

Schedule C

Education Record Release and Data Use Agreement

This educational record release and data use agreement is between the STATE Department of Education (“STATE”) and The Board of Regents of the University of Wisconsin System, on behalf of the University of Wisconsin-Madison’s Wisconsin Center for Education Research (“WCER”).

Title I and Title III of the Federal Elementary and Secondary Education Act (currently enacted as The Every Student Succeeds Act of 2015 or “ESSA”) establish Federally-supported education programs and activities related to English language instruction, acquisition and achievement; require local educational agencies and institutions to evaluate and report the biennial progress made by English learners; and require SEAs to develop accountability models for English learners that relate to these children’s development and attainment of English proficiency while meeting challenging State academic content and student academic achievement standards.

The Family Education Rights and Privacy Act (“FERPA”) allows educational agencies and institutions to disclose personally identifiable information (“Confidential Data” or “PII”) from the education records of students, without consent of students or parents, to authorized representatives of SEAs in order to evaluate and comply with these federal programs and legal requirements. 20 U.S.C. § 1232g(b)(1)(C) and (b)(3) and 34 C.F.R. § 99.31(a)(3) and § 99.35.

Concurrently with its entry into this educational record release and data use agreement, STATE and WCER are entering a memorandum of understanding (the “MOU”) to provide services relating to STATE’s compliance with federal requirements under ESSA, including, but not limited to, the administration and scoring of the ACCESS for ELLS English language proficiency assessment (“Evaluation Services”).

The MOU, by its terms, establishes WCER and its subcontractors as authorized representatives of STATE with respect to the Evaluation Services provided by WCER.

WCER wishes to obtain access to and collect personally identifiable information from the education records of students without the consent of the students or their parents during the performance of these Evaluation Services and STATE wishes to acquire these Evaluation Services, while protecting the privacy of students and parents within STATE.

The Parties therefore agree as follows:

1. Acknowledgment of Release of Confidential Data and Description of Use.

- A. The parties acknowledge that STATE is releasing Confidential Data to WCER for the purposes outlined in Section 3(H) below, and that the release of STATE Confidential Data to WCER is necessary for the completion of Evaluation Services. The personally identifiable information to be disclosed to and collected by WCER is attached to this agreement as Exhibit A. WCER shall notify STATE and STATE shall provide written

consent, if approved, of any changes to the list of disclosed information necessary for the provision of Evaluation Services.

- B. WCER will use PII from education records in order to facilitate the administration, scoring and reporting of individual student assessments and to connect student records from year to year in order to establish a longitudinal data set that can be used for the evaluation and federal compliance purposes described in this section. WCER will only use de-identified data and/or aggregated data for evaluation activities once student records are connected.
- C. WCER's use of STATE's Confidential Data is strictly limited to the uses specifically authorized under this agreement. WCER acknowledges that misuse, unauthorized release or violation of the Prohibited Uses Section, below, of STATE's Confidential Data by WCER or its subcontractor(s), etc., or any other violation of this agreement may be determined to be a material breach of the MOU and grounds for termination.

2. Designation of Authority and STATE Access to System.

- A. STATE hereby designates WCER, its subcontractors, including Data Recognition Corporation, and ACCESS for ELLs quality assurance participants as authorized representatives of STATE with respect to the provision of Evaluation Services and, specifically, the use of personally identifiable information disclosed under this agreement.
- B. WCER shall provide STATE and STATE's designated personnel with secure access to Confidential Data via WCER's Assessment Management System.
- C. WCER shall facilitate access to and correction of any factually inaccurate student information in response to an inquiry from an LEA or from the STATE. The STATE shall act as an intermediary on behalf of the LEA for any LEA inquiry.

3. Receiving Institution Obligations.

The undersigned receiving institution, WCER, agrees to abide by the following student privacy and information security requirements:

- A. WCER shall not share Confidential Data with anyone, except those employees of WCER, WCER's subcontractors, including Data Recognition Corporation, and ACCESS for ELLs quality assurance participants ("Authorized Users") that are directly involved and have a legitimate educational interest in providing Evaluation Services according to the terms of the MOU.
- B. WCER shall require all Authorized Users to comply with FERPA and other applicable state and federal student privacy law. WCER shall require and maintain confidentiality agreements with each Authorized User of Confidential Data. The terms of the Authorized User confidentiality agreements shall contain, at a minimum, the terms and conditions

of this educational record release and data use agreement. A copy of the current WCER employee confidentiality agreement is attached to this agreement as Exhibit B. WCER shall perform and cause its subcontractors to perform background checks on all of its employees and agents that are Authorized Users, prior to providing authorized access to Confidential Data. All background checks will be performed in accordance with the State of Wisconsin/University of Wisconsin background checks for employees and contractors.

