

**Community Unit School District 300  
and Hawthorn Associates of Lake County LLC  
Data Privacy Addendum (Student Data)**

This Data Privacy Addendum (the "Addendum") by and between Community Unit School District 300 (the "School District") and Hawthorn Associates of Lake County LLC (the "**Company**") (collectively, the "Parties") is incorporated in, effective simultaneously with, and modifies the attached agreement between the Parties and all current and supplemental terms and conditions, order forms, policies, practices, procedures, and/or other documentation relating to the attached agreement (collectively, the "Agreement"). This Addendum supersedes the Agreement by adding to, deleting from, and modifying the Agreement. To the extent any provision in this Addendum results in any conflict or inconsistency between the Agreement and this Addendum, this Addendum shall govern and any term of the Agreement that conflicts with this Addendum or is inconsistent with this Addendum shall be of no force or effect.

**1. Definition of School District Data**

As used in this Addendum, "School District Data" includes:

- "Personally Identifiable Information" and "Education Records" of students as defined in regulations implementing the Family Educational Rights and Privacy Act ("FERPA"), 34 C.F.R. § 99.3;
- "School Student Records" as defined in the Illinois School Student Records Act ("ISSRA"), 105 ILCS 10/2(d);
- "Covered Information" as defined in the Illinois Student Online Personal Protection Act ("SOPPA"), 105 ILCS 85/5; and
- All other non-public information, including student data, metadata, and user content, of the School District's students.

**2. Services and Data Provided**

2.1 *Nature of Products or Services Provided.* The Company has agreed to provide the following products and/or services to the School District:

*The Company provides the School District an internet-based toolset, MyServiceTracker, to assist the School District in the management of data and processes related to special education, Section 504 and Multi-Tier Systems of Support (MTSS). The toolset supports the School District in maintaining compliance with various state and federal rules including the Individuals with Disabilities Act (IDEA).*

2.2 *School District Data Provided.* To allow the Company to provide the products and/or services described in *Section 2.2*, the School District will provide the following categories or types of School District Data to the Company:

*The School District provides the Company:*

- *Student profile data. This data includes, but is not limited to, student name, address, birth date, grade, home/attending school and gender*
- *Parent/Guardian profile data. This data includes, but is not limited to, parent/guardian name, address and phone*
- *Para-professional encounter data. This data is related to the services para-professionals provide to the the School District's special education students. This data includes, but is not limited to, student id, service date and duration of para-professional service.*

2.3 *Minimum Data Necessary Shared.* The Company attests that the data requested by the Company from the School District for the School District to access the Company's products and/or services represents the minimum necessary data for the products and/or services as described in the Agreement and this Addendum.

### **3. Compliance with Law**

3.1 The Company agrees that all sharing, use, and storage of School District Data will be performed in accordance with all applicable Federal and State laws. The Company agrees that it will comply with all applicable laws and refrain from using School District Data in any way prohibited by any law, whether such requirements are specifically set forth in this Addendum. Applicable laws may include, but are not limited to, FERPA; ISSRA; SOPPA; the Children's Online Privacy Protection Act ("COPPA"), 15 U.S.C. 6501-6502; the Protection of Pupil Rights Amendment ("PPRA"), 20 U.S.C. 1232 h; and the Illinois Children's Privacy Protection and Parental Empowerment Act ("CPPPEA"), 325 ILCS 17/1 *et seq.*

### **4. Data Ownership and Use**

4.1 *Data Ownership and Control.* The School District Data and any intellectual property rights thereto remain the property of and under the control of the School District. The Company does not obtain any right, title, or interest in any of the School District Data furnished by the School District.

4.2 *School District Access to Data.* Any School District Data in the possession or under the control of the Company shall be made available to the School District upon request by the School District. The Company shall be responsible to provide copies of or access to School District Data in the possession or under the control of the Company to the School District within a reasonable time frame and in all cases within time frames that will allow timely compliance by the School District with any statutorily or court ordered deadline. This includes requests under the Illinois Freedom of Information Act ("FOIA"), 5 ILCS 140/1 *et seq.*, requests regarding student records under FERPA or ISSRA, requests

for records in discovery in state or federal court or administrative proceedings, and any other request.

