DATA SHARING AND CONFIDENTIALITY AGREEMENT

INCLUDING

Bill of Rights for Data Privacy and Security

AND

Vendor Information Regarding Data Privacy and Security

This Data Sharing and Confidentiality Agreement (the "Agreement") is made and entered into by and between **NYSSMA** (the "Vendor") and Bolivar-Richburg Central School District.

WHEREAS, Bolivar-Richburg Central School District and Vendor are parties to a contract or other written agreement (the "Contract") pursuant to which the Vendor will receive student data and/or teacher or principal data ("Protected Data") that is protected under New York Education Law Section 2-d and Part 121 of the Regulations of the Commissioner of Education (collectively referred to as "Section 2-d") from Bolivar-Richburg Central School District for purposes of providing certain products or services to Bolivar-Richburg Central School District; and

WHEREAS, both Bolivar-Richburg Central School District and Vendor are desirous of fulfilling their respective obligations under New York Education Law Section 2-d;

NOW THEREFORE, in consideration of the mutual promises and covenants contained in the Contract, as well as, this Agreement the parties hereto mutually agree as follows:

1. **Confidentiality**

    a. Vendor, its employees, and/or agents agree that all information obtained in connection with the services provided for in the Agreement is deemed confidential information.

    b. Vendor further agrees to maintain the confidentiality of the Protected Data it receives in accordance with federal and state law and that any information obtained will not be revealed to any persons, firms or organizations.

2. **Data Protections and Internal Controls**

    a. Vendor acknowledges that it may receive and/or come into contact with personally identifiable information, as defined by New York Education Law Section 2-d, from records maintained by Bolivar-Richburg Central School District that directly relate to a student(s) (hereinafter referred to as "education record").

    b. Vendor understands and acknowledges that it shall have in place sufficient protections and internal controls to ensure that information is safeguarded in accordance with applicable laws and regulations, and understands and agrees that it is responsible for complying with state data security and privacy standards for all personally identifiable information from education records, and it shall:

        1. Limit internal access to education records to those individuals that are determined to have legitimate educational interests; and

2. Not use the education records for any other purpose than those explicitly authorized in the Contract and/or Agreement; and

3. Maintain reasonable administrative, technical and physical safeguards to protect the security, confidentiality and integrity of education records in its custody; and

4. To use encryption technology to protect Protected Data in its custody while in motion or at rest, using a technology or methodology specified by the secretary of the United States Department of Health and Human Services in guidance issued under Section 13402(H)(2) of Public Law 111-5.

3. Data Security and Privacy Plan

a. Vendor agrees to have a Data Security and Privacy Plan in place to protect the confidentiality, privacy and security of the Protected Data it receives from Bolivar-Richburg Central School District.

b. Vendor understands and agrees that it is responsible for submitting a Data Security and Privacy Plan to Bolivar-Richburg Central School District prior to the start of the term of the Agreement, and it shall:

1. Outline how all state, federal and local data security and privacy contract requirements will be implemented over the life of the contract consistent with Bolivar-Richburg Central School District's policy on data security and privacy, as adopted.
2. Outline specific administrative, operational and technical safeguards and practices in place to protect Protected Data that it receives from Bolivar-Richburg Central School District under the Contract.
3. Outline the training requirement established by the Vendor for all employees who will receive personally identifiable information from student records (hereinafter referred to as "student data").

4. Notice of Breach and Unauthorized Release

a. In the event of a breach of this Agreement and unauthorized release of student data, the Vendor shall:

1. Immediately notify Bolivar-Richburg Central School District in the most expedient way possible and without unreasonable delay, but no more than seven (7) calendar days after Vendor has discovered or been informed of the breach or authorized release.

