



Data Sharing Agreements - Guidance

2018 UTAH DATA PRIVACY CONFERENCE

ADA Compliant as of 11/2018

Why are data sharing agreements needed?

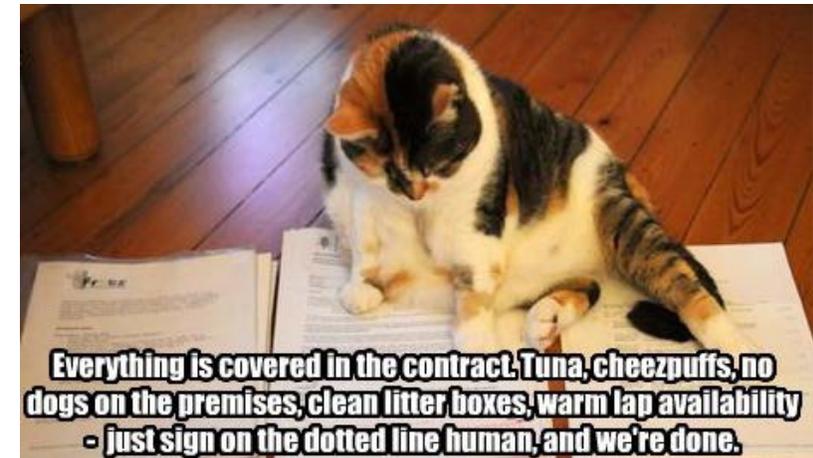
- Data is a resource that must be shared properly
- Clear responsibilities for both parties
- Legal compliance
- Protections for when things go wrong



Jill is not a lawyer. Do not consider this legal advice. Please consult with your counsel before making any legal decisions.

General Drafting Advice

- Unclear and missing requirements can lead to disputes and misunderstandings
- Define any terms that might cause confusion or are jargon
- Be detailed and explain the entire sharing process
- Use “may,” “shall,” and “will”



Precision is your friend!



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If you are looking to buy a car, how can you explain it so that you don't get a toy?

Contract Menu

Data Privacy Contract Terms

LEA Menu of Recommended and Required Terms with Guidance and Legal References

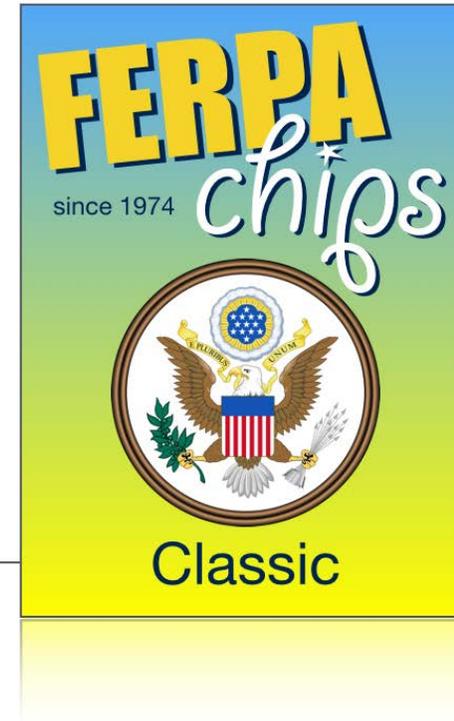
The following includes recommended and required data privacy and security terms and conditions for contracts with third parties. These are contract terms related only to privacy and security and does not include all legal requirements for contracts. Consult with your legal staff or representatives prior to using any contract terms.

Contract Section	Terms	Legal Reference	Recommended or Required and Why	Guidance
Title	Data Sharing Agreement/Purchase Order/Memorandum of Understanding/Contract Between [Insert Full LEA Name] and [Insert Full Entity Name] Data Sharing Agreement Between [Insert Full LEA Name] and [Insert Full Entity Name]	N/A	Recommended to differentiate between different agreement types and different third parties.	Determine which contract type is applicable to this relationship. Here's a general rule of thumb. Contract/Purchase Order – generally used for third parties that receive funds for the services being provided. Memorandum of Understanding/Data Sharing Agreement – Generally used for non-financial agreements where PII is being shared.
Header/ Whereas	This [Insert Full Type of Agreement from Above] (“[Insert Short Name]”) is between the [Insert Full LEA Name] and [Insert Full Entity Name]. For purposes of this Agreement, the [Insert Full LEA Name] is referred to as “[Insert LEA Acronym]” and [Insert Full Entity Name] is referred to as “[Insert Logical Term]”.	N/A	Both	You must define the parties involved in this agreement and it helps to create easy to write “nicknames” for the parties and for the type of agreement, to be used lower in the agreement. The LEA name should be consistent across all contracts. Use a logical name for the other party. Below are some suggestions: Contractor – generally used for a third party performing services for money.

- Important terms needed for any contract involving PII
- Includes your obligations under Utah and federal law
- Suggestions for how each section can be used
- Can be amended to include LEA specific terms or commonly negotiated items

Requirements - FERPA

- FERPA Exception
 - [USBE FERPA Exception Videos on YouTube](#)
- Correction of inaccurate PII
- Parental access to PII



You can neither confirm nor deny that you ate just one.



Requirements - Student Privacy and Data Protection Act

- Audit rights
- Data deletion on request and end of agreement
- Limits on the use of PII
- Description of and limits on the sharing of PII
- Restrictions on targeted advertising, selling PII



Best Practices – Main Agreement

- Have due dates for data deletion (e.g. 30 days post end of agreement)
- Limitation of data access based on need-to-know (e.g. authorized users)
- Incident notification, cooperation, and responsibility
- Specific security practices and requirements
- Insurance, indemnification, and data ownership



Good Practices – Appendices

- Appendices that describe the sharing in great detail which can be easily added or amended as sharing changes
 - Exact PII is being shared, sources of PII, and internal data owners or stewards
 - Specific uses of PII and any legal requirements driving data sharing (legally required)
 - Timing of sharing (i.e. 1st of each month)
 - Disclosures of PII (legally required) or any reporting requirements
 - Specific controls for this sharing activity

Because it's "best practices".
That's IT talk for: "Because I
said so."



Summary and Key Points

- Create a data sharing agreement template that works for you and is different from a contract template
- Always rely on your legal reps for guidance and specific requirements
- Ask the other party if you don't understand *anything* in the agreement
- Have a resource of common negotiation items – things you will or will not agree to – and add to contract menu
- Plan for the worst possible scenario





STUDENT DATA PRIVACY

IF YOU COLLECT IT **PROTECT IT**

Questions?