4.3 *Company Use of Data.* The Company may use and disclose the School District Data only for the purposes described in the Agreement and only in a manner that does not violate local, state, or federal privacy laws and regulations. These include, but are not limited to, the following requirements, as applicable:

4.3.1 School Officials Requirements. The Company acknowledges that it is acting and designated as a "school official" or "official of the school" with a "legitimate educational interest" in the School District Data as those terms are used in FERPA, ISSRA, and SOPPA (a "School Official"). The Company agrees to abide by the limitations and requirements applicable to a School Official. The Company agrees it is performing an institutional service or function for which the school would otherwise use employees and is under the direct control of the school with respect to the use and maintenance of the School District Data. The Company agrees that it will use the School District Data only for authorized purposes and will comply with all limitations and requirements imposed on a School Official under FERPA, ISSRA, and SOPPA, including the requirements that the Company: (1) collect and use School District Data only for the purpose of fulfilling its duties under the Agreement and this Addendum and only for the benefit of the School District and its end users; (2) will not share, disclose, or re-disclose the School District Data to any third party or affiliate except as permitted by FERPA, ISSRA, and SOPPA or provided for in this Addendum, otherwise authorized in writing by the School District, or pursuant to a court order; (3) will not use School District Data (including metadata) for advertising or marketing purposes unless such use is specifically authorized by this Addendum or otherwise authorized in writing by the School District.

4.3.2 PPRA Requirements. With respect to the Company's collection, disclosure, or use of School District Data as governed by the PPRA, the Company's collection, disclosure, or use of any School District Data shall be for the exclusive purpose of developing, evaluating, or providing educational products or services for, or to, the School District's students or educational institutions, or otherwise for the use and benefit of the school. The Company will not use the School District Data for any purpose other than the School District's purpose.

4.3.3 COPPA Requirements. To the extent applicable, the Company agrees that its use of the School District Data will be solely for the benefit of the School District's students and for the school system, and that the Company will not collect personal information from students for any purpose other than the School District's purpose, including any other commercial purpose.

4.4 *Internal Company Disclosure.* The Company attests that only individuals or classes of individuals who are essential to perform the work under the Agreement will have access to the School District Data and that those individuals and classes of individuals will be familiar with and bound by this Addendum and relevant law. The Company shall cause each officer, director, employee, subcontractor, and other representative who will have access to any School District Data during the term of the Agreement to comply with all legal requirements applicable to the School District Data, including but not limited to those outlined in this Agreement and under relevant law.

## **5. Company Obligations Regarding Data**

5.1 *Safeguards.* The Company agrees to take appropriate administrative, technical, and physical safeguards reasonably designed to protect the security, privacy, confidentiality, and integrity of School District Data. The Company shall ensure that School District Data are secured and encrypted to the greatest extent practicable during use, storage and/or transmission.

5.1.1 *Security Procedures and Practices.* The Company agrees that at it will implement and maintain security procedures and practices that, at a minimum, are designed to protect covered information from unauthorized access, destruction, use, modification, or disclosure that based on the sensitivity of the data and the risk from unauthorized access: (i) use technologies and methodologies that are consistent with the U.S. Department of Commerce's National Institute of Standards and Technology's Framework for Improving Critical Infrastructure Cybersecurity Version 1.1. and any updates to it; or (ii) maintain technical safeguards as they relate to the possession of covered information in a manner consistent with the provisions of 45 C.F.R. 164.312.

5.1.2 *Storage of Data.* The Company agrees to store and process the School District Data in a manner that is no less protective than those methods used to secure the Company's own data. The Company agrees that School District Data will be stored on equipment or systems located within the United States.

