



Data Security Agreement

7/30/19

This Data Security Agreement (the "**Agreement**") is made as of 5/8/2019 (the "**Effective Date**"), by and between The School Board of Hernando County, a Florida School Board, with a principal place of business at 919 N. Broad Street, Brooksville, FL 34601 (hereinafter referred to as "**HCSD**"), and Achieve3000, Inc, a Corporation with a principal place of business at 1985 Cedar Bridge Ave, Suite 3 (hereinafter referred to as "**Vendor**").
Lakewood, NJ 08701

Recitals

WHEREAS, HCSD wishes to further safeguard Protected Information from unlawful access and use;

WHEREAS, Vendor may receive or have access to HCSD Protected Information in the course of performance of Other Agreements that the Parties have entered into, or may enter into;

WHEREAS, the Parties both wish to further refine their data protection measures to conform with new and future regulations designed to address the protection of personal information; and

WHEREAS, Prior to, and in consideration of, Vendor's receipt of, or access to, HCSD Protected Information, Vendor is willing to protect HCSD Protected Information as set forth below.

NOW, THEREFORE, for good and sufficient consideration, the Parties agree as follows:

Agreement

1. Definitions. For purposes of this Agreement, the following terms shall have the meanings set forth below. Other terms are defined in context.

- 1.1. Breach of Security.** The term "**Breach of Security**" has the meaning set out herein and in applicable law, and as the same may be amended from time-to-time.
- 1.2. HCSD Protected Information.** The term "**HCSD Protected Information**" has the meaning set out in Section 2.1 (Provision of HCSD Protected Information).
- 1.3. Confidential Information.** The term "**Confidential Information**" means confidential or other proprietary information disclosed by HCSD to Vendor, whether orally, visually or in writing, before or after the Effective Date, and whether or not marked or otherwise designated as confidential or proprietary, including, without limitation, specifications, trade secrets, financial information, business plans, product plans, supplier lists, applicant and prospective applicant lists, admissions data and financial information. All reports, analyses, compilations, data, forecasts, studies and other materials which contain or otherwise reflect or are generated or derived from such information are also included in the definition of Confidential Information. Confidential Information includes information and documents in paper or electronic form which may not be released to third parties under law. Notwithstanding the foregoing, the term Confidential Information does not include information which: (i) is or becomes public knowledge without any action by, or involvement of, Vendor; (ii) is disclosed by Vendor with the prior written approval of HCSD; (iii) is independently developed by Vendor without use of HCSD's Confidential Information, provided that Vendor substantiates such independent development with contemporaneous documents; or (iv) is intentionally disclosed by HCSD to a third party without restriction on disclosure. This information and includes, but is not limited to education records as that term is defined in, Florida Statutes § 1002.221, 20 U.S.C. § 1232(g), and 34 C.F.R. Part 99.

