

**STATE OF LOUISIANA  
DEPARTMENT OF EDUCATION  
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. and La. R.S. 17:3914 make personally identifiable student information and other student level data in education records confidential and, subject to certain exceptions, prohibit the disclosure of such information to third parties and impose penalties, including criminal penalties, for unauthorized disclosures of such data 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 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 WestEd (hereinafter referred to as "Contractor") have entered into a contractual arrangement, pursuant to which Contractor will provide the services to State (hereinafter referred to as the "Services").

WHEREAS, WestEd has subcontracted a portion of its scope of work for the "Services" to NCS Pearson, Inc. ("Pearson" or "Subcontractor"), and Pearson has requested that State provide it with historical data regarding student performance, which Pearson will use in order to perform its scope of work under its subcontract with WestEd;

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

This Data Sharing Agreement, upon execution, shall supersede and replace all other Data Sharing Agreements related to the Services that are in existence between the Louisiana Department of Education and WestEd or Pearson.

## **1. Purpose of the Disclosure**

Contractor and Subcontractor agree to collect and use any data disclosed to Subcontractor pursuant to this Agreement (the "Data") solely for the purposes of the providing services to the State. Contractor does not intend to collect or receive any of the Data to be provided under this Agreement, but signs this Agreement because it is in privity with the State and is party to the subcontract with Pearson, under which Pearson will perform a portion of the Services. Notwithstanding the expectation that WestEd will not receive the Data, for simplicity, at times herein WestEd and Pearson are collectively referred to as "Receiving Parties."

The Data will be used by Pearson to develop test items, test forms, and other related test development and administration tools.

## **2. Data**

The State agrees to provide Subcontractor with the following student-level data solely for the purposes of providing services to the State.

School years 2014-2015 through 2019-2020 as applicable:

- Student identifier
- Test date
- District/School ID
- Grade
- Day of Birth
- Ethnicity
- Economically disadvantaged, migrant, limited English proficiency and homeless status
- Education classification and exceptionality
- Accommodations
- Item responses
- Test results
- Scoring and testing documentation

The State reserves the right to withhold any of the foregoing data if the State determines, in its sole discretion, that disclosure of such data would violate any provision of state or federal law.

### **3. Confidentiality**

This Agreement is entered into by Contractor, Subcontractor, 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 R.S. 17:3914. The Receiving Parties hereby acknowledge that all documents which include personally identifiable information contained in or derived from a student's education records are deemed confidential pursuant to FERPA and R.S. 17:3914 and will not be disclosed by Receiving Parties, or either of them, to any third party.

A Receiving Party may disclose student information to its subcontractors that have agreed in writing to provide the same protections for student data as contained in this Agreement.

Subcontractor 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 those who have a need for the data to perform the services. Subcontractor shall maintain the data, whether in hard copy or electronic form, in an area that has limited access only to Subcontractor's authorized personnel. Subcontractor shall not permit removal of the data from the limited access area. Subcontractor will ensure that access to the data maintained on computer files or databases is controlled by password protection. Subcontractor shall establish procedures to ensure that the target data cannot be extracted from a computer file or database by unauthorized individuals. Subcontractor 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. Subcontractor shall, under supervision of the State and/or Contractor, destroy the data provided to Subcontractor, including all copies, whether in electronic or hard copy form, when the services are completed, its subcontract with WestEd expires or is terminated, or this Agreement is terminated, whichever occurs first.

#### **4. Restrictions on Use**

The Receiving Parties shall not use the Data for any purpose not expressly permitted in this Agreement without the prior written approval of the Louisiana State Superintendent of Education. The Receiving Parties cannot disclose any document, whether in hard copy or electronic form, or otherwise disclose to any third party, except as otherwise previously provided in this Agreement, any student-level data or information in any form whatsoever or under any circumstances which would directly or indirectly make a student's identity easily traceable. Any questions by either Receiving Party regarding the implementation of this Agreement shall be directed to:

Kim Nesmith  
Data Governance and Privacy Director  
Louisiana Department of Education  
1201 N. Third Street  
Baton Rouge, LA 70802  
(225) 342-1803  
[kim.nesmith@la.gov](mailto:kim.nesmith@la.gov)

#### **5. Indemnification**

Each of the Receiving Parties 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 as a result of from the respective Receiving Party's breach of this Agreement or any unauthorized disclosure of the Data through the negligence or willful misconduct of the Receiving Party.

This section does not purport to modify or amend Subcontractor's general duty to defend, indemnify, and hold Contractor harmless, which extends to include any costs, expenses, damages, injury or loss suffered by Contractor that arises out of or is related to Subcontractor's act, omission, or breach related to this Agreement.

