STATE OF UTAH
INTERAGENCY DATA SHARING AGREEMENT

UTAH STATE BOARD OF EDUCATION

PARTIES: This Interagency Data Sharing Agreement ("Agreement") is between the Utah State Board of Education, referred to as "USBE" or "Board", and the following Agency "Agency", each individually a "Party" and together the "Parties".

Utah Department of Health				
Name of Agency				
288 N 1460 W				
Address				
Salt Lake City, UT 84116	UT	84116	flanier@utah.gov	801.573.3176
City	State	Zip	Email	Phone
https://health.utah.gov/				
Website				
Superintendent Dickson			801-538-7511	Sydnee.dickson@schools.utah.gov
USBE Sponsor Name			Sponsor Phone	Sponsor Email

AGREEMENT PERIOD: Effective Date: 9/13/2021 Termination Date: 12/31/2024 unless terminated early or extended in accordance with the terms and conditions of this Agreement. Renewal options (if any): 1.

ATTACHMENT A: State of Utah Standard Terms and Conditions for Data Sharing
ATTACHMENT B: Scope of Data Sharing
ATTACHMENT C: Additional Scopes of Data Sharing if applicable
Any conflicts between Attachment A and the other Attachments will be resolved in favor of Attachment A.

Each signatory below represents that he or she has the requisite authority to enter into this Agreement.

IN WITNESS WHEREOF, the Parties sign and cause this Agreement to be executed.

AGENCY SIGNATORY

Francesca Lanier — Digitally signed by Francesca Lanier Date: 2021.09.15 14:31:09 -06'00' — September 15, 2021

Agency's signature — Date

Francesca Lanier, Chief Privacy and Security Officer

Type or Print Name and Title

UTAH STATE BOARD OF EDUCATION

Dickson, Sydnee — Digitally signed by Dickson, Sydnee Date: 2021.09.19 20:31:55 -06'00'

Sydnee Dickson, Ed.D.
Utah State Superintendent of Public Instruction — Date

Sydnee Dickson, Utah State Superintendent of Public Instruction

Type or Print Name and Title

Whitney Phillips	801-538-7523		Whitney.phillips@schools.utah.gov
USBE Contact Person	Telephone Number	Fax Number	Email

