

**NEW YORK EDUCATION LAW 2-D RIDER
TO THE PEAR DECK TERMS OF SERVICE**

This New York Education Law 2-D Rider ("**Rider**") to the Pear Deck Terms of Service (available at <https://www.peardeck.com/terms-of-service>) and Pear Deck Privacy Policy (available at <https://www.peardeck.com/privacy-policy>) ("**Privacy Policy**") (together, Privacy Policy and Terms of Service as the "**Terms**") by and between Pear Deck, Inc. ("**Pear Deck**") and Liverpool Central School District ("**School**") (together, the "**Parties**"). As of the latest date on the signature line below ("**Effective Date**") and continuing until June 30, 2023, the Parties agree as follows:

1. **Definitions.** Capitalized terms shall have the meanings ascribed to such terms in the Terms, unless otherwise explicitly defined below:
 - a. "**Commercial or Marketing Purpose**" means the sale of Student Data; or its use or disclosure for purposes of receiving remuneration, whether directly or indirectly; the use of Student Data for advertising purposes, or to develop, improve or market products or services to students.
 - b. "**Encryption**" means methods of rendering Personally Identifiable Information unusable, unreadable, or indecipherable to unauthorized persons through the use of a technology or methodology specified or permitted 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.
 - c. "**New York Education Law Section 2-d**" means Section 2-d of Article I of Title I of New York Consolidated Laws, Education Law, together with its implementing regulations in Part 121 of the Regulations of the New York Commissioner of Education.
 - d. "**Personally Identifiable Information**", as applied to Student Data, means Personally Identifiable Information as defined in section 99.3 of Title 34 of the Code of 3 Federal Regulations implementing the Family Educational Rights and Privacy Act, 20 U.S.C 1232g ("**FERPA**"), and as applied to Teacher and Principal Data, means Personally Identifiable Information as such term is defined in Education Law §3012-c(10). Personally Identifiable Information does not include Deidentified Information.
 - e. "**Teacher or Principal Data**" means Personally Identifiable Information from the records of an educational agency 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.
 - f. "**Student Data**" means Personally Identifiable Information from the student records of an educational agency.
2. **Data Collection Transparency and Restrictions.**
 - a. Pear Deck acknowledges and agrees that under New York Education Law Section 2-d:
 - i. Personally Identifiable Information cannot be sold, or used or disclosed for any Commercial or Marketing Purpose;
 - ii. School is responsible for working with the State of New York to ensure that a complete list of all student data elements collected by the State is available for public review through either a website or in writing;
 - iii. Parents have the right to inspect and review the complete contents of their child's education record in compliance with New York Education Law Section 2-d; and
 - iv. School is responsible for addressing any parent complaints about providing a phone number, email address and mailing address for such complaints.
 - b. Pear Deck's Privacy Policy sets forth, among other things (i) how Pear Deck protects Personal Student Information (as defined in the Terms) and other Personally Identifiable Information; (ii) the list of Personal Student Information that Pear Deck collects in

connection with its services; and (iii) the process for a parent to request their child's education records from Pear Deck;

3. Data Handling Restrictions and Requirements.

- a. Pear Deck acknowledges that, in compliance with New York Education Law Section 2-d, it shall:
 - i. adopt technologies, safeguards and practices that align with the NIST Cybersecurity Framework;
 - ii. comply with School's data security and privacy policy;
 - iii. limit internal access to Personally Identifiable Information to only those employees or sub-contractors that need access to provide the Pear Deck services;
 - iv. not use the Personally Identifiable Information for any purpose not explicitly authorized in the Terms;
 - v. not disclose any Personally Identifiable Information to any other party without the prior written consent of the parent or eligible student: (i) except for authorized representatives of Pear Deck, such as a subcontractor or assignee to the extent they are carrying out obligations in connection with Pear Deck services and in compliance with the Terms, this Rider, and applicable state and federal law; or (ii) unless required by statute or court order and Pear Deck provides a notice of disclosure to School no later than the time the information is disclosed, unless providing notice of disclosure is expressly prohibited by the statute or court order;
 - vi. maintain reasonable administrative, technical and physical safeguards to protect the security, confidentiality and integrity of Personally Identifiable Information in its custody;
 - vii. use Encryption to protect Personally Identifiable Information in its custody while in motion or at rest;
 - viii. not sell Personally Identifiable Information nor use or disclose it for any Commercial or Marketing purpose or facilitate its use or disclosure by any other party for any Commercial or Marketing purpose or permit another party to do so;
 - ix. where it engages a subcontractor to perform its contractual obligations, the data protection obligations imposed on Pear Deck by state and federal law and contract shall apply to the subcontractor; and
 - x. cooperate with educational agencies and law enforcement to protect the integrity of investigations into the breach or unauthorized release of personally identifiable information.

