Contract Rider between Vestal Central School District

And

Noteflight, a division of Hal L

a. Noteflight, a division of H *(Vendor) acknowledges that the Vestal Central School District (Customer) is a public education governmental unit pursuant to the laws of the State of New York.*

b. *This Rider is hereby incorporated into the Agreement between Vendor and Customer. Notwithstanding any other language in the Agreement, including any referenced documents as well as otherwise incorporated documents, to the contrary, the language of this Rider has been individually negotiated and supersedes any other language that conflicts with the provisions of this Rider.*

c. *No part of this Agreement can be changed or modified as relates to Customer, without Customer's prior written notice and written agreement of the proposed changes to the Agreement.*

d. *Vendor agrees to defend, indemnify, and hold harmless Customer and Customer's officers, employees, volunteers, Users, agents, and other representatives (collectively Indemnitees) from any and all losses, costs, liabilities, damages, and expenses (including but not limited to reasonable attorneys' fees and reasonable attorneys' fees in seeking to enforce its rights pursuant to this Agreement) arising out of intellectual property claims brought by third parties based upon any intellectual property supplied to Indemnitees by Vendor or Vendor's affiliates or licensors pursuant to this Agreement.*

e. *No defense, indemnification, or hold harmless provision of the Agreement shall applied against Customer except to the extent Vendor also provides that identical provision protecting Customer and Customer's officers, employees, volunteers, agents, authorized users and other representatives.*

f. *Vendor waives and releases Customer from any claim of reimbursement of legal fees relating to its enforcement of the Agreement except to the extent the relevant provision of the Agreement provides that the prevailing party is entitled to such fees on the disputed matter following the decision and judgment of a Court of law finally deciding the matter.*

g. *Customer general liability. No limitations, exclusions, disclaimers or other language seeking to reduce or eliminate Vendors legal or financial duties shall apply to its duties under this subparagraph of the Rider.*

h. *No limitations shall apply to Vendor's duty to defend, indemnify, or hold harmless pursuant to subsection d above. For all other liabilities, Vendor's liability to Customer shall be the greatest of the amount and kind provided for in the agreement, or,*

    a. *One year's fees payable by Customer to Vendor pursuant to Agreement, or*
    b. *Vendor's applicable insurance coverage.*

i. *The Parties agree that this Agreement shall be governed by the laws of the State of New York, without regard to its conflict of laws principles. The parties agree that exclusive jurisdiction to resolve any conflicts relating to this Agreement shall be in the State and Federal Courts with venue in Broome County New York. The Parties consent to personal jurisdiction in such Courts. Arbitration is expressly prohibited. There is no waiver of class action suits against Vendor.*

j. *No assignment shall be authorized against a Customer without its written consent.*

k. *No Service of Process against Customer by electronic means is permitted.*

l. *Vendor acknowledges that Customer is subject to New York State Freedom of Information Law. Confidential Information does not include any information required to be produced pursuant to law, or a lawfully issued subpoena or other judicially enforceable demand. Customer does not have to provide advance notice to Vendor prior to complying with such lawful demands for information.*

m. *No limitation of time in the Agreement shall shorten Customers' time period to seek redress from the Vendor and where not satisfied, bring an action or special proceeding against Vendor as otherwise provided by applicable law.*

n. *Vendor's rate of interest on any unpaid amounts due from Customer shall be 3% annual.*

o. *This Rider shall survive termination of the Agreement.*

Vestal Central School District	*Date*
John Mlynczak	06/21/2022
Vendor	*Date*

Exhibit A

DATA PRIVACY RIDER FOR ALL CONTRACTS INVOLVING PROTECTED DATA PURSUANT TO EDUCATION LAW §2-C AND §2-D

District and Vendor agree as follows:

1. Definitions:

(1) Protected Data means personally identifiable information of students from student education records as defined by FERPA, as well as teacher and Principal data regarding annual professional performance reviews made confidential under New York Education Law §3012-c and §3012-d;

(2) Personally Identifiable Information (PII) means the same as defined by the regulations implementing FERPA (20 USC §1232-g);

2. Confidentiality of all Protected Data shall be maintained in accordance with State and Federal Law and the District's Data Security and Privacy Policy;

3. The Parties agree that the District's Parents' Bill of Rights for Data Privacy and Security are incorporated as part of this agreement, and Vendor shall comply with its terms;

4. Vendor agrees to comply with Education Law §2-d and its implementing regulations;

5. Vendor agrees that any officers or employees of Vendor, and its assignees who have access to Protected Data, have received or will receive training on federal and State law governing confidentiality of such data prior to receiving access;

