

ATTACHMENT-C

FERPA – STUDENT LEVEL DATA PROTECTION STANDARD TERMS AND CONDITIONS OR REQUIRED ATTACHMENT

The services or functions included in the State of Utah Contract involve the CONTRACTOR obtaining or using education records or personally identifiable information. Utah State Board of Education (“USBE”) is subject to Federal Education Records Privacy Act (“FERPA”) 20 U.S.C. § 1232g, and its implementing regulations, 34 C.F.R. Part 99, which generally requires written consent for disclosure of educational record or personally identifiable information to third parties.

Written consent is not required for school officials. FERPA provides a contractor, consultant, volunteer, or other outside party may be treated as a school official if the contracting party is: (a) providing services or functions that the USBE would otherwise use employees, (b) under the direct control of USBE with respect to the use and maintenance of education records and personally identifiable information, (c) subject to the requirements of 34 C.F.R. 99.33(a), and (d) limiting access within the Vendor’s organization to those who have a legitimate educational interest. 34 C.F.R 99.31(a)(1)(i)(B).

USBE and CONTRACTOR desire to have CONTRACTOR treated as a school official within the FERPA exception in 34 C.F.R. 99.31(a)(1)(i)(B) and to comply with state and federal student and family privacy laws. To protect the privacy of students and parent data, USBE and CONTRACTOR (“Parties”) include this Attachment to the Contract.

The Parties agree as follows:

1. The term of this Attachment shall remain in effect through the duration of the Contract.
2. The following definitions apply to the Attachment:
 - a. “Education records” includes all information accessed, collected, stored, processed, disclosed, de-identified, created, or used by Vendor, including metadata and personally identifiable information, in relation to the Agreement.
 - 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, 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.

3. CONTRACTOR agrees that all data files, including derivative files, and all data files resulting from merges, matches, or other uses of education records provided or obtained pursuant to the Contract are subject to this agreement.
4. CONTRACTOR's services provided to USBE are services for which USBE would otherwise use employees.
5. CONTRACTOR is a party acting for USBE, who has direct control of the use and maintenance of education records. All education records are in the legal and rightful custody and control of USBE. CONTRACTOR acquires no rights or licenses to use the education records for any other purpose than for performing the services set forth in the Interagency Agreement.
6. CONTRACTOR has a legitimate educational interest in the education records based upon the Contract.
7. CONTRACTOR shall limit access within its organization to individuals whom CONTRACTOR has determined to have legitimate educational interests in the education records.
 - a. CONTRACTOR shall require a non-disclosure agreement be signed by those individuals within its organization that CONTRACTOR determines will have access to the education records because the individuals have a legitimate educational interest in the education records.
 - b. CONTRACTOR shall 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 education records.
 - c. CONTRACTOR shall maintain each non-disclosure agreement signed by its employees at its facility and shall permit inspection of the same by the Board, upon request.
 - d. CONTRACTOR shall maintain an audit trail for the duration of this contract, which reflects the granting and revoking of access privileges. A copy of this audit trail may be requested by USBE from Contractor at any time and shall be provided within 10 days of the USBE request.
 - e. CONTRACTOR shall further notify the Board in writing within 48 hours if an individual's privileges to access education records has been withdrawn and the date withdrawal occurred.
 - f. CONTRACTOR shall require and ensure annual training of those individuals determined to have access due to a legitimate educational interest in the education records. The training shall include the federal and state laws relating to student and family privacy and best practices for maintaining student and family privacy.
 - g. CONTRACTOR shall maintain past and current lists of individuals attending training and the related training materials.
 - h. CONTRACTOR shall not disclose the education records to individuals within CONTRACTOR 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.

8. CONTRACTOR shall only access, collect, store, process, or use the education records, as necessary to provide the services set forth in the Contract for its legitimate educational interest in the education records. Therefore, CONTRACTOR will not access, collect, store, process, sell, disclose, de-identify or use the education records for any other purpose.
9. Data disclosed by USBE to Contractor includes records that: (1) may directly relate to a student; (2) may contain personally identifiable information, and (3) are maintained by an educational agency or institution or by a party acting for the agency or institution. SPECIFICALLY, USBE shall provide the particular data which is described in ATTCH D of this contract. In addition to the identification and description of the data, Attachment D shall also contain a description of the frequency and method of secure file transfer. USBE has no obligation to provide data not described in ATTCH D.
10. CONTRACTOR shall not re-disclose the education records to any other party without the prior consent of the parent or eligible student.
11. CONTRACTOR shall protect all education records in a manner that does not permit disclosure of the educational records to anyone other than those individuals within its organization to whom CONTRACTOR has determined to have legitimate educational interests in the education records.
12. CONTRACTOR shall store and maintain all education records separately from the information of any other records.
13. CONTRACTOR shall notify the Board if there are any changes that will affect the system where all education records are stored and maintained, and ensure the system is in compliance with industry standards for the security and privacy of education records.
14. CONTRACTOR shall comply with all state and federal laws relating to student or family privacy and will maintain any and all education records in a manner consistent with such laws.
15. CONTRACTOR shall notify the Board in writing immediately upon discovering any breach, or suspected breach of security, or any disclosure of education records to an unauthorized individual within CONTRACTOR's organization, or re-disclosure to anyone. Notification shall include the date of improper release and a secure transmission of list(s) of affected students or families to assist the Board in notifying students, parents, or guardians of the improper release as required by federal and state law. CONTRACTOR agrees the improper release of any education record constitutes a material breach of the Contract. CONTRACTOR shall be liable for any claims or damages that occur from its failure to comply with its obligations in this Attachment.
16. CONTRACTOR shall return to the Board or securely destroy any education records and PII provided pursuant to the Contract upon the earlier of either the expiration or termination of the Contract.
17. Notices required by this Attachment shall be provided to:
Chief Privacy Officer, who is currently Whitney Phillips at Whitney.Phillips@schools.utah.gov.