

Family Educational Rights and Privacy Act (FERPA) Data Sharing Agreement

[Project/Study/Audit/Evaluation/Contract Name]

Section 1.0 Parties

This Data Sharing Agreement (Agreement) for the [Project Name] is entered into by and between [Party A] (Define Party A) and [Party B] (Define Party B). At times, Party A and Party B are referred to singularly as “Party” and collectively as “Parties.”

The Contact Information for [Party A] is: [enter contact information].

The Contact Information for [Party B] is: [enter contact information].

Section 2.0 Term of Agreement

The term of this Agreement begins upon execution by the last party to sign and ends on August 31, [20XX], unless terminated earlier by the Parties. The Parties may extend the term of this Agreement by an amendment signed by the Parties.

Section 3.0 Background and Purpose

The purpose of this Agreement is to document the rights and obligations of the Parties pursuant to the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g and its implementing regulations, 34 C.F.R. Part 99, in order to protect the privacy of students’ education records and afford parents and eligible students (i.e., students who are 18 years of age or older or attend an institution of postsecondary education) the right to access student records.

Section 4.0 Data

For the purpose of this Agreement, the definitions of “directory information,” “education records,” and “personally identifiable information” are set out in 34 C.F.R. § 99.3. The Parties agree and represent that the information shared under this Agreement is narrowly tailored to meet the applicable exceptions set out in Section 5.03, below. The Parties agree that [Party A] will share the following data with [Party B]: [or The Parties agree that [Party A] will share data set out in Appendix A with [Party B].]

- (1) _____;
- (2) _____; and
- (3) _____;

Section 5.0 Applicable FERPA Provisions

5.01 **[Party A] obtained written consent to transfer student records to [Party B]:**

Yes

No

1. If yes, please indicate the secured file location or link to forms: [insert link here]. If yes, no exception is required under this Agreement.
2. If no, proceed to Section 5.02.

5.02 **[Party A] is sharing personally identifiable information with [Party B]:**

Yes

No

1. If yes, proceed to Section 5.03.
2. If no, no exception is required under this Agreement.

5.03 **[Party A] did not obtain written consent for disclosure of education records to [Party B].**

The following FERPA exceptions apply:

- Studies Exception:* 20 U.S.C. § 1232g(b)(1)(F) and 34 C.F.R. § 99.31(a)(6). Complete Section 6.01.
- Audit or Evaluation Exception:* 20 U.S.C. § 1232g(b)(1)(C), (b)(3), and (b)(5) and 34 C.F.R. §§ 99.31(a)(3) and 99.35. Complete Section 6.02.
- School Official or Representative (or Outsourced Services) Exception:* 34 C.F.R. §§ 99.31(a)(1) and 99.7(a)(3)(iii). Complete Section 6.03.

Section 6.0 Documentation for applicable exceptions

6.01 Studies Exception:

The purpose of the study is to (check one or more):

- (1) develop, validate, or administer predictive tests;
- (2) administer student aid programs; or
- (3) improve instruction.

[Describe in narrative the purpose of the study, its scope, and its duration (indicate period of five or fewer years), and identify the information being disclosed (as set out in Section 4.0 or in addition to Section 4.0).]

The Parties agree that the duration of the study may not extend beyond the term set out above except upon written amendment to this Agreement.

6.02 Audit or Evaluation Exception:

The purpose of the audit or evaluation is to (check one or more):

- (1) audit or evaluate a Federal or State supported education program;
or
- (2) enforce compliance with Federal legal requirements related to the program.

[Describe in narrative the audit or evaluation, including a definition of the state or federally supported educational program that will be subject to the audit, evaluation, or compliance review.]

6.03 School Official or Representative (or Outsourced Services) Exception:

[Party B] is serving in the role of a school official for [Party A] with a legitimate need to access education records in performance of this role. [Party A] represents that [Party B] is (1) performing an institutional service or function for which the school would otherwise use employees; (2) under the direct control of the school with respect to the use and maintenance of education records; and (3) complying with

the personally identifiable information from education records use and redisclosure requirements.

[Describe in narrative the service or function being performed on behalf of the local educational agency. Describe the legitimate need to access education records for the performance of the service or function.]

Section 7.0 FERPA Confidentiality and Data Governance Provisions

The Parties agree to comply with the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, and the implementing federal regulations, 34 C.F.R. Part 99. Each Party agrees to protect with reasonable data security procedures any confidential student information it receives or accesses that could make a student's identity traceable. Each Party agrees that the data shall be treated as FERPA-confidential and in accordance with this Agreement regardless of which Party possesses the data.

