

ATTACHMENT E

Data Sharing and Confidentiality Agreement

INCLUDING

BILL OF RIGHTS FOR DATA SECURITY AND PRIVACY

AND

SUPPLEMENTAL INFORMATION ABOUT A CONTRACT

BETWEEN MARCIA BRENNER ASSOCIATES, LLC ("LICENSOR") AND SOUTHERN WESTCHESTER BOARD OF COOPERATIVE EDUCATIONAL SERVICES

1. **Purpose**

(a) This Attachment E sets forth the terms of a Data Sharing and Confidentiality Agreement ("DSC Agreement") that has been agreed to by the Parties as a supplement to the Master License Agreement ("MLA") to which it is attached, to ensure that the MLA conforms to the requirements of New York State Education Law Section 2-d and Part 121 of the Regulations of the NYS Commissioner of Education (collectively referred to as "Section 2-d"). This DSC Agreement consists of the data sharing and confidentiality terms set forth herein, a copy of the Bill of Rights for Data Security and Privacy signed by the Licensor, and the "Supplemental Information about a Contract between Licensor and Southern Westchester Board of Cooperative Educational Services that is required to be posted on Southern Westchester Board of Cooperative Educational Services' website.

(b) Licensor shall comply with all terms, conditions and obligations as set forth in this DSC Agreement, including within the Bill of Rights for Data Security and Privacy and the Supplemental Information about a Contract between Licensor and Southern Westchester Cooperative Educational Services, throughout the duration of the term of the MLA to which it is attached. The terms of this DSC Agreement shall supersede and take the place of any other data sharing and confidentiality agreement or any similar data sharing and confidentiality language previously agreed to by the Parties prior to the date of mutual execution of the MLA to which this DSC Agreement is attached as an Exhibit.

(c) To the extent that any terms contained within the MLA, or any terms contained within any other Exhibits attached to and made a part of the MLA, conflict with the terms of this DSC Agreement, the terms of this DSC Agreement will apply and be given effect. In the event that Licensor has online or written Privacy Policies or Terms of Service ("TOS") that would otherwise be applicable to its Licensees or users of its Product that is the subject of the MLA, 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 MLA, if any will have the same definition as contained within the MLA.

In addition, as used in this DSC Agreement:

(a) "Student Data" means personally identifiable information, as defined in Section 2-d, from student records that Licensor receives from a Participating Educational Agency pursuant to the MLA.

(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 Licensor receives from a Participating Educational Agency pursuant to the MLA.

(c) "Protected Data" means Student Data and/or Teacher or Principal Data to the extent applicable to Licensor's Product.

(d) "Participating Educational Agency" means a school, school district or BOCES within New York State that purchases certain shared technology services and software through a Cooperative Educational Services Agreement ("CoSer") with Southern Westchester Board of Cooperative Educational Services, and as a result is licensed or granted access to use Licensor's Product pursuant to the terms of the MLA. For purposes of this DSC Agreement, the term also includes Southern Westchester Board of Cooperative Educational Services if licensed to use Licensor's Product pursuant to the MLA to support its own educational programs or operations.

(e) "NIST Cybersecurity Framework" means the U.S. Department of Commerce National Institute for Standards and Technology Framework for Improving Critical Infrastructure Cybersecurity Version 1.1.

3. Confidentiality of Protected Data

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

(b) Licensor will maintain the confidentiality of all Protected Data it receives in accordance with applicable federal and state law (including but not limited to Section 2-d) and this DSC Agreement, as may be amended by the Parties, and Southern Westchester Board of Cooperative Educational Services' policy on data security and privacy. Licensor acknowledges that Southern Westchester Board of Cooperative Educational Services is obligated under Section 2-d to adopt a policy on data security and privacy, and that Southern Westchester Board of Cooperative Educational Services will provide Licensor with a copy of its policy upon request.

4. Data Security and Privacy Plan

Licensor agrees that it will protect the confidentiality, privacy, and security of the Protected Data it receives from Participating Educational Agencies in accordance with Southern

Westchester Board of Cooperative Educational Services' Parents Bill of Rights for Data Privacy and Security, a copy of which has been signed by the Licensor and is set forth below.

Additional elements of Licensor'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 DSC Agreement, consistent with Southern Westchester Board of Cooperative Educational Services' data security and privacy policy, Licensor will: Review its data security and privacy policy and practices to ensure that they are in conformance with all applicable federal, state, and local laws and the terms of this DSC Agreement. In the event Licensor's policy and practices are not in conformance, the Licensor will implement commercially reasonable efforts to ensure such compliance.

