

**DATA SHARING AGREEMENTT  
BETWEEN  
UTAH STATE BOARD OF EDUCATION, UTAH DEPARTMENT OF HEALTH AND  
THE UNIVERSITY OF UTAH, DEPARTMENT OF PSYCHIATRY**

This Data Sharing Agreement (“Agreement”) is made and entered into by and between the Utah State Board of Education (“USBE”), the Utah Department of Health (“UDOH”), and the University of Utah, a body corporate and politic of the State of Utah, on behalf of its University of Utah School of Medicine, Department of Psychiatry (“U of U”).

**R E C I T A L S**

WHEREAS, USBE has constitutional and statutory authority for the general control and supervision of the public education system pursuant to the Utah Constitution Article X, Section 3 and Utah Code Title 53A Chapter 1;

WHEREAS, the UDOH is authorized by Utah Code Sections 26-5-4 to establish programs of community and professional education relevant to the detection, prevention and control of chronic diseases.

WHEREAS, the Utah Registry of Autism and Developmental Disabilities (URADD) is a program element of the UDOH which focuses on the autism spectrum disorder (ASD) and other developmental disabilities (DD)

WHEREAS, USBE, UDOH and U of U understand the information shared will only be used for only the following two purposes: (1)conduct evaluation and analysis for and in behalf of USBE in order to improve the quality of instruction and education in Utah; and (2) conduct investigation and analysis in order to meet reporting requirements of federal programs;

WHEREAS, the information shared between USBE, UDOH and U of U will include education records with personally identifiable information; and

WHEREAS, USBE, UDOH and U of U intend to comply with privacy laws including the provisions of the Family Educational Records and Privacy Act, 20 U.S.C. § 1232g and § 1232h, and 34 C.F.R. Parts 98 and 99 (“FERPA”), the Utah Family Education Rights and Privacy Act, Utah Code § 53A-13-3 (“UFERPA”), the Student Data Protection Act UCA 53A-1-1401, and the Individuals with Disabilities Educational Act, 30 U.S.C. §1400 *et seq.* and 34 C.F.R. Part 300 (“IDEA”).

NOW THEREFORE, for and in consideration of the mutual promises contained herein, the parties agree as follows:

**Purpose.** The purpose of the Agreement is to(1) conduct evaluation and analysis for and in behalf of USBE in order to improve the quality of instruction and education in Utah; and (2) conduct investigation and analysis in order to meet reporting requirements of federal programs. The parties will contribute to a multi-agency research study that collects, analyzes and provides state-level information regarding the occurrence of ASD and DD in order to investigate prevalence, diagnostic patterns, and risk factors for ASD with a goal of making educational improvement recommendations to USBE and UDOH. . For purposes of this study, personally identifiable information about students with disabilities will be provided to (URADD) for selected student educational records. The parties shall not access, collect, store, process, transfer, sell, disclose, de-identify or use the shared data for any other purpose.

1. **Data Sharing.** It is understood and agreed that when one party needs information from USBE data maintained by the other party for the purpose of supporting its research, study, or evaluation of federal- or state-supported education programs or complying with federal or state law, the other party that is maintaining the USBE data shall make a specific written request to the USB Data Privacy Office before providing any USBE – provided PII whatsoever to any other Party.

2. **Specific Request for Data.** At the time a party requests data maintained by the other party, the description of the data to be shared and any additional terms relating to that data sharing shall be stated in a separate writing, as shown below, signed by the parties, that (1) is made subject to the terms of this Agreement; (2) specifies the personally identifiable information from education records to be disclosed; and (3) describes how the personally identifiable information from education records will be used with sufficient specificity to describe how the Personally Identifiable Data (PII) will be used and to make clear that the sharing of this data, including the PII, is within the purpose set forth in this Agreement. The separate writing shall be in the form of the Data Request attached hereto as Exhibit A. The persons who are authorized to sign the writing are:

USBE  
Name: \_Whitney Phillips Title: Chief  
Data Privacy  
Officer \_\_\_\_\_

URADD  
Name: \_\_\_\_\_  
Title:  
Title: \_\_\_\_\_

UNIVERSITY OF UTAH  
Name:

3. **Term.** This Agreement is effective for four (4) years from the date signed by the parties, unless terminated sooner in accordance with the terms and conditions herein. This Agreement may be renewed for a one-year period for two years thereafter if agreed in writing by the parties.

4. **Termination.** This Agreement may be terminated without cause, in advance of the specified expiration date, by any party, upon sixty (60) days prior written notice being given the other party.

5. **Confidentiality and Disclosure.** The parties agree to use data only for those purposes described in paragraph 1 above or as required by law and under the following conditions:

- A. The parties shall have sufficient safeguards in place to ensure the data obtained is used only for the purpose stated in paragraph 1.
- B. Data in electronic format shall be stored and processed in such a way that unauthorized persons cannot retrieve the information by computer, remote terminal, or any other means.
- C. The data shall not be stored on any server accessible by unauthorized personnel.
- D. At the request of the donor party, the receiving party shall identify all personnel, by position, authorized to request and receive the data.
- E. The parties shall limit access to, and use of, the data to only those persons who have a legitimate interest in the data provided under this Agreement and shall do the following in regards to those individuals: (1) require a non-disclosure agreement to be signed by them;
  - (2) maintain past and current lists of all individuals to whom it has determined to allow access to education records because the individuals have legitimate educational interest in the data and education records;
  - (3) maintain each non-disclosure agreement signed by its employees at its facility and shall permit inspection of the same by the other party, upon request;
  - (4) notify the donor party in writing within 48 hours when an individual, who has had access to education records, is no longer with the receiving party;
  - (5) notify the donor party in writing within 48 hours if an individual's privileges to access education records has been withdrawn and the date withdrawal occurred;
  - (6) shall not disclose the data or education records to individuals who have not been determined to have a legitimate educational interest, who have not received training, and who have not signed a nondisclosure agreement; and
  - (7) ensure that personally identifiable information contained in the data is protected from further disclosure.
- F. The parties will publish the results of their audits and evaluations in a way that protects the privacy and confidentiality of the students who were the

subjects of the data that was provided. The parties will ensure that students cannot be directly or indirectly identified in published reports. For example, when publishing tables, cell suppression and other methods of disclosure avoidance will be used so that students cannot be identified through small numbers displayed in table cells.

