



# Contract Submittal Form

## Cover Sheet and Overview

Agency Name

Contract Amount

Start Date

End Date

**This is a:** ☐ New Contract ☐ Renewal

**Select funding source:** ☐ General Fund ☐ Partial Reimbursement ☐ Grant

Budget Code

Submitted By

Submitted On (date)

For Board Meeting (date)

**Primary services to be provided through this contract:**

**If confirming order (services are already underway) please explain the reason:**

### To be reviewed by *(only check applicable cabinet members)*

☐ **Lori A. McKenna**  
*Secondary Instruction* ☐ Accepted ☐ Not Accepted **Initials:**  **Date:**

☐ **Cecily Wilson-Turner, Ed.D.**  
*Elementary Instruction* ☐ Accepted ☐ Not Accepted **Initials:**  **Date:**

☐ **Kent Baker**  
*Technology/Data Protection* ☐ Accepted ☐ Not Accepted **Initials:**  **Date:**

☐ **Karen Bechdol**  
*Curriculum, Instruction and PD* ☐ Accepted ☐ Not Accepted **Initials:**  **Date:**

☐ **Ron Lesko**  
*Communication and Operations* ☐ Accepted ☐ Not Accepted **Initials:**  **Date:**

☐ **Matthew Petrin**  
*Human Resources* ☐ Accepted ☐ Not Accepted **Initials:**  **Date:**

☐ **Eileen Leffler**  
*Grants and Program Development* ☐ Accepted ☐ Not Accepted **Initials:**  **Date:**

☐ **John Yagielski**  
*Business and Finance (Interim)* ☐ Accepted ☐ Not Accepted **Initials:**  **Date:**

☒ **Kaweeda G. Adams**  
*Superintendent* ☐ Accepted ☐ Not Accepted **Initials:**  **Date:**

☒ **Honeywell Law Firm**  
*Attorneys for the District* ☐ Accepted ☐ Not Accepted **Initials:**  **Date:**

### Reviewer's comments *(if applicable)*



## Contract Submittal Form Cover Sheet and Overview

### Please indicate which district goals are supported by this contract:

- ☐ **Increase student achievement** in early literacy, close the achievement gaps and increase graduation rate by focusing on the unique factors that impact student success.
- ☐ **Enhance the delivery of quality instruction** by providing our teachers and staff with high-level, meaningful professional development to promote student growth and proficiency.
- ☐ **Build our leadership capacity and increase accountability** through ongoing professional growth opportunities designed to improve effective leadership in our organization.
- ☐ **Empower families** to support the success of their children through relationships of mutual respect and clear and effective communication.
- ☐ **Partner with our diverse community**, including local businesses and community leaders, to engage and empower stakeholders in the wrap-around services needed to support our students.

### Number of Students/Families Served:

### Purpose and Outcomes of the Contract/Program:

### Expected Measurable Results *(For Instructional Contracts Only)*:



# Contract Submittal Form

## Agreement for Consultant/Vendor Services

### District contact:

Name

Title

Building/Department

Email

Phone

### Vendor contact:

Name

Title

Organization Name

Email

Phone

**AGREEMENT** this date of \_\_\_\_\_, by and between the City School District of Albany, hereinafter referred to as "District," with its principal business address at 1 Academy Park, Albany, New York 12207 and \_\_\_\_\_, with a business address at \_\_\_\_\_, hereinafter referred to as "Consultant." District and Consultant may hereinafter be collectively referred to as "the Parties."

**WHEREAS**, the District desires to obtain certain services and activities as described below or in the attachment to this Agreement, hereinafter referred to as the "Scope of Work" or "Work," which is attached hereto and made a part hereof, completed; and

**WHEREAS**, Consultant represents that they are qualified and, where required, licensed and/or certified to provide such services and to do such work and will maintain such qualification(s)/certification(s) during the term of this Agreement; and

**WHEREAS**, the parties have discussed and agreed on the following terms and conditions for such Agreement.

**NOW, THEREFORE**, in consideration of the promises set forth herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged by both Parties, the Parties hereto agree, by and between themselves as follows:

## 1. Term

The Consultant is hereby retained by District as an independent contractor. The terms of this agreement shall begin on \_\_\_\_\_ and extend for, through and include \_\_\_\_\_. This agreement may be terminated prior to \_\_\_\_\_ upon successful completion of the services and activities outlined in this Agreement or upon written notice from the District as is provided below.



