

**MEMORANDUM OF UNDERSTANDING  
BETWEEN**

\_\_\_\_\_  
**AND**

**THE KENTUCKY CENTER FOR EDUCATION AND WORKFORCE STATISTICS  
TO DESIGNATE AN AUTHORIZED REPRESENTATIVE FOR THE KENTUCKY DEPARTMENT OF EDUCATION,  
THE KENTUCKY COUNCIL ON POSTSECONDARY EDUCATION, THE EDUCATION PROFESSIONAL STANDARDS  
BOARD AND THE KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY FOR THE  
AUDIT/EVALUATION OF EDUCATION PROGRAMS**

**AND**

**TO AUTHORIZE THE RELEASE AND USE OF CONFIDENTIAL DATA**

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**THIS AGREEMENT** is made and entered into by and between the Office of Education and Workforce Statistics dba the Kentucky Center for Education and Workforce Statistics (“KCEWS”) on behalf of the Commonwealth of Kentucky’s Department of Education (“KDE”), the Kentucky Council on Postsecondary Education (“CPE”), the Education Professional Standards Board (“EPSB”), the Kentucky Higher Education Assistance Authority (“KHEAA”) and \_\_\_\_\_ collectively the “parties” and establishes the procedures relating to an exchange of information between the Parties.

**WHEREAS**, KCEWS, KDE, CPE, EPSB, and KHEAA are public agency organized under KRS 151B.131, KRS 156.010, KRS 164.011, KRS 161.028 respectively and their duties include audit or evaluation functions of federal or state-supported education programs or enforcement or compliance with federal or state legal requirements that relate to those education programs (audit, evaluation or enforcement or compliance activity) in its role as the state education agency and in evaluation of education programs to identify or develop the best education practices to be used in public schools, postsecondary institutions, training providers and other education and training providers of the Commonwealth of Kentucky;

**WHEREAS**, the Authorized Representative is an entity performing audit or evaluation functions at the direction and under the control of The Commonwealth of Kentucky and the Authorized Representative is a contractor acting in the place of KCEWS and The Commonwealth of Kentucky to perform the audit or evaluation functions of federal or state-supported education programs or to enforce or comply with federal legal requirements that relate to those education programs (audit, evaluation or enforcement or compliance activity) in its role as the state education agency and in evaluation of education programs, as described below;

**WHEREAS**, various elements of the data maintained by KCEWS on behalf of the agencies are protected by the Privacy Act of 1974, 5 U.S.C. 552a; the Kentucky Family Educational Rights and Privacy Act, KRS 160.700 et seq.; the Family Educational Rights and Privacy Act, 20 U.S.C. 1232(g); the Richard B. Russell National School Lunch Act, 42 U.S.C. 1751 et seq.; the Child Nutrition Act of 1966, 42 U.S.C. 1771 et seq.; the Personal Information Security and Breach Investigation Procedures and Practices Act, KRS 61.931 et seq.; and the Kentucky Open Records Act, KRS 61.820 et seq.;

**NOW THEREFORE**, KCEWS and the Authorized Representative hereby mutually agree as follows:

**Section 1. Designation of Authority.**

A. KCEWS hereby designates the Authorized Representative and its subcontractors identified below as a “authorized representative” of the KCEWS, as defined in 34 C.F.R. 99.31 (a)(3) and 99.35, with respect to

the provision of audit or evaluation functions of federal or state-supported education programs or to enforce or comply with federal or state legal requirements that relate to those education programs (audit, evaluation or enforcement or compliance activity) and in evaluation of education programs (“audit/evaluation services”) and, specifically, with respect to the use of confidential data disclosed under this agreement.

B. KCEWS, and the Authorized Representative hereby agree that, if free or reduced price lunch eligibility data (i.e., free or reduced price lunch eligibility data which is the student poverty indicator for most education programs) is to be released to the Authorized Representative, then KCEWS shall identify the Authorized Representative as a contractor acting in the place of KCEWS; shall ensure that the Authorized Representative has demonstrated that the research is on behalf of KCEWS, under a federal or state-level education program or a state health program; shall ensure that the audit/evaluation services include a “need to know” this data as required by 7 C.F.R. 245.6 (f); and shall ensure that the data will only be disclosed to the Authorized Representative upon written request utilizing the U.S. Department of Agriculture Prototype Agreement. The completed USDA Prototype Agreement shall be attached in Exhibit A and incorporated into this agreement as if set forth fully herein and KCEWS’s agreement that the Authorized Representative meets the requirements for disclosure set forth in 7 C.F.R. 245.6 (f) and that the Authorized Representative has demonstrated a “need to know” shall be evidenced by KCEWS’s agreement to enter the USDA Prototype Agreement.

