

EXHIBIT ____

DATA SHARING AND CONFIDENTIALITY AGREEMENT

INCLUDING
PARENTS BILL OF RIGHTS FOR DATA SECURITY AND PRIVACY
AND
SUPPLEMENTAL INFORMATION ABOUT THE
Agreement

1. **Purpose**

(a) This Exhibit supplements the LINCOLN LIBRARY PRESS (“AGREEMENT”) to which it is attached, to ensure that the AGREEMENT conforms to the requirements of New York State Education Law Section 2-d and any implementing Regulations of the Commissioner of Education (collectively referred to as “Section 2-d”). This Exhibit consists of the terms of this Data Sharing and Confidentiality Agreement, a copy of BOCES Parents Bill of Rights for Data Security and Privacy signed by LINCOLN LIBRARY PRESS, and the Supplemental Information about the Agreement that is required to be posted on BOCES website.

(b) To the extent that any terms contained within the AGREEMENT, or any terms contained within any other Exhibits attached to and made a part of the AGREEMENT, conflict with the terms of this Exhibit, the terms of this Exhibit will apply and be given effect. In the event that LINCOLN LIBRARY PRESS has online or written Terms of Service (“TOS”) that would otherwise be applicable to its customers or users of its Product that is the subject of the AGREEMENT, to the extent that any term of the TOS conflicts with the terms of this Exhibit, the terms of this Exhibit will apply and be given effect.

2. **Definitions**

Any capitalized term used within this Exhibit that is also found in the AGREEMENT will have the same definition as contained within the AGREEMENT.

In addition, as used in this Exhibit:

(a) “Student Data” means personally identifiable information, as defined in Section 2-d, from student records that LINCOLN LIBRARY PRESS receives from a Participating Educational Agency pursuant to the AGREEMENT.

(b) “Teacher or Principal Data” means personally identifiable information relating to the annual professional performance reviews of classroom teachers or principals that is confidential and not subject to release under the provisions of New York Education Law Sections 3012-c or 3012-d, that LINCOLN LIBRARY PRESS receives from a Participating Educational Agency pursuant to the AGREEMENT.

(c) “Protected Data” means Student Data and/or Teacher or Principal Data to the extent applicable to LINCOLN LIBRARY PRESS’ Product.

(d) “Participating Educational Agency” means a school district within New York State that purchases certain shared instructional technology services and software through a Cooperative Educational Services Agreement with a BOCES, and as a result is licensed to use LINCOLN LIBRARY PRESS’s Product pursuant to the terms of the AGREEMENT.

3. **Confidentiality of Protected Data**

(a) LINCOLN LIBRARY PRESS acknowledges that the Protected Data it receives pursuant to the AGREEMENT may originate from several Participating Educational Agencies located across New York State, and that this Protected Data belongs to and is owned by the Participating Educational Agency from which it originates.

(b) LINCOLN LIBRARY PRESS will maintain the confidentiality of the Protected Data it receives in accordance with federal and state law (including but not limited to Section 2-d) and BOCES policy on data security and privacy. LINCOLN LIBRARY PRESS acknowledges that BOCES is obligated under Section 2-d to adopt a policy on data security and privacy, but that adoption may not occur until a date subsequent to the effective date of the AGREEMENT. BOCES will provide LINCOLN LIBRARY PRESS with a copy of its policy as soon as practicable following adoption, and LINCOLN LIBRARY PRESS and BOCES agree to engage in good faith negotiations to modify this Data Sharing Agreement to the extent necessary to ensure LINCOLN LIBRARY PRESS’ continued compliance with Section 2-d.

4. **Data Security and Privacy Plan**

LINCOLN LIBRARY PRESS agrees that it will protect the confidentiality, privacy and security of the Protected Data received from Participating Educational Agencies in accordance with BOCES Parents Bill of Rights for Data Privacy and Security, a copy of which has been signed by LINCOLN LIBRARY PRESS and is set forth below.

Additional elements of LINCOLN LIBRARY PRESS’s Data Security and Privacy Plan are as follows:

(a) In order to implement all state, federal, and local data security and privacy requirements, including those contained within this Data Sharing and Confidentiality Agreement, consistent with BOCES data security and privacy policy, LINCOLN LIBRARY PRESS will: [[Lincoln Library Press does not receive any Protected Data, nor does it collect data on any individual database users.](#)]

(b) In order to protect the security, confidentiality and integrity of the Protected Data that it receives under the AGREEMENT, LINCOLN LIBRARY PRESS will have the following reasonable administrative, technical, operational and physical safeguards and practices in place throughout the term of the AGREEMENT:
[[Lincoln Library Press does not receive any Protected Data, nor does it collect data on any individual database users.](#)]

(c) LINCOLN LIBRARY PRESS will comply with all obligations set forth in BOCES “Supplemental Information about the AGREEMENT” below.

