

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 Northwest Evaluation Association (NWEA) ("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 NWEA, 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 NWEA 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 NWEA 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 NWEA 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 NWEA'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 NWEA's Product pursuant to the terms of the AGREEMENT.

3. **Confidentiality of Protected Data**

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

4. **Data Security and Privacy Plan**

NWEA 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 NWEA and is set forth below.

Additional elements of NWEA'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, NWEA will: Please see Appendix A, NWEA Data Security and Privacy Plan

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

Please see Appendix A, NWEA Data Security and Privacy Plan

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

Please see Appendix A, NWEA Data Security and Privacy Plan

(e) NWEA [*check one*] ___ will will not utilize sub-contractors for the purpose of fulfilling one or more of its obligations under the AGREEMENT. In the event that NWEA 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) NWEA will manage data security and privacy incidents that implicate Protected Data, including identify breaches and unauthorized disclosures, and NWEA will provide prompt notification of any breaches or unauthorized disclosures of Protected Data in accordance with Section ___ of this Data Sharing and Confidentiality Agreement. Please see Appendix A, NWEA Data Security and Privacy Plan

(g) NWEA 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**

NWEA 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 NWEA 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 NWEA using the information to carry out NWEA'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 6 of this Data Sharing and Confidentiality Agreement) of any breach of security resulting in an unauthorized release of Protected Data by NWEA 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 NWEA or its subcontractors or assignees.

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

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

(b) NWEA 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) NWEA 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 NWEA 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 NWEA 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 NWEA representatives who can assist affected individuals that may have additional questions.

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

(e) NWEA 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 1 (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 NWEA:


DocuSigned by:

Signature
Geri Cohen
CFO & EVP
Title
2/4/2020
Date

EXHIBIT 2 (CONTINUED)

SUPPLEMENTAL INFORMATION

ABOUT THE AGREEMENT BETWEEN Albany-Schoharie-Schenectady- Saratoga BOCES and NWEA

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

*[list scope of services from
BOCES to NWEA]*

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

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

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

Privacy

NWEA recognizes the importance of protecting the privacy and security of its Subscribers and Users of the Assessment System. NWEA's Privacy Policy informs Subscribers and Users of NWEA's policies and procedures regarding the collection, use, and disclosure of Student Education Records, Deidentified Data, and Anonymized Data. NWEA's Privacy Policy – Assessment System can be found at: <https://legal.nwea.org/nwea-privacy-and-security-for-pii.html>

Data Security & Employee Training

NWEA develops and implements privacy and information security measures aligned to NIST Cybersecurity Framework to protect the confidentiality, integrity, and availability of partner personal data. In doing so, personal data is stored and processed in a manner that is designed to ensure the appropriate security of Student Education Records, including protection against unauthorized or unlawful processing and against accidental loss, destruction, or damage, using appropriate technical and organizational measures. Further information on NWEA's data security measures can be found here: <https://legal.nwea.org/map-growth-information-security-whitepaper.html>, which include, but are not limited to, training on applicable federal and state laws for officers and employees that have access to Student Education Records.

Cyber Supply Chain Risk Management

NWEA may share Student Education Records, as defined in the [Master Subscription Agreement](#) between the parties, with third-party contractors to support the Assessment System. NWEA utilizes a cyber supply chain risk management (SCRM) process for third parties. The primary objective of the cyber SCRM is to identify and assess external parties to ensure they meet NWEA's security profile (based on NIST security controls) and contractual requirements. As a part of this process, third parties are contractually committed to protect the availability, confidentiality, and integrity of Student Education Records. Third parties are prohibited from engaging in targeting advertising and any other use except in support of the Assessment System.