**INTRODUCING THE NEW YORK STATE**

**MODEL DATA PRIVACY AGREEMENT FOR EDUCATIONAL AGENCIES**

Compliance with the provisions of Education Law § 2-d and Part 121 of the Commissioner of Education’s regulations is of paramount importance when educational agencies enter into contracts or other written agreements with third parties that will receive student, teacher or principal personally identifiable information from an educational agency for purposes of providing services to the educational agency. To aid that process, we have created the attached Model Data Privacy Agreement (“Model DPA”).

The Model DPA represents best practices, suggested minimum terms and a model for an educational agency to use at its option. It is a supplemental agreement that may be used by educational agencies as an addendum to agreements with third party contractors to address the data privacy and security requirements of Education Law § 2-d when they procure services and/or products regardless of the procurement vehicle utilized. It cannot replace a service agreement or other contract because it does not address all issues between the educational agencies and third-parties, including license terms, price, maintenance and support, etc. Further, please note that while such terms are sometimes good practice, the Model DPA does not include an indemnity and insurance provision. We recommend that educational agencies review the service agreement to determine when adding such provisions would be beneficial.

Each educational agency that seeks to use the Model DPA must still comply with its local approval processes and requirements as the Model DPA, when executed by an educational agency and a third-party contractor the vendor, would be a legal agreement. When using the Model DPA, please consult the following instructions.

**INSTRUCTIONS FOR USE**

|  |  |  |  |
| --- | --- | --- | --- |
| **DOCUMENT** |  | **SECTION** | **INSTRUCTION** |
| **MODEL DPA – MAIN BODY** | This includes terms and conditions that will help address Education Law § 2-d requirements when using a vendor’s standard agreement or negotiating an agreement. Agencies may revise or supplement, as desired. | Header | Insert the names of the educational agency and contractor. |
|  |  | Introductory paragraph | Insert the names of the educational agency and contractor. |
|  |  | Article II.1 – Compliance with Law | Insert the date of the service agreement or other agreement. |
|  |  | Article II.12 - Breach | Provide the name and contact information of a contact for breach notifications. |
|  |  | Article IV.4 – Governing Law, Venue and Jurisdiction | If desired, add the county in which the educational agency is located. |
|  |  | Article IV.16 - Insurance | Insurance limits may be negotiated. |
| **EXHIBIT A** | Required by Education Law § 2-d where a contractor will receive PII. | Bill of Rights for Data Privacy and Security | Educational agencies should substitute their bill of rights. |
| **EXHIBIT B** | Required by Education Law § 2-d where a contractor will receive PII. | Supplemental Information | The contractor must provide a complete answer to each question, and sign and date the form. |
| **EXHIBIT C** -**Contractor’s Data Privacy and Security Plan** | Required by Education Law § 2-d where a contractor will receive PII | Contractor’s Data Privacy and Security Plan | The template is added to assist the contractor to submit a complete plan and aid the agency’s review of the submitted plan.  |
| **EXHIBIT C1 - NIST CSF Table** | Using this template is not mandated. | NIST CSF Table | This was added to help standardize the Contractor’s Data Privacy and Security Plan, thereby making it easy for agencies to review them. Using this template is not mandated.  |