(d) For any of its officers or employees (or officers or employees of any of its subcontractors or assignees) who have access to Protected Data, LINCOLN LIBRARY PRESS has provided or will provide training on the federal and state laws governing confidentiality of such data prior to their receiving access, as follows:

[Employees of Lincoln Library Press are aware of the federal and state laws governing confidentiality of Protected Data. Lincoln Library Press does not receive any Protected Data, nor does it collect data on any individual database users.

(e) LINCOLN LIBRARY PRESS [*check one*] ____ will x will not utilize sub-contractors for the purpose of fulfilling one or more of its obligations under the AGREEMENT. In the event that LINCOLN LIBRARY PRESS engages any subcontractors, assignees, or other authorized agents to perform its obligations under the AGREEMENT, it will require such subcontractors, assignees, or other authorized agents to execute written agreements as more fully described in BOCES “Supplemental Information about the AGREEMENT,” below.

(f) LINCOLN LIBRARY PRESS will manage data security and privacy incidents that implicate Protected Data, including identify breaches and unauthorized disclosures, and LINCOLN LIBRARY PRESS will provide prompt notification of any breaches or unauthorized disclosures of Protected Data in accordance with Section ___ of this Data Sharing and Confidentiality Agreement.

(g) LINCOLN LIBRARY PRESS will implement procedures for the return, transition, deletion and/or destruction of Protected Data at such time that the AGREEMENT is terminated or expires, as more fully described in BOCES “Supplemental Information about the AGREEMENT,” below.

5. **Additional Statutory and Regulatory Obligations**

LINCOLN LIBRARY PRESS acknowledges that it has the following additional obligations with respect to any Protected Data received from Participating Educational Agencies, and that any failure to fulfill one or more of these statutory or regulatory obligations shall be a breach of the AGREEMENT and the terms of this Data Sharing and Confidentiality Agreement:

(a) Limit internal access to education records to those individuals that are determined to have legitimate educational interests within the meaning of Section 2-d and the Family Educational Rights and Privacy Act (FERPA).

(b) Limit internal access to Protected Data to only those employees or subcontractors that need access in order to assist LINCOLN LIBRARY PRESS in fulfilling one or more of its obligations under the AGREEMENT.

(c) Not use education records for any purposes other than those explicitly authorized in this Data Sharing and Confidentiality Agreement.

(d) Not disclose any personally identifiable information to any other party, except for authorized representatives of LINCOLN LIBRARY PRESS using the information to carry out LINCOLN LIBRARY PRESS's obligations under the AGREEMENT, unless:

- (i) the parent or eligible student has provided prior written consent; or
- (ii) the disclosure is required by statute or court order and notice of the disclosure is provided to Participating Educational Agency no later than the time of disclosure, unless such notice is expressly prohibited by the statute or court order.

(e) Maintain reasonable administrative, technical, and physical safeguards to protect the security, confidentiality, and integrity of personally identifiable student information in its custody;

(f) Use encryption technology that complies with Section 2-d, as more fully set forth in BOCES "Supplemental Information about the AGREEMENT," below.

(g) Provide notification to BOCES (and Participating Educational Agencies, to the extent required by, and in accordance with, Section ____ of this Data Sharing and Confidentiality Agreement) of any breach of security resulting in an unauthorized release of Protected Data by LINCOLN LIBRARY PRESS or its assignees or subcontractors in violation of state or federal law or other obligations relating to data privacy and security contained herein.

(h) Promptly reimburse BOCES, another BOCES, or a Participating School District for the full cost of notification, in the event they are required under Section 2-d to notify affected parents, students, teachers or principals of a breach or unauthorized release of Protected Data attributed to LINCOLN LIBRARY PRESS or its subcontractors or assignees.

6. **Notification of Breach and Unauthorized Release**

(a) LINCOLN LIBRARY PRESS shall promptly notify BOCES of any breach or unauthorized release of Protected Data in the most expedient way possible and without unreasonable delay, but no more than seven (7) calendar days after LINCOLN LIBRARY PRESS has discovered or been informed of the breach or unauthorized release.

(b) LINCOLN LIBRARY PRESS will provide such notification to BOCES by contacting Michele Jones directly by email at Michele.jones@neric.org or by calling (518) 464-5139 (office).

