

MUTUAL NON-DISCLOSURE AGREEMENT

This Non-Disclosure Agreement is effective as of June _____, 2021, and is between The City University of New York ("CUNY") on behalf of John Jay College of Criminal Justice located at 524 W. 59th Street, New York, NY 10019, and DataKind, Inc., a corporation organized under the laws of **POL sec.87(2)(b)** with a mailing address of **POL sec.87(2)(b)** **POL sec.87(2)(b)** ("DataKind").

The parties wish to engage in discussions and/or activities related to examining with the objective of increasing the rates of community college graduates matriculating at, and ultimately graduating from, John Jay College, or other senior colleges across the CUNY system (the "Purpose") that may involve the disclosure of certain Confidential Information (as defined below). For purposes of this Agreement, a party disclosing Confidential Information shall be referred to as a "Discloser" and a party receiving Confidential Information shall be referred to as a "Recipient." As this is a reciprocal agreement, it is understood that a party may be both a Recipient and a Discloser, since it may both receive and disclose Confidential Information.

The parties agree as follows:

1. Confidential Information. Subject to Paragraph 2 below, "Confidential Information" shall mean all information and materials obtained from or disclosed to one party by the other party in connection with the Purpose in any form or medium, and all copies thereof, except for any such information that the Discloser designates to the Recipient in writing as excluded from Confidential Information. Without limitation, Confidential Information shall include all business, marketing, technical, scientific, financial or other information, data, concepts, ideas, proposals, specimens, know-how, source code, object code, data bases, files, methods of operation, research, inventions, customers, specifications, designs, plans, drawings, software, prototypes, and process techniques, of a party, whether furnished directly or indirectly by the Discloser to the Recipient, and whether disclosed in anticipation of this Agreement or after the date of this Agreement. "Confidential Information" shall also mean all analyses, compilations, studies or other documents prepared by the Recipient or its Representative (as defined in Paragraph 3), that contain or reflect the Confidential Information, as well as the existence and substance of any negotiations, agreements and/or business relationships between the parties, including with respect to the Purpose.
2. Exceptions. This Agreement imposes no obligation on the Recipient with respect to any item of Confidential Information to the extent that the Recipient can establish by legally sufficient evidence that such item of Confidential Information: (a) is or becomes part of the public domain other than through a breach of this Agreement; (b) is or was lawfully obtained by the Recipient from a third party under no obligation of confidentiality to the Discloser; (c) is known to the Recipient prior to disclosure by the Discloser; (d) is independently developed or discovered by the Recipient without reliance on the Discloser's Confidential Information; or (e) is required to be disclosed to comply with applicable law or legal process, provided that the Recipient gives the Discloser prior written notice of such required disclosure (to the extent legally permitted) and reasonable assistance if the Discloser wishes to contest the disclosure.
3. Obligation of Confidentiality. The Recipient shall maintain all Confidential Information disclosed to it by the Discloser in strict confidence. The Recipient shall treat such Confidential Information with at least the same degree of care that it would treat its own confidential information, and with no less than reasonable care. The Recipient shall limit access to such Confidential Information to those of the Recipient's directors, officers, employees, agents,

representatives, and advisors having a need to know such Confidential Information in order to carry out the Purpose (“Representatives”), provided that each such Representative is informed of the provisions of this Agreement prior to receiving any Confidential Information and agrees to be bound by them. The Recipient shall be responsible for any breach of this Agreement by its Representatives. Except as permitted by this Paragraph 3, the Recipient shall not directly or indirectly disclose, distribute, or otherwise allow any third party to have access to any Confidential Information of the Discloser without such third party executing a confidentiality and non-disclosure agreement with the Discloser under the same terms, or terms at least as restrictive, as set forth in this Agreement.

4. Ownership and Use. Confidential Information and all proprietary rights in or arising from Confidential Information (including without limitation trademark, trade secret, patent, copyright, mask work protection and all other intellectual property and personal property rights) shall be and remain the exclusive property of the Discloser. Except as expressly specified herein, Discloser does not license or otherwise convey any rights to use or reproduce any Confidential Information to the Recipient through this Agreement. The Recipient shall use the Confidential Information only for the Purpose, and shall not otherwise use or allow to be used, any Confidential Information, or derivative thereof arising from use of the Confidential Information, for its own benefit or the benefit of others. The Recipient shall not misappropriate, disassemble or reverse engineer in any manner, any portion of the Confidential Information; nor shall the Recipient file any patent application based on any portion of the Confidential Information, or otherwise attempt to assert any proprietary right in the Confidential Information, without explicit prior written approval of the Discloser.

5. Trademarks. Neither party shall use any name, logo or mark of the other party, or of its Representatives, without the written consent of that party.

6. No Warranty. The Discloser gives no representation or warranty of any kind with respect to the Confidential Information disclosed to the Recipient, including without limitation any representation or warranty as to its accuracy or completeness or with respect to the non-infringement of any intellectual property rights or other rights of third parties or the Discloser. The Discloser shall not have any liability or responsibility for errors or omissions in, or any decisions made by the Recipient in reliance on, any Confidential Information.