- 1.4. **Effective Date.** The term "**Effective Date**" has the meaning set out in the introduction to the Recitals.
- 1.5. **FERPA.** The term "**FERPA**" means the Family Educational Rights and Privacy Act set forth at 20 U.S.C. § 1232g and the regulations promulgated thereunder at 34 CFR § 99.3, and as the same may be amended from time-to-time.
- 1.6. **Other Agreements.** The term "**Other Agreements**" means any agreement entered into between the Parties besides this Agreement.
- 1.7. **Party or Parties.** The term "**Party**" or "**Parties**" means: (i) HCSD, (ii) Vendor; or (iii) HCSD and Vendor, as the context permits.
- 1.8. **Personal Information.** The term "**Personal Information**" has the meaning set out in applicable statutes laws and includes, but is not limited to education records as that term is defined in Florida Statutes §1002.221, 20 U.S.C. §1232(g), and 34 C.F.R. Part 99.
- 1.9. **Personally Identifiable Information.** The term "**Personally Identifiable Information**" means (i) information that could reasonably be used to identify you, including your name, home address, email address, birth date, credit card information, telephone number, or any combination of this information or similar information that could be used to personally identify you, and (ii) any other personally identifiable information from paper and electronic student education records as that term is used in FERPA, and as the same may be amended from time-to-time.
- 1.10. **HCSD Protected Information.** The term "**HCSD Protected Information**" means, collectively: (i) Personal Information, (ii) Confidential Information; and, (iii) Personally Identifiable Information.
- 1.11. **Services.** The term "**Services**" means any goods or services that a Party provides to the other Party pursuant to Other Agreements.
2. **HCSD Protected Information; Provision and Use.**
- 2.1. **Provision of HCSD Protected Information.** Throughout the course of performance of a Party's obligations under Other Agreements, Vendor may receive, or obtain access to, HCSD Protected Information from or on the behalf of HCSD, its students and other persons or entities, for the use or benefit of HCSD (collectively, the "**HCSD Protected Information**"). Vendor hereby acknowledges and agrees that it shall only accept receipt of, or access to, HCSD Protected Information as is necessary for Vendor's performance of its duties and responsibilities pursuant to Other Agreements.
- 2.2. **Vendor Use of HCSD Protected Information; Non-Disclosure.** Vendor hereby acknowledges and agrees to hold HCSD Protected Information in strict confidence, and shall not use or disclose HCSD Protected Information except: (i) as is necessary for Vendor to fulfill its obligations to HCSD under applicable Other Agreements, (ii) as required by law; or (iii) as otherwise authorized in writing by HCSD (collectively, the "**Permitted Uses**"). Vendor agrees not to use HCSD Protected Information for any purpose other than the Permitted Uses. Notwithstanding anything to the contrary, in no event shall Vendor use or otherwise disclose HCSD Protected Information in a manner that conflicts with HCSD's interests. Vendor shall be entitled to disclose HCSD Protected Information on a need-to-know basis to its employees and sub-Vendors provided such employees and sub-Vendors are bound by non-disclosure obligations no less protective than those set out in this Agreement. Vendor shall not copy, transcribe or record any HCSD Protected Information without HCSD's prior written consent, or as is absolutely necessary to perform the Services.

- 2.3. **Disclosure of HCSD Protected Information.** In the event Vendor is required to disclose HCSD Protected Information by law either during or after the Term, Vendor shall promptly notify HCSD in order to provide HCSD an opportunity to seek a protective order or other relief. If, HCSD does not elect to seek, or is unable to obtain, a protective order or other relief, Vendor may disclose the required HCSD Protected Information without liability hereunder; provided, however, that Vendor first gives HCSD written notice of the specific HCSD Protected Information to be disclosed as far in advance of its disclosure as is practicable, and shall use reasonable efforts to obtain assurances that the entity receiving HCSD Protected Information uses at least the same degree of care in safeguarding the disclosed HCSD Protected Information as Vendor is obligated to use pursuant to this Agreement.
- 2.4. **Standard of Care.** Vendor hereby represents that it has implemented appropriate measures to protect against the unauthorized release of HCSD Protected Information and agrees that it shall protect all HCSD Protected Information it receives according to commercially acceptable standards, but in no event, less rigorously than it protects its own Protected Information, and not less than reasonable care and diligence.
- 2.5. **Ownership of HCSD Protected Information.** Vendor acknowledge and agrees that, as between the Parties, HCSD Protected Information is the sole and exclusive property of HCSD.
- 2.6. **No Data Mining; No Marketing.** Vendor is prohibited from mining Data for any purposes other than those agreed to by the parties. Data mining or scanning of user content for the purpose of advertising or marketing to students or their parents is prohibited. Vendor will not otherwise use any Data to advertise or market to students or their parents. Data may not be used for any purpose other than the specific purpose(s) outlined in this Agreement.
3. **Breach.**
- 3.1 **Notification of Breach.** In addition to Vendor's responsibilities under the law, Vendor shall immediately upon discovery report to HCSD in writing (i) any Breach of Security involving HCSD Protected Information, or (ii) any use or disclosure of HCSD Protected Information other than the Permitted Uses (each, a "Report"). Vendor shall fully cooperate with HCSD with respect thereto. Each Report shall include, at a minimum: (i) the nature of the unauthorized use or disclosure, (ii) the HCSD Protected Information used or disclosed, (iii) who made the unauthorized use and received the unauthorized disclosure, (iv) what Vendor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, (v) what corrective action Vendor has taken or shall take to prevent future similar unauthorized use or disclosure; and, (vi) any other information, including a written report, as reasonably requested by HCSD.
- 3.2 **Incident Response Plan.** Vendor shall have a written incident response plan, to include prompt notification to HCSD in the event of a security or privacy incident, as well as best practices for responding to a breach of HCSD Protected Information and Data. Provider agrees to share its incident response plan upon request. Upon the occurrence of any actual or suspected unauthorized use or disclosure of HCSD Protected Information and Data. Vendor shall take reasonable steps to minimize or mitigate the risk of harmful or potentially harmful effects resulting from said actual or suspected unauthorized use or disclosure.
4. **HCSD Disclaimer of Warranties.** HCSD MAKES NO REPRESENTATIONS OR WARRANTIES REGARDING HCSD PROTECTED INFORMATION (AND EXPRESSLY DISCLAIMS ANY AND ALL SUCH WARRANTIES), WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.
5. **Vendor Indemnification.** Vendor shall indemnify, defend and hold HCSD harmless from and against all claims, actions, suits and proceedings resulting from Vendor's breach of any of its obligations under