(c) LINCOLN LIBRARY PRESS will cooperate with BOCES and provide as much information as possible directly to the General Counsel or designee about the incident, including but not limited to: a description of the incident, the date of the incident, the date LINCOLN LIBRARY PRESS discovered or was informed of the incident, a description of the types of personally identifiable information involved, an estimate of the number of records affected, the Participating Educational Agencies affected, what the LINCOLN LIBRARY PRESS has done or plans to do to investigate the incident, stop the breach and mitigate any further unauthorized access or release of Protected Data, and contact information for LINCOLN LIBRARY PRESS representatives who can assist affected individuals that may have additional questions.

(d) LINCOLN LIBRARY PRESS acknowledges that upon initial notification from LINCOLN LIBRARY PRESS, BOCES, as the educational agency with which LINCOLN LIBRARY PRESS contracts, has an obligation under Section 2-d to in turn notify the Chief Privacy Officer in the New York State Education Department ("CPO"). LINCOLN LIBRARY PRESS shall not provide this notification to the CPO directly. In the event the CPO contacts LINCOLN LIBRARY PRESS directly or requests more information from LINCOLN LIBRARY PRESS regarding the incident after having been initially informed of the incident by BOCES, LINCOLN LIBRARY PRESS will promptly inform General Counsel or designees.

(e) LINCOLN LIBRARY PRESS will consult directly with General Counsel or designees prior to providing any further notice of the incident (written or otherwise) directly to any other BOCES or Regional Information Center, or any affected Participating Educational Agency.

EXHIBIT ____ (CONTINUED)

PARENTS' BILL OF RIGHTS FOR DATA SECURITY AND PRIVACY

Albany-Schoharie-Schenectady-Saratoga BOCES (BOCES) is committed to protecting the privacy and security of personally identifiable information about students who attend BOCES instructional programs in accordance with applicable law, including New York State Education Law Section 2-d.

To further these goals, BOCES wishes to inform parents of the following:

- (1) A student's personally identifiable information cannot be sold or released for any commercial purposes.
- (2) Parents have the right to inspect and review the complete contents of their child's education record.
- (3) State and federal laws protect the confidentiality of personally identifiable information, and safeguards associated with industry standards and best practices, including but not limited to, encryption, firewalls, and password protection, must be in place when data is stored or transferred.
- (4) A complete list of all student data elements collected by the State is available for public review at <http://www.p12.nysed.gov/irs/sirs/documentation/NYSEDstudentData.xlsx>, or by writing to the Office of Information & Reporting Services, New York State Education Department, Room 863 EBA, 89 Washington Avenue, Albany, New York 12234.
- (5) Parents have the right to have complaints about possible breaches of student data addressed. Complaints may be directed to the NYS Chief Privacy Officer by writing to the New York State Education Department, 89 Washington Avenue, Albany, New York 12234. Complaints may also be directed to the Chief Privacy Officer via email at: CPO@mail.nysed.gov.

BY THE LINCOLN LIBRARY PRESS:



[See attached Privacy Policy.](#)

Signature

Vice President

Title

April 14, 2020

Date

EXHIBIT ____ (CONTINUED)

SUPPLEMENTAL INFORMATION

ABOUT THE AGREEMENT BETWEEN Albany-Schoharie-Schenectady- Saratoga BOCES AND LINCOLN LIBRARY PRESS

BOCES has entered into An Agreement (“AGREEMENT”) with LINCOLN LIBRARY PRESS (“LINCOLN LIBRARY PRESS”), which governs the availability to Participating Educational Agencies of the following Product(s):

LINCOLN LIBRARY PRESS Exams

Pursuant to the AGREEMENT, Participating Educational Agencies may provide to LINCOLN LIBRARY PRESS, and LINCOLN LIBRARY PRESS will receive, personally identifiable information about students, or teachers and principals, that is protected by Section 2-d of the New York State Education Law (“Protected Data”).

Exclusive Purpose for which Protected Data will be Used: [Lincoln Library Press does not receive any Protected Data, nor does it collect data on any individual database users. See attached Privacy Policy.](#)

To be completed by LINCOLN LIBRARY PRESS:

The exclusive purpose for which LINCOLN LIBRARY PRESS is being provided access to Protected Data is to provide Participating Educational Agencies with the functionality of the Product(s) listed above. LINCOLN LIBRARY PRESS agrees that it will not use the Protected Data for any other purposes not explicitly authorized in the AGREEMENT. Protected Data received by LINCOLN LIBRARY PRESS, or any of LINCOLN LIBRARY PRESS’s subcontractors, assignees, or other authorized agents, will not be sold, or released or used for any commercial or marketing purposes.

