

DIBELS Data System Agreement

IMPORTANT -- READ CAREFULLY: This DIBELS Data System Agreement ("Agreement") is a legal agreement between you (either an individual or a single entity) ("You" or "Your") and the State of Oregon, acting by and through the State Board of Higher Education on behalf of the University of Oregon, an institution of higher education located in Eugene, Oregon ("Oregon") for use of the DIBELS (Dynamic Indicators of Basic Early Literacy Skills) Data System ("DIBELS Data System"). By signing below, or by using the DIBELS Data System, You agree to be bound by the terms of this Agreement. If You do not agree to the terms of this Agreement, do not sign below and do not use the DIBELS Data System. This Agreement is entered into as of the date that You click the "I Agree" button.

BACKGROUND

A. The DIBELS Data System was developed at Oregon, and Oregon may license it to You in accordance with this Agreement; and

B. The DIBELS Data System is a web-based benchmark and progress monitoring reporting platform that permits schools, districts, and agencies such as You to enter student administrative and assessment (including, but not limited to, DIBELS 6th Edition, DIBELS Next, easyCBM Math and/or IDEL) data (collectively "Data") and generate automated reports.

NOW, THEREFORE, in consideration of the promises, conditions, and representations contained herein, You agree as follows:

1. Your Rights.

Oregon hereby grants to You the non-exclusive, non-transferable, right to do the following for non-commercial education and research purposes only:

- a. access the DIBELS Data System;
- b. enter Data into the DIBELS Data System; and
- c. generate reports using the DIBELS Data System.

You shall not use the DIBELS Data System for any other purpose and You must contact Oregon to request permission to use the DIBELS Data System in any other manner.

2. Oregon's Rights.

a. **Retained Rights.** Oregon reserves and retains all rights of every kind and nature except those specifically granted to You in this Agreement, including but not limited to the right to grant any rights to the DIBELS Data System to other persons or entities upon such terms and conditions as Oregon shall accept.

b. **Primary Uses of Data.** You retain ownership of all Data. You hereby grant to Oregon a perpetual, irrevocable, world-wide, royalty-free license to use Data for Oregon's use of the DIBELS Data System in a manner that does not disclose personally identifiable information.

c. **Secondary Uses of Data.** You also hereby grant permission to Oregon and its designees to use Data for secondary uses. These secondary uses are restricted to activities designed to improve DIBELS or DIBELS Data System resources and services, or research activities conducted by Oregon and its designees. Oregon designees are approved by Oregon's Center on Teaching and Learning and must provide an Institutional Review Board (IRB) approval for specific research. Data for these secondary uses will be available only to Oregon and its designees, and no further distribution of Data will be permitted, except as required by law. All individually-identifiable information will be kept private to the extent permitted by law, and whenever possible will not be included even within Oregon's or Oregon's designees valid secondary uses of Data. No individual will be identifiable in any report or publication resulting from these secondary uses. Oregon will destroy all personally identifiable information, if any remains in Data, 5 years after the project ends, in compliance with State of Oregon regulations on research records retention.

d. **Access for Third Party Researchers.** You may grant permission to Your education evaluators, applicable governmental bodies, or third party researchers to access personally identifiable information contained in any Data that You enter into the DIBELS Data System. Oregon will provide such access to those third parties after receipt of written request from You for such access.

3. Your Obligations.

a. **Fees.** Oregon will invoice You by billing Your appropriate unit (school district, school, or project) or the "Third Party Payer" (as defined below) for \$1.00 per student per year ("Fee") whether a purchase order has been received from You or not, and whether the amount of the purchase order that You submit is correct or not. You may designate an entity other than You (such as a state department of education or a research project) to pay the Fees on your behalf ("Third Party Payer"), provided that the Third Party Payer submits a signed Billing Agreement to Oregon to confirm that they will pay such Fees. Fee payments shall be due and payable, and You or the Third Party Payer shall pay Oregon the full amount invoiced by Oregon within 30 days of Your receipt of the invoice from Oregon. Any payments provided by You or by the Third Party Payer to Oregon shall be irrevocable by You and shall be made in U.S. dollars. Regardless of whether Your Fees are to be paid by You or by a Third Party Payer, You are solely responsible for ensuring that such payments are made to Oregon in accordance with this Section 3(a).

b. **Protection of Oregon's Rights.** You acknowledge and agree that Oregon will retain its rights in the DIBELS Data System, and that You shall take all reasonable precautions to preserve same. You shall not alter, change, or remove from the DIBELS Data System any identification marks, including copyright or trademark notices. Nothing in this Agreement shall be construed as permitting You to exercise any right under copyright or trademark law, except as specified in this Agreement.

c. **Consent You Obtain for Use of Data.** You shall obtain any consent necessary under federal or state laws, or school district policy, to enable You to enter Data into the DIBELS Data System and to permit the use of Data in accordance with the terms and conditions of this Agreement.

d. **Data Collection and Entry.** You shall be responsible for collecting Data, maintaining appropriate restrictions for accessing Data, generating and interpreting reports of Data, and

developing, implementing, and evaluating developmental, educational, or other interventions on the basis of the Data. You assume all liability for decisions made using Data entered into or reported from the DIBELS Data System.

e. **Billing and Contact Information.** You shall be responsible for providing Your billing and administrative information to Oregon and keeping it up-to-date, to include keeping Your contact and billing information accurate and updated (when You are a school district), and keeping individual school contact and billing information accurate when needed (e.g., when You are a school district and You would like schools to be invoiced individually instead of receiving a single invoice for the entire district). If a Third Party Payer will pay the Fees on Your behalf, You are also responsible for providing the Third Party Payer's billing and administrative information to Oregon and keeping it up-to-date.

f. **Financial Administration.** You shall handle all financial administration required on Your end, such as submitting purchase orders and requesting authorization from Your appropriate administrators.