**Section 2. Acknowledgment of Release of Confidential Data, Identification of Confidential Data to be Released to the Authorized Representative and Description of Use of Data by the Authorized Representative.**

A. The parties acknowledge that KCEWS is releasing confidential data including student and non-student information to the Authorized Representative for the purposes outlined herein, and that the release of the KDE confidential data including student and non-student information to the Authorized Representative is necessary for the completion of education audit/evaluation services. The confidential data including student and non-student information to be disclosed is described in a document attached to this agreement as Exhibit A. The Authorized Representative shall notify KCEWS and KCEWS shall provide written consent, if approved, of any changes to the list of disclosed data necessary for the provision of audit/evaluation services. The Authorized Representative will use all provided data for the sole purpose of to perform the audit/evaluation services described in Exhibit A. The description of the audit/evaluation services, as included in Exhibit A, shall include the purpose and scope of the audit/evaluation services, specific description of the methodology of disclosure and an explanation as to the need for confidential data including student and non-student information to perform these audit/evaluation services. The Authorized Representative shall notify KCEWS and KCEWS shall provide written consent, if approved, of any changes to the list of disclosed data necessary for the audit/evaluation services or any changes to the scope or purpose of the audit/evaluation services themselves. Any agreed upon changes to the data disclosed or to the audit/evaluation services shall be reduced to writing and included in Exhibit A to this agreement.

B. If free or reduced price lunch eligibility data (i.e., free or reduced price lunch eligibility data which is the student poverty indicator for most education programs) is to be released to the Authorized Representative, then KCEWS shall disclose this data to the Authorized Representative, upon written request utilizing the U.S. Department of Agriculture prototype request and confidentiality agreement, and upon KCEWS agreeing that the Authorized Representative has demonstrated that disclosure is allowed by 7 C.F.R. 245.6. A description of any data protected by 7 C.F.R 245.6 which is to be disclosed under this agreement shall be included in Exhibit A. Any agreed upon changes to the data disclosed or to the audit/evaluation services shall be reduced to writing and included in Exhibit A to this agreement.

### **Section 3. The Authorized Representative and the Authorized Users' Obligations.**

A. The Authorized Representative shall not share these confidential data with anyone, except those employees of the Authorized Representative and the Authorized Representative's subcontractors, ("Authorized Users") that are directly involved and have a legitimate interest under FERPA or a "need to know" (as defined in 7 C.F.R. 245.6 in the case of disclosure of free or reduced price lunch eligibility data which is the student poverty indicator for education programs) in the performance of the audit/evaluation services according to the terms of this agreement or any overarching agreement between the KCEWS and the Authorized Representative in which the Authorized Representative agrees to perform these audit/evaluation services on KCEWS's behalf ("Master Agreement").

B. The Authorized Representative shall require all Authorized Users to comply with FERPA and other applicable state and federal student and non-student privacy laws. The Authorized Representative shall require and maintain confidentiality agreements or the KCEWS's Nondisclosure Statement(s) with each Authorized User of confidential data. If a confidentiality agreement with each Authorized User is used, which is different from KCEWS's Nondisclosure Statement(s), then the terms of the Authorized Representative's confidentiality agreements shall contain, at a minimum, the terms and conditions of this agreement and a copy of the current Authorized Representative's confidentiality agreement or KCEWS's Nondisclosure Statement(s), as appropriate, shall be attached to this agreement as Exhibit B.

C. The Authorized Representatives that receive Personal Information as defined by and in accordance with Kentucky's Personal Information Security and Breach Investigation Procedures and Practices Act, KRS 61.931, et seq., (the "Act"), shall secure, protect and maintain the confidentiality of the Personal Information by, without limitation, complying with all requirements applicable to "non-affiliated third parties" set forth in the Act.

