

CONFIDENTIALITY AND USE AGREEMENT

This Confidentiality and Use Agreement (this "Agreement") is entered into this ____ day of _____, 20__, by and between _____ (the LEA "User") located at _____ and Alabama Commission on Higher Education ("ACHE") located at 100 N. Union, Street, Montgomery, Alabama 36104. "Parties" means both ACHE and the User.

I.

RECITALS:

- a. ACHE has entered into a SAIG Participation Agreement for State Grant Agencies (the "SAIG") with the U.S. Department of Education (the "Department"). Pursuant to the SAIG, the Department will permit ACHE to disclose limited Institutional Student Information Records ("ISIR") related to the completion status of a student's Free Application for Federal Student Aid ("FAFSA") to local educational agencies, secondary schools, or other entities in order to facilitate providing assistance to students in completing the FAFSA.
- b. This Agreement establishes the conditions under which the User will receive ISIR information as permitted under the terms of the SAIG Agreement. The SAIG provides that ACHE may disclose a student's FAFSA Filing Status Information (as hereinafter defined) to the User if the User has an Established Relationship (as hereinafter defined) with the student, provided that the User has executed a written agreement with ACHE containing the provisions set forth herein. The User will be authorized to use the ISIR information for purposes of determining the completion status of a student's FAFSA and/or facilitating the delivery of assistance to students in completing the FAFSA.

II.

DEFINITIONS:

- a. *Authorized Personnel* means employees of User who require access to FAFSA Filing Status Information to determine completion status of a student's FAFSA and facilitate providing assistance to such students in completing the FAFSA, including both paid and non-paid staff and authorized agents such as contractors, subcontractors, volunteers or other parties to whom User has outsourced any of its services or functions. All Authorized Personnel must be under the direct control of the User with respect to the use and maintenance of Covered Data and Information.
- b. *Covered Data and Information* means all data and information provided to the User pursuant to this Agreement, including ISIR data and FAFSA Filing Status Information.
- c. *Designated Entity* means a public or non-profit entity that has an Established Relationship with the student that the U.S. Secretary of Education has designated as eligible to receive FAFSA Filing Status Information from ACHE.

- d. *Established Relationship* means a relationship with a student FAFSA applicant that meets the requirements of Section V. of this Agreement.
- e. *FAFSA Filing Status Information* means information from an ISIR that ACHE may disclose to the User on the completion status of a student's FAFSA.

FAFSA Filing Status Information includes: student's first name, student's last name, FAFSA submitted date (the date the FAFSA was submitted to the Department), FAFSA processed date (the date the Department processed the FAFSA), a Selected for Verification flag, and a FAFSA completion flag.
- f. *FERPA* means Family Educational Rights and Privacy Act, 20 U.S.C. 1232g and its regulations codified at 34 CFR part 99.
- g. *HEA* means the Higher Education Act of 1965.
- h. *LEA* means a public board of education or other public authority legally constituted within a State for either administrative control of or direction of, or to perform service functions for, public elementary or secondary schools in a city, county, township, school district or other political subdivision of the State; or such combination of school districts or counties a State recognizes as an administrative agency for its public elementary and secondary schools; or any other public institution or agency that has administrative control and direction of a public elementary or secondary school.
- i. *Secondary School* means a day or residential school that provides secondary education as determined under State law.
- j. *State* means the State of Alabama.

III.

DATA SECURITY:

- a. The User agrees to only access Covered Data and Information for students with an Established Relationship (as defined in Section IV) with the User. The User shall use such Covered Data and Information only for the purposes of this Agreement.
- b. The User agrees to use reasonable administrative, technical, and physical security measures to protect the confidentiality of all Covered Data and Information received under this Agreement and to protect it from unauthorized access, use or re-disclosure. For purposes of this Agreement, such security measures shall be no less rigorous than the measures the User has in place for educational records covered by FERPA.
- c. The User will restrict access to and disclosure of all Covered Data and Information provided or created under this Agreement to Authorized Personnel (as defined by this Agreement) only.

- d. The User shall advise all Authorized Personnel who have access to the Covered Data and Information of the confidential nature of the data and the safeguards required to protect this data, and criminal sanctions for noncompliance under applicable Federal, state or local laws.
- e. The User will not re-disclose or share the FAFSA Filing Status Information obtained from ACHE in personally identifiable form other than (i) to the FAFSA applicant and to the FAFSA applicant's parents if the applicant is under age 18, to the FAFSA applicant if the applicant is age 18 or older or enrolled in a post-secondary institution, or to any other party with the consent of the FAFSA applicant (or the FAFSA applicant's parents if the applicant is under the age of 18), or (ii) if required to do so by law and if such use is consistent with all applicable privacy laws, including the privacy provisions of Section 483(a)(3)(E) of the HEA, 20 U.S.C. 1090(a)(3)(E) and FERPA.
- f. The User shall comply with the requirements of FERPA in disclosing any personally identifiable information from students' education records to ACHE or its agents.
- g. The User shall maintain a copy of this Agreement.