this Agreement including, but not limited to (i) (a) the cost of notification of affected persons, (b) third party credit monitoring services, (c) establishing and maintaining a call center in the event of a Data Security Breach; and (d) costs of an investigation (including computer forensic work) to assess and/or mitigate the effects of a Data Security Breach, and (ii) HCSD's costs and reasonable attorneys' fees which arise as a result of Vendor's breach of any of its obligations under this Agreement, or other failure to safeguard HCSD Protected Information as provided in this Agreement. Vendor shall indemnify HCSD for all losses, damages, liabilities, judgments, penalties, fines and expenses incurred by HCSD in any such claim, action, suit or proceeding. Any limitations of liability contained in any Other Agreements shall not be applicable to Vendor's obligations pursuant to this Section 5 (Vendor Indemnification).

- 6. Limitations on Liability; Consequential Damages Waiver.** EXCEPT FOR A CLAIM FOR INDEMNIFICATION MADE PURSUANT TO SECTION 5 (Vendor Indemnification), IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND OR NATURE WHATSOEVER, INCLUDING WITHOUT LIMITATION, LOSS OF PROFITS OR OTHER ECONOMIC LOSS, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

7. Compliance with Laws.

7.1. General Compliance. Vendor acknowledges and agrees to comply at its own expense with all applicable laws, rules and regulations of governmental bodies and agencies that relate to the subject matter of this Agreement. Such laws include, but are not limited to, the following:

7.1.1. Compliance with the HIPPA. Vendor hereby acknowledge and agrees that, before the Effective Date, it shall implement, maintain, and use appropriate administrative, technical, and physical security measures to preserve the confidentiality, integrity, and availability of all electronically and physically stored (including, but not limited to, all paper copies) maintained or transmitted Personal Information that is in full compliance and otherwise consistent with the provisions of HIPPA. Prior to Vendor's receipt of Personal Information, Vendor shall provide to HCSD a written certification that it has a written, comprehensive information security program, and that Vendor shall ensure that any sub-Vendors it engages that receives, or is given access to, Personal Information by Vendor is in compliance with the requirements set out in this Section 7.1.1.