#### **6. Ownership**

Any records, reports, documents, materials, and/or products created or developed by Receiving Parties with the data provided under this Agreement shall be the property of the State. Any work undertaken by Receiving Parties pursuant to this Agreement shall be work made for hire, and the Receiving Parties, and each of them, hereby transfer and assign to the State any intellectual property rights, including but not limited to the copyright of any records, reports, documents, materials or products created or developed by Receiving Parties in connection with the performance of this Agreement. No records, reports, documents, materials or products created or developed under this Agreement can be distributed free or for profit without explicit written approval from the State Superintendent of Education.

## **7. Audits**

Pursuant to in La. R.S. 17:3914, the Subcontractor shall permit the State or its authorized representatives to carry out security or audit checks pertaining to Subcontractor's security and usage of PII. Subcontractor shall cooperate with the State. The State or its authorized representatives shall have access at all reasonable times on working days during working hours at Subcontractor's business premises to Subcontractor's employees, together with records, books and correspondence and other papers and documentation or media of every kind in possession of Subcontractor and Subcontractor's employees pertaining to this Agreement that are necessary for the State to carry out such security and audit checks. The State or its authorized representatives shall have the right to reproduce and/or retain copies at its expense of any of the aforementioned information and documents. No person or entity will access PII in the data provided under this Agreement except as authorized by law or this Agreement.

## **8. Security Breach**

As used in this Agreement "Security Breach" means any act or omission that compromises either (i) the security, confidentiality or integrity of personally-identifiable student information or the physical, technical, administrative or organizational safeguards put in place by a Receiving Party that relates to the protection of the security, confidentiality or integrity of PII, or (ii) receipt of a complaint in relation to the privacy practices of a Receiving Party or a breach or alleged breach of this Agreement relating to such privacy practices.

Receiving Parties shall take commercially reasonable steps and best efforts, in accordance with industry standards, to prevent security breaches. Receiving Parties shall also take commercially reasonable steps, in accordance with industry standards, to immediately remedy any security breach and prevent any further security breach at Receiving Party's expense in accordance with standard industry practices and applicable law.

Contractor shall:(i) provide the state with the name and contact information for an employee of Contractor who shall serve as the State'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 State in writing of a security breach after Contractor becomes aware of it; and

Immediately following Contractor's notification to the State of a security breach, Contractor and the State shall coordinate with each other to investigate the security breach. Contractor agrees to fully cooperate with State in State's handling of the matter, including, without limitation: (i) assisting with any investigation; (ii) providing the State with 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 (v) providing any notices to persons or organizations affected by the security breach as required by law and as required by the State.

## **9. Liaison Officials**

The State's liaison, the Contractor's liaison, and the Subcontractor's liaison for the implementation of this Agreement and for receipt of all notices or other communications required or permitted under this Agreement are, respectively:

**Kim Nesmith**  
Data Governance and Privacy Director  
Louisiana Department of Education  
1201 N. Third Street  
Baton Rouge, LA 70802  
(225) 342-1803  
[kim.nesmith@la.gov](mailto:kim.nesmith@la.gov)

**Amy Washburn**  
Senior Program Manager  
WestEd  
Standards, Assessment, and Accountability  
730 Harrison Street  
San Francisco, CA 94107-1242  
(415) 615-3244  
[awashbu@wested.org](mailto:awashbu@wested.org)

**Melinda Orta**  
Senior Program Manager  
Pearson  
19500 Bulverde Rd.  
San Antonio, TX 78259  
(210) 339-5796  
[melinda.orta@pearson.com](mailto:melinda.orta@pearson.com)

## **10. Term of Agreement**

This Agreement shall begin on July 19, 2016 and shall terminate on June 30, 2020. 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 any party informs the others that an extension of this Agreement is deemed necessary, an amendment may be prepared by one party for appropriate action by the other parties.

## **11. Termination for Convenience**

The State may terminate this Agreement at any time by giving Receiving Parties written notice of such termination. Such termination will be effective five (5) business days after the written notice of termination is delivered.

## 12. Assignment of Contract

Receiving Parties shall not assign any interest in this Agreement by assignment, transfer, or novation, without prior written consent of the State.

## 13. Jurisdiction, Venue and Governing Law

Exclusive jurisdiction and venue for any and all suits in which the State is a party arising out of, or related to, this Agreement shall be in the 19<sup>th</sup> 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 insofar as it is being enforced by the State.

## 14. Survival

Receiving Parties' respective obligations under Clauses 1, 3, 4, 5, 6, and 13 shall survive expiration and/or termination of this Agreement. Receiving Parties' obligations under Clauses 7 and 8 shall survive expiration and/or termination of this Agreement until Subcontractor has fully complied with its obligation to destroy data as set forth herein.

**THUS DONE AND SIGNED** at Baton Rouge, Louisiana, on the day, month and year first written below.

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of this 19th day of July, 2016.



John C. White  
State Superintendent of Education

  
Virgilio F. Tinio, Jr. (Jul 26, 2016)

Jul 26, 2016

Virgilio F. Tinio, Jr., Contracts Manager  
Contractor

 July 28, 2016  
Subcontractor