

DATA SHARING AGREEMENT

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, La 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, La 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 a contractual arrangement, pursuant to which the Contractor will provide services to State and Local Educational Agencies (LEAs).

WHEREFORE, the State and Contractor do enter into this Agreement subject to the terms and conditions as specified herein.

1. Local Educational Agencies Stipulation

The Contractor acknowledges that local educational agencies (LEAs) in Louisiana submit student data directly to the Contractor. 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.

2. Purpose of the Disclosure

The Contractor agrees to collect and use any data disclosed to it pursuant to this Agreement solely for the purposes of providing services to the State and LEAs for Assessments and Services related to the ACT[®] and ACT WorkKeys[®]. Student data provided directly to Contractor by the student or the student’s parent/guardian is not subject to this Agreement.

3. Data

The State will provide the following Student data via eScholar, the authorized third party represented of the State:

- Louisiana Secure ID
- First letter of the first name
- First three letters of the last name
- Day of birth
- Grade
- School and LEA identifiers

LEAs that choose to opt into this Agreement may choose to provide the following additional Student data:

- Full first name in place of first letter of the first name
- Full last name in place of first three letters of the last name
- Full birthday in place of day of birth

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. Confidentiality

This Agreement is entered into by Contractor and the State in accordance with the provisions of the Family Educational Rights and Privacy Act, 20 U.S.C. Section 1232(g), et seq., (FERPA) and La. R.S. 17:3914. The Contractor hereby acknowledges that all documents which include information contained in or derived from a student's education records are deemed confidential pursuant to FERPA and La. R.S. 17:3914 and therefore will not be disclosed by Contractor to any third party.

Contractor shall retain the original version of the data at a single location and shall not make a copy or extract of the data available to anyone except personnel who have a need for the data to perform the services referenced in this agreement. Contractor shall maintain the data in hard copy or electronic form, in an area that has limited access only to Contractor's authorized personnel. Contractor shall not permit removal of the data from the limited access area. Contractor will ensure that access to the data maintained on computer files or databases is controlled by password protection. Contractor shall establish procedures to ensure that the target data cannot be extracted from a computer file or database by unauthorized individuals. Contractor shall maintain all printouts, discs, or other physical products containing student-level data in locked cabinets, file drawers, or other secure locations when not in use. Contractor shall, under supervision of the State, destroy the data provided to Contractor, including all copies, whether in electronic or hard copy form, when the services are completed or this Agreement is terminated, whichever occurs first.

5. Restrictions on Use

Contractor shall not use the Student data for any purpose not expressly permitted in this Agreement. Contractor cannot disclose any document, whether in hard copy or electronic form, or otherwise disclose to any unauthorized third party any Student data or information in any form whatsoever or under any circumstances which would directly or indirectly makes a student's identity traceable, except as otherwise required by law. Contractor may also, upon request, disclose to any student his or her own data or disclose to parents or guardians Student data of their sons, daughters, or other students over whom they have parental rights. Contractor may also disclose Student data to government agencies to comply with the law or in response to legal or administrative processes such as subpoenas. Prior to disclosing any Student data in response to a legal or administrative process such as a subpoena, ACT shall provide notice to affected students or their parents or guardians and provide such students/parents /guardians a reasonable opportunity to object to the disclosure (move to quash). The term "unauthorized third party" for purposes of this Agreement does not include governmental agencies and educational institutions that have authority over schools or students (e.g., school districts); students or their parents/guardians: parties with whom students or their parents/guardians have authorized Contractor to disclose the Student data; or; subcontractors who have agreed in writing to provide substantially similar protections for student data as this Agreement.

State expressly grants Contractor permission to share student data with the Louisiana Office of Student Financial Assistance ("LOFSA") for the sole purpose of considering students for scholarships and awarding scholarships to examinees who have taken the ACT test and have agreed to allow ACT to report test scores and other information about them for the purpose of recognizing student achievement. ACT shall enter into a Confidentiality Agreement with LOFSA to protect student data.

6. 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.

7. Ownership

Any data delivered or transmitted to the Contractor by the State or an LEA pursuant to this

Agreement is the property of the State or the LEA and shall only be used by the Contractor as allowed in this Agreement and the agreement between Contractor and the LEA and will be retained and destroyed in accordance with those Agreements.

8. Security Audits

Pursuant to in 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 shall be made available 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 PII except as authorized by law.

9. 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 as a contact in resolving issues and fulfilling obligations associated with a security breach; (ii) notify the State and LEA via email or 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.

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 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 (v) providing any notices to persons or organizations affected by the security breach as required by law and as required by the State or LEA.

10. 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.

11. 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.

12. 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 work contemplated herein; however, the 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 subcontractor subject to the audit provisions contained herein.

13. 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 file 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.

14. Survival

Contractor's obligation under Clauses 2, 4, 5, 6, 7, and 13 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.

IN WITNESS WHEREOF, the parties have executed this Agreement as of this 11th day of May, 2021.

DocuSigned by:
Cade Brumley
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Dr. Cade Brumley
State Superintendent of Education

DocuSigned by:
Curt Yedlik
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Curt D. Yedlik
Interim Chief Financial Officer

DocuSigned by:
Janet Godwin
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Janet E. Godwin
Chief Executive Officer