1. **DEFINITIONS:** The following terms shall have the meanings set forth below:
   - **1.1.** "**Authorized Persons**" means Agency's employees, officers, partners, Subcontractors or other agents of Agency who require access to Data and who have a legitimate educational interest in the education records to enable the Agency to perform its responsibilities under this Agreement.
   - **1.2.** "**Agreement Signature Page(s)**" means the State of Utah cover page(s) that the USBE and Agency signed.
   - **1.3.** "**Contact**' means an individual having had association with an infected individual so as to have had an opportunity to acquire the infection
   - **1.4.** "**Data**" includes Student Personally Identifiable Information and Educator Data, and may also include Confidential Information but does not include Student Personally Identifiable Information and Educator Data linked with data from another source which is governed by the confidentiality provisions established in Utah Code § 26-6-27.
   - **1.5.** "**Data Steward**" means the entity responsible for combining two Data sets from different sources, and managing the resultant Data set. If a USBE Data system is being used, then USBE is the Data Steward. If another entity is doing the calculations or derivations, then that entity becomes the Data Steward.
   - **1.6.** "**Destroy**" means to remove Data such that it is not maintained in retrievable form and cannot be retrieved in the normal course of business.
   - **1.7.** "**Educator Data**" includes, but is not limited to, the educator's name; any unique identifier, including social security number; and other information that, alone or in combination, is linked or linkable to a specific educator.
   - **1.8.** "**Incident**" means the potentially unauthorized access to Data that Agency believes could reasonably result in the use, disclosure or theft of Data within the possession or control of Agency or Agency's Subcontractors.
   - **1.9.** "**Metadata**" includes all information created manually or automatically to provide meaning or context to other data.
   - **1.10.** "**State of Utah**" means the State of Utah, in its entirety, including its institutions, agencies, departments, divisions, authorities, instrumentalities, boards, commissions, elected or appointed officers, employees, agents, and authorized volunteers.
   - **1.11.** "**Student Personally Identifiable Information**" or "**PII**" has the same meaning as that found in U.C.A § 53E-9-301, and 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 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.
   - **1.12.** "**Subcontractors**" means any person or entity that will receive Student Personally Identifiable Information shared as part of this agreement.
   - **1.13.** "**Targeted Advertising**" means advertising to a student or student's parent by Agency if the advertisement is based on information or Data Agency collected or received under this Agreement.
2. **GOVERNING LAW AND VENUE:** This Agreement shall be governed by the laws, rules, and regulations of the State of Utah. Any action or proceeding arising from this Agreement shall be brought in a court of competent jurisdiction in the State of Utah. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.
3. **LAWS AND REGULATIONS:** At all times during this Agreement, Agency and all Data sharing shall comply with all applicable federal and state constitutions, laws, rules, codes, orders, and regulations, including applicable licensure and certification requirements.
4. **RECORDS ADMINISTRATION:** Agency shall maintain or supervise the maintenance of all records necessary to properly account for Agency's performance under this Agreement. These records shall be retained by Agency for at least six (6) years after termination of this Agreement, or until all audits initiated within the six (6) years have been completed, whichever is later. Agency agrees to allow, at no additional cost, the State of Utah, federal auditors, USBE staff, or their designees, access to all such records during normal business hours and to allow interviews of any employees or others who might reasonably have information related to such records. Further, Agency agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement.
5. **INDEPENDENT CONTRACTOR:** Agency and Subcontractors, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the USBE or the State of Utah.
6. **NON-FINANCIAL UNDERSTANDING:**
   - **6.1.** This Agreement is a non-financial understanding between USBE and Agency. No financial obligation by or on behalf of either of the Parties is implied by a Party's signature at the end of this Agreement.
   - **6.2.** The terms of any financial liability that arises from data processing activities carried out in support of the responsibilities covered herein must be negotiated separately and to the mutual satisfaction of the Parties.
   - **6.3.** The legal authority for data sharing for specified purposes conveyed by this Agreement cannot be used to support a subsequent claim of implied agreement to financial obligation.
7. **COST (OPTIONAL):** Agency agrees to pay fees in the amount of $ for the preparation or delivery of the Data (this payment may be required in advance). Payment shall be made to:
8. **AGENCY RESPONSIBILITY:** Agency is solely responsible for fulfilling the Agreement. Agency shall be the sole point of contact regarding all contractual matters. Agency must incorporate Agency's responsibilities under this Agreement into every subcontract with its Subcontractors. Moreover, Agency is responsible for its Subcontractors compliance under this Agreement.
9. **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. This Agreement shall not be construed as a waiver by either or both Parties of any rights, limits, protections, or defenses provided by the Act. This Agreement shall not be construed as a waiver of any governmental immunity to which a Party to this Agreement is otherwise entitled. 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.
10. **EMPLOYMENT PRACTICES:** Agency agrees to abide by any other laws, regulations, or orders that prohibit the discrimination of any kind by any of Agency's employees.
11. **AMENDMENTS:** This Agency may only be amended by the mutual written agreement of the Parties, which amendment will be attached to this Agreement. Automatic renewals will not apply to this Agreement, even if identified elsewhere in this Agreement.