7.1.2. Compliance with FERPA. Vendor hereby acknowledge and agrees to comply with the limitations on the use and re-disclosure of Personally Identifiable Information from education records as set forth in 34 CFR § 99.00 et seq. Vendor further acknowledge and agrees that it shall maintain the confidentiality, and shall not re-disclose, Personally Identifiable Information from education records except as authorized by the HCSD in writing.

7.2. Order of Precedence for Compliance with Laws. The Parties acknowledge and agree that Vendor's obligations pursuant to this Agreement may be more onerous than those in an applicable law, rule or regulation. In the event that a particular law, rule or regulation is more protective of HCSD Protected Information than those obligations set out in this Agreement, Vendor shall comply with such law, rule or regulation (in addition to complying with its obligations under this Agreement). In the event that Vendor's obligations under this Agreement are more protective of HCSD Protected Information than those obligations set out in an applicable law, rule or regulation, then Vendor shall comply with its obligations under this Agreement (in addition to complying with the applicable law, rule or regulation).

8. Term and Termination.

- 8.1. Term.** This Agreement shall come into force and effect on the Effective Date and shall continue until terminated pursuant to Section 8.2 (Termination) (the "**Term**").
- 8.2. Termination.**
- 8.2.1. Termination for Convenience.** HCSD may terminate this Agreement at any time and for any reason upon giving Vendor written notice of such termination.
- 8.2.2. Termination for Cause.** In the event that HCSD reasonably determines that Vendor has breached any of its obligation under this Agreement, HCSD may: (i) immediately terminate this Agreement for cause, (ii) provide Vendor with a notice of breach and, thereafter, provide the Vendor a five (5) day period to cure such breach; or (iii) require Vendor to submit to a plan to better monitor and protect HCSD Protected Information, and to notify HCSD of any breach.
- 8.2.3. Insolvency.** In the event a Party makes an assignment for the benefit of creditors, or has a petition in bankruptcy filed for or against it that is not dismissed within sixty (60) days, the other Party shall have the right to terminate this Agreement immediately upon providing written notice of such termination.
- 8.2.4. Termination Without Prejudice to Other Rights and Remedies.** Termination of this Agreement shall be without prejudice to HCSD's other rights and remedies pursuant to this Agreement.

9. Effect of Termination.

- 9.1. Return of HCSD Protected Information.** Upon termination or expiration of this Agreement for any reason, all written, electronic or other forms of media in which HCSD Protected Information is embodied along with all copies and extracts thereof, shall forthwith be delivered to HCSD, and all memoranda, notes, reports, designs, plans, schedules, lists and other writings prepared by Vendor based on HCSD Protected Information shall either be immediately delivered to HCSD or destroyed, as HCSD requests. Vendor shall promptly certify to HCSD in writing that it has complied with the requirements of this Section 9.1 (Return of HCSD Protected Information). Vendor acknowledges and agrees to comply with its obligations pursuant to this Section 9.1 (Return of HCSD Protected Information) within thirty (30) days of termination or expiration of this Agreement for any reason, or within such other time as the Parties mutually agree upon.
- 9.2. Existing Obligations.** The termination of this Agreement for any reason shall not relieve either Party of any obligations to the other Party that arose prior to the termination.
- 9.3. Survival.** The following Sections shall survive any termination or expiration of this Agreement:
- Section 2.3 (Disclosure of HCSD Protected Information)
 - Section 2.5 (Ownership of HCSD Protected Information)
 - Section 5 (Indemnification)
 - Section 6 (Limitations on Liability; Consequential Damages Waiver)
 - Section 9 (Effect of Termination)
 - Section 10 (General)

10. General.

- 10.1. Independent Vendors.** The Parties to this Agreement are independent Vendors, and no agency, partnership, joint venture or employer-employee relationship is intended or created by this Agreement. Neither Party shall have the power to obligate or bind the other Party.

Personnel supplied by a Party shall work exclusively for that Party and shall not, for any purpose, be considered employees or agents of the other Party.

