

NON DISCLOSURE / DATA PROCESSING AGREEMENT
FOR SERVICES AND FUNCTIONS PROVIDED ON BEHALF OF THE BOE

This agreement (“Agreement”) is dated October 1, 2020 between
The Board of Education of the City of New York with an address at 52 Chambers Street, New York, New
York 10007 (“BOE”)

and

MedRite Urgent Care (“Contractor”) with an address at **ADDRESS**
352 W 51st St., NY, NY 10019

1. Definitions. “Biometric Record” means a record of one or more measurable biological or behavioral characteristics that can be used to recognize or identify an individual. Examples include fingerprints; retina and iris patterns; voiceprints; DNA sequence; facial characteristics; and handwriting.

“NIST Cybersecurity Framework” means the U.S. Department of Commerce National Institute for Standards and Technology Framework for Improving Critical Infrastructure Cybersecurity Version 1.1, or any successor thereto.

“Process” or “Processing” means to perform any act, omission or operation on or with respect to data or information, such as accessing, adapting, altering, blocking, collecting, combining, delivering, deleting, destroying, disclosing, disseminating, erasing, generating, learning of, organizing, recording, releasing, retrieving, reviewing, sharing, storing, transmitting, using or otherwise making data or information available.

“Protected Information,” as it relates to BOE’s current, future and former employees, students, and their family members (together, “Subjects”), includes, but is not limited to (a) personal and family names, and any variation or abbreviation of a name; (b) physical and electronic addresses, telephone or mobile phone numbers, and geolocation; (c) Biometric Records; (d) personal identifiers, such as social security numbers, student identification numbers, staff identification numbers; (e) indirect identifiers, such as date of birth and place of birth; (f) health information relating to any Subject or their contacts; (g) any other information that, alone or in combination, is linked or linkable to a specific Subject that would allow a reasonable person in a school community, who does not have personal knowledge of the Subject or contact or the relevant circumstances, to identify or locate the Subject with reasonable certainty; or (h) information requested by a person who the Contractor or BOE reasonably believes knows the identity of the Subject or contact to whom the information relates.

2. Confidentiality. In accordance with the Family Educational Rights and Privacy Act and its implementing regulations (respectively 20 U.S.C. 1232g and 34 C.F.R. Part 99 and together, “FERPA”), the Contractor agrees that it is conducting the services described in the Services Description (the “Services”), attached hereto as Attachment A, on behalf of the BOE, and is acting as a “school official” pursuant to 34 C.F.R. 99.31(a)(1)(B). The Contractor agrees to hold and Process the Protected Information in strict confidence, and not to disclose Protected Information to, or otherwise permit the Processing of Protected Information by, any other parties, nor to Process such Protected Information for the benefit of another or for any use or purpose other than for providing the Services. The confidentiality and data security obligations of the Contractor under this Agreement shall survive any termination of this Agreement. The Contractor agrees to conduct the Services in a manner that does not permit the personal identification of Subjects by anyone other than Authorized Users with legitimate interests in the Protected Information. Contractor agrees to not collect any Biometric Records of Subjects as part of the Services, except to the extent documents in Subjects’ handwriting (for example, on consent forms) are provided to or collected by Contractor.

3. Authorized Users. The Contractor shall only disclose Protected Information to its employees (hereinafter referred to as “Personnel”), and its nonemployee agents, assignees, consultants or subcontractors (hereinafter collectively referred to as “Non-Employee Contractors,” and together with Personnel, “Authorized Users”) who need to Process the Protected Information in order to carry out the Services and in those instances only to the extent justifiable by that need. The Contractor shall ensure that all such Authorized Users comply with the terms of this Agreement. The Contractor agrees that upon request by the BOE, it will provide the BOE with the names and affiliations of the Non-Employee Contractors to whom it

proposes to disclose, or has disclosed, Protected Information. The Contractor agrees and acknowledges that the data protection obligations imposed on it by state and federal law, as well as the terms of this Agreement, shall apply to any Non-Employee Contractor it engages to Process Protected Information of the BOE. The Contractor therefore The Contractor agrees to ensure that each Non-Employee Contractor is contractually bound by an agreement that includes confidentiality and data security obligations equivalent to, and no less protective than, those found in this Agreement. Contractor agrees and acknowledges that the data protection obligations imposed on it by state and federal law, as well as the terms of this Agreement shall apply to any Subcontractor it engages in providing the Services to the BOE.