- C. WCER certifies that it has the capacity to restrict access to Confidential Data solely to Authorized Users and ensure that the Confidential Data is accessed only for the purposes described in this agreement. WCER shall protect Confidential Data in a manner that does not permit personal identification of students and their parents by anyone except those bound by this agreement and STATE. WCER and its subcontractors subject to this section shall maintain a comprehensive information security program that is reasonably designed to protect the security, privacy, confidentiality, and integrity of Confidential Data. A copy of WCER's Standard Security Policies and Procedures is attached to this agreement as Exhibit C. WCER shall notify STATE in accordance with the procedures in Exhibit C if it learns of any of the following:
- i. A use of Confidential Data by anyone that is inconsistent with the terms of this agreement or for a use not authorized under the MOU;
 - ii. A security breach to any system containing Confidential Data; or
 - iii. Any disclosure of Confidential Data to anyone other than an Authorized User or the STATE officials authorized to receive Confidential Data.

WCER shall cooperate and take all reasonable means prescribed by STATE to secure any breaches as soon as practicable.

- D. WCER shall not store, process or transfer Confidential Data outside the United States.
- E. WCER shall not redisclose Confidential Data to any other party without the prior consent of the parent or eligible student.
- F. WCER shall destroy all Confidential Data within 45 days after it is no longer needed to perform the Evaluation Services described in this agreement, upon STATE's request or upon termination of this agreement, whichever occurs first or unless otherwise agreed upon in writing. WCER shall provide written verification of the data destruction to STATE within 45 days after the data is destroyed. Prior to destruction, STATE may request a copy of all electronically stored Confidential Data retained by WCER or its subcontractor in accordance with the Transfer Protocol section below. "Destroy" means to remove Confidential Data from WCER's systems, paper files, records, databases, and any other media regardless of format so that the Confidential Data is permanently irretrievable in the WCER's and Subcontractor's normal course of business.
- G. WCER shall permit STATE, at STATE's cost, to audit, upon reasonable request, that it is complying with the Standard Security Policies and Procedures in Exhibit C and/or that it has destroyed the data as verified.

- H. WCER shall collect and use these Confidential Data only for the purpose of assisting STATE to carry out an audit or evaluation of Federal and State supported education programs and to comply with the Federal legal requirements related to the activities outlined in the MOU, including but not limited to:
 - i. Activities related to the development, administration, scoring and reporting of the annual assessment of student English proficiency;
 - ii. Activities related to the evaluation of federally-supported education programs;
 - iii. Activities related to English language instruction, acquisition, assessment and achievement; and
 - iv. The development of accountability measures and models for limited English proficient children that relate to these children's development and attainment of English proficiency while meeting challenging State academic content and student academic achievement standards.

- I. If STATE requests additional services for activities beyond the scope specified in Section H, above, but consistent with STATE's federal and state requirements, then WCER shall obtain prior written approval from STATE before accessing Confidential Data. Any Confidential Data collected by WCER under activities approved by STATE under this sub-section, which is not regularly collected within the scope of Section H, above, but is consistent with the activities of Section H, shall be subject to the terms and conditions of this agreement.

- J. WCER shall obtain from the University of Wisconsin-Madison Institutional Review Board either approval or a determination of exemption for all research conducted using Confidential Data where required by law and/or University policy.

- K. If WCER becomes legally compelled to disclose any Confidential Data (whether by judicial or administrative order, applicable law, rule or regulation, or otherwise), then WCER shall use all reasonable efforts to provide STATE with prior notice before disclosure so that STATE may seek a protective order or other appropriate remedy to prevent the disclosure; provided, however, that WCER 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, WCER will disclose only that portion of Confidential Data that it is legally required to disclose.