12. **TERMINATION:** This Agreement may be terminated, with cause by either Party, in advance of the specified expiration date, upon written notice given by the other Party. The party in violation will be given ten (10) days after written notification to correct and cease the violations, after which this Agreement may be terminated for cause immediately and subject to the remedies below. This Agreement may also be terminated without cause (for convenience), in advance of the specified expiration date, by the USBE, upon thirty (30) days written termination notice being given to the Agency. The USBE and the Agency may terminate this Agreement, in whole or in part, at any time, by mutual agreement in writing.
    12.1. Following the termination of this Contract, USBE reserves the right to request a complete and secure (i.e. encrypted and appropriately authenticated) download file of all data, including, but not limited to, all Data, schema and transformation definitions, or delimited text files with documented, detailed schema definitions along with attachments in its native format. After USBE has been provided and confirmed as acceptable a complete download, or declines a download and requests immediate destruction, Contactor shall Destroy all Data collected, generated, or inferred as a result of this Contract. Should USBE not request a complete download, Contractor shall Destroy the Data immediately after thirty (30) days post termination of the Contract. The Contractor shall notify USBE in writing of the date upon which all of the Data is destroyed.
13. **CHANGES IN LAW:** Upon thirty (30) days written notice delivered to the Agency, this Agreement may be terminated in whole or in part at the sole discretion of the USBE, if the USBE reasonably determines that a change in Federal or State legislation or applicable laws materially affects the ability of either Party to perform under the terms of this Agreement.
14. **RESERVED.**
15. **PUBLIC INFORMATION:** Agency agrees that this Agreement shall 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). Agency gives the USBE and the State of Utah express permission to make copies of this Agreement in accordance with GRAMA. The USBE and the State of Utah are not obligated to inform Agency of any GRAMA requests for disclosure of this Agreement.
16. **OWNERSHIP IN INTELLECTUAL PROPERTY:** The USBE and Agency each recognizes that each has no right, title, or interest, proprietary or otherwise, in the intellectual property owned or licensed by the other, unless otherwise agreed upon by the Parties in writing.
17. **ASSIGNMENT:** Agency may not assign, sell, transfer, subcontract or sublet rights, or delegate any right or obligation under this Agreement, in whole or in part, without the prior written approval of the USBE.
18. **REMEDIES:** Any of the following events will constitute cause for the USBE to declare Agency in default of this Agreement: (i) Agency's non-performance of its contractual requirements and obligations under this Agreement; or (ii) Agency's material breach of any term or condition of this Agreement. The USBE may issue a written notice of default providing a ten (10) day period in which Agency will have an opportunity to cure. Time allowed for cure will not diminish or eliminate Agency's liability for damages. If the default remains after Agency has been provided the opportunity to cure, the USBE may do one or more of the following: (i) exercise any remedy provided by law or equity; (ii) terminate this Agreement; (iii) impose liquidated damages, if liquidated damages are listed in this Agreement; or (iv) demand a full refund of any payment that the USBE has made to Agency under this Agreement for Procurement Item(s) that do not conform to this Agreement.
19. **FORCE MAJEURE:** Neither Party to this Agreement will be held responsible for delay or default caused by fire, riot, act of God, and/or war which is beyond that Party's reasonable control. The USBE may terminate this Agreement after determining such delay will prevent successful performance of this Agreement.
20. **PUBLICITY:** Agency shall submit to the USBE for written approval all advertising and publicity matters relating to this Agreement. It is within the USBE's sole discretion whether to provide approval, which approval must be in writing.
21. **WAIVER:** A waiver of any right, power, or privilege shall not be construed as a waiver of any subsequent right, power, or privilege.
22. **SUSPENSION OF WORK:** Should circumstances arise which would cause the USBE to suspend Agency's responsibilities under this Agreement, but not terminate this Agreement, this will be done by formal written notice pursuant to the terms of this Agreement. Agency's responsibilities may be reinstated upon advance formal written notice from the USBE.
23. **CHANGES IN SCOPE**: Any changes in the scope of the services to be performed under this Agreement shall be in the form of a written amendment to this Agreement, mutually agreed to and signed by both Parties, specifying any such changes, fee adjustments, any adjustment in time of performance, or any other significant factors arising from the changes in the scope of services.
24. **DISPUTE RESOLUTION:** Prior to either Party filing a judicial proceeding, the Parties agree to participate in the mediation of any dispute. The USBE, after consultation with Agency, may appoint an expert or panel of experts to assist in the resolution of a dispute. If the USBE appoints such an expert or panel, USBE and Agency agree to cooperate in good faith in providing information and documents to the expert or panel in an effort to resolve the dispute.
25. **ORDER OF PRECEDENCE:** In the event of any conflict in the terms and conditions in this Agreement, the order of precedence shall be: (i) this Attachment A; (ii) Attachment B; (iii) Agreement Signature Page(s); (iv) the State of Utah's additional terms and conditions, if any; (v) any other attachment listed on the Agreement Signature Page(s); and (vi) Agency's terms and conditions that are attached to this Agreement, if any. Any provision attempting to limit the liability of Agency or limit the rights of the USBE or the State of Utah must be in writing and attached to this Agreement or it is rendered null and void.
26. **SURVIVAL OF TERMS:** Any terms that by their nature would survive the expiration of, completion, or termination of this Agreement shall survive.
27. **SEVERABILITY:** The invalidity or unenforceability of any provision, term, or condition of this Agreement shall not affect the validity or enforceability of any other provision, term, or condition of this Agreement, which shall remain in full force and effect.
28. **ERRORS AND OMISSIONS:** Agency shall not take advantage of any errors and/or omissions in this Agreement. Agency must promptly notify the State of any errors and/or omissions that are discovered.
29. **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.
30. **CONFIDENTIALITY GENERAL PROVISIONS:**
    30.1. USBE reserves all right, title, and interest, including all intellectual property and proprietary rights, in and to system data, Data, and all related data and content.

30.2. This Agreement applies to all data sharing between Agency and USBE. Specific data to be shared are outlined in the Attachments, along with the purpose of data sharing, data ownership and conditions and/or regulations governing the usage of the shared data, requirements for shared data retention/destruction, and Party processes for implementing these actions.