# Contract Submittal Form

## Agreement for Consultant/Vendor Services

### 2. Services

Consultant shall perform the services and work (hereinafter "Work") described in "Appendix A" for the District. All such services and work being the responsibility of the Consultant. The District reserves the right to monitor/evaluate services performed under the Agreement.

### 3. Qualifications

Consultant is qualified and if required, licensed and/or certified to provide the services required by this Agreement and will maintain such certification(s)/qualification(s) during the term of this Agreement. Failure to do so will result in termination of this Agreement.

### 4. Schedule

Consultant is free to devote attention to the Work as the Consultant best determines in order to accomplish the objective of the Work and is not required to perform such Work during particular hours, on particular days or in a particular location, unless noted, so long as any time line or deadline for completion of the Work or portions of the Work is satisfied. The Consultant shall work with the District so as to coordinate any work to be performed so as to minimize disruption to District staff and students.

### 5. Fees and charges

#### Consultant's fees

- a) Hourly rate of \$ \_\_\_\_\_, per person, not to exceed \_\_\_\_\_ hours per day and \_\_\_\_\_ total days
- b) Daily rate of \$ \_\_\_\_\_, per day, per person, not to exceed \_\_\_\_\_ days (minimum of 7 hours required per day or the daily rate will be pro-rated)
- c) Fixed amount per unit of service delivered \$ \_\_\_\_\_, not to exceed \_\_\_\_\_ delivery units. The unit of service is defined as: \_\_\_\_\_

The District will only agree to "fixed" amount contracts (c) when it is common for the situation or industry. For example, the fee for an evaluation of a student is typically a per diem evaluation rather than the amount of time it takes.

The total estimated consultant fees based on the time estimates above are \$ \_\_\_\_\_

#### Travel time

☐ **N/A** If this box is checked, this section (Travel Time) is not applicable to this contract and can be disregarded.

The District does not compensate for any travel time required for consultants to travel to and from Albany, or any other location.



# Contract Submittal Form

## Agreement for Consultant/Vendor Services

### Travel Expense Reimbursement

☐ **N/A**

*If this box is checked, this section (Travel Expense Reimbursement) is not applicable to this contract and can be disregarded.*

Expense reimbursements (including, but not limited to, mileage, public transportation (air or train), meals, hotels, etc) will not be permitted for any Consultant located within 50 miles of 1 Academy Park, Albany, New York. Consultants outside of this mileage limit may be allowed reimbursement for travel expenses only if specifically noted in this Agreement or on any attached supplement to this Agreement if they are disclosed in this section (see "estimated reimbursable travel" below).

Any allowable reimbursable travel costs must follow the US General Services Administration Allocations with respect to meals, incidentals and hotel rates, as well as mileage and other transportation expenses where applicable. The per diem and allowed rates are provided from the US General Services Administration. No alcoholic beverages are allowed for reimbursement under any circumstance.

The District will only reimburse travel expenses based upon itemized receipts submitted fully documenting the date, time, location and cost such expenses, but expenses will be capped based upon the US General Services Administration guidelines.

If permitted, the total estimated reimbursable travel expenses under this Agreement are \$ . If any travel expenses are included in any attached supplement(s) to this agreement, the total amount must be disclosed here or it will be disqualified from reimbursement eligibility.

### Other expenses

☐ **N/A**

*If this box is checked, this section (Other expenses) is not applicable to this contract and can be disregarded.*

With the exception of training materials for District employees as noted below, the District is not responsible for any expense except for the items covered above and within the guidelines.

Please specify the training materials to be used and the number of District employees to be trained:

Please indicate the total cost of materials (if applicable): \$

### Total Compensation

The total compensation of this Agreement shall not exceed \$ (includes consultant time, travel reimbursements and training materials as indicated above) unless prior approval is obtained in writing from the Superintendent of Schools.

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## 6. Virtual Environment Acceptable Platforms

☐ **N/A**

*If this box is checked, this section (Virtual Environment Acceptable Platforms) is not applicable to this contract and can be disregarded.*

Consultant shall only utilize district approved platforms of Microsoft Teams and/or Google Classroom for performing any services in a virtual environment. The consultant will be provided with a district network account that must be used in these platforms.

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### 7. Payment

Payment pursuant to this Agreement is dependent upon the satisfactory completion of work, faithful compliance with the Agreement, acceptance of the Work by District, and periodic submission of invoice(s) adequately and fully describing Work performed. When the fee is on an hours or a per diem basis, any consultant time which is invoiced must reflect in detail the time and date such time was worked by specific individuals and total time/days by individual (i.e. collective or cumulative time bills are not permitted).