4. Bill of Rights for Data Privacy and Security.

- a. Pear Deck acknowledges that, pursuant to New York Education Law Section 2-d, (i) School must publish on your website a parents bill of rights for data privacy and security that includes the supplemental information described in Section 3(b) ("**Supplemental Information**") concerning Pear Deck ("**Bill of Rights**"), and (ii) Pear Deck's contract with School must include a copy of such Bill of Rights.
- b. Supplemental Information for a third party contractor includes:
 - i. 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;
 - ii. 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; New York Education Law Section 2-d);
- iii. 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 educational agency, and/or whether, when and how the data will be destroyed);
 - iv. 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;
 - v. where the Student Data or Teacher or Principal Data will be stored, described in such a manner as to protect data security, and the security protections taken to ensure such data will be protected and data security and privacy risks mitigated; and
 - vi. address how the data will be protected using Encryption while in motion and at rest.
- b. In compliance with New York Education Law Section 2-d, Pear Deck's Supplemental Information is set forth in Schedule 1 to this Rider.

The bill of rights and supplemental information may be redacted to the extent necessary to safeguard the privacy and/or security of the educational agency's data and/or technology infrastructure.

- c. A copy of the Bill of Rights is attached hereto as Schedule 2 to this Rider.

5. Data Security and Privacy Plan.

- a. Pear Deck currently has and shall maintain and adhere to a data security and privacy plan that, at a minimum:
 - i. outlines how Pear Deck implements applicable state, federal, and local data security and privacy requirements during the Term, consistent with School's data security and privacy policy;
 - ii. specifies the administrative, operational and technical safeguards and practices it has in place to protect Personally Identifiable Information it receives under the Terms;
 - iii. demonstrates that it complies with the requirements in New York Education Law Section 2-d to provide its Supplemental Information for the Bill Rights;
 - iv. specifies how its officers or employees and its assignees who have access to Student Data, or Teacher or Principal Data under the Terms receive or will receive training on the federal and state laws governing confidentiality of such data prior to receiving access;
 - v. specifies whether it will utilize sub-contractors to perform the Pear Deck Services, and, if so, how it will manage those relationships and contracts to ensure Personally Identifiable Information is protected;
 - vi. specifies how it will manage data security and privacy incidents that implicate Personally Identifiable Information, including specifying any plans to identify breaches and unauthorized disclosures, and to promptly notify School; and
 - vii. describes whether, how and when data will be returned to School, transitioned to a successor contractor, at School's option and direction, deleted or destroyed by it when the Terms and this Rider are terminated or expire (such data security and privacy plan, the "**Pear Deck Data Security Plan**").

b. School acknowledges and agrees that it accepts the Pear Deck Data Security Plan.

6. Reports and Notifications of Breach and Unauthorized Release.

Pear Deck acknowledges and agrees that, pursuant to New York Education Law Section 2-d, it must (a) promptly notify School of any breach or unauthorized release of Personally Identifiable Information in the most expedient way possible and without unreasonable delay but no more than seven calendar days after the discovery of such breach and otherwise in accordance with New York Education Law Section 2-d; (b) must cooperate with School and law enforcement to protect the integrity of investigations into the such breach or unauthorized release of Personally Identifiable Information; and (c) pay for or promptly reimburse School for the full cost of notifying a parent, eligible student, teacher, or principal of an unauthorized release of Personally Identifiable Information attributed to Pear Deck.