30.3. USBE and Agency enter into this Agreement to share and exchange Data for the purposes of conducting studies for, or on behalf of, educational agencies or institutions to develop, validate, or administer predictive tests; administer student aid programs; or improve instruction.

30.4. This Agreement will be reviewed, updated, and approved on an annual basis.

30.5. Agency shall comply with all applicable laws and regulations including but not limited to FERPA, the Utah Family Education Rights and Privacy Act, Utah Code § 53E-9-2 ("UFERPA"), and the Individuals with Disabilities Educational Act, 30 U.S.C. §1400 et seq. and 34 C.F.R. Part 300 ("IDEA").

31. DATA ACCURACY:

31.1. The Data provided are the best and most complete documentation available. USBE does not ensure 100% accuracy of all records and fields. Some data fields, including those that are not used, may contain incorrect or incomplete Data. USBE and Agency will report any systematic problems with the Data to the data owner. Data that has been manipulated or re-processed by either USBE or Agency is the responsibility of that Party.

32. ACCESS TO DATA:

32.1. Agency shall limit access to Data to Authorized Persons only and shall require a non-disclosure agreement be signed by all Authorized Persons prior to being granted access to Data.

32.2. Agency shall maintain past and current lists of all Authorized Persons, maintain each non-disclosure agreement, and shall permit inspection of the same by USBE upon request.

32.3. Agency shall maintain an audit trail for the duration of this Agreement, which reflects the granting and revoking of access privileges to Authorized Persons. A copy of this audit trail may be requested by USBE from Agency at any time and shall be provided within 10 days of the USBE request. This audit trail is not required for access to the Data once it has been linked with other data.

32.4. Agency shall have strong access controls in place. Agency shall disable and/or immediately delete unused and terminated Authorized Persons' accounts and shall periodically assess account inactivity for potential stale accounts.

32.5. Agency shall provide annual, mandatory privacy and security awareness and training for all Authorized Persons, maintain past and current lists of Authorized Persons that have completed training, and permit inspection of the same by USBE upon request.

32.6. The Agency shall request and use data only for functions directly related to responding to and interrupting the transmission of COVID-19 in the school environment and school population throughout the duration of the state and national state of emergency or if necessary to protect the health and safety of a student or other individuals. The Agency may not use the data for any other purpose without prior approval of the other party.

33. USE AND DISCLOSURE OF DATA:

33.1. Agency shall not collect, use, or share Data beyond the purposes set forth in the Attachments.

33.2. Agency shall share Data only for the purposes stated in the Attachments and then only with the Authorized Persons stated in the Attachments.

33.3. If Agency seeks to publicly release Data, Agency must aggregate the Data by totaling the Data and reporting it at the group, cohort, school, school district, region, or state level. Agency shall, upon request of USBE, provide USBE with a document that lists the steps and methods the Agency shall use to de-identify the information. Any aggregate data that is publicly released without being redacted using the methods in this section shall be considered an Incident. The following methods shall be used on any aggregated reports:

33.3.1. Aggregate data shall be reported publicly only if there is a sufficient number of individuals represented in any demographic or subgroup so that an individual cannot be identified.

33.3.2. Aggregated reports shall redacted using complementary suppression methods that remove the risk of Data being identifiable using simple mathematics or formulas.

33.3.3. Aggregated reports shall be redacted to remove identifiability risks caused other prior releases of aggregate data by Agency.

33.4. Agency shall not use Data for the purposes of Targeted Advertising.

34. DATA LINKAGE:

34.1. If Agency will link USBE's Data with Data from another source, the result could be a new data set with potentially unique regulations and conditions governing its use. Prior to linking the Data, Agency will provide detailed information to USBE outlining the Data being linked and the other sources for Data.

34.2. The Data Steward will classify the linked data based on security or privacy risks. This could include evaluating the method of release, on the likelihood of identifying individuals from the linked Data, if linking the Data will violate any laws or regulations, or if the new data set meets the original request.

34.3. Based on the results of the risk assessment, USBE may refuse to provide Agency with some or all of the requested Data in its sole discretion in order to mitigate any risks identified.

34.4. Should USBE consent to the Data being linked, the Data Steward shall apply additional constraints as necessary to the usage of the new data set.

34.5. Detailed information on the Data being linked, the other sources of Data, and any additional constraints shall be documented in the Attachments.

35. SECURITY AND PROTECTION OF DATA:

35.1. Agency shall notify USBE if there are any material changes that will negatively affect the system where all Data are stored and maintained.