4. Compliance with Law.

- (a) The Contractor agrees to hold all Protected Information it Processes in compliance with all applicable provisions of federal, state and local law, including but not limited to FERPA and New York Education Law §2-d and any applicable regulations promulgated thereunder. The Contractor understands that the disclosure of Protected Information to persons or agencies not authorized to receive it is a violation of United States federal law and New York state law, which may result in civil and/or criminal penalties under New York State and Federal laws.
- (b) In the event that disclosure of Protected Information (including Protected Information) is required of the Contractor under the provision of any law, judicial order or lawfully-issued subpoena, the Contractor will (a) promptly notify the BOE of the obligations to make such disclosure sufficiently in advance of the disclosure, if possible, to allow the BOE to seek a protective order or to make any notifications required by law, and (b) disclose such Protected Information only to the extent (i) allowed under a protective order, if any, or (ii) necessary to comply with the law or court order. Notwithstanding the foregoing, the BOE acknowledges that the Contractor is required under applicable federal and state law to report certain laboratory testing results, and shall not be required to notify BOE of any such mandatory reporting.

5. Mandatory N.Y. Education Law 2-d Requirements.

- (a) BOE Data Privacy and Security Policies. Contractor agrees that it will comply with the BOE's data privacy and security policies, including but not limited to New York City Department of Education Chancellor's Regulation A-820, and any successor thereto.
- (b) Subject Data Requests. If permitted by law, the Contractor agrees to notify the BOE of any requests it receives from Subjects or parties authorized by Subjects to amend, inspect, obtain copies of, or otherwise access Protected Information of such Subject in the possession or control of the Contractor, in advance of compliance with such requests. The Contractor shall defer to the judgment of the BOE in granting or denying such requests, and in confirming the identity of Subjects and the validity of any authorizations submitted to the Contractor. The Contractor agrees to assist the BOE in processing such requests in a timely manner, whether received by the Contractor or by the BOE. The Contractor shall amend any Protected Information in accordance with the BOE's decision and direction. Notwithstanding the foregoing, the Contractor shall not be required to notify the BOE if a Subject requests his or her laboratory testing records, and the BOE acknowledges that the Contractor is required under federal and state law to promptly provide such records to a requesting Subject.
- (c) Training. The Contractor shall ensure that all Authorized Users with access to the Protected Information are trained, prior to receiving such access and thereafter on a periodic basis, in their confidentiality and data security responsibilities under applicable law and understand the privacy and data security obligations of this Agreement.
- (d) Privacy and Security Plan; Additional Data Privacy and Security Protections. The Contractor shall neither retain nor incorporate any of the Protected Information into any database or any medium other than as may be required for it to provide the Services and as required under applicable federal and state law and regulations as well as laboratory accreditation and certification requirements. Contractor agrees to maintain appropriate administrative, technical and physical safeguards in accordance with industry best practices and applicable law to protect the security, confidentiality and integrity of Protected Information in its custody. Contractor agrees to adhere to its data privacy and

security plan and the BOE Information Security Requirements (together, the “Plan”), attached hereto as Attachment B. Contractor warrants and represents that (i) its technologies, safeguards and practices, as outlined in the Plan, align with the NIST Cybersecurity Framework, and include sufficient (A) data privacy protections, including processes to ensure that personally identifiable information is not included in public reports or other public documents; and (B) data security protections, including data systems monitoring, encryption of data in motion and at rest, an incident response plan, limitations on access to Protected Information, safeguards to ensure Protected Information is not accessed by unauthorized persons when transmitted over communication networks, and destruction of Protected Information when no longer needed; and (ii) that its Plan meets all additional requirements of New York Education Law 2-d. The Contractor agrees to use encryption technology to protect Protected Information both (i) while in motion or in transit and (ii) while stored, at rest or otherwise in its custody from unauthorized Processing using a technology or methodology specified by the United States Department of Health and Human services in guidance issued under Section 13402(H)(2) of Public Law 111-5. The Contractor acknowledges and agrees to conduct digital and physical periodic risk assessments and to remediate any identified security and privacy vulnerabilities in a timely manner. The BOE reserves the right to request information from Contractor regarding its security practices and compliance with the Plan, prior to authorizing any exchange of Protected Information. The BOE reserves the right to work with the Contractor to develop a risk mitigation plan to resolve any deficiencies in its compliance with the Plan. The BOE reserves the right to promptly terminate the Agreement with no further liability to the Contractor, in the event that the Contractor fails to comply with such risk mitigation plan or is unable to resolve its noncompliance with the Plan. The BOE may audit the Contractor’s Processing of the Protected Information for data privacy and data security purposes.