6. Vendor shall:

(1) limit internal access to education records to those individuals that are determined to have legitimate educational interests;

(2) not use the education records for any other purposes than those explicitly authorized in its contract. Unauthorized use specifically includes, but is not limited to, selling or disclosing personally identifiable information for marketing or commercial purposes or permitting, facilitating, or disclosing such information to a third party for marketing or commercial purposes;

(3) except for authorized representatives of the third party contractor to the extent they are carrying out the contract, not disclose any personally identifiable information to any other party:

> (i) without the prior written consent of the parent or eligible student; or
>
> (ii) unless required by statute or court order and the party provides notice of the disclosure to the department, Board of Education, or institution that provided the information no later than the time the information is disclosed, unless providing notice of the disclosure is expressly prohibited by the statute or court order;

(4) maintain reasonable administrative, technical and physical safeguards to protect the security, confidentiality and integrity of personally identifiable student information in its custody;

(5) use encryption technology to protect data while in motion or in its custody from unauthorized disclosure using a technology or methodology specified by the Secretary of the United States Department of Health and Human Services in guidance issued under Section 13402(H)(2) of Public Law §111-5;

(6) adopt technology, safeguards and practices that align with NIST Cybersecurity Framework;

(7) impose all the terms of this rider in writing where the Vendor engages a subcontractor or other party to perform any of its contractual obligations which provides access to Protected Data.

(8) If any terms of the foregoing agreement conflict with any terms of this exhibit, the terms of this exhibit, New York Education Law §2-d and the regulations shall control."

Exhibit B

PARENTS' BILL OF RIGHTS FOR DATA PRIVACY AND SECURITY

The District, in compliance with Education Law §2-d, provides the following:

DEFINITIONS:

As used in this policy, the following terms are defined:

Student Data means personally identifiable information from the student records of a District student.

Teacher or Principal Data means personally identifiable information from District records relating to the annual professional performance reviews of classroom teachers or Principals that is confidential and not subject to release under the provisions of Education Law §§3012-c and 3012-d.

Third-Party Contractor means any person or entity, other than a District, that receives student data or teacher or Principal data from the District pursuant to a contract or other written agreement for purposes of providing services to the District, including, but not limited to, data management or storage services, conducting studies for or on behalf of the District, or audit or evaluation of publicly funded programs. Such term shall include an educational partnership organization that receives student or teacher or Principal data from a school district to carry out its responsibilities pursuant to Education Law §211-e and is not a District, and a not-for-profit corporation or other nonprofit organization, other than a District.

Parent means a parent, legal guardian, or person in parental relation to a student. These rights may not apply to parents of eligible students.

Eligible Student means a student 18 years and older.

1. Neither student data, nor teacher or Principal data will be sold or released for any commercial purpose;

2. Parents have the right to inspect and review the complete contents of their child's education records. Procedures for reviewing student records can be found in the Board Policy entitled ***Student Records: Access and Challenge (#7240).***

3. Security protocols regarding confidentiality of personally identifiable information are currently in place and the safeguards necessary to protect the confidentiality of student data are maintained at industry standards and best practices as defined below. The safeguards include, but are not limited to, encryption, firewalls, and password protection. As required by Education Law §2-d (5), the National Institute for Standards and Technology Framework for Improving Critical Infrastructure Cybersecurity Version 1.1 (NIST Cybersecurity Framework or NIST CSF) is adopted as the standard for data security and privacy;

4. New York State maintains a complete list of all student data collected by the State and the data is available for public review at http://www.p12.nysed.gov/irs/sirs/NYSEDDataElements2018.xlsx, or by writing to the Office of Information & Reporting Services, New York State Education Department, Room 863 EBA, 89 Washington Avenue, Albany, New York 12234;

5. Parents have the right to have complaints about possible breaches of student data addressed. Complaints should be directed to the District's Data Protection Officer at 607-757-2211.

   Complaints may be also be submitted to NYSED online at www.nysed.gov/data-privacy-security, by mail to Chief Privacy Officer, New York State Education Department, 89 Washington Avenue, Albany, NY 12234; by email to privacy@nysed.gov; or by telephone at 518-474-0937.

6. Parents have the right to be notified in accordance with applicable laws and regulations if a breach or unauthorized release of their student's personally identifiable information occurs.

7. Educational agency workers that handle personally identifiable information will receive annual training on applicable state and federal laws, the educational agency's policies, and safeguards associated with industry standards and best practices that protect personally identifiable information.

