

Education Record Release and Data Use Agreement

This Education Record Release and Data Use Agreement, by and between City School District of Albany (the “Client”) and Education Analytics, Inc. (“EA”), is dated as of the date set forth below (the “Data Use Agreement” or this “Agreement”). Capitalized terms not otherwise defined herein have the meanings assigned to them in the Agreement for Scheduled Services, by and between the Client and EA, dated as of the [29] of [April] 2019 (hereinafter referred to as the “Institutional Functions Agreement”).

RECITALS

WHEREAS, the Family Education Rights and Privacy Act, 20 U.S.C. § 1232(g) and 34 C.F.R. § 99.31 (“FERPA”), allows educational agencies and institutions to disclose students’ education records that include Personally Identifiable Information (defined below) (each an “Education Record”, collectively, “Education Records”), without the consent of eligible students or parents, if such disclosure is to one or more school officials whom the educational agency or institution has determined to have a “legitimate educational interest” in the Education Records. 20 U.S.C. § 1232g(b)(1)(A) and 34 C.F.R. § 99.31(a)(1);

WHEREAS, the Client and EA agree that the term “Personally Identifiable Information” for purposes of this Agreement shall be defined as direct or indirect information in a student’s Education Record that could be used by a reasonable person to identify that student;

WHEREAS, the National School Lunch Act, 42 U.S.C. § 1758(b)(6) (“NLSA”), allows local education programs to use information collected from an application for free or reduced price meals without the consent of the parent or natural guardian and without criminal penalty if such information is limited to the income eligibility status of a child for whom such application was submitted and is used for the benefit of the local education program (“Income Eligibility Information”). Section 9(b)(6) 42 U.S.C. § 1758(b)(6);

WHEREAS, the Client is an educational institution that receives funds from the United States Department of Education and is therefore, subject to FERPA;

WHEREAS, the Client is a local education program and is in receipt of applications for free or reduced-price meals that were submitted on behalf of students and is therefore, subject to NLSA;

WHEREAS, the Client desires to outsource certain institutional functions (described summarily in Schedule A and defined herein as “institutional functions”) and in furtherance thereof, entered into the Institutional Functions Agreement with EA;

WHEREAS, the Parties agree that EA has a “legitimate educational interest” in the Education Records and the Income Eligibility Information (collectively hereinafter referred to as the “Confidential Data”) because it will act on behalf of and at the request of the Client to further its educational purposes. 34 C.F.R. § 99.31; and

WHEREAS, to protect the privacy of the Confidential Data during the term of the Institutional Functions Agreement, the Parties hereto agree to enter into this Data Use Agreement to set forth their understanding with respect to the terms and conditions for such use.

NOW, THEREFORE, for good and adequate consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. Institutional Functions.

The institutional functions covered under this agreement are summarily described in Schedule A (attached hereto). The description set forth in Schedule A contains the following information:

- A. Title of the project;
- B. Purpose of the project;
- C. Scope of the project;
- D. Duration of the project;
- E. The information to be disclosed by the Client and a description of any necessary data handling activities/conditions prior to the release of Confidential Data by the Client;
- F. Name and contact information of the supervisor directly responsible for managing the Confidential Data in question;
- G. A description of any necessary data handling activities/conditions that each team member of the EA staff will perform during the course of the project.

To the extent that there is a discrepancy between the summary listing of services (as set forth above and in Schedule A of the Data Use Agreement) and the detailed description of services (as set forth in the Institutional Functions Agreement), the description of services detailed in the Institutional Functions Agreement shall prevail.

2. Changes to the Request Information.

If the list of requested institutional functions changes during the term of the Data Use Agreement due to EA's actions, then EA shall, within five (5) business days of such change, notify the Client in writing of such change pursuant to Section 15 below. The Client shall have ten (10) business days from the date such notice was deemed to be effective to provide EA with written approval or disapproval of such change. If EA has not received written notification of approval or disapproval of the change from the Client within the time-period contemplated herein, EA shall send a second (2nd) written notice of such change to the Client pursuant to Section 15 below. Until EA receives written notification of approval or disapproval of such change from the Client, the Parties agree that EA may continue to provide institutional functions with such change incorporated therein. If EA does not receive written approval or disapproval of such change from the Client within ten (10) business days of the second notice, the Client's approval of such change shall be deemed granted.

