

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 Data Sharing and Confidentiality Agreement (DSC Agreement) supplements the Fogarty Services, Inc. (Fogarty) software purchased through Fogarty Services Inc. (Fogarty Agreement), to ensure that the FOGARTY 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 Agreement consists of the terms of this DSC Agreement, a copy of BOCES Parents Bill of Rights for Data Security and Privacy signed by FOGARTY, and the Supplemental Information about the FOGARTY AGREEMENT that is required to be posted on BOCES website.

(b) To the extent that any terms contained within the FOGARTY AGREEMENT, or any terms contained within any other Agreements attached to and made a part of the FOGARTY AGREEMENT, conflict with the terms of this DSC Agreement, the terms of this DSC Agreement will apply and be given effect. In the event that FOGARTY 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 FOGARTY AGREEMENT, to the extent that any term of the TOS conflicts with the terms of this DSC Agreement, the terms of this DSC Agreement will apply and be given effect.

2. **Definitions**

Any capitalized term used within this DSC Agreement that is also found in the FOGARTY AGREEMENT will have the same definition as contained within this DSC 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 FOGARTY receives from a Participating Educational Agency pursuant to the DSC 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 FOGARTY receives from a Participating Educational Agency pursuant to the FOGARTY AGREEMENT.

(c) "Protected Data" means Student Data and/or Teacher or Principal Data to the extent applicable to FOGARTY's 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 FOGARTY's Product pursuant to the terms of the AGREEMENT.

3. **Confidentiality of Protected Data**

(a) FOGARTY 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) FOGARTY 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. FOGARTY 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 FOGARTY AGREEMENT. BOCES will provide FOGARTY with a copy of its policy as soon as practicable following adoption, and FOGARTY and BOCES agree to engage in good faith negotiations to modify this DSC Agreement to the extent necessary to ensure FOGARTY's continued compliance with Section 2-d.

4. **Data Security and Privacy Plan**

FOGARTY 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 FOGARTY and is set forth below.

Additional elements of FOGARTY'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, FOGARTY will: [_____ See attached data security agreement _____]

(b) In order to protect the security, confidentiality and integrity of the Protected Data that it receives under the FOGARTY AGREEMENT, FOGARTY will have the following reasonable administrative, technical, operational and physical safeguards and practices in place throughout the term of the FOGARTY AGREEMENT:
[See attached data security agreement _____]

(c) FOGARTY 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, FOGARTY has provided or will provide training on the federal and state laws governing confidentiality of such data prior to their receiving access, as follows:

[Ongoing training as processes are implemented to ensure best practices and procedures
_____]

(e) FOGARTY [check one] _____ will X will not utilize sub-contractors for the purpose of fulfilling one or more of its obligations under the FOGARTY AGREEMENT. In the event that FOGARTY engages any subcontractors, assignees, or other authorized agents to perform its obligations under the FOGARTY 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 FOGARTY AGREEMENT," below.

(f) FOGARTY will manage data security and privacy incidents that implicate Protected Data, including identify breaches and unauthorized disclosures, and FOGARTY will provide prompt notification of any breaches or unauthorized disclosures of Protected Data in accordance with Section 6 of this Data Sharing and Confidentiality Agreement.

(g) FOGARTY 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**

FOGARTY 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 FOGARTY 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 FOGARTY in fulfilling one or more of its obligations under the FOGARTY 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 FOGARTY using the information to carry out FOGARTY's obligations

under the FOGARTY 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 FOGARTY AGREEMENT," below.

(g) Provide notification to BOCES (and Participating Educational Agencies, to the extent required by, and in accordance with, Section 6 of this Data Sharing and Confidentiality Agreement) of any breach of security resulting in an unauthorized release of Protected Data by FOGARTY 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 FOGARTY or its subcontractors or assignees.

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

(a) FOGARTY 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 FOGARTY has discovered or been informed of the breach or unauthorized release.

(b) FOGARTY will provide such notification to BOCES by contacting General Counsel directly by email at Michele.jones@neric.org or by calling (518) 464-5139 (office).

(c) FOGARTY 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 FOGARTY 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 FOGARTY 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 FOGARTY representatives who can assist affected individuals that may have additional questions.

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

(e) FOGARTY 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.

BY FOGARTY:



Signature

Project Manager

Title

430/20

Date

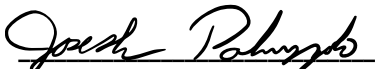
PARENTS' BILL OF RIGHTS FOR DATA SECURITY AND PRIVACY

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 FOGARTY:



Signature

Project Manager

Title

4/30/20

Date

SUPPLEMENTAL INFORMATION

ABOUT THE AGREEMENT BETWEEN Albany-Schoharie-Schenectady- Saratoga BOCES AND FOGARTY

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

*[list scope of services from
FOGARTY]*

Pursuant to the AGREEMENT, Participating Educational Agencies may provide to FOGARTY, and FOGARTY 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:

To be completed by FOGARTY:

The exclusive purpose for which FOGARTY is being provided access to Protected Data is to provide Participating Educational Agencies with the functionality of the Product(s) listed above. FOGARTY agrees that it will not use the Protected Data for any other purposes not explicitly authorized in the AGREEMENT. Protected Data received by FOGARTY, or any of FOGARTY’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 FOGARTY 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 FOGARTY under the AGREEMENT and applicable state and federal law. FOGARTY will ensure that such subcontractors, assignees, or other authorized agents abide by the provisions of these agreements by: *[Describe steps the FOGARTY 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, FOGARTY will securely delete or otherwise destroy any and all Protected Data remaining in the possession of FOGARTY or its assignees or subcontractors. If requested by a Participating Educational Agency, FOGARTY will assist that entity in exporting all Protected Data previously received for its own use, prior to deletion.
- At BOCES request, FOGARTY will cooperate with BOCES as necessary in order to transition Protected Data to any successor FOGARTY prior to deletion.
- FOGARTY 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, FOGARTY 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 FOGARTY, 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 FOGARTY by following the appeal process in their employing school district's applicable APPR Plan.

Data Storage and Security Protections: Any Protected Data FOGARTY receives will be stored on systems maintained by FOGARTY, or by a subcontractor under the direct control of FOGARTY, in a secure data center facility located within the United States. The measures that FOGARTY 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: FOGARTY (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.

BY FOGARTY:


Signature

Project Manager

Title

4/30/20

Date