8. The District will promptly acknowledge receipt of complaints, commence an investigation, and take the necessary precautions to protect personally identifiable information.

   - Following its investigation of a submitted complaint, the District shall provide the parent or eligible student with its findings within a reasonable period, but no more than 60 calendar days from receipt of the complaint;
   - Where the District requires additional time, or where the response may compromise security or impede a law enforcement investigation, the District shall provide the parent or eligible student with a written explanation that includes the approximate date when the District anticipates that it will respond to the complaint;
   - The District will require complaints to be submitted in writing;
   - The District will maintain a record of all complaints of breaches or unauthorized releases of student data and their disposition in accordance with applicable data retention policies, including the Records Retention and Disposition Schedule LGS-1.

9. This policy will be regularly updated with supplemental information for each contract the District enters into with a third-party contractor where the third-party contractor receives student data or teacher or Principal data. The supplemental information must be developed by the District and include the following information:

- the exclusive purposes for which the student data or teacher or Principal data will be used by the third-party contractor, as defined in the contract;
- how the third-party contractor will ensure that the subcontractors, or other authorized persons or entities to whom the third-party contractor will disclose the student data or teacher or Principal data, if any, will abide by all applicable data protection and security requirements, including, but not limited to, those outlined in applicable State and federal laws and regulations (e.g., FERPA; Education Law §2-d);
- the duration of the contract, including the contract's expiration date and a description of what will happen to the student data or teacher or Principal data upon expiration of the contract or other written agreement (e.g., whether, when and in what format it will be returned to the District, and whether, when and how the data will be destroyed);
- if and how a parent, student, eligible student, teacher or Principal may challenge the accuracy of the student data or teacher or Principal data that is collected;
- where the student data or teacher or Principal data will be stored, it will be described in such a manner as to protect data security and the security protections taken to ensure that such data will be protected and data security and privacy risks mitigated; and how the data will be protected using encryption while in motion and at rest will be addressed.

10. This policy shall be published on the District's website. This policy shall also be included with every contract the District enters with a third-party contractor where the third-party contractor receives student data or teacher or Principal data.

Vestal Central School District
New York State Education Law 2-D: Supplemental Information
This section to be completed by the Vendor

CONTRACTOR	[Vendor Name] Noteflight, a division of Hal L
PRODUCT	[Product Name] Noteflight Learn
SUPPLEMENTAL INFORMATION ELEMENT	**SUPPLEMENTAL INFORMATION**
Please list the exclusive purposes for which the student data or teacher or Principal data will be used by the third-party contractor, as defined in the contract *(or list the section(s) in the contract where this information can be found)*	Teacher name and email, plus school address for the purpose of servicing the account and invoicing.
Please list how the third-party contractor will ensure that the subcontractors, or other authorized persons or entities to whom the third-party contractor will disclose the student data or teacher or Principal data, if any, will abide by all applicable data protection and security requirements, including, but not limited to, those outlined in applicable State and federal laws and regulations (e.g., FERPA; Education Law §2-d) *(or list the section(s) in the contract where this information can be found)*	Contractor will not utilize subcontractors without a written contract that requires the subcontractors to adhere to, at a minimum, materially similar data protection obligations imposed on the contractor by state and federal laws and regulations, and the Contract.
Please list the duration of the contract, including the contract's expiration date and a description of what will happen to the student data or teacher or Principal data upon expiration of the contract or other written agreement (e.g., whether, when and in what format it will be returned to the District, and whether, when and how the data will be destroyed) *(or list the section(s) in the contract where this information can be found)*	The contract expires upon written request unless renewed or automatically extended for a term pursuant to the agreement. When the contract expires, protection data will be deleted by the contractor, via shredding, returning of data, mass deletion, and upon request, may be exported for use by VCSD before deletion.
Please list if and how a parent, student, eligible student, teacher or Principal may challenge the accuracy of the student data or teacher or Principal data that is collected *(or list the section(s) in the contract where this information can be found)*	Parents, teachers, or principals who seek to challenge the accuracy of PII will do so by contacting the EA. If a correction to data is deemed necessary, the EA will notify
Please list where the student data or teacher or Principal data will be stored, it will be described in such a manner as to protect data security and the security protections taken to ensure that such data will be protected and data security and privacy risks mitigated; and how the data will be protected using encryption while in motion and at rest will be addressed *(or list the section(s) in the contract where this information can be found)*	AWS Security groups and encryption. Data will be encrypted while in motion and at rest.

John Mlynczak
Signature

06/21/2022
Date

VP of Music Education & Technology
Name & Job Title