3. Acknowledgment of Release of Confidential Data and Direct Control.

- A. The parties acknowledge that EA and the EA staff, described below, shall be considered "school officials" pursuant to U.S.C. § 1232g(b) and 34 C.F.R. § 99.31(a) for the purpose of performing the institutional functions described in Schedule A.
- B. EA acknowledges that the term "Confidential Data" may include the Client's student information system (SIRS) data or any other data that the Client deemed confidential and provided EA with prior written notice thereof.
- C. The parties acknowledge that the Client, or the Client's RIC/BOCES or New York State Education Department (NYSED) on behalf of the Client, is releasing Confidential Data to EA so that EA may

provide the Client with the institutional functions described in Schedule A and that the release of the Client's Confidential Data to EA is necessary to the performance of this institutional function.

- D. EA acknowledges that, for purposes of FERPA, it is under the direct control of the Client with respect to the use and maintenance of education records maintained by the Client and disclosed under this Data Use Agreement.

4. Ownership of Data.

- A. The Confidential Data provided by the Client, or the Client's RIC/BOCES or NYSED on behalf of the Client, under this Agreement are and shall remain the property of the Client.
- B. The Client acknowledges that EA may retain certain portions of the Confidential Information (defined above), so long as such portions do not include Personally Identifiable Information and are used only for the purpose of research and growth model enhancements. The de-identified portions of the Confidential Information shall hereinafter be referred to as "De-Identified Client Data." EA agrees that the De-Identified Client Data shall be used at the analysis level only and shall not identify the state, school, teacher or student in relation to the use of the De-Identified Client Data. EA shall inform the Client of its methods for creating De-Identified Client Data and shall make the De-Identified Client Data reasonably available to the Client to enable the Client to make a determination that the data does not contain any Personally Identifiable Information from the Client.
- C. This Data Use Agreement does not grant the Client any license to EA Intellectual Property or Existing Technology (as those terms are defined in the Institutional Functions Agreement), which may include, but are not limited to, any proprietary analytical tools used by EA in the creating, generating or determining research or analysis results.

5. EA Confidentiality Obligations.

- A. EA shall only use the Confidential Data for the institutional functions described in Schedule A. Use of the Confidential Data by EA for any other purpose is strictly prohibited.
- B. EA shall not share the Confidential Data with anyone, except EA staff, EA's subcontractors, and EA's attorneys (but only for the purposes of advising EA regarding its rights and responsibilities under the Data Use Agreement and/or the Institution Functions Agreement). See Schedule A for a list of EA teams authorized to perform the institutional function.
- C. EA shall require all members of EA staff to comply with FERPA and other applicable state and federal student privacy laws as well as state policies and any applicable Parents Bill of Rights pursuant to NY Education Law 2-d. EA shall require and maintain confidentiality agreements with each member of the EA staff that is an authorized user of Confidential Data. A copy of the current EA employee research confidentiality agreement is attached to this Data Use Agreement as Schedule B.
- D. EA shall use its best efforts to protect Confidential Data and perform the institutional functions in a manner that does not permit identification of students and their parents by anyone except those bound by this Data Use Agreement and the Client. EA shall store all Confidential Data using current industry best practices for secure data storage. EA shall notify the Client as soon as practicable if it learns of any security breach to the server containing the Confidential Data or of any disclosure of Confidential Data to anyone other than EA staff or the EA officials authorized to receive

Confidential Data. EA shall cooperate and take all reasonable means prescribed by the Client to secure any breaches as soon as practicable.

- E. EA certifies that it has the capacity to restrict access to Confidential Data solely to EA staff and ensure that the Confidential Data is accessed only for the purposes described in Schedule A. Except as otherwise provided in Section 4(B) above, EA shall destroy all Confidential Data within 1 year after it is no longer needed to perform the institutional functions described in Schedule A, upon the Client's request or upon termination of this agreement, whichever occurs first or unless otherwise agreed to in writing by the Parties. EA shall provide written verification of the data destruction to the Client within 45 days after the data is destroyed.
- F. EA shall permit the Client, at the Client's cost, to audit, upon reasonable request and during normal working hours, that it has destroyed the data as verified.
- G. If EA becomes legally compelled to disclose any Confidential Data (whether by judicial or administrative order, applicable law, rule or regulation, or otherwise), then EA shall use all reasonable efforts to provide the Client with prior notice before disclosure so that the Client may seek a protective order or other appropriate remedy to prevent the disclosure; provided, however, that EA will use all reasonable efforts to maintain the confidentiality of Confidential Data. If a protective order or other remedy is not obtained prior to when any legally compelled disclosure is required, EA will only disclose that portion of Confidential Data that it is legally required to disclose.

6. Transfer Protocol.

- A. The parties shall work cooperatively to determine the data necessary for EA to perform the institutional function for the Client described in this Agreement and to ensure that EA obtains access to only those education records in which it has legitimate educational interests.
- B. The parties shall work cooperatively to determine the proper medium and method for the transfer of Confidential Data between each other.
- C. The Client agrees to allow the Client's their RIC/BOCES or NYSED to share their Confidential Data on their behalf.