4. Storage of Data.

a. **Release of Data.** Oregon maintains the Data You provide on secure servers at Oregon and backups are periodically made, encrypted and may be stored both onsite and offsite to protect against loss of data in the event of a catastrophic local event. Access to Your account's Data is password-protected by Oregon, and restricted by Oregon to those individuals identified by You. Oregon does not release Data without Your written permission, except as required by law. It is Your responsibility to maintain security for the user names and passwords within Your account.

b. **Access to Data for Maintenance.** You grant permission to Oregon and its designees to access Data for maintenance purposes. Data accessed for maintenance purposes will be kept private to the extent permitted by law. Maintenance purposes include, but are not limited to, software programming or database engineering for the DIBELS Data System, providing technical support to You, correcting problems within the database, and managing the billing system. Oregon's maintenance designees (programmers and technical support personnel) will have access to the DIBELS Data System accounts for each site, the raw data within each account, and system-wide administrative functions.

5. Indemnification, No Warranty, and Limitation of Liability.

a. **Indemnification.** To the extent permitted by law, You shall indemnify and hold harmless Oregon, its successors, assigns and licensees, and the respective officers, directors, agents and employees, from and against any and all claims, damages, liabilities, costs and expenses, arising out of or in any way connected with the use, reproduction, distribution or public display of the DIBELS Data System by You or by any third party accessing the DIBELS Data System from or through You. You shall be liable for all of Your obligations and responsibilities under this Agreement. You assume all liability for decisions made using Data entered into or reported from the DIBELS Data System.

b. NO WARRANTY AND LIMITATION OF LIABILITY. OREGON PROVIDES ACCESS TO THE DIBELS DATA SYSTEM ON AN "AS IS, WITH ALL DEFECTS" BASIS. YOU AGREE TO BEAR ALL RISKS ASSOCIATED WITH THE DIBELS DATA SYSTEM. OREGON MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED. BY WAY OF EXAMPLE, BUT NOT LIMITATION, OREGON MAKES NO REPRESENTATIONS OR WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE (EVEN IF OREGON KNOWS OF SUCH PURPOSE), OR THAT THE USE OF THE DIBELS DATA SYSTEM WILL NOT INFRINGE ANY PATENTS, COPYRIGHTS, TRADEMARKS OR OTHER RIGHTS OF THIRD PARTIES. OREGON SHALL NOT BE HELD LIABLE FOR ANY DAMAGES WITH RESPECT TO ANY CLAIM BY YOU OR ANY THIRD PARTY ON ACCOUNT OF OR ARISING FROM THIS AGREEMENT OR USE OF THE DIBELS DATA SYSTEM. YOU HEREBY SAVE, HOLD HARMLESS, DISCHARGE AND RELEASE OREGON AND ALL OF ITS RESPECTIVE AGENTS, SERVANTS, EMPLOYEES AND VOLUNTEERS, FROM ANY AND ALL LIABILITY, CLAIMS, CAUSES OF ACTIONS, DAMAGES OR DEMANDS OF ANY KIND AND NATURE WHATSOEVER WHICH MAY ARISE FROM OR IN CONNECTION WITH YOUR USE OF THE DIBELS DATA SYSTEM.

6. Term and Termination.

a. Term. The term of this Agreement shall commence on the Effective Date and shall continue until terminated in accordance with this Section 6.

b. Termination. Oregon may terminate this Agreement immediately due to Your breach of this Agreement, including non-payment of any Fee whether by You or by a Third Party Payer. Oregon may also terminate this Agreement for Oregon's convenience upon 30 days prior notice to You by electronic communication or otherwise. You may terminate this Agreement by ceasing to use all portions of the DIBELS Data System.

c. No Use after Termination. Upon termination of this Agreement, You shall cease using any portion of the DIBELS Data System.

d. Obligations after Termination. Termination of this Agreement shall not extinguish any obligations of either party under this Agreement which by their terms continue after the date of termination.

7. General Provisions.

a. Assignment.

This Agreement may not be assigned or transferred by You. If UO assigns this Agreement, any assignee will be bound by the terms and conditions of this Agreement.

b. Entire Agreement, Modification, and Waiver.

This Agreement sets forth the entire agreement between the parties with respect to the subject matter hereof, and may not be modified or amended except by written agreement executed by the

parties hereto. No waiver, consent, modification, or change of any terms of this Agreement shall be binding unless the same is in writing and signed by both parties and all necessary approvals have been obtained. Such express waiver, consent modification, or change, if made, shall be effective only in the specific instance and for the specific purpose set forth in such signed writing.

c. Your Authority.

You represent and warrant that the individual executing this Agreement on behalf of You is duly authorized to execute and deliver this Agreement on behalf of You in accordance with duly adopted organizational documents or agreements and if appropriate a resolution of You, and that this Agreement is binding upon You in accordance with its terms.

d. No Third Party Beneficiary.

Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide, any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

e. Force Majeure.

Oregon's failure to perform any term or condition of this Agreement as a result of conditions beyond its control such as, but not limited to, war, strikes, fires, floods, acts of God, governmental restrictions, power failures, or damage or destruction of any network facilities or servers, shall not be deemed a breach of this Agreement.

CLAIBORNE PARISH
Name of School Board

William Kennedy
Signature of School Board's Authorized Representative

WILLIAM KENNEDY
Printed Name of School Board's Authorized Representative

9-24-15
Date