



APPENDIX B
DATA SHARING AND CONFIDENTIALITY AGREEMENT

Including

Putnam | Northern Westchester BOCES Bill of Rights for Data Privacy and Security
And Supplemental Information about a Master Agreement between
Putnam | Northern Westchester BOCES and Discovery Education, Inc.

1. **Purpose**

- (a) Putnam | Northern Westchester BOCES (hereinafter “PNW BOCES”) and Discovery Education, Inc. (hereinafter “Vendor”) are parties to a contract or other written agreement pursuant to which Vendor will receive student data and/or teacher or principal 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 PNW BOCES for purposes of providing certain products or services to PNW BOCES and/or its affiliates (the “Master Agreement”).
- (b) This Exhibit supplements the Master Agreement to which it is attached, to ensure that the Master Agreement conforms to the requirements of Section 2-d. This Exhibit consists of a Data Sharing and Confidentiality Agreement, a copy of PNW BOCES’s Bill of Rights for Data Privacy and Security signed by Vendor, and the Supplemental Information about the Master Agreement between PNW BOCES and Discovery Education, Inc. that PNW BOCES is required by Section 2-d to post on its website.
- (c) In consideration of the mutual promises set forth in the Master Agreement, Vendor agrees that it will comply with all terms set forth in the Master Agreement and this Exhibit. To the extent that any terms contained in the Master Agreement, or any terms contained in any other Exhibit(s) attached to and made a part of the Master Agreement, conflict with the terms of this Exhibit, the terms of this Exhibit will apply and supersede any inconsistent terms. In addition, in the event that Vendor has online or written Privacy Policies or Terms of Service (collectively, “TOS”) that would otherwise be applicable to its customers or users of the products or services that are the subject of the Master Agreement between PNW BOCES and Vendor, to the extent that any terms of the TOS, that are or may be in effect at any time during the term of the Master Agreement, conflict with the terms of this Exhibit, the terms of this Exhibit will apply and be given full force and effect.

2. **Definitions**

Terms as used herein shall be consistent with those terms as defined by Education Law Section 2-d and Part 121 of the rules of the Board of Regents.

3. **Confidentiality of Protected Data**

- (a) Vendor acknowledges that the Protected Data it receives pursuant to the Master Agreement originates from PNW BOCES and/or its affiliates, and that this Protected Data belongs to and is owned by PNW BOCES and/or its affiliates.
- (b) Vendor will maintain the confidentiality of the Protected Data it receives in accordance with federal and state law (including but not limited to Section 2-d) and PNW BOCES’s policy on

data privacy and security. PNW BOCES will provide Vendor with a copy of its policy on data privacy and security upon request.

4. **Data Security and Privacy Plan**

As more fully described herein, throughout the term of the Master Agreement, Vendor will have a Data Security and Privacy Plan in place to protect the confidentiality, privacy and security of the Protected Data it receives from PNW BOCES and/or its affiliates.

Vendor's Plan for protecting the Protected Data of PNW BOCES and/or its affiliates includes, but is not limited to, its agreement to comply with the terms of PNW BOCES's Bill of Rights for Data Privacy and Security, a copy of which is set forth below and has been signed by the Vendor.

Additional components of Vendor's Data Security and Privacy Plan for protection of Protected Data of PNW BOCES and/or its affiliates throughout the term of the Master Agreement are as follows:

- (a) Vendor will implement all state, federal, and local data security and privacy requirements including those contained within the Master Agreement and this Data Sharing and Confidentiality Agreement, consistent with PNW BOCES's data security and privacy policy.
- (b) Vendor will have specific administrative, operational and technical safeguards and practices in place to protect Protected Data that it receives from PNW BOCES and/or its affiliates under the Master Agreement.
- (c) Vendor will comply with all obligations contained within the section set forth in this Exhibit below entitled "Supplemental Information about a Master Agreement between PNW BOCES and Discovery Education, Inc." Vendor's obligations described within this section include, but are not limited to:
 - (i) its obligation to require subcontractors or other authorized persons or entities to whom it may disclose Protected Data (if any) to execute written agreements acknowledging that the data protection obligations imposed on Vendor by state and federal law and the Master Agreement shall apply to the subcontractor, and
 - (ii) its obligation to follow certain procedures for the return, transition, deletion and/or destruction of Protected Data upon termination, expiration or assignment (to the extent authorized) of the Master Agreement.
- (d) Vendor has provided or will provide training on the federal and state laws governing confidentiality of Protected Data for any of its officers or employees (or officers or employees of any of its subcontractors or assignees) who will have access to Protected Data, prior to their receiving access.
- (e) Vendor will manage data security and privacy incidents that implicate Protected Data and will develop and implement plans to identify breaches and unauthorized disclosures. Vendor will provide prompt notification to PNW BOCES of any breaches or unauthorized disclosures of Protected Data in accordance with the provisions of Section 5 of this Data Sharing and Confidentiality Agreement.

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

- (a) Vendor will promptly notify PNW BOCES of any breach or unauthorized release of Protected Data it has received from PNW BOCES and/or its affiliates in the most expedient way possible

and without unreasonable delay, but no more than ten (10) calendar days after Vendor has discovered or been informed of the breach or unauthorized release.

- (b) Vendor will provide such notification to PNW BOCES by contacting the Data Protection Officer, dataprivacy@pnwboces.org, 914-248-3888.
- (c) Vendor will cooperate with PNW BOCES and provide as much information as possible directly to the Data Protection Officer or his/her designee about the incident, to the extent the information is available, including but not limited to: a description of the incident, the date of the incident, the date Vendor discovered or was informed of the incident, a description of the types of Protected Data involved, an estimate of the number of records affected, the schools within PNW BOCES affected and/or the affiliates of PNW BOCES whose data has been affected, 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 contact information for Vendor representatives who can assist affected individuals that may have additional questions.
- (d) Vendor acknowledges that upon initial notification from Vendor, PNW BOCES, as the educational agency with which Vendor contracts, has an obligation under Section 2-d to in turn notify the Chief Protection Officer in the New York State Education Department (“CPO”). Vendor agrees not to provide this notification to the CPO directly unless requested by PNW BOCES 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 PNW BOCES, Vendor will promptly inform the Data Protection Officer or his/her designee.

6. **Additional Statutory and Regulatory Obligations**

Vendor acknowledges that it has the following additional obligations under Section 2-d with respect to any Protected Data received from PNW BOCES and/or its affiliates, and that any failure to fulfill one or more of these statutory or regulatory obligations will be deemed a breach of the Master Agreement and the terms of this Data Sharing and Confidentiality Agreement:

- (a) To limit internal access to Protected Data to only those employees or subcontractors that are determined to have legitimate educational interests within the meaning of Section 2-d and the Family Educational Rights and Privacy Act (FERPA); *i.e.*, they need access in order to assist Vendor in fulfilling one or more of its obligations to PNW BOCES and/or its affiliates under the Master Agreement.
- (b) To not use Protected Data for any purposes other than those explicitly authorized in this Data Sharing and Confidentiality Agreement and the Master Agreement to which this Exhibit is attached.
- (c) To not disclose any Protected Data to any other party, except for authorized representatives of Vendor using the information to carry out Vendor’s obligations to PNW BOCES and/or its affiliates, and in compliance with state and federal law, regulations and the terms of the Master Agreement, unless:
 - (i) the parent or eligible student has provided prior written consent; or
 - (ii) the disclosure is required by statute or court order and notice of the disclosure is provided to PNW BOCES no later than the time of disclosure, unless such notice is expressly prohibited by the statute or court order.
- (d) To maintain reasonable administrative, technical, and physical safeguards to protect the security, confidentiality, and integrity of Protected Data in its custody.

