

Data Sharing Agreement Between The Utah State Board of Education and Utah Department of Corrections

This Data Sharing Agreement (Agreement) is entered into between the Utah State Board of Education (“Board” or **USBE**), and Utah Department of Corrections (**UDOC**).

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, Section 53A-1-403.5 makes the Board along with the UDOC responsible for the education of inmates in custody and Section 53A-15-401 gives the Board general control and supervision of adult education

WHEREAS, the Board is the designated fiscal agent, compliance monitor and functions as the administrator of adult education services, with the purpose of preparing qualified individuals for the workforce with the academic and vocational skills needed to compete successfully in a world market;

Whereas, the inmates in custody who are the beneficiaries of the educational efforts envisioned by this Agreement are all 18 years of age or older; and

WHEREAS, the services or functions outsourced involves the exchange and use of education records or personally identifiable information for adult inmates both before and after they reached the age of 18; but does not involve or permit the exchange of personally identifiable information for any student who is currently under the age of 18.

WHEREAS, USBE and UDOC intend to fully comply with student data privacy laws including FERPA (20 USC 1232g), and the Utah Student Data Protection Act (53A-1-1401) and the Utah Family Rights and Privacy Act (UCA 53A-12-3)

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

- 1. Purpose:** The purpose of this Agreement is to enable USBE the ability to share and obtain data with/from UDOC -- to wit, [specifically for: 1. The purpose of allocating state and federal funding and 2. State and federal educational reporting under the Workforce Innovation and Opportunity Act (WIOA).
- 2. Data Sharing:** It is understood and agreed that when USBE needs information from data maintained by UDOC, that USBE and UDOC will securely send offender ID numbers, Date of

Births, SSN, academic level gains, high school or equivalency outcomes and entry and transfer/ exit dates and student level data for the above stated purpose to be matched and that UDOC agrees that the sharing of data files, including derivative files, and data files resulting from merges, matches, or other uses of education records are subject to this Agreement. Furthermore, written consent shall be obtained from any inmate prior to the release or exchange of their personally identifiable information under this Agreement.

a. *Disclosure of Data:*

i. *USBE may disclose personally identifiable information of:*

Student names, ID numbers, SSNs, DOB and location of educational services, educational outcomes including but not limited to academic level gains, high school diploma or equivalency outcomes and entry and exit dates

ii. *UDOC may disclose*

1. *Offender names, ID numbers, SSNs, DOB and correctional institution location of offender as well as transfer and exit dates.*

3. The following **Definitions** apply to this Agreement:

- a. "Education records" includes all information accessed, collected, stored, processed, disclosed, de-identified, created or used, including metadata and Personally Identifiable Information.
- b. "Metadata" includes all information created manually or automatically to provide meaning or context to other data.
- c. "Personally Identifiable Information" or "PII" includes both direct identifiers (such as a student's or other family member's name, address, SSN, student number, or biometric number) and indirect identifiers (such as a student's date of birth, place of birth, or mother's maiden name). Indirect identifiers that constitute PII also include metadata about student interaction with an app or service, or other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community who does not have personal knowledge of the relevant circumstances to identify the student with reasonable certainty.
- d. "Student" means any individual who is or has been in attendance at an education agency or institution and regarding who the agency or institution maintains education records;

4. **Confidentiality and Disclosure.** The parties agree to use data only for those purposes described this Agreement 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 this Agreement.
- 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:

- i. require a non-disclosure agreement to be signed by those persons;
 - ii. maintain past and current lists of all individuals to whom a party has determined to allow access to education records because the individuals have legitimate educational interest in the data and education records;
 - iii. maintain each non-disclosure agreement signed by its employees and shall permit inspection of the same by the other party upon request;
 - iv. 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;
 - v. 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;
 - vi. 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 non-disclosure agreement; and
 - vii. ensure that PII 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.
5. **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/publication-portal.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>.
6. **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.
7. **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 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.
8. **Indemnity:** Both parties to this Agreement are governmental entities as defined in the Governmental Immunity Act of Utah (U.C.A. 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.
9. **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 3rd 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 WHEREFOR, the parties sign and cause this Interagency Agreement to be executed.

UTAH STATE BOARD OF EDUCATION

By: _____

Its: _____

Date _____

Utah Department of Corrections

By: _____

Its: _____

Date _____