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### 8. Independent Contractor

Consultant is an independent contractor and neither the Consultant nor any of its employees, sub-consultants, or agents are employees of the District. The Consultant and any of its employees, sub-consultants, or agents are not entitled to participate in any benefit plan afforded to the employees of the District, Worker's Compensation, unemployment insurance benefits, nor any other benefit, right or privilege available to employees of District. District will provide Consultant with Internal Revenue Service Form 1099. Consultant is responsible for payment of taxes due for payments under this Agreement.

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### 9. Records

The Consultant shall observe all applicable Federal and New York State requirements relating to the confidentiality of records and information provided to the Consultant by the District, including but not limited to, student records. All records generated by the Consultant as a result of rendering services under the Agreement shall be the property of the District and maintained in District files. The Consultant may maintain duplicate records for its purposes consistent with any confidentiality requirements.

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### 10. Assignment

The Consultant is prohibited from assigning, transferring, conveying, subcontracting, or otherwise disposing of this Agreement and its obligations thereunder without the prior written consent of the District.

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### 11. Indemnification

The Consultant shall defend, indemnify, and save harmless the District, its employees and agents from and against all claims, damages, losses and expenses (including, but not limited to reasonable attorney's fees) arising out of, or in consequence of, any negligent or intentional act or omission of the Consultant, its employees or agents. The District shall defend, indemnify, and save harmless the Consultant from and against all claims, damages, losses, and expenses (including, but not limited to, reasonable attorney's fee) arising out of, or in consequence of, any negligent or intentional act or omission of the District, its employees or agents.

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### 12. Insurance

☐ **N/A** *If this box is checked, this section (Insurance) is not applicable to this contract and can be disregarded.*

The Consultant agrees to procure and maintain, at no additional expense to the District, general liability insurance (including application to any claims of professional liability) in the amount of \$1 million dollars and Worker's

Compensation Insurance in accordance with New York State Law. The Consultant further agrees that, prior to commencing any work under this Agreement, it shall furnish a certificate of insurance to the District showing that the requirements of this provision are satisfied naming the District as an additional insured on the liability insurance. Coverage is on a primary and non-contributory bases, and may not include limiting language. The liability insurance shall further provide that it may not be changed or canceled without thirty (30) days prior written notice to the District.

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### 13. Termination

This Agreement shall terminate upon submission by the Consultant of the product and services described above in a form and manner satisfactory to the District or upon mutual agreement. The Parties reserve the right to terminate this Agreement upon failure by either Party to meet the terms and conditions set forth herein. The District has the right to terminate this Agreement at any time, with or without cause, upon seven (7) days written notice to the Consultant.

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### 14. Non-Discrimination Clause

The Consultant agrees that neither it, nor any of its sub-consultants, or agents, shall violate any Federal or New York State laws regarding discrimination in employment.

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### 15. Instructional Measurable Results for Renewals

☐ **N/A** *If this box is checked, this section (Instructional Measurable Results for Renewals) is not applicable to this contract and can be disregarded.*

For renewal contracts involving professional development relating to instructional practice or services provided directly to students, Consultant is required to complete Appendix B and include it with the submission of this Agreement.

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### 16. Fingerprinting Requirements

☐ **N/A** *If this box is checked, this section (Fingerprinting Requirements) is not applicable to this contract and can be disregarded.*

Applicable Education Law and Commissioner of Education regulations require that employees of contracted services, including consultants, are required to have any and all employees or staff who will come into contact with students complete a required Criminal History Record Check as administered by the New York State Education Department. This applies to all consultants who will come into contact with students (under the age of 21) for at least five (5) school days in any given school year and whom are not volunteering their services. This requirement must be completed prior to the commencement of services and any costs associated with such requirement will be borne by the Consultant. The District's Human Resources Department will coordinate this process.

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# Contract Submittal Form

## Agreement for Consultant/Vendor Services

### 17. Data Privacy

☐ **N/A** *If this box is checked, this section (Data Privacy) is not applicable to this contract and can be disregarded.*

Applicable Education Law and Commissioner of Education Regulations, including, but not limited to, Education Law 2-d, require that third party contractors of school districts protect student and employee data as required under the law and accompanying regulations. Consultant is required to complete Appendix C and include it with the submission of this Agreement and is advised to review the applicable Board of Education Policies, including, but not limited to, Policy 8635, Regulation 8635R, and Exhibit 8635E the Parent Bill of Rights.

