

**STATE OF LOUISIANA
DEPARTMENT OF EDUCATION
DATA SHARING AGREEMENT
FOR THE ACT AND ACT WorkKeys DATA FOR
NON-STATE TESTING PURCHASED BY LEAs UNDER
DIRECT CONTRACTS WITH ACT, INC.**

WHEREAS, the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g and its implementing regulations codified at 34 C.F.R 99. 1 et seq. make personally identifiable student information in education records confidential and, subject to certain exceptions, prohibits the disclosure of such information to third parties,

WHEREAS, FERPA and its implementing regulations allow for an educational agency or institution to share personally identifiable student level data with contractors performing work on their behalf,

WHEREAS, FERPA and its implementing regulations at 34 C.F.R. 99.31(b)(1) allow for the sharing of personally identifiable student information with organizations under circumstances in which parental permission has been obtained,

WHEREAS, R.S. 17:3914 allows for Local Educational Agencies to contract with a private entity for student and other educational services and release personally identifiable information pursuant to the terms of the Contract,

WHEREAS, R.S. 17:3914 allows for the Louisiana Department of Education to share data outside the state of Louisiana for purposes of academic analysis of assessments,

WHEREAS, the Louisiana Department of Education (hereinafter referred to as “State”) and ACT, Inc. (hereinafter referred to as “Contractor”) have entered into this Data Sharing Agreement pursuant to which the Contractor will provide the services to State and Local Educational Agencies (“LEAs”).

WHEREFORE, the State and Contractor do enter into this Data Sharing Agreement for ACT and ACT WorkKeys Data for Non-State Testing Purchased by the LEAs Under Direct Contracts with ACT, Inc., subject to the terms and conditions as specified herein.

1. Local Educational Agencies Stipulation

The Contractor acknowledges that local educational agencies (LEAs) in Louisiana may submit student data directly to the Contractor under individual agreements between Contractor and the LEA(s) for the ACT and ACT WorkKeys assessments. The Contractor hereby agrees, to be bound, vis-à-vis any and all such Louisiana LEAs that unilaterally sign an addendum to this Data Sharing Agreement, by all of the provisions of this Agreement with respect to any student data provided directly to the Contractor by such Louisiana LEAs. State shall provide Contractor with a list of LEAs that have signed an addendum to this Agreement authorizing Contractor to share data with State.

The LEAs acknowledge that the Contractor will provide a student-level extract to the contracted vendor for the statewide student unique identification. The contracted vendor will add a Louisiana Secure ID and remove all personally identifiable information prior to sending student level data to the State.

2. Purpose of the Disclosure

With LEA permission, Contractor agrees to share data collected under direct agreements between Contractor and LEAs for ACT and ACT WorkKeys Assessments with the State for the purposes of state assessment and accountability process. Student data provided directly to Contractor by the student or the student's parent/guardian is not subject to this Agreement.

3. Data

The Contractor agrees to provide the State with the following, through the contracted vendor for the statewide student unique identification. The contracted vendor will add a Louisiana Secure ID and remove the personally identifiable information described below prior to sending student level data to the State.

- Full name (Removed by contracted vendor)
- Date of birth (Removed by contracted vendor)
- Gender
- Grade
- School
- District
- WorkKeys data
- ACT assessment data

The State and LEAs reserve the right to withhold any of the foregoing data if determined, in their sole discretion, that disclosure of such data would violate any provision of state or federal law.

4. Indemnification

Contractor shall defend, indemnify and hold harmless the State and any and all of the State's directors, officers, officials, employees, agents, contractors and representatives against and from any and all costs, expenses, damages, injury or loss, including reasonable attorney's fees, to which they or any of them may be subject from any claims arising out of any cause related to the collection, transfer, keeping or securing of student data, except to the extent that they are due to the fault or negligence of the State.

Contractor shall defend, indemnify and hold harmless any LEA and any and all of the LEA's directors, officers, officials, employees, agents, contractors and representatives against and from any and all costs, expenses, damages, injury or loss, including reasonable attorney's fees, to which

they or any of them may be subject from any claims arising out of any cause related to the collection, transfer, keeping or securing of student data, except to the extent that they are due to the fault or negligence of the LEA.

5. Security Audits

Pursuant to La. R.S. 17:3914, the Contractor shall permit security audit checks pertaining to Contractor's security and usage of student data. Contractor shall cooperate with all security audits. Access at all reasonable times on working days during working hours at Contractor's business premises to Contractor's employees, together with records, books and correspondence and other papers and documentation or media of every kind in possession of Contractor and Contractor's employees pertaining to this Agreement. No person or entity will access Student data except as authorized by law.