(b) As required by the NIST Cybersecurity Framework, in order to protect the security, confidentiality and integrity of the Protected Data that it receives under the MLA, Licensor will have the following reasonable administrative, technical, operational, and physical safeguards and practices in place throughout the term of the MLA:

Data Security:

- Data-at-rest & data-in-transit is encrypted
- Data leak protections are implemented

Information Protection Processes and Procedures:

- Data destruction is performed according to contract and agreements
- A plan for vulnerability management is developed and implemented

Protective Technology:

- Log/audit records are ascertained, implemented, documented, and reviewed according to policy
- Network communications are protected

Identity Management, Authentication and Access Control:

- Credentials and identities are issued, verified, managed, audited, and revoked, as applicable, for authorized devices, processes, and users
- Remote access is managed

(c) Licensor will comply with all obligations set forth in Southern Westchester Board of Cooperative Educational Services' "Supplemental Information about a Contract between Licensor and Southern Westchester Board of Cooperative Educational Services," 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, Licensor has provided or will provide training on the federal and state laws governing confidentiality of such data prior to their receiving access, as follows: Annually, Licensor will require that all of its employees (or officers or employees of any of its subcontractors or assignees) undergo data security and privacy training

to ensure that these individuals are aware of and familiar with all applicable data security and privacy laws.

(e) Licensor _____ will X will not utilize sub-contractors for the purpose of fulfilling one or more of its obligations under the MLA. In the event that Licensor engages any subcontractors, assignees, or other authorized agents to perform its obligations under the MLA, it will require such subcontractors, assignees, or other authorized agents to execute written agreements as more fully described in Southern Westchester Board of Cooperative Educational Services' "Supplemental Information about a Contract between Licensor and Southern Westchester Board of Cooperative Educational Services," below.

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

(g) Licensor will implement procedures for the return, transition, deletion and/or destruction of Protected Data at such time that the MLA is terminated or expires, as more fully described in the "Supplemental Information about a Contract between Licensor and Southern Westchester Board of Cooperative Educational Services," below.

5. **Additional Statutory and Regulatory Obligations**

Licensor 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, if not corrected following notice of such failure, shall be a breach of the MLA and the terms of this DSC 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 Licensor in fulfilling one or more of its obligations under the MLA.

(c) Not use Protected Data for any purposes other than those explicitly authorized in this DSC Agreement.

(d) Not disclose any personally identifiable information to any other party, except for authorized representatives of Licensor using the information to carry out Licensor's obligations under the MLA, 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 the 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 Protected Data in its custody;

(f) Use encryption technology that complies with Section 2-d, as more fully set forth in the "Supplemental Information about a Contract between Licensor and COMPLETE LEGAL NAME OF BOCES," below.

(g) Provide notification to Southern Westchester Board of Cooperative Educational Services (and Participating Educational Agencies, to the extent required by, and in accordance with, Section 6 of this DSC Agreement) of any breach of security resulting in an unauthorized release of Protected Data by Licensor 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 Southern Westchester Board of Cooperative Educational Services 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 Licensor or its subcontractors or assignees.

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

(a) Licensor shall promptly notify Southern Westchester Board of Cooperative Educational Services 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 Licensor has discovered or been informed of the breach or unauthorized release.

(b) Licensor will provide such notification to Southern Westchester Board of Cooperative Educational Services by contacting the designated BOCES contact at the email address, telephone number, and/or mailing address provided by Licensee.

(c) Licensor will cooperate with Southern Westchester Board of Cooperative Educational Services and provide as much information as possible directly to the designated BOCES Contact about the incident, including but not limited to: a description of the incident, the date of the incident, the date Licensor 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 Licensor 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 Licensor representatives who can assist Southern Westchester Board of Cooperative Educational Services or its Participating Districts that may have additional questions.

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

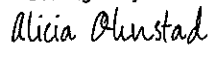
(e) Licensor will consult directly with the designated BOCES contact prior to providing any further notice of the incident (written or otherwise) directly to any affected Participating Educational Agency.

EDUCATION LAW §2-D BILL OF RIGHTS FOR DATA SECURITY AND PRIVACY

Southern Westchester Board of Cooperative Educational Services is committed to protecting the privacy and security of student, teacher, and principal data. In accordance with New York Education Law § 2-D, parents (including legal guardians or persons in parental relationships) and Eligible Students (students 18 years old and older) can expect the following:

1. A student's personally identifiable information (PII) cannot be sold or released for any commercial purpose. PII, as defined by Education Law § 2-d and FERPA, includes direct identifiers such as a student's name or identification number, parent's name, or address; and indirect identifiers such as a student's date of birth, which when linked to or combined with other information can be used to distinguish or trace a student's identity. Please see FERPA's regulations at 34 CFR 99.3 for a more complete definition.
2. The right to inspect and review the complete contents of the student's education record stored or maintained by an educational agency. This right may not apply to parents of an Eligible Student.
3. State and federal laws such as Education Law § 2-d; the Commissioner of Education's Regulations at 8 NYCRR Part 121, the Family Educational Rights and Privacy Act ("FERPA") at 12 U.S.C. 1232g (34 CFR Part 99); Children's Online Privacy Protection Act ("COPPA") at 15 U.S.C. 6501-6502 (16 CFR Part 312); Protection of Pupil Rights Amendment ("PPRA") at 20 U.S.C. 1232h (34 CFR Part 98); the Individuals with Disabilities Education Act ("IDEA") at 20 U.S.C. 1400 et seq. (34 CFR Part 300); protect the confidentiality of a student's identifiable information.
4. Safeguards associated with industry standards and best practices including but not limited to encryption, firewalls and password protection must be in place when student PII is stored or transferred.
5. A complete list of all student data elements collected by NYSED is available at <http://www.nysed.gov/data-privacy-security/student-data-inventory> and by writing to: Chief Privacy Officer, New York State Education Department, 89 Washington Avenue, Albany, NY 12234.
6. The right to have complaints about possible breaches and unauthorized disclosures of PII addressed. Complaints may be submitted to NYSED at <http://www.nysed.gov/data-privacysecurity/report-improper-disclosure>, by mail to: Chief Privacy Officer, New York State Education Department, 89 Washington Avenue, Albany, NY 12234; by email to privacy@nysed.gov; or by telephone at 518-474- 0937.
7. To be notified in accordance with applicable laws and regulations if a breach or unauthorized release of PII occurs.
8. Educational agency workers that handle PII will receive training on applicable state and federal laws, policies, and safeguards associated with industry standards and best practices that protect PII.
9. Educational agency contracts with vendors that receive PII will address statutory and regulatory data privacy and security requirements.

BY THE LICENSOR:

<p>DocuSigned by: </p> <hr/> <p>ALICIA OHNSTAD, PRESIDENT</p> <p>DATED: 8/30/2024</p>
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SUPPLEMENTAL INFORMATION ABOUT A CONTRACT

BETWEEN MARCIA BRENNER ASSOCIATES, LLC ("LICENSOR") AND SOUTHERN WESTCHESTER BOARD OF COOPERATIVE EDUCATIONAL SERVICES

Southern Westchester Board of Cooperative Educational Services has entered into a Master License and Service Agreement ("MLA") with MARCIA BRENNER ASSOCIATES, LLC ("Licensor") which governs the availability to Participating Educational Agencies of certain proprietary software applications of Licensor ("Plug-ins"). The specific Plug-ins are set forth on Attachment A to the MLA.

Pursuant to this MLA, Participating Educational Agencies (*i.e.*, those educational agencies that are authorized to use the above Product(s) by purchasing certain shared technology services and software through a Cooperative Educational Services Agreement with Southern Westchester Board of Cooperative Educational Services) may provide to Licensor, and Licensor 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"). The MLA incorporates a Data Sharing and Confidentiality Agreement ("DSC Agreement") with Southern Westchester Board of Cooperative Educational Services setting forth Licensor's obligations to protect the confidentiality, privacy, and security of Protected Data it receives pursuant to the MLA.

Exclusive Purpose for which Protected Data will be Used: The exclusive purpose for which Licensor is being provided access to Protected Data is to provide Participating Educational Agencies with the functionality of the Licensed Software. Licensor agrees that it will not use the Protected Data for any other purposes not explicitly authorized in the MLA, including the DSC Agreement. Protected Data received by Licensor, or any of Licensor'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 Licensor engages subcontractors, assignees, or other authorized agents to perform one or more of its obligations under the MLA (including any hosting service provider), it will require those to whom it discloses Protected Data to execute legally binding agreements acknowledging their obligation under Section 2-d of the New York State Education Law to comply with the same data security and privacy standards required of Licensor under the MLA and applicable state and federal law. Licensor will ensure that such subcontractors, assignees, or other authorized agents abide by the provisions of these agreements by: Subcontractors will not be used.

Duration of MLA and Protected Data Upon Expiration:

- The Term of the MLA is set forth in the MLA.
- Upon expiration or termination of the MLA, Licensor will securely delete or otherwise destroy any and all Protected Data remaining in the possession of Licensor or its assignees or subcontractors or other authorized persons or entities to whom it has disclosed Protected Data. If requested by Southern Westchester Board of Cooperative Educational Services and/or any Participating Educational Agency, Licensor will assist a Participating Educational Agency in exporting all Protected Data previously received back to the Participating Educational Agency for its own use, prior to deletion, in such standard formats as may be requested by the Participating Educational Agency.
- In the event the MLA is assigned to a successor Licensor (to the extent authorized by the MLA), the Licensor will cooperate with Southern Westchester Board of Cooperative Educational Services as necessary to transition Protected Data to the successor Licensor prior to deletion.
- Neither Licensor nor any of its subcontractors or other authorized persons or entities to whom it has disclosed Protected Data will retain any Protected Data, copies, summaries or extracts of the Protected Data, or any de-identified Protected Data, on any storage medium whatsoever. Upon request, Licensor and/or its subcontractors or other authorized persons or entities to whom it has disclosed Protected Data, as applicable, will provide Southern Westchester Board of Cooperative Educational Services with 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 Licensor, 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 Licensor by following the appeal process in their employing school district's applicable APPR Plan.

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