### 18. Governing Law

This Agreement shall be governed by, construed and enforced in accordance with the law of the State of New York. Any action by either party related to this Agreement shall be commenced in New York State Supreme Court for the County of Albany.

### 19. Modification

This agreement shall not be altered or otherwise amended without a writing signed by both parties.

### 20. Board Approval

This Agreement is subject to the approval of the Board of Education of the District.

**IN WITNESS WHEREOF**, the parties hereto have executed this agreement on the day and year written below.

#### Board President:

Name

Signature

Date

#### Vendor Contact:

Name

Signature

Date





# Appendix A: Services

The Consultant shall perform the services and work (hereinafter "Work") for the District as described below. All such services and Work are to be performed as the responsibility of the Consultant.

# Appendix B:

## Instructional Measurable Results

☐

**N/A**

*If this box is checked, this section (Appendix B) is not applicable to this contract and can be disregarded.*

**This section is only for instructional contracts which are being renewed**

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Please indicate the expected measurable results of the service **from the original contract**:

Please provide the results of the services below explaining the renewal of this instructional contract:

# Appendix C:

## Student Privacy Data

☐

**N/A**

*If this box is checked, this section (Appendix C) is not applicable to this contract and can be disregarded.*

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The remainder of pages in this contract are all related to Student Privacy Data.

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**If Student Privacy Data is not relevant to this contract, and you have checked the box above, the remaining pages of this contract can be disregarded.**

If Student Privacy Data is relevant to this contract, continue to the following pages.

If you are unsure whether Student Privacy Data is relevant to this contract, please contact our Data Protection Officer at [kbaker1@albany.k12.ny.us](mailto:kbaker1@albany.k12.ny.us) or (518) 475-6195

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This section is only for contracts involving Student Privacy Data.

**If this contract does not involve Student Privacy data, you should not be completing this section.**

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## The Law

NYS Education Law §2-d has been in effect since April 2014. It applies to educational agencies and third-party contractors and is intended to limit collection and use of student data.

A third-party contractor is any person or entity other than an educational agency, that receives student, teacher or principal data from an educational agency pursuant to a contract for purposes of providing services to the educational agency. Services include, but are not limited to;

- Data management or storage OR
- Conducting studies for or on behalf of the educational agency OR
- Audit or evaluation of publicly funded programs.

## NYS Part 121 Regulations

New York State prescribes nine (9) general domains of compliance to enhance the effectiveness of NYS Education Law §2-d. It is the Part 121 regulations that govern the application of the law at the district level. One of the key areas of focus is contracts with third-party vendors and partners.

Data privacy and security obligations related to third-party contractors must be addressed by the district entering into a compliant agreement with vendors to whom we are providing protected Personally Identifiable Information (PII).

## Contractual Requirements

An agreement that covers the requirements defined by Ed Law 2-d must exist either directly between the school district and the product vendor, or, if the product is part of a service obtained through a BOCES CoSer, an agreement between that BOCES and the product vendor. A vendor cannot achieve compliance unilaterally.

The domains below must be addressed by the formal agreement between the vendor and the district to meet the threshold of compliance.

- Exclusive purposes for data use
- Subcontractor oversight details
- Contract lifecycle practices
- Data accuracy/correction practices
- Security practices
- Encryption practices

To achieve consistent and uniform compliance, the district has developed three (3) templates to serve specific scenarios that provide data directly to a vendor for purposes of storage or allow a partner access to PII within district systems.



This section is only for contracts involving Student Privacy Data.

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## Use Cases

There are three possible templates for Student Privacy Data agreements. Please review the cases below to determine which template is applicable to this section. Again, this section should only be completed if Student Privacy Data is relevant to this contract.

Once you have reviewed the information below, please then complete the only corresponding section found in the remaining pages of this contract.

**You do not need to complete all three templates; only the one that is applicable for this contract.**

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### Template 1: District Agreement

Vendor receives data directly without their own agreement

When a vendor or company will receive and store student data in their own systems, a formal agreement is necessary. The district has an agreement template that must be used in cases where the vendor does not already have their own agreement or terms of service document.

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### Template 2: Third Party Supplemental Agreement

Vendor receives data directly with their own agreement

In this scenario, the vendor will receive and store student data for the same purposes described above, but also furnishes their own agreement or terms of service. While their agreement may be extensive and thorough, and may even address all the contractual requirements for NYS Education Law §2-d compliance, this vendor must complete the district's Third Party Supplemental Agreement (Template 2) in order to achieve compliance.