7. Permission to Use data.

The Client acknowledges that by entering this agreement it is approving, in writing, EA's use of Confidential Data to perform the institutional functions described in this Data Use Agreement and the Institutional Functions Agreement.

8. Publications and Public Releases.

EA may use details and/or results of the services provided to the Client pursuant to the Institutional Functions Agreement; provided, however, the use of any such details or results shall be limited to educational and/or marketing purposes; provided, further, however, any such details or results shall not include Personally Identifiable Information.

9. Remedies.

In the event of a material breach or material threatened breach of Section 5 of this Agreement by EA, the Client may be entitled to preliminary and permanent injunctions, enjoining and restraining the material breach or material threatened breach if the Client is, as determined by a court of competent jurisdiction, able to (a) produce sufficient evidence that it has suffered or will suffer irreparable harm, and (b) present specific findings of fact that support the elements necessary to support such requested injunctive relief. Notwithstanding the aforementioned, this Section 9 shall not be interpreted so as to deny EA's ability to avail itself of the Dispute Resolution measures set forth in Section 16 below.

10. Binding Effect and Assignability.

The rights and obligations of each party under this Agreement shall inure to the benefit of and shall be binding upon that party and its respective successors and assigns.

11. Waiver.

The failure by one party to require performance of any provision shall not affect that party's right to require performance at any time thereafter, nor shall a waiver of any breach or default of this Agreement constitute a waiver of any subsequent breach or default or a waiver of the provision itself. No modification, amendment, waiver or release of any provision of this Agreement or of any right, obligation, claim or cause of action arising from this Agreement shall be valid or binding for any purpose unless in writing and duly executed by the party against whom they are asserted.

12. Severability.

Any provision of this Agreement that is declared invalid by a court of competent jurisdiction or by operation of law, shall not affect the validity or enforceability of any other provision of this Agreement.

13. Term.

This Agreement shall remain effective until the termination of the Institutional Functions Agreement, unless terminated earlier by either party upon thirty (30) days advanced written notice. However, notwithstanding termination of this Agreement, EA shall continue to meet all of its confidentiality obligations described in Section 5, above until such time as EA destroys the Confidential Data pursuant to Section 5(E) above.

14. Governing Law.

Except as otherwise stated in this Agreement, the validity, interpretation and performance of this Agreement shall be determined according to the laws of the State of New York.

15. Notice.

Unless otherwise specifically provided in this Data Use Agreement, all notices and other communications required or permitted to be given hereunder shall be in writing, directed or addressed to the respective addresses of the parties set forth below, and shall be either (i) delivered by hand, (ii) delivered by an internationally recognized commercial overnight delivery service, (iii) mailed postage prepaid by registered

or certified mail, or (iv) transmitted by facsimile or electronic mail, with receipt confirmed. Such notices shall be effective: (a) in the case of hand deliveries when received; (b) in the case of overnight delivery service; when received in accordance with the records of such delivery service; (c) in the case of registered or certified mail, upon the date received by the addressee as determined by the Postal Service; and (d) in the case of facsimile or electronic mail notices, when electronic indication of receipt is received.

If to the Client: City School District of Albany
1 Academy Park
Albany, NY 12207

If to EA: Education Analytics, Inc.
131 W. Wilson St. Suite 200
Madison, Wisconsin 53703

16. Dispute Resolution.

In the event of a dispute among the parties to this Data Use Agreement regarding the provisions of this Agreement, any party may, by written notice to the other parties, call for mediation of the dispute before a mediator to be agreed upon by the parties. If the dispute is not resolved by mediation within 30 days of such notice, then any party may proceed to exercise all rights and remedies available under applicable law and this Agreement.

17. Counterparts; Electronic Signatures.

This Data Use Agreement may be executed in counterparts, each of which shall be deemed an original, but all counterparts together shall constitute but one and the same agreement. Electronically signed documents shall be accepted by all parties as original for purposes of this Data Use Agreement. This Data Use Agreement shall be the dated as of the date on which it was signed by the last party to sign it.