5.1.3 *Audit of Safeguards.* The Company shall maintain complete and accurate records of its security measures for School District Data and produce such records to the School District for purposes of audit upon reasonable prior notice during normal business hours. The School District reserves the right at its sole discretion to audit the Company's storage of School District Data at the School District's expense to ensure compliance with the terms of the Agreement and this Addendum.

5.1.4 *Reasonable Methods.* The Company agrees to use "reasonable methods" to ensure to the greatest extent practicable that the Company and all parties accessing School District Data are compliant with state and

federal law. The School District reserves the right to audit such measures upon reasonable prior notice during business hours.

- 5.2 *Privacy Policy.* The Company must publicly disclose material information about its collection, use, and disclosure of covered information, including, but not limited to, publishing a terms of service agreement, privacy policy, or similar document. Any changes the Company may implement with respect to its privacy policies or terms of use documents shall be ineffective and inapplicable with respect to the School District and/or School District Data unless the School District affirmatively consents in writing to be bound by such changes. Access by students or parents/guardians to the Company's programs or services governed by the Agreement and this Addendum or to any School District Data stored by the Company shall not be conditioned upon agreement by the parents/guardians to waive any of the student data confidentiality restrictions or a lessening of any of the confidentiality or privacy requirements contained in this Addendum.
- 5.3 *Data Return/Destruction.* Upon expiration of the term of the Agreement, upon the earlier termination of the Agreement for any reason, at a time when some or all the School District Data is no longer needed for purposes of the Agreement, or upon the School District's request, the Company covenants and agrees that it promptly shall return to the School District all School District Data in the Company's possession and control. If return of the data is not feasible or if the School District agrees, then the Company shall destroy the data. The Company agrees to send a written certificate that the data was properly destroyed or returned. Such certificate shall be delivered within 30 days of the date of the event triggering return/destruction (e.g., within 30 days of the termination of the Agreement, within 30 days of the School District's request or notification to the Company that the data is no longer needed for the purposes of the Agreement). The Company shall destroy School District Data in a secure manner and in such a manner that it is permanently irretrievable in the normal course of business. The only exception to the requirements of this *Section 4.3* is if the Company has express written consent from a student's parent or legal guardian consenting to the maintenance of the covered information. In such case, the Company agrees to send with or in lieu of the written certificate required by this *Section 4.3* written evidence of parental/guardian consent for any data maintained.
- 5.4 *Authorizations.* The Company agrees to secure individual School District or parent/guardian written authorizations to maintain or use the School District Data in any manner beyond the scope of or after the termination of the Agreement.
- 5.5 *Data Breach.* For purposes of this section, "data breach" means the unauthorized disclosure of data, unauthorized provision of physical or electronic means of gaining access to data that compromises the security, confidentiality, or integrity of School Student Data, or other unauthorized access, alteration,

use or release of School District Data, as well as any other circumstances that could have resulted in such unauthorized disclosure, access, alteration, or use.

5.5.1 In the event of a data breach, the Company agrees to the following: (1) notify the School District by telephone and email within the most expedient time possible and without unreasonable delay, but no later than 24 hours after the determination that a breach has occurred; (2) at the time notification of the breach is made, provide the School District with the name and contact information for an employee of the Company who shall serve as the Company's primary security contact; (3) assist the School District with any investigation, including interviews with Company employees and review of all relevant records; (4) provide the School District within the most expedient time possible and without unreasonable delay, and in no case later than fifteen (15) days after notification to the School District that a data breach occurred, the number of students whose covered information is involved in the breach; the date, estimated date, or estimated date range of the breach; a description of the covered information that was compromised or reasonably believed to have been compromised in the breach; and contact information for the person who parents/guardians may contact at the Company regarding the breach; and (4) assist the School District with any notification the School District deems necessary related to the security breach. The Company agrees to comply with the terms of this *Section 5.5.1* regardless of whether the misuse or unauthorized release of School District Data is the result of or constitutes a material breach of the Agreement or this Addendum.