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### Template 3:

Vendor needs access to district systems

The City School District of Albany partners with several service and program providers who often request access to district systems for purposes of reviewing or monitoring students, or performing program evaluation. While this access to student data is a critical element of the program, a Memorandum of Agreement (Template 3) is necessary to ensure compliance with NYS Education Law §2-d.

Even though this partner does not directly receive or store student information, this partner has access to the very sensitive PII that NYS Education Law §2-d strives to protect. As such, the district has an agreement that must be in place before any partner agency is provided access to any district system or location that affords personally identifiable or otherwise sensitive student data.



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## Template 1: District Agreement

Sections 2-c and 2-d of the New York State Education Law require that third party contractors, including casual employees, comply with the Parents' Bill of Rights and ensure privacy of an personally identifiable data shared under this contract. Consultant agrees to comply in every respect with all applicable provisions of section 2-c and 2-d of the NYS Education Law and any subsequently promulgated rules, regulations or laws regarding the same. Contractor has read the Parent' Bill of Rights and has read the District's Student Records Policy and agrees to fully comply with both including any amendments. For reference, the Parents' Bill of Rights is included below. The District will notify Consultant of any significant changes to either policy.

The City School District of Albany, in recognition of the risk of identity theft and unwarranted invasion of privacy, affirms its commitment to safeguarding student personally identifiable information (PII) in education records from unauthorized access or disclosure in accordance with State and Federal law. The School District establishes the following Parental Bill of Rights:

- Student PII will be collected and disclosed only as necessary to achieve educational purposes in accordance with State and Federal Law
- A students' PII cannot be sold or released for any marketing or commercial purposes by the district or any third-party consultant. The district will not sell student PII and will not release it for marketing or commercial purposes, other than directory information released by the district in accordance with district policy
- Parents have the right to inspect and review the complete contents of their child's education record
- State and Federal laws, such as NYS Education Law 2-d and the Family Educational Rights and Privacy Act, protect the confidentiality of students' PII. 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
- A complete list of all student data elements collected by the State Education Department is available for public review online at [nysed.gov](http://nysed.gov) or by writing to: Chief Privacy Officer, New York State Education Department, 89 Washington Ave., Albany, NY 12234
- Parents have the right to have complaints about possible breaches and unauthorized disclosure of student data addressed. Complaints may be directed to the District's Data Protection Officer through submission of a form at [albanyschools.org](http://albanyschools.org) or in writing to the Data Protection Officer, 33 Essex Street, Albany, NY 12206. Complaints can also be directed to the New York State Education Department online at [nysed.gov](http://nysed.gov), by mail to the Chief Privacy Officer, New York State Education Department, 89 Washington Ave., Albany, NY 12234 or by email to [privacy@mail.nysed.gov](mailto:privacy@mail.nysed.gov) or by telephone at (518) 474-0937
- Parents have the right to be notified in accordance to applicable laws and regulations if a breach or unauthorized release of their student's PII occurs
- Parents can expect that educational agency workers who handle PII will receive annual training on applicable federal and state laws, regulations, educational agency's policies and safeguard which will be in alignment with industry standards and best practices to protect PII
- In the event that the District engages a third party provider to deliver student educational services, the contractor or subcontractors will be obligated to adhere to state and federal laws to safeguard student PII. Parents can request information about third part contractors by contacting the District's Data Protection Officer

For purposes of further ensuring confidentiality and security of student data, as well as the security of personally identifiable teacher or principal data, the Parent's Bill of Rights (above) and the following supplemental information must be agreed to in order to access to this information.

The Consultant will ensure that subcontractors or others that the company shares PII with will abide by data protection and security requirements of district policy, and state and federal laws and regulations by the methods described below. By entering into an agreement with the District, Consultant acknowledges it has reviewed the relevant District policies on safeguarding PII, including but not limited to, Policy 8635 and Regulation 8635.