- (e) Parent Bill of Rights. The Contractor agrees to comply with the BOE Parents’ Bill of Rights for Data Privacy and Security, attached hereto as Attachment C. The Contractor shall complete the Supplemental Information section of Attachment C, and append it to this Agreement. The Contractor acknowledges and agrees that the BOE shall make Contractor’s Supplemental Information public, including but not limited to posting it on the BOE’s website.
- (f) Reportable Data Events. The Contractor shall promptly notify, without unreasonable delay, the BOE Office of Legal Services at 212-374-6888 and at AskLegal@schools.nyc.gov (to the attention of the Chief Privacy Officer) of any act, error or omission, negligence, misconduct, or breach (including any unauthorized release, use or disclosure of, access to Protected Information, whether by the Recipient, its Authorized Users or any other party that shall have gained access to the affected Protected Information) that compromises or is suspected to compromise the security, confidentiality, availability or integrity of Protected Information, including by compromising the physical, technical, administrative or organizational safeguards implemented by the Recipient (“Reportable Data Event”). In no event shall such notification occur more than seventy-two (72) hours after confirmation that a Reportable Data Event occurred. Moreover, to the extent (a) New York Education Law 2-d or any other law or regulation requires parties affected by the Reportable Data Event to be notified, and (b) the Reportable Data Event is not attributable to the acts or omissions of the BOE, the Contractor shall compensate the BOE for the full cost of any notifications that the BOE is required by law to make. Contractor agrees to assist and collaborate with the BOE in ensuring that required notifications shall be clear, concise, use language that is plain and easy to understand, and to the extent available, include: (a) a brief description of the Reportable Data Event, the dates of the incident and the date of discovery, if known; (b) a description of the types of Protected Information affected; (c) an estimate of the number of records affected; (d) a brief description of the investigation or plan to investigate; and (e) contact information for representatives who can assist parents or adult students that have additional questions. The Contractor shall provide any records or other information the BOE requires to investigate the incident or to effectuate the notifications. The Contractor shall fully cooperate with and assist the BOE in investigating the Reportable Data Event, including, without limitation, by providing full access to persons or information necessary to determine the scope of the Reportable Data Event, such as all relevant records, logs, files, data

reporting, and other materials required to comply with applicable law or as otherwise required by the BOE.

- (g) No Sale or Commercial Use. The Contractor agrees that it will not sell Protected Information; use, disclose or otherwise Process Protected Information for purposes of receiving remuneration, whether directly or indirectly; or use, disclose or otherwise Process Protected Information for marketing, commercial or advertising purposes (or facilitate its use, disclosure or other Processing by any other party for such purposes), or to develop, improve or market products or services to students, or permit another party to do so.

6. Right to Termination. The BOE shall have the right at its sole discretion to terminate the Contractor's access to the BOE's Protected Information upon fifteen (15) days written notice to the Contractor. The BOE shall have the right at its sole discretion to terminate the Contractor's access to the BOE's Protected Information immediately upon the Contractor's breach of any confidentiality obligations herein. No claim for damages will be made or allowed to the Contractor because of said termination.

7. Protected Information Retention, Transfer and Destruction. Whenever required by the BOE, and no later than upon termination of this Agreement, except for Protected Information which the Contractor is required to retain under applicable federal or state law and regulation as well as laboratory accreditation and certification requirements, the Contractor shall promptly (a) with respect to physical copies of Protected Information, surrender, or if surrender is not practicable, securely delete or otherwise destroy Protected Information and (b) with respect to digital and electronic Protected Information, securely delete or otherwise destroy Protected Information remaining in the possession of the Contractor and its Authorized Users, (including all hard copies, archived copies, electronic versions or electronic imaging of hard copies of such data). Contractor shall ensure that no copy, summary, or extract of Protected Information are retained on any storage medium whatsoever by Contractor or its Authorized Users, except as otherwise provided in this Agreement. Any and all measures related to the extraction, transmission, deletion, or destruction of Protected Information will be accomplished utilizing an approved, appropriate and secure method of destruction, including shredding, burning or certified/witnessed destruction of physical materials and verified erasure of electronic media. To the extent that the Contractor continues to be in possession of de-identified data, it agrees not to attempt to re-identify de-identified data and not to transfer de-identified data to any party for re-identification. The contractor agrees not to retain any de-identified Biometric Records. The Contractor shall certify, in writing, that all of the foregoing materials have been surrendered or destroyed (as applicable), except as otherwise provided in this Agreement, in accordance with this Agreement via the "Certificate of Records Disposal" form attached to this Agreement as Attachment D. Provider shall dispose of Protected Information when it is no longer needed to carry out the Services, except as otherwise provided in this Agreement, and shall submit the form found in Attachment D upon disposition. The obligations of this agreement shall apply for so long as Contractor maintains, or is responsible for maintaining, any Protected Information.