IV.

SAFEGUARD STANDARD:

The Parties agree that they will protect the Covered Data and Information pursuant to the Agreement no less rigorously than they protects their own confidential information.

V.

ESTABLISHED RELATIONSHIP:

A User has an Established Relationship with a student if:

- a. in the event the User is an LEA, the student is enrolled in a secondary school under the legal authority of the LEA or the LEA is otherwise providing services to the student;
- b. in the event the User is a Secondary School, the student is enrolled in such school or such school is otherwise providing services to the student; or
- c. in the event the User is a Designated Entity, the student is enrolled in or has registered with or is receiving services from such Designated Entity in order for the Designated Entity to assist the student in pursuit of postsecondary education.

VI.

RETURN OR DESTRUCTION OF COVERED DATA AND INFORMATION:

Upon termination, cancellation, expiration or other conclusion of the Agreement between the User and ACHE, the User shall, upon written request of ACHE, return to ACHE or, if return is not

feasible, destroy all Covered Data and Information in whatever form or medium that the User received from or created on behalf of ACHE.

VII.

REPORTING OF UNAUTHORIZED DISCLOSURES OR MISUSE OF COVERED DATA AND INFORMATION:

The User's Primary Data Receiver shall report to ACHE any use or disclosure of Covered Data and Information not authorized by this Agreement or in writing by the Parties within five (5) business days after the Primary Data Receiver learns of such use or disclosure. The report shall identify the following information: (i) the nature of the unauthorized use or disclosure (ii) the Covered Data and Information used or disclosed, (iii) if known, who made the unauthorized use or received the unauthorized disclosure, (iv) what corrective action the User has taken or will take to prevent future similar unauthorized use or disclosure. The User shall provide such other additional information as may be reasonably requested by ACHE.

VIII.

OVERSIGHT AND COMPLIANCE:

ACHE reserves the right to monitor any database or electronic program that it utilizes to provide access to Covered Data and Information to a User in order to confirm that the database or program is being utilized in compliance with this Agreement. ACHE also may, at its discretion, at any time and from time to time perform on-site inspections of the User to monitor compliance with the terms of this Agreement.

IX.

SURVIVAL:

The respective rights and obligations of all Parties shall survive the termination of this Agreement.

X.

PRIMARY DATA CUSTODIANS:

The Superintendent can designate up to two (2) Primary Data Custodians using the attached form, APPENDIX A. If the designated Primary Data Receiver would like to add additional Data Custodians, the Primary Data Receiver must assign them as Local Data Custodians using attached form, APPENDIX B.

XI.

TERMINATION:

A User's failure to comply with the administrative and/or information security responsibilities set forth in this Agreement may result in the termination of this Agreement.

IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be duly executed in its name and on its behalf.

COORDINATOR FOR SPECIAL INITIATIVES WITH ACHE

By: _____

Ronald P. Leonard

Date

USER (Superintendent)

By: _____

(Signature)

Name: _____

(Print name)

Title: _____

Date

APPENDIX A

Provide the Primary Data Receivers, as follows:

Primary Data Receiver Point of Contact/ Primary Data Custodian.
(Individual becomes Local Access Manager):

Printed Name: _____

Title: _____

School District: _____

Phone Number: _____

Physical Address: _____

Email Address: _____

Primary Data Receiver Point of Contact/ Primary Data Custodian.
(Individual becomes Local Access Manager):

Printed Name: _____

Title: _____

School District: _____

Phone Number: _____

Physical Address: _____

Email Address: _____

APPENDIX B

The Primary Data Custodian should use this form to assign additional data custodians outside the agreement.

Additional District Level Data Custodians (able to access students from the entire district):

Name: _____ Title: _____ Phone: _____

Email: _____

Name: _____ Title: _____ Phone: _____

Email: _____

High School Data Custodians (only able to access students from one high school):

Contact 1: Name: _____ High School: _____

Title: _____ Email: _____

Phone: _____

Contact 2: Name: _____ High School: _____

Title: _____ Email: _____

Phone: _____

Contact 3: Name: _____ High School: _____

Title: _____ Email: _____

Phone: _____

Contact 4: Name: _____ High School: _____

Title: _____ Email: _____

Phone: _____