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## Template 1: District Agreement *(continued)*

Describe the specific purpose for which consultant will have access to student personally identifiable information (PII):

Describe consultant's methods/procedures to safeguard data use:

Describe how PII will be stored in a manner that protects data security:

Consultant will take reasonable measures to ensure the confidentiality of PII by implementing password protections, administrative procedures, firewalls and encryption while PII is at motion and at rest. Describe any additional measures that will be taken below (if applicable):

Once consultant has completed its service to the District, indicate whether records containing student PII will be destroyed or returned, and how that process will be executed:

**Parents may challenge the accuracy of PII held by consultant by contacting the following:**

Consultant Contact

Title

Phone

Email

Mailing Address



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## Template 2: Third Party Supplemental Agreement

Describe the specific purpose for which consultant will have access to student personally identifiable information (PII):

Describe consultant's methods/procedures to safeguard data use:

Describe how PII will be stored in a manner that protects data security:

Consultant will take reasonable measures to ensure the confidentiality of PII by implementing password protections, administrative procedures, firewalls and encryption while PII is at motion and at rest. Describe any additional measures that will be taken below (if applicable):

Once consultant has completed its service to the District, indicate whether records containing student PII will be destroyed or returned, and how that process will be executed:

**Parents may challenge the accuracy of PII held by Consultant by contacting the following:**

Consultant Contact

Title

Phone

Email

Mailing Address





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## Template 3: Memorandum of Agreement

Describe the system or data domain to which access is required and the purpose of access:

List the specific elements or describe the type of data access required:

## Agreement for Sharing of Data

This Agreement is entered into by the City School District of Albany, hereinafter referred to as "District", and Partner, hereinafter referred to as "Partner," for the purpose of sharing information between the parties in a manner consistent with the Family Educational Records Privacy Act of 1974 ("FERPA"). The information will be used for research or evaluation, to conduct studies designed to improve instruction, or to provide services for children in the District.

This Agreement (MOA) is to ensure that Partner 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 incorporates the Student Data Privacy Agreement, the Parents Bill of Rights for Data Security and Privacy, and the Third-Party Contractor Supplement.

The Family Educational Rights and Privacy Acts Statute (FERPA) describes circumstances under which Local Educational Agencies (LEAs) and the District are authorized to release confidential data regarding individual students, teachers, and schools without prior parental consent. Confidential information can be disclosed to organizations as stated in section II. 2. and is destroyed per section V.

Consistent with District nomenclature, Partner agrees to ensure that all reports (using data from the National School Lunch Program) will use the terms "Economically Disadvantaged Students" as opposed to "Students that qualify for Free/Reduced Price meals" if the data are reported by sub-groups.

The following terms further specify the manner in which the District agrees to share data with Partner, subject to FERPA regulations:

### I. Parties

The District is a state educational authority authorized to receive information from local educational agencies ("LEAs") subject to FERPA, as authorized by 34 CFR Section 99.31. Researcher desires to conduct studies on behalf of the and LEAs for the purpose of improving instruction in public schools. The parties wish to share data collected by the District regarding education within the district, some of which may allow the identification of individual students.



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## II. Compliance with FERPA

To effect the transfer of data subject to FERPA, Partner agrees to:

1. In all respects comply with the provisions of FERPA. For purposes of this Agreement, "FERPA" includes any amendments or other relevant provisions of federal law, as well as all requirements of Chapter 99 of Title 34 of the Code of Federal Regulations and reauthorization when effective. Nothing in this Agreement may be construed to allow either party to maintain, use, disclose or share student information in a manner not allowed by federal law or regulation.
2. Use the data shared under this Agreement for no purpose other than research and analysis authorized under Section 99.31(a)(6) of Title 34 of the Code of Federal Regulations which allow disclosure of personally identifiable information from students' education records in connection with the District's conducting studies to develop, validate, or administer predictive tests, administer student aid programs, or improve instruction. Use the data pursuant to 42 USC 1758(b)(6)(A)(i)(II) which allows for disclosure of student eligibility for free or reduced priced meals under the USDA's School Lunch Program for a State education program administered by the State or local educational agency. Partner further agrees not to share data received under this MOA with any other entity without District approval.
3. Require all employees, contractors and agents of any kind to comply with all applicable provisions of FERPA and other federal laws with respect to the data shared under this Agreement. Partner agrees to require and maintain an appropriate confidentiality agreement from each employee, contractor or agent with access to data pursuant to this Agreement. Nothing in this paragraph authorizes sharing data provided under this Agreement with any other entity for any purpose other than completing Partner's work authorized under this Agreement.
4. Maintain all data obtained pursuant to this Agreement in a secure computer environment and not copy, reproduce or transmit data obtained pursuant to this Agreement except as necessary to fulfill the purpose of the original request. All copies of data of any type, including any modifications or additions to data from any source that contains information regarding individual students, are subject to the provisions of this Agreement in the same manner as the original data. The ability to access or maintain data under this Agreement shall not under any circumstances transfer from Partner to any other institution or entity or unauthorized individual or agent.
5. Not to disclose any data obtained under this Agreement in a manner that could identify an individual student, except as authorized by FERPA, to any other entity. Partner may publish results of studies authorized by this Agreement, but specifically agrees to abide by the District "small cell suppression" policy of deleting all data items that include any group of students less than ten (10), and to require all employees, contractors and agents of any kind to also abide by that policy.
6. Not to provide any data obtained under this Agreement to any party ineligible to receive data protected by FERPA or prohibited from receiving data from any entity by virtue of a finding under Sections 99.67(c), (d), or (e) of Title 34, Code of Federal Regulations.
7. Provide to the District a list of specific activities for which the confidential data are being used, and to notify the District in advance and in writing of any new project or research question Partner proposes to address. This list of research studies will identify linkages of all data possessed by Partner under this Agreement and covered by FERPA to specific research studies. Further, it will include the fixed ending date for use of all data linked to each project. Partner agrees to neither amend nor alter the scope, design, format or description of a project or report generated by Partner for this project, except as consistent with the Agreement, without prior written notice to District.