6. **Data Security.** The parties will have whole disk encryption on computers used for accessing or storing reports from the data. Each party will limit access to the data using appropriate security controls in accordance with the most recent NIST 800-53 guidelines in transmitting, encrypting, storing, and maintaining data:

<http://www.nist.gov/publicationportal.cfm>, and comply with the State of Utah Information Technology Resources Acceptable Use Policy found at: <http://dts.utah.gov/employee-state/statewide-dts-policies/index.php>.

7. **User Training.** The parties agree to train authorized users accessing information under this Agreement, on relevant statutes prescribing confidentiality and safeguarding requirements, disclosure prohibitions and penalties for unauthorized access or disclosure. The parties shall have the right to review disclosure training and request or suggest any changes necessary. The parties shall maintain past and current lists of individuals attending training and the related training materials.

8. **Security Plans.** The parties shall:

- A. Store any data provided by the other party in an area that is physically secure from access by unauthorized individuals at all times.
- B. Maintain each other's data only until such time that the data is no longer needed or upon termination of this Agreement, whichever occurs first. At that point, the data will be destroyed within thirty (30) days, except for disclosed information possessed by any court.
- C. Refrain from duplicating the data other than as required for disaster recovery.
- D. Report any data breach to the party that provided the information immediately upon discovery and cooperate to mitigate any concerns.

9. **Indemnity.** Both parties to this Agreement are governmental entities as defined in the Governmental Immunity Act of Utah (Utah Code Ann. 63G-7-101 et. seq.). Nothing in this Agreement shall be construed as a waiver by either or both parties of any rights, limits, protections or defenses provided by the Act. Nor shall this Agreement be construed, with respect to third parties, as a waiver of any governmental immunity to which a party to this Agreement is otherwise entitled. Subject to and consistent with the Act, each party will be responsible for its own actions or negligence and will defend against any claims or lawsuits brought against it. There are no indemnity obligations between these parties.

**Liquidated Damages:** Any party that discloses an element of personally identifiable information in violation of this Agreement shall pay to the other party, as a liquidated damage, the sum of \$10,000.00 for each student whose PII has been released, disclosed or otherwise compromised. These liquidated damage proceeds, may, in the discretion of

the receiving party, be provided to the students whose PII was compromised. This is independent of any civil penalty assessed by the Board under UCA53A-1-1411 against a 3<sup>rd</sup> party contractor.

10. **Monitoring.** The parties shall permit each other the right of a compliance review to ensure that the provisions of the Agreement are upheld and will maintain a system sufficient to allow an audit of its compliance with the disclosure and confidentiality and access to data sections above this Agreement.

11. **Amendments.** This Agreement may only be amended by the mutual written agreement of the parties. No provision in this Agreement may be waived, except pursuant to a writing executed by the party against whom the waiver is sought to be enforced. Any such waiver shall not be construed as a waiver by such party of any subsequent breach under this Agreement.

12. **Public Information.** The parties agree that this Agreement will be a public document, and may be available for public and private distribution in accordance with the State of Utah's Government Records Access and Management Act (GRAMA). Each party gives the other express permission to make copies of this Agreement in accordance with GRAMA.

13. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties and supersedes any and all other prior and contemporaneous agreements and understandings between the parties, whether oral or written.

14. **Governing Law.** This Agreement shall be governed by the laws, rules, and regulations of the State of Utah.

15. **Assignment.** Neither party may assign any of its rights under this Agreement, except with the prior written consent of the other party.

16. **Independent Contractors.** The parties are independent contractors, and no agency, partnership, joint venture or employee-employer relationship is intended or created by this Agreement. Neither party may take any binding action on the other party.

IN WITNESS WHEREOF, the parties have executed this Agreement on the above referenced date.

UTAH STATE BOARD OF EDUCATION

URADD PRINCIPAL INVESTIGATOR

By: \_\_\_\_\_  
Its:

By: \_\_\_\_\_  
Its:

UDOH (URADD) DATA STEWARD

URADD DIRECTOR

By: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_

# **Exhibit A**

## **Specific Data Request**

Date of Request: \_\_\_\_\_

TO: \_\_\_\_\_

Chief Data Officer: \_\_\_\_\_

From: \_\_\_\_\_

Requestor: \_\_\_\_\_

1. This Data Request is subject to the terms and conditions of that certain Data Sharing Agreement Between Utah State Board of Education, Utah Department of Health, and the University of Utah, Department of Psychiatry dated \_\_\_\_\_ (“MDSA”).

2. Description of Data Requested (include description of the personally identifiable information (“PII”) that is to be disclosed):

\_\_\_\_\_  
\_\_\_\_\_

3. Description of Intended Use of Data (explain with sufficient specificity to describe how the PII will be used and to make clear that the sharing of this data, including the PII, is within the purposes set forth in the DSA):

\_\_\_\_\_  
\_\_\_\_\_

4. Other terms: \_\_\_\_\_

Approvals:

UTAH STATE BOARD OF EDUCATION

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

UNIVERSITY OF UTAH

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

UTAH STATE DEPARTMENT OF HEALTH

Signature: \_\_\_\_\_

Date: \_\_\_\_\_