"Personal Information" is defined in accordance with KRS 61.931(6) as "an individual's first name or first initial and last name; personal mark; or unique biometric or genetic print or image, in combination with one (1) or more of the following data elements:

- a) An account, credit card number, or debit card number that, in combination with any required security code, access code or password, would permit access to an account;
- b) A Social Security number;
- c) A taxpayer identification number that incorporates a Social Security number;
- d) A driver's license number, state identification card number or other individual identification number issued by an agency;
- e) A passport number or other identification number issued by the United States government; or
- f) Individually Identifiable Information as defined in 45 C.F.R. sec. 160.013 (of the Health Insurance Portability and Accountability Act), except for education records covered by the Family Education Rights and Privacy Act, as amended 20 U.S.C. sec 1232g."

As provided in KRS 61.931(5), a "non-affiliated third party" means "any person or entity that has a contract or agreement with the Commonwealth and receives (accesses, collects or maintains) personal information from the Commonwealth pursuant to the contract or agreement."

The Authorized Representative shall not disclose, without written consent of KCEWS, any “personal information,” as defined in KRS 61.931, or any other personally identifiable information of a student or other persons, such as employees.

D. The Authorized Representative hereby agrees to cooperate with the Commonwealth in complying with the response, mitigation, correction, investigation, and notification requirements of the Act.

E. The Authorized Representative shall notify as soon as possible, but not to exceed seventy-two (72) hours, the Executive Director of KCEWS, the Commissioner of the Kentucky State Police, the Auditor of Public Accounts, and the Kentucky Attorney General of a determination of or knowledge of a breach, unless the exception set forth in KRS 61.932(2)(b)2 applies and the vendor abides by the requirements set forth in that exception. If the agency is a unit of government listed in KRS 61.931(1)(b), the vendor shall notify the Commissioner of the Department of Local Government in the same manner as above. If the agency is a public school district listed in KRS 61.931(1)(d), the vendor shall notify the Commissioner of the Department of Education in the same manner as above. If the agency is an educational entity listed under KRS 61.931(1)(e), the vendor shall notify the Council on Postsecondary Education in the same manner as above. Notification shall be in writing on the form developed by the Commonwealth Office of Technology and incorporated by reference into Kentucky Regulation 200 KAR 1:015.

F. The Authorized Representative hereby agrees that the Commonwealth may withhold payment(s) owed to the vendor for any violation of the Identity Theft Prevention Reporting Requirements.

G. The Authorized Representative hereby agrees to undertake a prompt and reasonable investigation of any breach as required by KRS 61.933

H. Upon conclusion of an investigation of a security breach of **Personal Information** as required by KRS 61.933, the Authorized Representative hereby agrees to an apportionment of the costs of the notification, investigation, and mitigation of the security breach.

I. In accordance with KRS 61.932(2)(a) the Authorized Representative shall implement, maintain, and update security and breach investigation procedures that are appropriate to the nature of the information disclosed, that are at least as stringent as the security and breach investigation procedures and practices established by the Commonwealth Office of Technology:

<http://technology.ky.gov/ciso/Pages/InformationSecurityPolicies,StandardsandProcedures.aspx>

J. If the Authorized Representative is a cloud computing service provider (as defined in KRS 365.734(1)(b) as “any person or entity other than an educational institution that operates a cloud computing service”), the Authorized Representative does further agree that:

- Authorized Representative shall not process student data for any purpose other than providing, improving, developing, or maintaining the integrity of its cloud computing services, unless the provider receives express permission from the student’s parent. The Authorized Representative shall work with the student’s school and district to determine the best method of collecting parental permission. KRS 365.734 defines “process” and “student data”.
- With a written agreement for educational research, the Authorized Representative may assist an educational institution to conduct educational research as permitted by the Family Education Rights and Privacy Act of 1974, as amended, 20 U.S.C.sec.1232g.

- Pursuant to KRS 365.734, the Authorized Representative shall not in any case process student data to advertise or facilitate advertising or to create or correct an individual or household profile for any advertisement purposes.
- Pursuant to KRS 365.734, the Authorized Representative shall not sell, disclose, or otherwise process student data for any commercial purpose.
- Pursuant to KRS 365.734, the Authorized Representative shall certify in writing to the agency that it will comply with KRS 365.734(2).

K. The Authorized Representative shall protect confidential and otherwise personally identifiable data in a manner that does not permit personal identification of students and their parents, and non-students by anyone except those bound by this agreement and KCEWS. The Authorized Representative shall store all confidential data on secure data servers using current industry best practices. The Authorized Representative shall notify the KCEWS as soon as practicable if the Authorized Representative learns of any security breach to the server containing the confidential and otherwise personally identifiable data or of any disclosure of confidential and otherwise personally identifiable data to anyone other than the Authorized Representative's Authorized Users or KCEWS officials authorized to receive confidential and otherwise personally identifiable data. The Authorized Representative shall cooperate and take all reasonable means prescribed by KCEWS to secure any breaches as soon as practicable.