2. Advise Bolivar-Richburg Central School District as to the nature of the breach and steps Vendor has taken to minimize said breach.

b. In the case of required notification to a parent or eligible student, the Vendor shall:

1. Promptly reimburse Bolivar-Richburg Central School District for the full costs of such notification.

c. Vendor will cooperate with Bolivar-Richburg Central School District and provide as much information as possible directly to Bolivar-Richburg Central School District about the incident, including but not limited to:

1. The description of the incident;

2. The date of the incident;

3. The date Vendor discovered or was informed of the incident;

4. A description of the types of Protected Data involved;

5. An estimate of the number of records affected;

6. The schools within Bolivar-Richburg Central School District affected;

7. What the Vendor 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

8. The contact information for Vendor representatives who can assist affected individuals that may have additional questions.

d. The Vendor shall indemnify and hold Bolivar-Richburg Central School District harmless from any claims arising from its breach within the Data Sharing and Confidentiality Agreement confidentiality and data security and privacy standards provision.

e. Vendor acknowledges that upon initial notification from Vendor, Bolivar-Richburg Central School District, as the educational agency with which Vendor contracts, has an obligation under Section 2-d to in turn notify the Chief Privacy Officer in the New York State Education Department ("CPO"). Vendor agrees not to provide this notification to the CPO directly unless requested by Bolivar-Richburg Central School District or otherwise required by law. In the event the CPO contacts Vendor directly or requests more information from Vendor regarding the incident after having been initially informed of the incident by Bolivar-Richburg Central School District, Vendor will promptly inform Bolivar-Richburg Central School District of the same.

5. <u>Vendor Information</u>

Vendor understands that as part of Bolivar-Richburg Central School District's obligations under New York Education Law Section 2-d, Vendor is responsible for providing Bolivar-Richburg Central School District with Vendor information (see Vendor Information for Data Privacy and Security) to include:

a. Exclusive purposes for which the student data will be used;

b. How Vendor will ensure that subcontractors, persons or entities that Vendor will share the student data with, if any, will abide by data protection and security requirements;

c. That student data will be returned or destroyed upon expiration of the Agreement;

d. If and how a parent, student, or eligible teacher may challenge the accuracy of the student/teacher data that is collected; and

e. Where the student data will be stored (described in such a manner as to protect data security), and the security protections taken to ensure such data will be protected, including whether such data will be encrypted.

6. Termination or Expiration of Contract and/or Agreement

a. Upon termination of the Agreement, Vendor shall return or destroy all confidential information obtained in connection with the services provided therein and/or student data. Destruction of the confidential information and/or student data shall be accomplished utilizing an approved method of confidential destruction, including, shredding, burning or certified/witnessed destruction of physical materials and verified erasure of magnetic media using approved methods of electronic file destruction. The parties further agree that the terms and conditions set forth herein shall survive the expiration and/or termination of the Agreement.

b. If requested by Bolivar-Richburg Central School District, Vendor will assist Bolivar-Richburg Central School District in exporting all Protected Data previously received back to Bolivar-Richburg Central School District for its own use, prior to deletion, in such formats as may be requested by Bolivar-Richburg Central School District

c. In the event the Contract is assigned to a successor Vendor (to the extent authorized by the Contract), the Vendor will cooperate with Bolivar-Richburg Central School District as necessary to transition Protected Data to the successor Vendor prior to deletion.

d. Neither Vendor 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, Vendor and/or its subcontractors or other authorized persons or entities to whom it has disclosed Protected Data, as applicable, will provide Bolivar-Richburg Central School District with a certification from an appropriate officer that these requirements have been satisfied in full.

PARENTS' BILL OF RIGHTS FOR DATA PRIVACY AND SECURITY

The Bolivar-Richburg Central School District seeks to use current technology, including electronic storage, retrieval, and analysis of information about students' education experience in the district, to enhance the opportunities for learning and to increase the efficiency of our district and school operations.

The Bolivar-Richburg Central School District seeks to insure that parents have information about how the District stores, retrieves, and uses information about students, and to meet all legal requirements for maintaining the privacy and security of protected student data and protected principal and teacher data, including Section 2-d of the New York State Education Law.

To further these goals, the Bolivar-Richburg Central School District has posted this Parents' Bill of Rights for Data Privacy and Security.

1. A student's personally identifiable information cannot be sold or released for any commercial purposes.

2. Parents have the right to inspect and review the complete contents of their child's education record. The procedures for exercising this right can be found in Board Policy 7240, Student Records: Access and Challenge. You may access this Policy from the District's website.

3. State and federal laws protect the confidentiality of personally identifiable information, and 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.