35.2. If Agency is given Data as part of this Agreement, the protection of Data shall be an integral part of the business activities of Agency to ensure that there is no inappropriate or unauthorized use of Data. Agency shall safeguard the confidentiality, integrity, and availability of Data.

35.3. Agency shall comply with and protect and maintain Data using methods that are at least as good as or better than that established in the State of Utah's Department of Technology Policies (https://dts.utah.gov/policies).

35.4. Agency shall only transmit or exchange Data via secure means (ex. HTTPS or FTPS). Agency shall not use, store or process Data on any unencrypted portable or laptop computing device or any portable storage medium.

35.5. Agency shall store and maintain all Data in data centers located in the United States.

35.6. Agency shall permit its employees and Subcontractors to access Data remotely only via a secured manner, such as Virtual Private Networks (VPN).

35.7. Agency shall store all Data, as well as any backups made of that data, in encrypted form using no less than 128 bit key and include all Data as part of a designated backup and recovery process.

35.8. Agency shall enforce strong password protections on all devices and networks with access to or that store Data.

35.9. Agency shall maintain data only until such time that the data is no longer needed (Term Expiration) or upon early termination of this Agreement (with Cause), whichever occurs first. At that point, the data will be destroyed within 30 days by the party holding the data, except for disclosed information possessed by any court. Agency shall certify to USBE in writing that the data has been destroyed.

36. INCIDENTS:

36.1. If Agency becomes aware of an Incident involving Data by either Agency or any of Agency's Subcontractors, Agency shall notify USBE within one (1) calendar day and cooperate with USBE regarding recovery, remediation, and the necessity to involve law enforcement, if any.

36.2. Agency shall produce a written remediation plan that includes information about the cause and extent of the Incident and the actions Agency will take to remediate the Incident and to reduce the risk of incurring a similar type of Incident in the future. Agency shall present its analysis and remediation plan to USBE within ten (10) calendar days of notifying USBE of an Incident. USBE reserves the right to adjust this plan, in its sole discretion. If Agency cannot produce its analysis and plan within the allotted time, USBE, in its sole discretion, may perform such analysis and produce a remediation plan, and Agency shall reimburse USBE for the reasonable costs thereof.

36.3. In the event of an Incident, Agency shall provide USBE or its designated representatives with access seven (7) days a week, twenty-four (24) hours a day, for the purpose of evaluating, mitigating, or resolving the Incident.

36.4. Unless Agency can establish that Agency or any of its Subcontractors is not the cause or source of the Incident, Agency shall be responsible for the cost of notifying each person whose personal information may have been compromised by the Incident.

ATTACHMENT B
SCOPE OF DATA SHARING

1. **PURPOSE:** The Utah Department of Health (UDOH) is authorized to collect Data from USBE under Utah Code 26-6-3 when necessary in undertaking public health efforts to interrupt transmission of COVID-19 infections in the school environment, throughout the school population and to others having contact with school populations**.** Per the Family Educational Rights and Privacy Act (FERPA) health or safety emergency provision permits such disclosures when the disclosure is necessary to protect the health or safety of the student or other individuals (34 CFR §§ 99.31(a)(10) and 99.36). The Utah Department of Health seeks to streamline the required reporting of COVID-19 cases among schools (school health authorities) and the Utah Department of Health. The UDOH request is for access to the data via the USBE Data Gateway.
2. **ROLES:**
   2.1. Requestor's Data Steward: Joe Jackson.
   2.2. USBE's Data Quality Manager: Aaron Brough
   2.3. Authorized Persons: Joe Jackson, Jason Barnes, Scott Christofferson, Daniella Birch, Doug McGowan, Josh Ridderhoff.
3. **DELIVERY:** September 13, 2021
4. **DATA:**

Data (PII, Educator Data, and other information requested)	Source System	USBE Owner
Enrollment of students, including name, date of birth, and gender		

5. **OUTPUT:** N/A
6. **DATA LINKAGE:** The Utah Department of Health will match their database of COVID-positive students and Contacts to identify where a student is enrolled in school. Linked data in the Utah Department of Health EpiTrax database maintains its strictly confidential status as designated under the Utah Communicable Disease Control Act (Utah Code 26-6-1 et seq.),and remain subject to the provisions of that chapter including the confidentiality restrictions.
7. **DURATION OF DATA SHARING:** The sharing referenced in this Attachment will end on December 31, 2024, the end of the COVID-19 threat in Utah Public Schools as measured by decline in schools nearing established thresholds, or upon the termination of this Agreement, whichever occurs first.