L. The Authorized Representative shall not disclose KCEWS's confidential and otherwise personally identifiable data to any other party without the prior consent of the parent or eligible student, or non-student except as allowed by applicable federal and state law.

M. The Authorized Representative certifies that it has the capacity to restrict access to confidential and otherwise personally identifiable data solely to Authorized Users and to ensure that the confidential and otherwise personally identifiable data is accessed only for the purposes described in this agreement. A copy of the Authorized Representative's data security policies and procedures is attached to this agreement as Exhibit C.

N. The Authorized Representative shall destroy all confidential and otherwise personally identifiable data within forty-five (45) days after it is no longer needed to perform the audit/evaluation services described in this agreement, upon KCEWS's request or upon termination of this agreement, whichever occurs first unless agreed otherwise in writing. The Authorized Representative's description of the method(s) which will be used to destroy all confidential and otherwise personally identifiable data shall be attached to this agreement as Exhibit D. The Authorized Representative shall provide written verification of the data destruction to the KCEWS within forty-five (45) days after the data is destroyed by completing Exhibit F.

O. The Authorized Representative shall permit KCEWS, at KCEWS's cost and upon written reasonable request, to audit the Authorized Representative to confirm that the Authorized Representative is complying with the data security policies and procedures in Exhibit C, maintaining and having on file confidentiality agreements or KCEWS's Nondisclosure Statement(s) for each Authorized User of confidential data, and/or that the Authorized Representative has destroyed the data as verified.

P. The Authorized Representative shall collect and use these confidential and otherwise personally identifiable data only for the purpose of helping KCEWS perform audit/evaluation services related to the activities outlined in this agreement or in any Master Agreement.

Q. Upon completion of the audit/evaluation services and no later than 45 days following the end date of the audit/evaluation, the Authorized Representative shall provide to KCEWS (any deliverables and/or) the results of the audit/evaluation described in Exhibit A. At least five days prior to Authorized Representative's use or disclosure of results of the audit or evaluation as described in Exhibit A, the Authorized Representative shall provide the results of the audit or evaluation to KCEWS.

R. The Authorized Representative shall obtain prior written approval from KCEWS before accessing confidential and otherwise personally identifiable data for activities beyond the scope specified in this agreement or in a Master Agreement; and, any access beyond the scope of this agreement or a Master Agreement shall be consistent with federal and state law requirements. Any confidential and otherwise personally identifiable data collected by the Authorized Representative under activities approved by KCEWS under this section, which are not regularly collected within the scope of this agreement but are consistent with the activities described in this agreement, shall be subject to the terms and conditions of this agreement.

S. If the Authorized Representative becomes legally compelled to disclose any confidential and otherwise personally identifiable data (whether by judicial or administrative order, applicable law, rule or regulation, or otherwise), then the Authorized Representative shall use all reasonable efforts to provide KCEWS with prior notice before disclosure so that KCEWS may seek a protective order or other appropriate remedy to prevent the disclosure or to ensure KCEWS's compliance with the confidentiality requirements of federal or state law; provided, however, that the Authorized Representative will use all reasonable efforts to maintain the confidentiality of confidential and otherwise personally identifiable data. If a protective order or other remedy is not obtained prior to the deadline by which any legally compelled disclosure is required, the Authorized Representative will only disclose that portion of confidential and otherwise personally identifiable data that the Authorized Representative is legally required to disclose.

T. The Authorized Representative shall abide by and be bound by the requirements of the U.S. Department of Education, Family Policy Compliance Office's Guidance for Reasonable Methods and Written Agreements issued pursuant to the requirements of the Family Educational Rights and Privacy Act ("Guidance"). The Guidance is available by clicking the following hyperlink, [http://www2.ed.gov/policy/gen/guid/fpc/pdf/reasonablemtd\\_agreement.pdf](http://www2.ed.gov/policy/gen/guid/fpc/pdf/reasonablemtd_agreement.pdf) and made a part of this agreement as if stated fully herein.