4. A complete list of all student data elements collected by the State is available at http://www.p12.nysed.gov/irs/sirs/documentation/NYSEDstudentData.xlsx and a copy may be obtained by writing to the Office of Information & Reporting Services, New York State Education Department, Room 863 EBA, 89 Washington Avenue, Albany, New York 12234.

5. Parents have the right to submit complaints about possible breaches of student data addressed. Complaints should be directed in writing to **Bolivar-Richburg Central School District- Data Privacy Officer, 100 School Street, Bolivar, New York 14715** or by using the form found at the schools Technology webpage, or directly at: https://www.brcs.wnyric.org/Page/4065. Complaints may also be directed in writing to Chief Privacy Officer, New York State Education Department, 89 Washington Avenue, Albany, New York 12234 or by using the form available at the following website: http://www.nysed.gov/data-privacy-security/report-improper-disclosure

Supplemental Information About Third Party Contracts

In order to meet 21st century expectations for effective education and efficient operation, the District utilizes several products and services that involve third party contractors receiving access to student data, or principal or teacher data, protected by Section 2-d of the Education Law. The District recognizes that students, parents, and the school community have a legitimate interest in understanding which of the District's vendors receive that data, for what purpose, and under what conditions. The District has undertaken the task of compiling that information, and of insuring that each new contract adequately describes (1) the exclusive purposes for which the data will be used, (2) how the contractor will ensure that any subcontractors it uses will abide by the data protection and security requirements, (3) when the contract expires and what happens to the data at that time, (4) if and how an affected party can challenge the accuracy of the data is collected, (5) where the data will be stored, and (6) the security protections taken to ensure the data will be protected, including whether the data will be encrypted.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the day and year first written above.

David Gaines
AC56A8A1938ED649DA1A7BF6C3D5998D Contractworks

Authorized Vendor Signature — Date: 05/28/2021

Authorized Bolivar-Richburg Central School District Signature — Date: 6/1/2021

VENDOR INFORMATION REGARDING DATA PRIVACY AND SECURITY

Vendor: NYSSMA Product: NYSSMA

Collects: XX Student Data ☐ Teacher or Principal Data ☐ Does not collect either

Educational agencies including Bolivar Richburg Central School are required to *post information about third-party contracts on the agency's website* with the Parents Bill of Rights. To that end, please complete the table below with information relevant to NYS Education Law 2-d and Part 121.3 of the Commissioner's Regulations. Note that this applies to all software applications and to mobile applications ("apps").

Part 1: Exclusive Purposes for Data Use
The exclusive purposes for which the student data (or teacher or principal data) will be used by the third-party contractor: NYSSMA uses student data for selection of students in honor ensembles and student evaluations.
Part 2: Subcontractor Oversight Details – Select the appropriate option below.
☐ This contract has no subcontractors. X This contract has subcontractors. As such, the third-party contractor will take the following steps to ensure that any subcontractors, assignees, or other agents who see, or receive, this protected data are contractually required to obey the same data protection and security requirements that the third-party contractor is required to obey under state and federal law: see supplemental information in Part 121 checklist and privacy policy.
Part 3: Contract Lifecycle Practices
The contract expires on ____June 30th of each year_____ unless renewed or automatically extended for a term pursuant to the agreement. When the contract expires, protected data will be deleted by the contractor, via shredding, returning of data, mass deletion, and upon request, may be exported for use by Sa before deletion.
Part 4: Student Educational Records / Improper Disclosure
A. For information on FERPA (Family Educational Rights and Privacy Act), which is the federal law that protects the privacy of student education records, visit the U.S. Department of Education FERPA website. B. A complaint or report of improper disclosure may be completed by submitting the Improper Disclosure Report form.
Part 5: Security Practices
A. Protected data provided to the contractor will be stored: (include *where* and *how*) The data is stored locally on servers and on two offsite data centers, one in Pennsylvania and the other in Utah. The data is encrypted at rest and in-transit, remote access to the data is secured by multi-factor identification, the least privileged access policy is in place. There is a secure password policy and password rotation policy in place.
Part 6: Encryption Practices
☒ By checking this box, contractor certifies that data encryption is applied in accordance with NYS Education Law Section 2-d 5(f)(5).

C. The security protections taken to ensure data will be protected that align with the NIST Cybersecurity Framework and industry best practices include: see NYSSMA supplemental information.