## III. Common Core Implementation Reform Act, Education Law §2-D

As part of the Common Core Implementation Reform Act, Education Law §2-d requires that every contract, where the third party contractor receives student data, provides important protections for student data, and remedies for breaches of the responsibility to maintain the security and confidentiality of such data.

The law applies to personally identifiable information contained in student records of an educational agency. The term "student" refers to any person attending or seeking to enroll in an educational agency, and the term "personally identifiable information" ("PII") uses the definition provided in FERPA. Under FERPA, personally identifiable information or PII includes, but is not limited to:



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- (a) The student's name;
- (b) The name of the student's parent or other family members;
- (c) The address of the student or student's family;
- (d) A personal identifier, such as the student's social security number, student number, or biometric record;
- (e) Other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name;
- (f) Other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or
- (g) Information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates.

For purposes of further ensuring confidentiality and security of student data, third party contractors must also include the following provisions and assurances:

- (a) That the confidentiality of the student, teacher or principal data will be maintained in accordance with federal and state law, and the educational agency's policy on data security and privacy;
- (b) Access to education records will be limited to individuals with legitimate educational interests;
- (c) Education records will not be used except for purposes explicitly authorized in the contract;
- (d) Education records may only be shared with authorized representatives of the third party contractor to the extent they are carrying out the contract, and not to any other party without the prior written consent of the parent or eligible student; or unless required by statute or court order, with notice then provided to the department, the district board of education, or institution that provided the information no later than the time the information is disclosed, unless such notice is prohibited by the statute or court order;
- (e) The reasonable administrative, technical and physical safeguards maintained to protect the security, confidentiality and integrity of personally identifiable student information in its custody;
- (f) Data will be encrypted in motion or in custody using a technology or methodology specified by the United States health and human services guidance issued under Section 13402(H)(2) of Public Law 111-5
- (g) Requirement to notify the educational agency of any security breach resulting in an unauthorized release of data by the third party contractor or its assignees in violation of applicable state or federal law, the parents bill of rights for student data privacy and security, the data privacy and security policies of the educational agency and/or binding contractual obligations, in the most expedient way possible and without unreasonable delay.
  - 1. In the case of an unauthorized release of student, teacher or principal data, the educational agency shall notify the parent or eligible student, teacher or principal, respectively, of the unauthorized release of student data that includes personally identifiable information in the most expedient way possible and without unreasonable delay, and the third party contractor must promptly reimburse the educational agency for the full cost of such notification.



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### IV. HIPAA assurances

The following terms used in this Agreement shall have the same meaning as those terms in the specific definitions:

- (a) Business Associate. "Partner" shall generally have the same meaning as the term "business associate" at 45 CFR 160.103.
- (b) Covered Entity. "District" shall generally have the same meaning as the term "covered entity" at 45 CFR 160.103.
- (c) HIPAA Rules shall mean the Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use at 45 CFR Part 160 and Part 164.
  - 1. Recognize that HITECH (the Health Information Technology for Economic and Clinical Health Act of 2009) and the regulations thereunder (including 45 CFR. Sections 164.308, 164.310, 164.312, and 164.316), apply to a business associate of a covered entity in the same manner that such sections apply to the covered entity;
  - 2. Not use or further disclose the PHI, except as permitted by law;
  - 3. Not use or further disclose the PHI in a manner that had the Covered Entity done so, would violate the requirements of HIPAA;
  - 4. Use appropriate safeguards (including implementing administrative, physical, and technical safeguards for electronic PHI) to protect the confidentiality, integrity, and availability of and to prevent the use or disclosure of the PHI other than as provided for by this Agreement;
  - 5. Comply with each applicable requirements of 45 CFR. Part 162 if the Business Associate conducts Standard Transactions for or on behalf of the Covered Entity;
  - 6. Report promptly to the Covered Entity any security incident or other use or disclosure of PHI not provided for by this Agreement of which Business Associate becomes aware;
  - 7. Ensure that any subcontractors or agents who receive or are exposed to PHI (whether in electronic or other format) are explained the Business Associate obligations under this paragraph and agree to the same restrictions and conditions;
  - 8. Make available PHI in accordance with the individual's rights as required under the HIPAA regulations;
  - 9. Account for PHI disclosures for up to the past six (6) years as requested by Covered Entity, which shall include: (i) dates of disclosure, (ii) names of the entities or persons who received the PHI, (iii) a brief description of the PHI disclosed, and (iv) a brief statement of the purpose and basis of such disclosure;
  - 10. Make its internal practices, books, and records that relate to the use and disclosure of PHI available to the US. Secretary of Health and Human Services for purposes of determining Customer's compliance with HIPAA; and
  - 11. Incorporate any amendments or corrections to PHI when notified by Customer or enter into a Business Associate Agreement or other necessary Agreements to comply with HIPAA.

### V. Data requests

The District may decline to comply with a request if it determines that providing the data requested would not be in the best interest of the district. All requests shall include a written statement of the purpose for which it is requested and an estimation of the time needed to complete the project for which the data is requested. Data requests may be submitted in writing by post, electronic mail or facsimile.



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## VI. Authorized representative

Partner shall designate in writing a single authorized representative able to request data under this Agreement. The authorized representative shall be responsible for transmitting all data requests and maintaining a log or other record of all data requested and received pursuant to this Agreement, including confirmation of the completion of any projects and the return or destruction data as required by this Agreement. Partner designates authorized representative as the authorized representative of the Department's data. The District or its agents may upon request review the records required to be kept under this section.

## VII. Related parties

Partner represents that it is authorized to bind to the terms of this agreement, including confidentiality and destruction or return of student data, all related or associated institutions, individuals, employees or contractors who may have access to the data or may own, lease or control equipment or facilities of any kind where the data is stored, maintained or used in any way. Data may be stored on a server with additional data but may not be merged with any other data without prior written permission from the District. This Agreement takes effect only upon acceptance by authorized representatives of Partner, by which that institution agrees to abide by its terms and return or destroy all student data covered by this MOA 12 months following the date of publication of the final report of this project.

## VIII. Terms

1. This Agreement takes effect upon signature by the authorized representative of each party and will remain in effect until the end date listed on both pages 1 and 3 of this contract (MAY NOT EXCEED 6/30 OF CURRENT YEAR). The parties further understand that the District may cancel this Agreement at any time, upon reasonable notice. The District specifically reserves the right to cancel this Agreement should the District, in its sole discretion, determine that confidential student information has been released in a manner inconsistent with this Agreement, has not been maintained in a secure manner, or that substantially similar data access has become generally available for research purposes through any other mechanism approved by the District.
2. Partner understands that the Agreement does not convey ownership of data to Partner.
3. Any cloud storage or processing will require the express written consent of the District.
4. Data from the District must not be taken outside the United States.
5. Partner will provide the District with an electronic copy of the final versions of all reports and other documents associated with the project. The District, as the owner of the data, reserves the right to distribute and otherwise use the final report and associated documents in its discretion, in sum or in part. Partner, or its agents working on this project, retain the right to publish findings in other publications, provided that prior notice of report is first shared with the District.
6. Partner has the right, consistent with scientific standards, to publish, present or use the study results gained in the course of the research under this Agreement. In order to protect the confidentiality of previously identified confidential information disclosed to Partner, the authorized representative agrees to provide to the District any proposed publications or presentations which are to make public any findings, data, or results of the research under this Agreement for the Department's review at least thirty (30) days prior to submission of a manuscript or abstract for publication or the date of the presentation. Partner agrees to delete any of the District's previously identified confidential information therefrom.



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### IX. Authorizations

#### Accepted on behalf of District:

Name

Signature

Title

Date

#### Accepted on behalf of Consultant:

Name

Signature

Title

Date