIDGE PUBLIC SCHOOLS



Kenneth N. Salim, Ed.D.
Superintendent of Schools
Cambridge Public Schools



NAME AND TITLE FOR
CONTRACTOR SIGNATORY
owner
O'Connor Studios

CITY OF CAMBRIDGE



Louis A. DePasquale
City Manager

Approved as to form:



Nancy E. Glowa
City Solicitor