

# NON-DISCLOSURE AGREEMENT

## Natomas Unified School District (NUSD)

### Check Type:

Employee

Contractor

Consultant

Other

**THIS AGREEMENT** (the "Agreement") is made between the Natomas Unified School District ("NUSD") and \_\_\_\_\_ ("DISCLOSEE"), and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ for the purpose of \_\_\_\_\_ ("Project Title").

NUSD and DISCLOSEE are considering entering into a business relationship with each other. In connection with discussions and negotiations regarding the potential business relationship, NUSD may disclose to DISCLOSEE certain Confidential Information (as defined below), which Confidential Information is proprietary, secret, nonpublic and confidential. The purpose of this Agreement is to protect such Confidential Information by setting forth the terms and conditions upon which NUSD is willing to disclose such Confidential Information to DISCLOSEE and the obligations that DISCLOSEE hereby accepts and agrees to abide by following the disclosure of such Confidential Information to DISCLOSEE.

In consideration of the mutual promises and covenants contained in this Agreement and for other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto agree as follows:

### 1. Confidential Information and Confidential Materials

- (a) "Confidential Information" means nonpublic information that NUSD designates as being confidential or which, under the circumstances surrounding disclosure, ought to be treated as confidential. "Confidential Information" includes, without limitation, information relating to released or unreleased NUSD mailing lists or contact lists and the marketing or promotion of any NUSD event, information of a confidential nature of, about, or concerning the students or personnel of NUSD, business of NUSD or its manner of operation, which may include Proprietary Information, such as student records, tax records and other financial information concerning NUSD and NUSD's employees, officers, directors, shareholders, students, lists or other written records used in NUSD's operations, investment information, compensation paid to employees and other terms of employment, personnel records, and information received by NUSD from third parties subject to NUSD's duty to maintain the confidentiality of such information and to use it only for certain limited purposes.

- (a) "Confidential Information" shall include all personally identifiable student information protected under the Family Rights and Privacy Act (FERPA), California Education Code 49073.1, and NUSD Board Policy 5125.
- (b) "Confidential Information" shall not include: (i) any information that is or subsequently becomes available to the public without DISCLOSEE's breach of any obligation owed to NUSD; or (ii) any non-confidential information that became known to DISCLOSEE from a source other than by breach of an obligation of confidentiality owed to NUSD
- (c) "Confidential Materials" means all tangible materials containing Confidential Information, including without limitation written or printed documents, computer media, data files, and other related items.

## **2. Disclosee's Promise of Secrecy**

- (a) DISCLOSEE agrees to keep strictly confidential all Confidential Information and Confidential Materials governed by this Agreement. DISCLOSEE agrees not to disclose such Confidential Information and Material to any person, organization, representative, entity, business, manufacturer, designer or corporation other than those individuals reasonably necessary for the purpose NUSD is using DISCLOSEE.
- (b) DISCLOSEE agrees it does not intend nor will it, directly or indirectly, export any Confidential Information or Materials or products to any person, entity, business, manufacturer, designer or corporation who DISCLOSEE knows or has reason to know will utilize them in an unacceptable manner.
- (c) DISCLOSEE shall not disclose or through knowing inaction fail to prevent disclosure of any Confidential Information or Materials to third parties during the contractual relationship between DISCLOSEE and NUSD and after termination of this contractual relationship. However, DISCLOSEE may disclose Confidential Information in accordance with judicial or other governmental orders, provided DISCLOSEE shall give NUSD reasonable notice prior to such disclosure and shall comply with any applicable protective order or equivalent issued on behalf of NUSD.
- (d) DISCLOSEE shall not share or use any of NUSD Confidential Information and Confidential Materials to engage in any targeted marketing or advertising.

## **3. Security of Confidential Information and Materials**

- (a) DISCLOSEE shall take all reasonable measures including the training of DISCLOSEE's staff, to protect the secrecy of and avoid disclosure and unauthorized use of the Confidential Information and Confidential Materials. Without limiting the foregoing, DISCLOSEE shall take at least those measures that DISCLOSEE takes to protect its own confidential information. DISCLOSEE may disclose Confidential Information or Confidential Materials only to DISCLOSEE's consultants on a need-to-know basis.

DISCLOSEE shall execute appropriate written agreements with its consultants sufficient to enable it to comply with all the provisions of this Agreement. DISCLOSEE shall not disclose any Confidential Information or Confidential Materials to any third party other than the consultants mentioned herein, without the prior written consent of NUSD.