5.5.2 The Company shall not, unless required by law, provide any notices except to the School District without prior written permission from the School District.

5.5.3 The Company shall reimburse and indemnify the School District for all costs imposed on the School District or reasonably undertaken by the School District at its discretion associated with a data breach, including but not limited to reimbursement of costs associated with notifying individuals whose information was compromised and notifying required regulatory agencies; fees paid to provide credit monitoring to impacted individuals; legal fees, audit costs, fines, and any other fees or damages reasonably undertaken by or imposed against the School District as a result of the security breach; and any other notifications, legally mandated responses, or responses reasonably undertaken by the School District in response to the breach.

## **6. Prohibited Uses**

6.1 The Company shall not do any of the following:

6.1.1 Sell School District Data; use or share School District Data for purposes of targeted advertising, as defined in Section 85/5 of SOPPA; or use

School District Data to create a personal profile of a student other than for accomplishing the purposes described in the Agreement and this Addendum and explicitly authorized in writing by the District;

- 6.1.2 Use information, including persistent unique identifiers, created or gathered by the operator's site, service, or application to amass a profile about a student, except in furtherance of "K through 12 school purposes," as defined by SOPPA. "Amass a profile" does not include the collection and retention of account information that remains under the control of the student, the student's parent or legal guardian, or the School District; or
  - 6.1.3 Sell or rent a student's information, including covered information. This Section does not apply to the purchase, merger, or other type of acquisition of the Company by another entity if the Company or its successor entity complies with all relevant law and this Addendum regarding previously acquired School District Data.
- 6.2 Notwithstanding the previous paragraphs and any other terms of this Addendum, the Company may use School District Data for maintaining, developing, supporting, improving, or diagnosing the operator's site, service, or application if such use is authorized by Federal or State law. The Company agrees to notify the School District if it believes release of School District Data is otherwise justified under law, including the reasons set forth in SOPPA Section 84/10(4); however, any such disclosure must be made by the School District and pursuant to valid ISSRA and FERPA exceptions.

## **7. Miscellaneous**

- 7.1 *Service Levels.* The Company's products or services are provided 24 hours per day, 7 days per week. The Company shall ensure 99.5% up-time, Monday through Friday between 6 a.m. and 6 p.m. US Central Time ("Up-time"). Where Up-time percentage averages less than 99.5% in a calendar month, the School District shall have the right to terminate the Agreement immediately upon written notice to the Company and shall be entitled to a refund of the School District's fees paid for the services, as depreciated on a straight-line basis over a 12-month period commencing on the date the School District first had access to the Services through the date of termination.
- 7.2 *Limited Warranty.* For the purposes of this Addendum, a "Defect" is defined as a failure of the Company's product or service to substantially conform to the then-current Company's User Guides materials. For as long as the Agreement is in place, the Company warrants that the Company's products or services will not contain Defects. If the products or services do not perform as warranted, the Company will use reasonable efforts, consistent with industry standards, to cure the Defect in accordance with the Company's then-current support call process. Should the Company be unable to cure the Defect or provide a replacement product within five business days, the School District shall be entitled to a refund of its fees paid for the products or services, as depreciated

on a straight-line basis over a 12-month period commencing on the date the School District first has access to the Company's products or services through the date of termination.