7.01 Study Exception Provisions Governing Section 6.01 Disclosure:

Pursuant to disclosure under Section 5.03 of this Agreement, in accordance with 34 C.F.R. § 99.31(a)(6)(iii)(C), the Parties agree that:

7.01.1 Use of Data:

- (a) [Party B] may use personally identifiable information (PII) from education records provided by [Party A] only to meet the purpose or purposes of the study as stated in Section 6.01, supra.
- (b) The Parties agree and understand that PII from education records must only be used for the study identified in Section 6.01.
- (c) The Parties agree that [Party B] may conduct the study in a manner that does not permit the personal identification of parents and students by anyone other than representatives of the organization with legitimate interests in the study.
- (d) [Party B] understands and agrees that it may not publish any study that contains any PII. [Party B] agrees to publish any data or study in a way that protects the privacy and confidentiality of the individuals involved. When publishing tables, cell suppression and other methods of disclosure avoidance can be used to ensure students cannot be identified through small numbers displayed in table cells. [Party B] must mask any cells containing fewer than five students and may be required to mask further to avoid any risk that data could be paired with other available data to identify students. [Party B] agrees to mask data in such a way to avoid this risk.

- (e) [Party A] retains an express right to review any data prior to publication by [Party B] and to verify proper disclosure avoidance techniques have been used.
- (f) The Parties agree that the data used for the study may be linked to PII only by the following methodology: [describe in narrative applicable limitations and permissible data links].
- (g) Access to Data: [Party B] understands and agrees that it may allow internal access to PII from education records only to individuals with a need to know and that [Party B] should take steps to maintain the confidentiality of the PII from education records at all stages of the study, including within the final report, by using appropriate disclosure avoidance techniques.
- (h) [Party B] agrees that each of its researchers, employees, and authorized persons with access to PII are required to review and sign a copy of this Agreement.

7.01.2 Ownership:

The following provision governing ownership of PII and data apply under the Agreement: [describe which party owns PII, data, or study derivative from the data exchanged under the Agreement].

7.01.3 Destruction:

- (a) [Party B] must return, destroy, or obliterate all education records obtained under this Agreement not later than [one calendar month] after the earlier of completion of the study or the end of the duration of the study authorized in this Agreement in Section 6.01. This term may be amended only by a written Agreement that otherwise complies with 20 U.S.C. § 1232g and its implementing regulations in 34 C.F.R. Part 99.
- (b) Notwithstanding any other term of this or any other Agreement, [Party A] retains the right to terminate [Party B's] access to education records or derivative PII without advance notice as necessary to ensure the security of PII and disclosure of PII in compliance with this Agreement.
- (c) Upon completion of the return, destruction, or obliteration of the applicable education records and PII, the Data Compliance Official and Data Custodian listed in Section 12.0, shall provide to [Party

A] a written, sworn verification of the return, destruction, or obliteration of the data.

7.02 Audit or Evaluation Provisions Governing Section 6.02 Disclosure:

7.02.1 Use of Data:

The Parties agree that:

- (a) [Party B] is authorized to use data obtained under this Agreement only for the purpose of the audit or evaluation it is performing and no other purpose. [Party A] has reviewed the audit or evaluation request of [Party B] and to the best of its ability determined [Party B] has a legitimate need to obtain the requested data under this Agreement for that data. The Parties agree that [Party A] will provide only data and PII from education records that are necessary to perform the audit or evaluation and no more.
- (b) [Party B] agrees that the PII from education records produced under the Agreement may not be disclosed or otherwise used, except as authorized by [Party A] in accordance with this Agreement. [Party B] is not authorized to further disclose the PII from education records except as set out in this Agreement or an amendment. Approval to use the PII from education records for one audit or evaluation **does not** confer approval to use it for another, including any “unauthorized look-ups.”

7.02.2 Ownership:

The following provision governing ownership of PII and data apply under the Agreement: [describe which party owns PII, data, or study derivative from the data exchanged under the Agreement].

7.02.3 Destruction:

- (a) [Party B] must return, destroy, or obliterate all education records obtained under this Agreement not later than [one calendar month] after the earlier of completion of the audit, evaluation, or compliance assessment authorized in this Agreement in Section 6.02. This term may be amended only by a written Agreement that otherwise complies with 20 U.S.C. § 1232g and its implementing regulations in 34 C.F.R. Part 99.

- (b) Notwithstanding any other term of this or any other Agreement, [Party A] retains the right to terminate [Party B's] access to education records or derivative PII without advance notice as necessary to ensure the security of PII and disclosure of PII in compliance with this Agreement.
- (c) Upon completion of the return, destruction, or obliteration of the applicable education records and PII, the Data Compliance Official and Data Custodian listed in Section 12.0, shall provide to [Party A] a written, sworn verification of the return, destruction, or obliteration of the data.

7.03 School Official Provisions Governing Section 6.03 Disclosure:

7.03.1 Use of Data:

- (a) [Party A] represents that [Party B] is a school official or acting as an authorized representative of a school official and performing a service or function that the school official would otherwise perform, and which requires access to PII in education records as set out in Section 6.03 above.
- (b) [Party A] maintains the right to conduct audits or other monitoring activities of [Party B's] policies, procedures, and systems to ensure adequate measures to protect PII under this Agreement and FERPA.
- (c) The Parties agree that [Party A] will provide only data and PII from education records that are necessary to perform the service or function and no more.
- (d) The Parties agree that [Party B's] performance of a service or function that the school official would otherwise perform and which requires access to PII is governed by [reference to written contract or other Agreement describing the relationship and other terms applicable to the right of access to use PII].

