

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, 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, the Louisiana Department of Education (hereinafter referred to as “State”) and The Regents of the University of California (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),

WHEREAS, the State designates the Contractor an “authorized representative” pursuant to 20 U.S.C. 1232g(b)(1)(C) and 34 C.F.R. 99.31(a)(3),

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 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 the providing the following:

Contractor agrees to collect and use any data disclosed to it pursuant to this Agreement for the purposes of the providing the services to State and LEA related to the English Language Proficiency Test (ELPT) and the English Language Proficiency Screener.

3. Data

The State agrees to provide the Contractor with the following student data:

- Louisiana Secure ID
- First letter of the first name
- First three letters of the last name
- Day of birth
- Grade
- Gender
- Ethnicity/Race
- LEP Status including native language, entry to US, EL program information
- 504 Status
- IEP Status
- Economically Disadvantaged Status
- Homeless Status
- Migrant Status
- Test accommodation
- Test item responses

LEAs that choose to opt into this agreement may choose to provide the following additional 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 RS 17:3914. The Contractor hereby acknowledges that all personally-identifiable information contained in or derived from a student's education records are deemed confidential pursuant to FERPA and RS 17:3914 and therefore will not be disclosed by Contractor to any third party. For the purposes of this Agreement, data is defined as confidential information that can be used on its own or with other information to identify, contact, or locate a single individual, including but not limited to (a) any information that can be used to distinguish or trace an individual's identity such as full name, social security number, date and place of birth, mother's maiden name, or biometric records; (b) any other information that is linked or linkable to an individual such as medical, educational, financial, and employment information; or (c) two or more pieces of information that separately or when linked together can be used to reasonably ascertain the identity of the person

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 the attached Contract. Contractor shall maintain the data in electronic form, in an area that has limited access only to Contractor's authorized personnel. Contractor will ensure that access to the data maintained on computer files or databases is encrypted and password protected. 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 data in locked cabinets, file drawers, or other secure locations when not in use. Contractor shall 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 data for any purpose not expressly permitted in this Agreement. In that connection, Contractor cannot disclose any document, whether in hard copy or electronic form, or otherwise disclose to any third party any data or information in any form whatsoever or under any circumstances which would directly or indirectly makes a student's identity traceable.

6. Breach of Agreement; Limitation of Liability

If Contractor breaches its duty to maintain the confidentiality of the data pursuant to this Agreement, Contractor's liability shall be limited to two (2) times the amount that State paid Contractor under the Memorandum of Understanding between State and Contractor dated September 29, 2017 during the twelve (12) months immediately preceding the date on which Contractor is demonstrated to have negligently breached its duties.

7. Ownership

Any data delivered or transmitted to the Contractor by the State and/or obtained or prepared by Contractor for the State pursuant to this Agreement shall become the property of the State, and shall, upon request, be provided or returned by Contractor to the State, or destroyed as set forth above.

Any data delivered or transmitted to the Contractor by an LEA and/or obtained or prepared by Contractor for an LEA pursuant to this Agreement shall become the property of the LEA, and shall, upon request, be provided or returned by Contractor to the LEA or destroyed as set forth above. In that connection, any documents, materials, and/or products created or developed by Contractor under this Agreement for an LEA shall be the property of the LEA.

No records, reports, documents, materials or products created or developed under this contract and containing data can be distributed to third parties.

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 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.

9. Security Breach

As used in this Agreement “Security Breach” means any act or omission that compromises either the security, confidentiality or integrity of data 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 data, or receipt of a complaint in relation to the privacy practices of Contractor or a breach or alleged breach of this Agreement relating to such privacy practices.

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 twenty-four (24) hours per day, seven (7) days per week as a contact in resolving issues and fulfilling obligations associated with a security breach; (ii) immediately notify the State and LEA via email, SMS text, or a phone call to the State and LEA contacts which have been provided to the Contractor once the Contractor becomes 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;(iii) facilitating interviews with Contractor’s employees and others involved in the matter; and (iv) 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 the date signed by the parties and shall terminate on June 30, 2024. 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

The State may terminate this Agreement at any time by giving Contractor and all LEAs written notice of such 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.

14. Survival

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

THUS DONE AND SIGNED by the State at Baton Rouge, Louisiana, and the Contractor at Los Angeles, California, on the day, month and year first written below.

IN WITNESS WHEREOF, the parties have executed this Agreement as of this 29th day of June, 2019.



John C. White,
State Superintendent of Education



Li Cai,
Director, CRESST at UCLA