- 7.3 *Harmful Code.* Using a recent version of a reputable virus-checking product (to the extent commercially available), Company will check its software and other systems used by Company to deliver the products or services to the School District for any harmful code, including, without limitation, any viruses, worms, or similar harmful code, and will use commercially reasonable efforts to eliminate any such harmful code that the Company discovers.
- 7.4 *Indemnification.* The Company agrees to indemnify, defend and hold harmless the School District and its officers, directors, employees, agents, attorneys and assigns, against any third-party claims, demands, actions, arbitrations, losses and liabilities resulting from damage caused by the Company employees, contractors, or subcontractors in performing its obligations under the Agreement or this Addendum.
- 7.5 *Insurance.* During the term of this Agreement, the Contractor, at its sole cost and expense, and for the benefit of the District, shall carry and maintain the following insurance:
  - 7.5.1 Comprehensive general liability and property damage insurance, insuring against all liability of the Contractor related to this Agreement, with a minimum combined single limit of One Million Dollars (\$1,000,000.00) per occurrence, One Million Dollars (\$1,000,000) Personal & Advertising Injury, Two Million Dollars (\$2,000,000) Products/Completed Operations Aggregate, and Two Million Dollars (\$2,000,000) general aggregate;
  - 7.5.2 Professional Liability/Technology Errors & Omissions Insurance with limits in the per claim amount of not less than Two Million Dollars (\$2,000,000.00) and the annual aggregate of not less than Two Million Dollars (\$2,000,000);
  - 7.5.3 Automobile liability Insurance with a combined single limit of One Million Dollars (\$1,000,000) (only required if Contractor will be on-site);
  - 7.5.4 Cyber liability/identity theft insurance with a combined limit of Two Million Dollars (\$2,000,000) per claim and Two Million Dollars (\$2,000,000) general aggregate;
  - 7.5.5 Workers' Compensation Insurance covering all costs, statutory benefits, and liabilities under State Workers' Compensation and similar laws for the Contractor's respective employees with Employers Liability of limits of \$1,000,000 Each Accident; \$1,000,000 Disease – Each Employee; \$1,000,000 – Policy Limit; and



- 7.5.6 Umbrella liability insurance with a minimum combined single limit of Five Million dollars (\$5,000,000.00) per occurrence and Five Million Dollars (\$5,000,000) general aggregate.

The insurance shall include sexual abuse and molestation coverage if the Contractor will be on District premises. All insurers shall be licensed by the State of Illinois and rated A-VII or better by A.M. Best or comparable rating service. The comprehensive general liability, property damage, auto liability, and umbrella liability insurance policy shall name the District, its Board, Board members, employees, volunteers, and agents as an additional insured on a primary noncontributory basis with a waiver of subrogation in favor of the District (if the Contractor will be on the District's premises the waiver of subrogation shall also apply to the workers' compensation insurance the waiver of subrogation shall also apply to the workers' compensation insurance). The Contractor shall provide the District with certificates of insurance reasonably acceptable to the District evidencing the existence of the coverage described above, including form and deductibles, during the duration of this Agreement. If requested the Contractor shall provide copies of applicable policy endorsements. The failure to provide acceptable insurance shall be deemed a breach of this Agreement entitling the District to terminate this Agreement immediately. All policies of insurance shall provide by endorsement that no coverage may be canceled, terminated, or reduced by the insuring company without the insuring company having first given at least 30 days prior written notice to the District by certified mail, return receipt requested.

- 7.6 *Infringement.* The Company warrants that no third party has any claim to any trademark, patent, or proprietary interest in any product or service the Company provides to the School District. The Company will defend, hold harmless, and indemnify the School District from any claims brought by a third party against the School District to the extent based on an allegation that any Company product or service infringes any U.S. patent, copyright, trademark, trade secret or other proprietary right of a third party. If the School District's use of the Company's products is restricted as the result of a claim of infringement, the Company shall do one of the following: (i) substitute another equally suitable product or service; (ii) modify the allegedly infringing Company product or service to avoid the infringement; (iii) procure for the School District the right to continue to use the Company product or service free of the restrictions caused by the infringement; or (iv) take back such Company product or service and refund to the School District the fees previously paid for the Company's product or service depreciated on a straight line basis over 12 months and terminate the School District's license to use the Company's product.
- 7.7 *No Indemnification or Limitation of Liability by School District.* Any provision included in the Agreement that requires the School District to indemnify the Company or any other party is deleted and shall not apply to the School District. Any provision in the Agreement, except for Section 6.7 of this Addendum, that limits the Company's liability, requires the School District to release the

Company for claims the School District may have against the Company is deleted. Further, any provisions requiring the School District to release its class action rights is deleted.