Oversight of Subcontractors: In the event that LINCOLN LIBRARY PRESS engages subcontractors, assignees, or other authorized agents to perform one or more of its obligations under the AGREEMENT (including any hosting service provider), it will require those to whom it discloses Protected Data to execute legally binding agreements acknowledging the obligation under Section 2-d of the New York State Education Law to comply with the same data security and privacy standards required of LINCOLN LIBRARY PRESS under the AGREEMENT and applicable state and federal law. LINCOLN LIBRARY PRESS will ensure that such subcontractors, assignees, or other authorized agents abide by the provisions of these agreements by: *[Describe steps the LINCOLN LIBRARY PRESS will take]*

Duration of AGREEMENT and Protected Data Upon Expiration:

- The AGREEMENT commences on *[date]* and expires on *[date]*. Upon expiration of the AGREEMENT without renewal, or upon termination of the AGREEMENT prior to expiration, LINCOLN LIBRARY PRESS

will securely delete or otherwise destroy any and all Protected Data remaining in the possession of LINCOLN LIBRARY PRESS or its assignees or subcontractors. If requested by a Participating Educational Agency, LINCOLN LIBRARY PRESS will assist that entity in exporting all Protected Data previously received for its own use, prior to deletion.

- At BOCES request, LINCOLN LIBRARY PRESS will cooperate with BOCES as necessary in order to transition

Protected Data to any successor LINCOLN LIBRARY PRESS(s) prior to deletion.

- LINCOLN LIBRARY PRESS agrees that neither it nor its subcontractors, assignees, or other authorized agents will retain any copy, summary or extract of the Protected Data, or any de-identified Protected Data, on any storage medium whatsoever. Upon request, LINCOLN LIBRARY PRESS and/or its subcontractors, assignees, or other authorized agents will provide a certification from an appropriate officer that these requirements have been satisfied in full.

Challenging Accuracy of Protected Data: Parents or eligible students can challenge the accuracy of any Protected Data provided by a Participating Educational Agency to LINCOLN LIBRARY PRESS, by contacting the student's district of residence regarding procedures for requesting amendment of education records under the Family Educational Rights and Privacy Act (FERPA). Teachers or principals may be able to challenge the accuracy of APPR data provided to LINCOLN LIBRARY PRESS by following the appeal process in their employing school district's applicable APPR Plan.

Data Storage and Security Protections: Any Protected Data LINCOLN LIBRARY PRESS receives will be stored on systems maintained by LINCOLN LIBRARY PRESS, or by a subcontractor under the direct control of LINCOLN LIBRARY PRESS, in a secure data center facility located within the United States. The measures that LINCOLN LIBRARY PRESS will take to protect Protected Data include adoption of technologies, safeguards and practices that align with the NIST Cybersecurity Framework and industry best practices including, but not necessarily limited to, disk encryption, file encryption, firewalls, and password protection.

Encryption of Protected Data: LINCOLN LIBRARY PRESS (or, if applicable, its subcontractors) will protect Protected Data in its custody from unauthorized disclosure while in motion or at rest, using a technology or methodology specified by the secretary of the U.S. Department of HHS in guidance issued under Section 13402(H)(2) of P.L. 111-5.

FactCite Lincoln Library Online Privacy Policy may be found here: <http://www.factcite.com/media/privacy.html>; text is provided here.

Privacy Policy

We do not gather, collect, or store information that would identify individual visitors to this site.

Consequently, FactCite does not collect or maintain information on individual students or patrons.

- There is no information on individual students for parents to delete.
- There are no encrypted data relative to an individual student or patron.
- Data on individual students or patrons are not retained for any purpose, educational or otherwise.

Should we in the future begin to retain student or patron data, we will update our policy on this page and pledge that:

- We will send an email notification to all subscribers notifying them of the change before it is implemented and include prominent notification on the site that a change will be or has been made and to include a prominent statement on the website the first time the user logs on following the change.
- We will provide an opportunity for new consent (i.e., notice and choice) for any material changes to this privacy policy.
- We will not share student data with third parties.
- We will support access to student personal information to parents and students for review and correction whether the access is through the company or through the school, teacher, or educational entity.
- We will not retain student personal information for longer than necessary to deliver services or for school purposes. This means that personal information will not be kept in backups or not be deleted because of data commingling.
- We will maintain a comprehensive security program that is reasonably designed to protect the security, privacy, confidentiality, and integrity of student personal information against risks—such as unauthorized access or use, or unintended or inappropriate disclosure—through the use of administrative, technological, and physical safeguards appropriate to the sensitivity of the information.
- That subscriber contract with future companies will be consistent with Pledge principles and will allow users a choice to send information to the future entity.