7.03.2 Ownership:

Except as expressly set out in this Agreement, a school official or acting as an authorized representative of a school official does not own any education record or PII contained therein. The official or representative is authorized to use the record only as set out in this Agreement [and as provided in (insert contract reference)].

7.03.3 Destruction:

- (a) Notwithstanding any other term of this Agreement or [contract reference], [Party A] retains the right to terminate [Party B's] access to education records or derivative PII without advance notice as necessary to ensure the security of PII and disclosure of PII in compliance with this Agreement.
- (b) [Party B] must return, destroy, or obliterate all PII from education records obtained under this Agreement not later than [one calendar month] or upon direction of [Party A], in the case of written termination of this Agreement, after the earlier of completion of the project or contract authorized in this Agreement in Section 6.03. This term may be amended only by a written Agreement that otherwise complies with 20 U.S.C. § 1232g and its implementing regulations in 34 C.F.R. § 99.31(a)(1)(i)(B).
- (c) Upon completion of the return, destruction, or obliteration of the applicable education records and PII, the Data Compliance Official and Data Custodian listed in Section 12.0, shall provide to [Party A] a written, sworn verification of the return, destruction, or obliteration of the data.

Section 8.0 General Terms Applicable to All Access

- (a) The Parties each individually and collectively represent that under all terms of this Agreement the disclosure of education records is for an education purpose and the access is narrowly tailored to permit disclosure of PII and education records only as essential to carry out the terms of the audit, evaluation, study, project, or program.
- (b) [Party B] agrees that it and its employees and authorized representatives who access information pursuant to this Agreement will use the information only for the purpose(s) expressly authorized under this Agreement and shall not use or disclose the information for any other purpose except by written amendment to this Agreement. This Agreement further expressly prohibits “unauthorized look-ups.”
- (c) The Parties each individually and collectively represent that [Party B] will allow access to PII only to those individuals employed by [Party B] with a need to know.
- (d) [Party B] represents that it will ensure that each individual who is able to access PII is expressly informed of the limitations on the right to access and use the PII. [Party B] represents that it will immediately terminate access to PII and has the right to discipline any authorized representative who fails to comply with this Agreement or otherwise violates FERPA.

- (e) [Party B] represents that it will not redisclose any data or PII governed by this Agreement without express permission from [Party A].
- (f) [Party A] has verified that [Party B] has a sound data security program, one that protects both data at rest and data in transmission. [Party B's] data security system and data stewardship plans are attached at: [link file or file location].
- (g) [Party A] has taken reasonable efforts to confirm that [Party B's] employees have been trained to properly handle education records and PII in accordance with this Agreement and FERPA.
- (h) To the maximum extent provided by law, [Party A] expressly retains the right to audit [Party B's] compliance with the Agreement, including obtaining copies of documents from [Party B] that demonstrate whether [Party B] has breached this Agreement.

Section 9.0 Breach

Any breach of this Agreement leading to unlawful disclosure of education records or PII that is covered under 20 U.S.C. § 1232g and its implementing regulations in 34 C.F.R. Part 99 constitutes a material breach of this Agreement and constitutes cause for immediate termination by [Party A].

Section 10.0 Termination

Either party may terminate this Agreement without cause upon fifteen (15)-days written notice. Any unlawful disclosure of information covered by the Agreement, including by data security incident or breach, shall constitute a breach of this Agreement and cause for any party to immediately terminate the Agreement, as set out in Section 9.0. Any duty of confidentiality as to FERPA-protected information at any time subject to the Agreement shall survive this Agreement notwithstanding termination of this Agreement.

Section 11.0 Amendment

This Agreement may be modified only by written amendment executed by the Parties hereto. No amendment shall be effective except upon final signature of all parties. This Agreement, and executed amendments hereto, constitutes the final and exclusive agreement of the Parties.

Section 12.0 Role of the Parties

[Party A] designates the following individual as the Point of Contact for Compliance and receipt of notification under this Agreement:

Name: _____

Title: _____

Signature: _____

[Party B] designates the following individual as the Data Compliance Official and Data Custodian for the purpose of this Agreement:

Name: _____

Title: _____

Signature: _____

Section 13.0 Signatures

By signature hereon, the individuals below represent and warrant that they are duly authorized representatives of the Parties and have the authority to bind the Parties in this Agreement.

[Party A]

Name: _____

Title: _____

Signature: _____

[Party B]

Name: _____

Title: _____

Signature: _____

[This Model Data Sharing Agreement was developed pursuant to Tex. Educ. Code § 7.012. This form does not constitute, nor substitute for, legal advice. Each party should consult its own legal counsel prior to entering any written agreement. The Texas Education Agency, Texas Higher Education Coordinating Board, and Texas Workforce Commission do not represent or warrant that use of this form constitutes compliance under 20 U.S.C. § 1232g and its implementing regulations in 34 C.F.R. Part 99.]