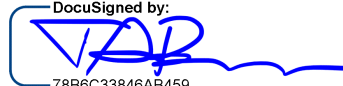
- (e) To use encryption technology to protect Protected Data in its custody while in motion or at rest, using a technology or methodology specified by the Secretary of the U.S. Department of Health and Human Services in guidance issued under Section 13402(H)(2) of Public Law 111-5.
- (f) To adopt technologies, safeguards and practices that align with the NIST Cybersecurity Framework.
- (g) To comply with PNW BOCES's policy on data security and privacy, Section 2-d and Part 121.
- (h) To not sell Protected Data nor use or disclose it for any marketing or commercial purpose or facilitate its use or disclosure by any other party for any marketing or commercial purpose or permit another party to do so.
- (i) To notify PNW BOCES, in accordance with the provisions of Section 5 of this Data Sharing and Confidentiality Agreement, of any breach of security resulting in an unauthorized release of Protected Data by Vendor or its assignees or subcontractors in violation of applicable state or federal law, PNW BOCES's Bill of Rights for Data Privacy and Security, PNW BOCES's policies on data security and privacy, or other binding obligations relating to data privacy and security contained in the Master Agreement and this Exhibit.
- (j) To cooperate with PNW BOCES and law enforcement to protect the integrity of investigations into the breach or unauthorized release of Protected Data.
- (k) To pay for or promptly reimburse PNW BOCES and/or its affiliates for the full cost of notification, in the event PNW BOCES and/or its affiliates is required under Section 2-d to notify affected parents, students, teachers or principals of a breach or unauthorized release of Protected Data attributed to Vendor or its subcontractors or assignees.

7. **Execution of Agreement**

This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same Agreement. This Agreement shall further be executed either with original signatures or electronic signatures. Electronic signatures shall be legally binding as original signatures. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

BY THE VENDOR:

Travis Barrs _____
Name (Print)

DocuSigned by:

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Signature

Head of Global Operations _____
Title

April 5, 2023

Education Law Section 2-d Bill of Rights for Data Privacy and Security
Putnam | Northern Westchester BOCES

Pursuant to Section 2-c and 2-d of the Education Law, parents and students are entitled to certain protections regarding confidential student information. PNW BOCES is committed to safeguarding personally identifiable information from unauthorized access or disclosure as set forth below:

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;
3. PNW BOCES is committed to implementing safeguards associated with industry standards and best practices under state and federal laws protecting the confidentiality of personally identifiable information, including but not limited to, encryption, firewalls, and password protection when data is stored or transferred;
4. A complete list of all student data elements collected by the State is available for public review at <http://www.nysed.gov/data-privacy-security/student-data-inventory> or by writing to the NYS Education Department, Information & Reporting Services, Room 863 EBA, 89 Washington Avenue, Albany, NY 12234;
5. Parents have the right to have complaints about possible breaches of student data addressed. Complaints should be directed to PNW BOCES Data Protection Officer, Jamie Molina, at dataprivacy@pnwboces.org, 914-248-3888, 200 BOCES Drive, Yorktown Heights, NY 10598.

In addition, complaints may be directed to the Chief Privacy Officer of the New York State Education Department, by mail at 89 Washington Avenue, Albany, New York 12234; by email to privacy@nysed.gov; or by telephone at 518-474-0937.

6. PNW BOCES has entered into contracts with certain third party contractors/consultants who have been sent student data and/or teacher data and/or principal data. The following information about such contractors appears in the attachment to this document as required by law:
 - The names of the third party contractors, the exclusive purpose(s) for which the data will be used;
 - The commencement and termination dates of each such agreement;
 - A description of how the data will be disposed by the contractor when the contract purpose has been fulfilled;
 - The data storage and security measures undertaken
7. Agreements with third party contractors/consultants will ensure that the subcontractors, persons or entities that the third party contractor will share the student data or teacher or principal data with, if any, will abide by data protection and security requirements.
8. A parent, student, eligible student, teacher or principal may challenge the accuracy of the student data or teacher or principal data that is collected by filing a written request with PNW BOCES Superintendent of Schools or his administrative designee, Louis Riolo, Assistant Superintendent, lriolo@pnwboces.org.