For the Client



Name Kent Baker

Date April 29, 2019

Title Assistant Superintendent
Assessment, Accountability and Technology Innovation

For EA



Andrew Rice
Vice President of Research and Operations
Education Analytics

4/30/2019

Date

Schedule A

Education Record Release and Data Use Agreement

Summary Description of Institutional Functions

1. Title of the project: New York State – NWEA MAP Project.
2. Purpose: To provide growth models and Student Learning Objectives (SLOs) services for approved NWEA assessments.
3. Scope: Education Analytics (EA) uses the NWEA MAP assessment data with SIRS data to create growth models and SLOs for New York districts. EA's results cover teachers who teach in grades K-10 in Mathematics, Reading, and Language Usage.
 - a. EA is responsible for distribution and collection of expected teacher templates, data cleaning, data analysis, and providing results to all districts that participate in this project.
 - i. Results to include:
 1. Growth Model results for Teacher-level, Grade-level, and School-level
 2. SLOs for Teacher-level, Grade-level, and School-level
 - b. The Client releases confidential student and staff data, specifically student and staff personally identifiable information that are garnered from the Student Information Repository System (SIRS) data system to a third party, known as Education Analytics.
4. Duration of the project: To begin in May and will remain in effect for twelve months. All data due dates and information needed leading up to results will be outlined during participant notification.
5. Confidential Data (i.e., Education Records and/or Income Eligibility Information) requested to be disclosed and a description of any necessary data handling activities/conditions prior to disclosure.
 - a. Data Use Agreements to be signed and returned to EA
 - b. SIRS data files to be provided to EA:
 - i. Course
 - ii. Course Instructor Assignment
 - iii. Programs Fact
 - iv. School Entry Exit
 - v. Staff Snapshot
 - vi. Staff Student Course
 - vii. Student Class Entry Exit
 - viii. Student Lite
 - c. Client SIRS data provided to EA by June 28th, 2019
 - d. Expected Teacher template uploaded by the Clients by June 28th, 2019.

Name and contact information of the individual directly responsible for managing the Confidential Data in question.

Data Manager: Ms. Lalanthika Vasudevan
lvasudevan@edanalytics.org

Name of EA teams requesting authorization to access the Confidential Data, including any necessary data handling activities/conditions that each team will perform.

Data Analysts, IT, Data Strategists, Researchers

Schedule B

Education Analytics, Inc. Employee Research Confidentiality Agreement

The purpose of this agreement is for employees of Education Analytics, Inc. (EA) to understand and acknowledge their responsibilities to protect and safeguard the restricted use of confidential information to which they have access during their employment.

To perform the responsibilities of my job at EA, I therefore agree as follows:

1. That “confidential information” includes education records directly related to an individual student, which contain personally identifiable information. Confidential information may also include student and family income eligibility information obtained from an application for free and reduced-price meals;
2. That “disclosure” means to permit access to or the release, transfer or other communication of confidential information to any party, by any means;
3. That because of my employment duties or research activities with EA I will have authorized access to confidential information of others and that but for this authorization this confidential information would not be disclosed to me;
4. That the disclosure and maintenance of education records is subject to state and federal student privacy laws, including the federal Family Educational Rights and Privacy Act; and that the disclosure of income eligibility information obtained from an application for free and reduced-price meals is subject to the National School Lunch Act.
5. During my employment and after the termination of my employment, I shall maintain the confidentiality of confidential information and will not reproduce or disclose the contents of any confidential information to any party not authorized to receive this confidential information and will only use this confidential information as directed by EA and solely for purposes authorized within the scope of my employment duties or research activities with EA.
6. I understand and acknowledge that unauthorized disclosure of confidential information could be highly damaging to the students, parents of the students and educational agency to whom this information belongs or pertains.
7. In order to maintain the confidentiality of confidential information:
 - a. I shall take all precautions and follow all measures specified by EA to protect confidential information in a manner that does not permit disclosure to anyone except those authorized to receive confidential information, including the safeguarding of EA IT system passwords and identifications.
 - b. I shall not remove materials containing confidential information from EA or EA sanctioned servers unless authorized to do so.

- c. I shall submit for review by appropriate personnel a copy of any report, article or public statement that concerns the use of confidential information prior to its dissemination in order to assure that no confidential information will be disclosed.
 - d. When I no longer have a need to access confidential information, upon termination of any project or as requested by my supervisor, I shall immediately return any confidential information and copies to EA; or, if I destroy any confidential information, either upon request by EA or the owner of the information or as required by law, I shall create a written record certifying the destruction of the confidential information.
 - e. I shall immediately notify my supervisor if:
 - i. I learn of any unauthorized or accidental disclosures of confidential information;
 - ii. I am asked to disclose confidential information to a proposed recipient who I am unaware is authorized to receive the information; and
 - iii. I have questions relating to what constitutes confidential information.
8. I understand and acknowledge that EA or any other party affected by a breach or threatened breach of this agreement by me will be entitled to injunctive and other equitable relief in addition to any available remedy of law. I further understand that any unauthorized use or disclosure of confidential information to unauthorized persons may be cause for disciplinary and legal action, including monetary fines and/or imprisonment.

I have read this Confidentiality Agreement and understand that adherence to the terms of this Confidentiality Agreement is a condition of my employment with Education Analytics, Inc.

Signature of Employee

Date

Print Name