- (b) Confidential Information and Confidential Materials may be disclosed, reproduced, summarized or distributed only in pursuance of DISCLOSEE's actual use of such information or material. Such information or material, if distributed, must be collected and securely contained by DISCLOSEE.
- (c) Compliance with the Security of Confidential Information and Materials shall not, in itself, absolve the DISCLOSEE of liability in the event of an unauthorized disclosure of Confidential Information and Confidential Materials.

#### **4. Return and Destruction of Materials.**

All documents and other tangible objects containing or representing Confidential Information and all copies thereof which are in the possession of DISCLOSEE shall be and remain the property of NUSD and shall be promptly returned or destroyed upon NUSD's request. Documents prepared by DISCLOSEE using Confidential Information, or derived therefrom, shall be destroyed upon request of NUSD. Written confirmation of destruction of Confidential Information as requested by NUSD shall be provided by DISCLOSEE to NUSD.

#### **5. Rights and Remedies**

- (a) DISCLOSEE shall notify NUSD immediately upon discovery of any unauthorized use or disclosure of Confidential Information and/or Materials, or any other breach of this Agreement by DISCLOSEE, and will cooperate with NUSD in every reasonable way to help NUSD regain possession of the Confidential Information and/or Materials and prevent its further unauthorized use. DISCLOSEE shall, upon request, provide opportunity for NUSD, or the owner of information such as a student or student's parent/guardian, to review, update, and or correct erroneous information contained in any pupil records. DISCLOSEE shall assist NUSD in the notification of students and parents/guardians in the event of unauthorized disclosure of pupil records.
- (b) DISCLOSEE acknowledges that monetary damages may not be a sufficient remedy for unauthorized disclosure of Confidential Information and that NUSD shall be entitled, without waiving any other rights or remedies, to such injunctive or equitable relief as may be deemed proper by a court of competent jurisdiction.

## 6. Miscellaneous

- (b) NUSD and the DISCLOSEE are jointly responsible for ensuring the protection of personally identifiable student information in compliance with the Family Rights and Privacy Act (FERPA). The DISCLOSEE acknowledges that it shall not take any action that may cause the DISCLOSEE or NUSD to be out of compliance with FERPA, California Education Code 49073.1, or NUSD Board Policy 5125.
- (c) All Confidential Information and Materials are and shall remain the property of NUSD. By disclosing information to DISCLOSEE, NUSD does not grant any express or implied right to DISCLOSEE to or under NUSD Confidential Information and Materials. Further, the delivery and disclosure of Confidential Information and Materials does not constitute a License permitting DISCLOSEE to use said Information and/or Materials for any purpose other than that allowed by NUSD as specified above.
- (d) This Agreement constitutes the entire agreement between the parties with respect to subject matter hereof and merges all prior discussions between them as Confidential Information. It shall not be modified except by a written agreement dated subsequent to the date of this Agreement date and signed by both parties.
- (e) None of the provisions of this Agreement shall be deemed to have been waived by any act or acquiescence on the part of NUSD, its agents, or employees, but only by an instrument in writing signed by an authorized officer of NUSD. No waiver of any provision of this Agreement shall constitute a waiver of any other provision(s) or of the same provision on another occasion.
- (f) If either NUSD or DISCLOSEE employs attorneys to enforce any rights arising out of or relating to this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees. This Agreement shall be constructed and controlled by the laws of the State of California, and DISCLOSEE further consents to jurisdiction by the state and federal courts sitting in Sacramento County in the State of California. Process may be served on either party by U.S. Mail, postage prepaid, certified or registered return receipt requested.
- (g) Subject to the limitations set forth in this Agreement, this Agreement will inure to the benefit of and be binding upon the parties, their successors and assigns.
- (h) If any provisions of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect.
- (i) All obligations created by this Agreement shall survive change or termination of the parties' business relationship.

**7. Suggestions and Feedback**

NUSD may from time to time request suggestions, feedback or other information from DISCLOSEE concerning Confidential Information or concerning released NUSD Confidential Information and Materials. Any suggestions, feedback or other disclosures made by DISCLOSEE are and shall be entirely voluntary on DISCLOSEE’s part and shall not create either any obligations on the part of NUSD or a confidential relationship between DISCLOSEE and NUSD. NUSD shall be free to disclose and use DISCLOSEE’s suggestions, feedback, or other information as NUSD sees fit, entirely without obligation of any kind to DISCLOSEE.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

| DISCLOSEE |                | Superintendent’s Designee |
|-----------|----------------|---------------------------|
| _____     | Signature      | _____                     |
| _____     | Print Name     | _____                     |
| _____     | Date           | _____                     |
| _____     | Representing   | _____                     |
| _____     | Address        | _____                     |
| _____     | City/State/Zip | _____                     |
| _____     | Phone/Fax      | _____                     |