- 10.2. Independence of Agreement.** This Agreement is separate from and independent of all other agreements between the Parties.
- 10.3. Governing Law; Venue.** This Agreement shall be governed by and construed in accordance with the laws of the state of Florida, without regard to its conflicts of law principles. The Parties agree that State and Federal Courts in the judicial districts in which HCSD's principal place of business is located shall have jurisdiction over disputes under this Agreement (to the exclusion of all other forums). The Parties hereby consent to personal jurisdiction and venue in such courts.
- 10.4. Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and permitted assigns. Neither Party shall, without the prior written consent of the other Party (which consent shall not be unreasonably withheld) assign or transfer this Agreement, and any attempt to do so shall be void and of no force and effect, except that a Party hereto may, without the other Party's consent, assign this Agreement to a parent, subsidiary, or purchaser of substantially all the assets or stock, or to a third party with whom such Party is directly or indirectly merged or consolidated. In the case of any permitted assignment set forth above, the assigning Party will provide reasonable advance notice of the assignment to the other Party.
- 10.5. Force Majeure.** Neither Party shall be liable for any delay in performing its obligations under this Agreement, if such delay is caused by circumstances beyond the Party's reasonable control, including without limitation, any acts of God, war, terrorism, floods, windstorm, labor disputes, changes in laws or regulations, or delay of essential materials or services. The Party not affected by the force majeure shall have the right to terminate this Agreement without penalty if the Party affected by the force majeure event is unable to resume full performance within thirty (30) days of occurrence of the event.
- 10.6. Severability; Waiver.** If any provision of this Agreement is held to be invalid or unenforceable for any reason, the remaining provisions will continue in full force without being impaired or invalidated in any way. The Parties agree to replace any invalid provision with a valid provision which most closely approximates the intent and economic effect of the invalid provision. The waiver by either Party of a breach of any provision of this Agreement will not operate or be interpreted as a waiver of any other or subsequent breach.
- 10.7. Headings.** Headings used in this Agreement are for reference purposes only and in no way define, limit, construe or describe the scope or extent of such section or in any way affect this Agreement.
- 10.8. Notice.** In any case where any notice or other communication is required or permitted to be given hereunder, such notice or communication shall be given in writing by personal delivery, registered mail, confirmed facsimile, or nationally recognized courier service, addressed to the respective Party at the addresses listed below (or such other address as subsequently notified in writing to the other Party). All such notices or other communications shall be deemed to have been given and received: (i) upon receipt, if personally delivered or sent by registered mail, (ii) when delivery is confirmed, if sent by courier service; and (iii) on the transmission date for facsimile communications, if such transmission is error-free and such communication is confirmed by a copy sent first class mail.

If to HCSD: 919 N. Broad Street
 Brooksville, FL 34601

If to Vendor: _____

- 10.9. Additional Obligations.** The Parties acknowledge and agree that Vendor's obligations under this Agreement are in addition to any other obligations which Vendor has to HCSD as a result of Other Agreements or other instruments.
- 10.10. Order of Precedence.** The Parties agree that if a conflict arises between this Agreement and any Other Agreement, then the term or provision of this Agreement shall control.
- 10.11. Counterparts.** This Agreement may be executed in one or more counterparts, delivered electronically, each of which shall be deemed an original and all of which shall be taken together and deemed to be one instrument.
- 10.12. Entire Agreement.** This Agreement sets forth the entire understanding and agreement of the Parties and supersedes any and all oral or written agreements or understandings between the Parties as to the subject matter of this Agreement. It may be changed only by a writing signed by both Parties. Neither Party is relying upon any warranties, representations, assurances or inducements not expressly set forth herein.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their respective duly authorized representatives as of the Effective Date.

HCSD

By: Susan D Duval
Name: Susan D. Duval
Title: Chair, 7/30/19

By: Nick Bates
Name: Nick Bates
Title: Chief Financial Officer

Approved as to Form

Nancy McClain Alfonso

General Counsel, HCSB