8. BOE Property. All Protected Information (a) created or collected by the Contractor, or (b) disclosed or transmitted to the Contractor, pursuant to this Agreement, shall remain the exclusive property of the BOE, or (as applicable) the Subjects. All rights, including the intellectual property rights in and to Protected Information contemplated per this Agreement shall remain the exclusive property of the BOE. Any reports or work product may not contain any Protected Information, unless required by the BOE or if necessary to carry out the Services.

9. Other Agreements. The Contractor agrees that to the extent that any confidentiality or data security terms or conditions regarding the Services found in another agreement binding BOE employees, subcontractors, parents or students (together, "BOE Users,") including but not limited to any end-user license agreement, "click wrap," "click-through," "click and accept," "web-wrap," or other form of agreement requiring the individual user to accept terms in order to use or benefit from the Services, conflict with the terms found in this Agreement, the terms and conditions which afford more protection to BOE Users shall apply. Any subsequent agreements between the Contractor and the BOE with respect to the provision of the Services shall include confidentiality and data security obligations on the part of the Contractor at least as strict as set those forth in this Agreement. In the event a subsequent agreement fails to contain confidentiality

and data security provisions with obligations at least as strict as this Agreement, the confidentiality provisions of this Agreement shall be deemed inserted therein, and shall continue to bind the Contractor, unless such subsequent agreement specifically references this Agreement by name and disclaims its obligations in writing.

10. Other Terms.

- (a) The Contractor agrees that money damages would be an insufficient remedy for breach or threatened breach of this Agreement by the Contractor. Accordingly, in addition to all other remedies that the BOE may have, the BOE shall be entitled to specific performance and injunctive or other equitable relief as a remedy for any breach of the confidentiality and other obligations of this Agreement.
- (b) Nothing in this Agreement obligates either party to consummate a transaction, to enter into any agreement or negotiations with respect thereto, or to take any other action not expressly agreed to herein.
- (c) The Contractor shall defend, indemnify and hold harmless the BOE and the City of New York from any and all claims brought by third parties to the extent arising from, or in connection with, any negligent acts or omissions of the Contractor and the Contractor's Authorized Users or any other representatives for whom the Contractor is legally responsible for, in connection with the performance of this Agreement.
- (d) No failure or delay (in whole or in part) on the part of either party hereto to exercise any right or remedy hereunder shall impair any such right or remedy, operate as a waiver thereof, or affect any right or remedy hereunder. All rights and remedies hereunder are cumulative and are not exclusive of any other rights or remedies provided hereunder or by law or equity. To the extent any provision of this Agreement is held to be unenforceable or invalid, the remainder of the Agreement shall be remain in full force and effect, and the Agreement shall be interpreted to give effect to the such provision to the maximum extent permitted by law.
- (e) This Agreement shall be governed by and construed in accordance with the law of the State of New York. The Federal or State Courts of New York City, New York will have exclusive jurisdiction to adjudicate any dispute arising under or in connection with this Agreement. This Agreement constitutes the entire Agreement with respect to the subject matter hereof; it supersedes any other Contractor terms and conditions, all prior agreements or understandings of the parties, oral or written, relating to the Services and shall not be modified or amended except in writing signed by the Contractor and the BOE. The Contractor may not assign or transfer, without the prior written consent of the BOE, this Agreement. This Agreement shall inure to the benefit of the respective parties, their legal representatives, successors, and permitted assigns. This Agreement is effective upon execution of the Contractor.

Signed and Agreed to:

MedRite Urgent Care

By:



Date:

1/14/20

Name:

William Miller

Title:

EVP