- 7.8 *Mutual Limitation of Liability.* Neither party will be liable for breach-of-contract damages that the breaching party could not reasonably have foreseen on entry into this agreement.
- 7.9 *Taxes.* The School District is a tax-exempt organization. Federal excise tax does not apply to the School District and State of Illinois Sales Tax does not apply. The amounts to be paid to the Company hereunder are inclusive of all other taxes that may be levied, including sales, use, nonresident, value-added, excise, and similar taxes levied or imposed upon the work. The Company shall be responsible for any taxes levied or imposed upon the income or business privileges of the Company.
- 7.10 *Payments.* The School District shall make payments to the Company in accordance with the Illinois Local Government Prompt Payment Act, 50 ILCS 505/1. If the School District is late in making a payment it shall make interest payments at the maximum amount permitted under the Illinois Local Government Prompt Payment Act, 50 ILCS 505/4.
- 7.11 *Force Majeure.* Neither party will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including acts of war, acts of God, acts of terrorism, earthquake, flood, embargo, riot, sabotage, labor shortage or dispute, governmental act or failure of the Internet (not resulting from the actions or inactions of the delayed party), provided that the delayed party: (i) gives the other party prompt notice of such cause, and (ii) uses its reasonable commercial efforts to promptly correct such failure or delay in performance.
- 7.12 *Freedom of Information Act.* The Company acknowledges that School District is subject to the Illinois FOIA, and that the School District shall not be in breach of any confidentiality provisions contained in the Agreement if the School District releases a record in compliance with the FOIA.
- 7.13 *Publication of Agreement.* Under SOPPA, the School District must publish the Company's name and business address, a copy of the Agreement and this Addendum, and a list of any subcontractors to whom School District Data may be disclosed. The Company agrees to provide to the School District prior to execution of the Agreement and this Addendum the name, business address, and list of subcontractors to be published. The Company acknowledges that if there are provisions of the Agreement other than those required to be included in the Agreement and this Addendum by SOPPA that the Company would like redacted before publication, the Company must submit a request in writing to the School District prior to execution of the Agreement and this Addendum. Only if the School District agrees to such redaction prior to the execution of the Agreement and this Addendum shall the redaction be made prior to publication.

- 7.14 *Governing Law.* The Agreement and this Addendum shall be governed by, construed, and enforced in accordance with the laws of the State of Illinois without regard to conflict of law principles. Jurisdiction and venue for all disputes hereunder shall be the Circuit Court located in Kane County, Illinois, or the federal district court for the Northern District of Illinois. Any references to required notices of claims, arbitration, or mediation in the Agreement are not applicable to the Parties.
- 7.15 *Renewal of Agreement.* The parties may renew the Agreement and this Addendum in writing. Any provision in the Agreement that provides for an automatic renewal of the Agreement is deleted.
- 7.16 *Termination.* The School District may immediately terminate the Agreement if the School District makes the determination that the Company has breached a material term of the Agreement or this Addendum. In addition, the School District may terminate this Agreement at any time without cause after providing the Company with 90 days written notice and shall be entitled to reimbursement of all fees previously paid but not yet incurred.
- 7.17 *Amendment.* No amendment or modification to the Agreement and this Addendum shall be effective unless and until the amendment or modification is in writing and signed by all parties to the Agreement and this Addendum.
- 7.18 *Effective Date.* The Addendum shall be deemed dated and become effective on the date the last of the parties signs as set forth below the signature of their duly authorized representatives.

**Company Name**

Community Unit School District 300

  
 \_\_\_\_\_  
 Signature  
 Steven Koruna

  
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 Signature

\_\_\_\_\_  
 Name  
 Partner

\_\_\_\_\_  
 Susan Harkin

\_\_\_\_\_  
 Title 6/2/2020

\_\_\_\_\_  
 Chief Operating Officer

\_\_\_\_\_  
 Date

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 06/24/2020  
 Date