7. No Implied Obligations or Agency. Neither this Agreement nor the disclosure or receipt of Confidential Information shall constitute or imply any promise or intention to make any purchase of products or services or any commitment or representation with respect to the present or future development or marketing of any product or service by either party and shall not obligate either party to disclose Confidential Information to the other. Neither party is authorized to act for or on behalf of the other party under this Agreement. Each party is an independent contractor, and no principal/agent or partnership relationship is created between them by this Agreement.

8. Compliance with Laws. Each party shall comply with all applicable laws, rules and regulations, including without limitation The Family Educational Rights and Privacy Act (20 U.S.C.A. 1232g) regarding the confidentiality of CUNY student information.

9. Export Controls. It is CUNY’s policy to remain fully compliant at all times with all U.S. export control regulations, including (but not limited to) the Export Administration Regulations; International Traffic in Arms Regulations; and embargo sanctions under the Office of Foreign Assets Control (OFAC). Therefore, in the event that the non-CUNY party to this Agreement

wishes to provide export controlled information to CUNY during the course of activity under this Agreement, that party shall first notify CUNY in writing of its intention to provide this data at least 30 days in advance of actually providing this information. CUNY will then determine whether it can or cannot accept such data as well as the conditions for such receipt if agreed upon, and will communicate its determination to the non-CUNY party. In the event that CUNY is not notified by the non-CUNY party that it intends to provide CUNY with information that is export controlled, and such information is in fact provided to CUNY, then CUNY shall assume that such information is not export controlled, absent any other information to the contrary.

10. Term and Termination. This Agreement shall remain in full force and effect for a period of three (3) years from the date hereof, unless terminated earlier on thirty (30) days written notice by one party to the other at the address set forth in this Agreement or at such other address that a party may hereafter give to the other in writing, it being understood that the notice shall be given to an officer of the other party. Any causes of action accrued on or before such expiration or termination shall survive the expiration of the applicable statute of limitations. All obligations of confidentiality, limited use and nondisclosure hereunder with respect to any item of Confidential Information shall expire five (5) years from the date of disclosure of such Confidential Information to the Recipient.

11. Return of Confidential Information. Upon the conclusion of the Purpose, or at any earlier time within fifteen (15) days of a written request from the Discloser, the Recipient shall either (a) return to the Discloser all originals, copies, and summaries of the Confidential Information, as well as all notes, diagrams, analyses, compilations, studies and other tangible materials, in whatever media, containing or derived from any portion of the Confidential Information, or (b) at the request of the Discloser, destroy all such materials and provide written certification to the Discloser of the destruction.

12. Remedies. The parties acknowledge that a breach by the Recipient of its obligations of confidentiality, limited use and nondisclosure hereunder may result in irreparable harm to the Discloser for which remedies at law may be inadequate, and therefore such breach shall entitle the Discloser (in addition to any other rights and remedies available to it) to seek specific performance of Recipient's obligations hereunder and to seek immediate injunctive relief without having to post a bond.

13. Governing Law. This Agreement is governed and construed in accordance with the laws of New York State, without regard to principles relating to conflicts of law, except where the Federal supremacy clause requires otherwise. The courts of the State of New York in New York County and the United States District Court for the Southern District of New York shall have exclusive jurisdiction over the parties hereto with respect to any dispute or controversy between them arising under or in connection with this Agreement.

14. Miscellaneous.

(a) The terms and conditions herein constitute the entire understanding of the parties and supersede all communications, negotiations, arrangements and agreements, either oral or written, with respect to the subject matter hereof.

(b) No amendment or modification of this Agreement shall be valid or binding on the parties unless made in writing and signed by their duly authorized representatives.

(c) This Agreement shall be binding upon, inure to the benefit of and be enforceable by, the respective successors and assigns of the parties hereto.

(d) The rights and obligations of the parties under this Agreement may not be assigned, subcontracted, or transferred except with the prior written consent of an authorized representative of each party.

(e) Waiver by either party of a breach of any provision of, or right under, this Agreement shall not operate or be construed as a waiver of any other or subsequent breach of the same provision or right, or of any other provision or right under this Agreement.

(f) If any provision of this Agreement or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect any other provision that can be given effect without the invalid provision or application, and to this end the provisions hereof shall be severable.

(g) This Agreement may be executed in counterparts, each of which shall be deemed an original, but both of which together shall constitute one and the same instrument. A facsimile or pdf copy of a signed counterpart shall be treated the same as a signed original.

15. Authority. Each party represents and warrants that the person executing this Agreement on its behalf has the right to execute this Agreement, and that such person binds that party to the terms and conditions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the date set forth below.

DataKind, Inc.

By: _____

POL sec.87(2)(b)

The City University of New York
on behalf of John Jay College of Criminal
Justice

By: _____

POL sec.87(2)(b)

Derek Davis
CUNY General Counsel & Senior Vice
Chancellor for Legal Affairs