6. Security Breach

As used in this Agreement "Security Breach" means any act or omission that compromises either the security, confidentiality or integrity of student information or the physical, technical, administrative or organizational safeguards put in place by Contractor that relate to the protection of the security, confidentiality or integrity of personally-identifiable student information, or a breach or alleged breach of this Agreement .

Contractor shall take commercially reasonable steps and best efforts, in accordance with industry standards, to prevent security breaches. Contractor shall also take commercially reasonable steps, in accordance with industry standards, to immediately remedy any security breach and prevent any further security breach at Contractor's expense in accordance with standard industry practices and applicable law.

Contractor shall: (i) provide the State and LEA with the name and contact information for an employee of Contractor who shall serve as the State's and LEA's primary security contact and shall be available to assist State and LEAs as a contact in resolving issues and fulfilling obligations associated with a security breach; (ii) notify the State and LEA via email or a phone call to the State and LEA contacts which have been provided to the Contractor as soon as possible, but not more than 72 hours following the Contractor becoming aware of a security breach that impacts Louisiana data pertaining to this Agreement.

Immediately following Contractor's notification to the State and LEA of a security breach, Contractor, the State, and the LEA shall coordinate with each other to investigate the security breach. Contractor agrees to fully cooperate with State and LEA in their handling of the matter, including, without limitation: (i) assisting with any investigation; (ii) providing physical access to the facilities and operations affected; and (iii) making available all relevant records, logs, files, data reporting and other materials required to comply with applicable law or industry standards and as otherwise required by the State and LEA and (iv) providing any notices to persons or organizations affected by the security breach as required by law and as required by the State or LEA.

7. Term of Agreement

This Agreement shall begin on July 1, 2021 and shall terminate on June 30, 2026. The effective date of this Agreement may be extended only if an amendment to that effect is duly executed by the parties and approved by the necessary authorities prior to said termination date. If either party informs the other that an extension of this Agreement is deemed necessary, an amendment may be prepared by one party for appropriate action by the other party.

8. Termination for Convenience

Either party may terminate this Agreement upon written notice to the other party in the event that other party breaches its obligations under the Agreement and fails to cure such breach within thirty (30) days after receiving written notice of such breach. This Agreement may also be terminated without cause at any time by either party giving thirty (30) days written notice to the other. The State shall pay ACT for all Assessments and Services delivered through the date of termination.

9. Assignment of Contract

Contractor shall not assign any interest in this Agreement by assignment, transfer, or novation, without prior written consent of the State. Nothing in this provision shall preclude the Contractor from subcontracting with third parties to perform the work contemplated herein; however, Contractor is responsible for ensuring that any such subcontractor(s) adhere to, and agree to be bound by, all provisions of this Agreement, and that any contract with such subcontractor(s) shall explicitly make such contractor subject to the audit provisions contained herein.

110. Jurisdiction, Venue and Governing Law

Exclusive jurisdiction and venue for any and all suits between the State and Contractor arising out of, or related to, this Agreement shall be filed and adjudicated in the 19th Judicial District Court, Parish of East Baton Rouge, State of Louisiana.

Exclusive jurisdiction and venue for any and all suits between the LEA and Contractor arising out of, or related to, this Agreement shall be filed and adjudicated in the appropriate Louisiana State District Court, in the Parish in which the LEA is domiciled.

Exclusive jurisdiction and venue for any and all suits among the Contractor, the State, and one or more LEAs arising out of, or related to, this Agreement shall be filed and adjudicated in the 19th Judicial District Court, Parish of East Baton Rouge, State of Louisiana.

The laws of the State of Louisiana, without regard to Louisiana law on conflicts of law, shall govern this Agreement.

11. Survival

Contractor's obligation under Clauses 2, 4, 5, and 11 shall survive expiration and/or termination of this Agreement. Contractor's obligations under Clauses 8 and 9 shall survive expiration and/or termination of this Agreement until Contractor has fully complied with its obligation to destroy data as set forth herein.

12. Counterparts

This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original but all of which shall constitute one and the same agreement.

THUS, DONE AND SIGNED on the day, month and year first written below.

IN WITNESS WHEREOF, the parties have executed this Agreement as of this 15th day of October, 2021

DocuSigned by:

Dr. Cade Brumley

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Dr. Cade Brumley
State Superintendent of Education

DocuSigned by:

Curt Yedlik

9/29/2021

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Curt D. Yedlik
Chief Financial Officer, ACT, Inc.

DocuSigned by:

Janet Godwin

9/29/2021

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Janet E. Godwin
Chief Executive Officer, ACT, Inc.