4. Prohibited Uses

- A. WCER shall not sell STATE's Confidential Data, use STATE's Confidential Data for purposes of targeted advertising to students or any party, or use STATE's Confidential Data to create a personal profile of a student other than supporting the Evaluation Services described in this Contract. "Targeted Advertising" means selecting and sending advertisements to a student based on information obtained or inferred over time from the student's online behavior, use of applications, or PII.

- B. WCER shall not use Confidential Data to measure, capture, record or analyze any biological characteristics that can be used for automated recognition of an individual. WCER shall not create or maintain any biometric records, as defined by FERPA, using PII disclosed, captured or received during the course of providing Evaluation Services to STATE.
- C. WCER shall contractually require any subcontractor that it discloses STATE's Confidential Data in accordance with this contract to comply with the requirements of this prohibited uses subsection.

5. Transparency Requirements

WCER shall provide transparency to parents, school districts and the public about its collection and use of PII for ACCESS for ELLs test administrations by posting the following information in plain English on its public website:

- A. Contact information for an individual within WCER's organization that can provide information on or answer questions related to the use of PII by WCER and Data Recognition Corporation.
- B. An explanation of how the PII will be shared with Subcontractors or disclosed to any third party.
- C. The types of PII WCER collects, generates, or uses. This information must include all PII that is collected regardless of whether it is initially collected or ultimately held individually or in the aggregate.
- D. An explanation of the PII, an explanation of how the PII is used, and the learning purpose for which the PII is collected and used.
- E. WCER shall update this information on its website as necessary to maintain accuracy. WCER acknowledges that the STATE may post this information on its public website, in STATE's sole discretion.
- F. WCER shall send the STATE a written notice that includes a clear explanation of the proposed changes prior to making a material change to the transparency information required by this section.

6. Use of Aggregate Data.

- A. In order to provide Consortium level data and analysis to WIDA consortium member states, WCER will aggregate State of STATE data with all other WIDA Consortium member states.
- B. WCER shall follow the recommended practices outlined in the IES-SLDS Technical Brief Statistical Methods for Protecting Personally Identifiable Information in Aggregate

Reporting, December 2010, Brief 3 NCES 2011-603, including the use of a minimum of 10 students for the reporting subgroup size limitation in Aggregate Reporting.

7. Permission to Use Data.

STATE acknowledges that by entering this agreement it is approving, in writing, of WCER's use of these Confidential Data within the scope of purposes outlined in this agreement and Section 3H, above.

8. Transfer Protocol.

The parties shall work cooperatively to determine the proper medium and method for the transfer of Confidential Data between each other. The party receiving Confidential Data shall confirm the transfer of Confidential Data and notify the transferring party as soon as practicable of any discrepancies between the actual data transferred and the data described in this agreement.

9. Remedies.

WCER acknowledges that the breach of this Agreement on its part may result in irreparable and continuing damage to STATE for which money damages may not provide adequate relief. In the event of a breach or threatened breach of this Agreement by WCER, STATE, in addition to any other rights and remedies available to it at law or in equity, may be entitled to preliminary and permanent injunctions, enjoining and restraining the breach or threatened breach.

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.

The term of this Agreement shall be the same as the term of the MOU of even date herewith between STATE and WCER/University of Wisconsin for the development, administration and scoring of ACCESS for ELL's and other testing services, unless terminated earlier by either party upon thirty (30) days advanced written notice.

14. Data Custodians.

The following individuals are the designated data custodians for their respective entities with respect to this educational record release and data use agreement:

For WCER

WIDA Consortium – Data at rest/compliance uses

H. Gary Cook

Research Director

1025. W Johnson St., MD#23

Madison, WI 53706

Phone: 608-890-0471

Email: hcook@wisc.edu

WIDA Consortium – Assessment operational uses

H. Gary Cook

Research Director

1025. W Johnson St., MD#23

Madison, WI 53706

Phone: 608-890-0471

Email: hcook@wisc.edu

For Data Recognition Corporation – Assessment platform vendor

Karen Jans

Sr. Director, Education Programs

13490 Bass Lake Road

Maple Grove, MN 55311

Phone: 763-268-2040

Email: kjans@datarecognitioncorp.com

This educational record release and data use agreement will become effective once STATE and WCER both sign it. The date of this agreement shall be the date on which it is signed by the last party to sign it.