For avoidance of doubt, this Rider is solely between the Parties and shall have no effect upon the Terms for any other individual or entity subject to such Terms. All other provisions in the Terms remain in full force and effect. If any provision of this Rider is invalid or unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect. To the extent that the terms of this Rider conflict with the Bill of Rights, the terms of this Rider shall control. Any violation or breach of this Rider shall, except as otherwise prohibited by law, be subject to all disclaimers and limitations on liability as set forth in the Terms.

[Remainder of Page Left Intentionally Blank; Signature Page Follows]

Signed and Agreed:

For and on behalf of Liverpool Central School District ("School")

Signature: _____

Name: _____

Dated: _____

For and on behalf of Pear Deck, Inc. ("Pear Deck")

Signature: _____

Name: _____

Dated: _____



Schedule 1 Supplemental Information

Supplemental Information for a third party contractor includes:

- **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;**

Please see Privacy Policy listing the exclusive purposes for which the Student Data (and, to the extent that Pear Deck maintains any Teacher or Principal Data to the extent that Pear Deck maintains such data) will be used by Pear Deck).

- **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; New York Education Law Section 2-d);**

Please see Pear Deck's Data Privacy and Security Plan, incorporated herein as Schedule 3, for a description of how Pear Deck will help ensure that the subcontractors, or other authorized persons or entities to which Pear Deck will disclose Student Data (and, to the extent that Pear Deck maintains any Teacher or Principal Data, any Teacher or Principal Data).

- **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 educational agency, and/or whether, when and how the data will be destroyed);**

Upon request by School, School may request Pear Deck to transfer and/or deidentify the School's Student Data (and, to the extent that Pear Deck maintains any Teacher or Principal Data, any Teacher or Principal Data), back to the School. Pear Deck will act upon a School's documented instruction to transfer and/or deidentify the School's Student Data (and any Teacher or Principal Data) to the School and take reasonable efforts to complete such requests in a commercially reasonable amount of time.

- **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;**

Please see Privacy Policy listing for how a student may challenge the accuracy of Student Data (and, to the extent that Pear Deck maintains any Teacher or Principal Data to the extent that Pear Deck maintains such data how a teacher or principal may challenge the accuracy of Teacher or Principal Data).

- **where the Student Data or Teacher or Principal Data will be stored, described in such a manner as to protect data security, and the security protections taken to ensure such data will be protected and data security and privacy risks mitigated; and**

- Student Data (and, to the extent that Pear Deck maintains any Teacher or Principal Data, any Teacher or Principal Data) will be stored in industry-leading databases.
- **address how the data will be protected using Encryption while in motion and at rest.**
 - Student Data (and, to the extent that Pear Deck maintains any Teacher or Principal Data, any Teacher or Principal Data) will be protected using encryption in motion via SSL and at rest.

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**Schedule 2
Bill of Rights**

[School to insert its Parent Bill of Rights]

EXHIBIT A - Education Law §2-d Bill of Rights for Data Privacy and Security

Parents (including legal guardians or persons in parental relationships) and Eligible Students (students 18 years and older) can expect the following:

1. A student’s personally identifiable information (PII) cannot be sold or released for any Commercial or Marketing purpose. PII, as defined by Education Law § 2-d and the Family Educational Rights and Privacy Act ("FERPA"), includes direct identifiers such as a student’s name or identification number, parent’s name, or address; and indirect identifiers such as a student’s date of birth, which when linked to or combined with other information can be used to distinguish or trace a student’s identity. Please see FERPA’s regulations at 34 CFR 99.3 for a more complete definition.
2. The right to inspect and review the complete contents of the student’s education record stored or maintained by an educational agency. This right may not apply to Parents of an Eligible Student.
3. State and federal laws such as Education Law § 2-d; the Commissioner of Education’s Regulations at 8 NYCRR Part 121, FERPA at 12 U.S.C. 1232g (34 CFR Part 99); Children's Online Privacy Protection Act ("COPPA") at 15 U.S.C. 6501-6502 (16 CFR Part 312); Protection of Pupil Rights Amendment ("PPRA") at 20 U.S.C. 1232h (34 CFR Part 98); and the Individuals with Disabilities Education Act ("IDEA") at 20 U.S.C. 1400 et seq. (34 CFR Part 300); protect the confidentiality of a student’s identifiable information.
4. Safeguards associated with industry standards and best practices including, but not limited to, encryption, firewalls and password protection must be in place when student PII is stored or transferred.
5. A complete list of all student data elements collected by NYSED is available at www.nysed.gov/data-privacy-security/student-data-inventory and by writing to: Chief Privacy Officer, New York State Education Department, 89 Washington Avenue, Albany, NY 12234.
6. The right to have complaints about possible breaches and unauthorized disclosures of PII addressed. (i) Complaints should be submitted to the EA at: dfarsaci@liverpool.k12.ny.us. (ii) Complaints may also be submitted to the NYS Education Department at www.nysed.gov/data-privacy-security/report-improper-disclosure, 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.
7. To be notified in accordance with applicable laws and regulations if a breach or unauthorized release of PII occurs.
8. Educational agency workers that handle PII will receive training on applicable state and federal laws, policies, and safeguards associated with industry standards and best practices that protect PII.
9. Educational agency contracts with vendors that receive PII will address statutory and regulatory data privacy and security requirements.

CONTRACTOR	
[Signature]	
[Printed Name]	
[Title]	

PEAR DECK CONFIDENTIAL INFORMATION

**Schedule 3
Pear Deck's Data Privacy and Security Plan**

- **Pear Deck will implement applicable state, federal, and local data security and privacy requirements during the Term, consistent with School's data security and privacy policy.**
- **Pear Deck has administrative, operational and technical safeguards designed to protect Personally Identifiable Information that it receives during the Term, including:**
 - Administrative Safeguards : Change management systems, security and privacy awareness training, employee background checks
 - Operational Safeguards: Procedures designed to maintain security; Risk assessment
 - Technical Safeguards : access controls to Personally Identifiable Information, encryption in motion between endpoints via SSL and at rest of Personally Identifiable Information, authentication of desktops and laptops, penetration testing
- **Pear Deck provided its Supplemental Information for the Bill of Rights in Schedule 1. Please see Schedule 1 for Supplemental Information for the Bill of Rights.**
- **Pear Deck provides training to employees who access Student Data** (and, to the extent that Pear Deck maintains any Teacher or Principal Data, any Teacher or Principal Data) **under the Terms on the federal and state laws governing confidentiality of such data in the onboarding process for new employees and on an annual basis for existing employees.**
- **Pear Deck will use subcontractors to help operate some of the Services such as a database provider. Pear Deck will take steps designed to ensure that the subcontractors, or other authorized persons or entities to which Pear Deck will disclose Student Data** (and, to the extent that Pear Deck maintains any such data, any Teacher or Principal Data), **including by:**
 - Conducting diligence and evaluating the security practices of subcontractors that can access Student Data (and, to the extent that Pear Deck maintains any such data, any Teacher or Principal Data)
 - Requesting verification of compliance with security and privacy standards aligned with state and federal law
 - Evaluating the contractual safeguards of subcontractors of Student Data (and, to the extent that Pear Deck maintains any such data, any Teacher or Principal Data)
- **Pear Deck will manage data security and privacy incidents that implicate Personally Identifiable Information by implementing a data incident response policy, conducting penetration tests to help prevent breaches, and by complying with the breach provisions of Education Law 2-d, including the breach notification requirements described in Section 6 of this Rider.**
- **For information about whether, how and when Student Data** (and, to the extent that Pear Deck maintains any such data, any Teacher or Principal data) **will be transitioned to a**

successor contractor or deleted and destroyed when the Terms and the Rider are terminated or expire, please refer to Pear Deck's Privacy Policy (available at <https://github.com/peardeck/policies/blob/master/privacy-policy.md>)

END OF PEAR DECK CONFIDENTIAL INFORMATION