**Supplemental Information about a Master Agreement between
Putnam | Northern Westchester BOCES and
Discovery Education, Inc.**

PNW BOCES has entered into a Master Agreement with Discovery Education, Inc. which governs the availability to PNW BOCES of the products or services as specifically enumerated in the Master Agreement.

Pursuant to the Master Agreement (which includes a Data Sharing and Confidentiality Agreement), PNW BOCES may provide to Vendor, and Vendor will receive, personally identifiable information about students and/or teachers and principals that is protected by Section 2-d of the New York Education Law (“Protected Data”).

Exclusive Purposes for which Protected Data will be Used:

The exclusive purpose for which Vendor is receiving Protected Data from PNW BOCES and/or its affiliates is to provide PNW BOCES and/or its affiliates with the functionality of the products or services listed in the Master Agreement that benefit students and District, as expressly enumerated therein. Vendor will not use the Protected Data for any other purposes not explicitly authorized above or within the Master Agreement.

Oversight of Subcontractors:

In the event that Vendor engages subcontractors or other authorized persons or entities to perform one or more of its obligations under the Master Agreement (including subcontracting hosting of the Protected Data to a hosting service provider), it will require those subcontractors or other authorized persons or entities to whom it will disclose the Protected Data to comply with Section 2-d of the New York Education Law and to comply with all applicable data protection, privacy and security requirements required of Vendor under the Master Agreement and applicable state and federal law and regulations.

Duration of Agreement and Protected Data upon Termination or Expiration:

- The Master Agreement commences on July 1, 2023 and expires on June 30, 2024.
- Upon expiration of the Master Agreement without renewal, or upon termination of the Master Agreement prior to its expiration, Vendor will securely delete or otherwise destroy any and all Protected Data remaining in the possession of Vendor or any of its subcontractors or other authorized persons or entities to whom it has disclosed Protected Data.
- In the event the Master Agreement is assigned to a successor Vendor (to the extent authorized by the Master Agreement), the Vendor will cooperate with PNW BOCES and/or its affiliates as necessary to transition Protected Data to the successor Vendor prior to deletion.
- 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 PNW BOCES and/or its affiliates with a certification from an appropriate officer that these requirements have been satisfied in full.

Challenging Accuracy of Protected Data:

Parents or eligible students can challenge the accuracy of any Protected Data provided by PNW BOCES and/or its affiliates to Vendor, by contacting PNW BOCES and/or its affiliates regarding procedures for requesting amendment of education records under the Family Educational Rights and Privacy Act (FERPA). Teachers or principals may request to challenge the accuracy of APPR data provided to Vendor by following the appeal process in PNW BOCES’s applicable APPR Plan.

Data Storage and Security Protections:

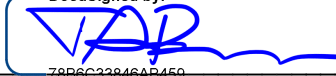
Any Protected Data that Vendor receives will be stored on systems maintained by Vendor, or by a subcontractor under the direct control of Vendor, in a secure data center facility located within the United States. The measures that Vendor (and, if applicable, its subcontractors) will take to protect Protected Data include adoption of technologies, safeguards and practices that align with the NIST Cybersecurity Framework, and safeguards associated with industry standards and best practices including, but not limited to, disk encryption, file encryption, firewalls, and password protection.

Encryption of Protected Data:

Vendor (and, if applicable, its subcontractors) will protect Protected Data in its custody from unauthorized disclosure while in motion or at rest, using a technology or methodology that complies with Section 2-d of the New York Education Law.

BY THE VENDOR:

Travis Barrs _____
Name (Print)

DocuSigned by:

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Signature

Head of Global Operations _____
Title

April 5, 2023

Date