U. The Authorized Representative shall also, if the data shared by KCEWS includes data protected by 7 C.F.R. 245.6 (i.e., free or reduced price lunch eligibility data which is the student poverty indicator for most education programs), abide by the restrictions of disclosure and confidentiality requirements contained in 7 C.F.R. 245.6 (f) applicable to the KCEWS.

#### **Section 4. Permission to Use Data.**

KCEWS acknowledges that by entering this agreement it is approving, in writing, of the Authorized Representative's use of these confidential data within the scope of purposes outlined in this agreement. At least five days prior to Authorized Representative's public disclosure of conclusions or results of the audit or evaluation, the Authorized Representative shall provide a copy of conclusions, results or product(s) resulting from the audit/evaluation (e.g., article, report, book, etc.) to KCEWS Research Director. No later than 45 days following the end date of the audit/evaluation, the Authorized Representative shall provide their conclusions, results or product(s) of the audit/evaluation.

## **Section 5. Transfer Protocol.**

The KCEWS and the Authorized Representative shall work cooperatively to determine the proper medium and method for the transfer of confidential data between each other. The Authorized Representative shall confirm the transfer of confidential data and notify the KCEWS as soon as practicable of any discrepancies between the actual data transferred and the data described in this agreement. The same protocol shall apply to any transfer of confidential data from the Authorized Representative to the KCEWS.

## **Section 6. Breach of Data Confidentiality and Remedies.**

The Authorized Representative acknowledges that the breach of this agreement or its part may result in irreparable and continuing damage to KCEWS for which money damages may not provide adequate relief. In the event of a breach or threatened breach of this agreement by the Authorized Representative, KCEWS, in addition to any other rights and remedies available to KCEWS at law or in equity, may be entitled to preliminary and permanent injunctions to enjoin and restrain the breach or threatened breach. If the United States Department of Education's Family Policy Compliance Office determines that the Authorized Representative has violated paragraph 34 C.F.R. 99.31(a)(3), KCEWS may not allow the Authorized Representative access to personally identifiable information from education records for at least five (5) years. If the Authorized Representative breaches the confidentiality requirements of 7 C.F.R. 245.6 relative to any confidential free or reduced price lunch eligibility data, then the Authorized Representative shall be responsible for any consequences or penalties which result from such breach.

## **Section 7. Amendment and Assignability.**

The terms and conditions of this agreement may only be amended by mutual written consent of both KCEWS and the Authorized Representative. The Authorized Representative shall not assign its respective rights or obligations under this agreement without prior written consent of KCEWS. The rights and obligations of each party under this agreement shall inure to the benefit of and shall be binding upon each party and any respective successors and assigns.

## **Section 8. Choice of Law and Forum.**

All questions as to the execution, validity, interpretation, and performance of this agreement shall be governed by the laws of the Commonwealth of Kentucky. The selected forum to hear any causes of action arising from this agreement, or any actions thereunder, is the Franklin Circuit Court, Frankfort, Kentucky.

## **Section 9. Waiver.**

The failure by one party to require performance of any provision shall not affect that party's right to require performance at any time thereafter, nor shall a waiver of any breach or default of this agreement constitute a waiver of any subsequent breach or default or a waiver of the provision itself. No modification, amendment, waiver or release of any provision of this agreement or of any right, obligation, claim or cause of action arising from this agreement shall be valid or binding for any purpose unless in writing and duly executed by the party against whom they are asserted.

## **Section 10. Severability.**

Any provision of this agreement that is declared invalid by a court of competent jurisdiction or by operation of law, shall not affect the validity or enforceability of any other provision of this agreement.

**Section 11. Authority to Enter the Agreement.**

KCEWS and the Authorized Representative represent and warrant, by the signatures of their duly appointed representatives, that they are legally entitled to enter into this agreement.

**Section 12. Data Custodians.**

The individuals who are the designated data custodians for the Authorized Representative with respect to this confidential data release and use agreement are listed in Exhibit E with their contact information.

**Section 13. Term and Termination.**

The term of this agreement at any time for cause or may cancel without cause on thirty (30) days written notice.

**Section 14. Cost of Services.**

KCEWS may charge a fee for the assembly and delivery of the data or analyses being requested. All costs and services are outlined in the Statement of Work Exhibit G.

**Section 15. Effective Date of This Agreement.**

This agreement will become effective once KCEWS, KDE, CPE, EPSB, KHEAA, and the Authorized Representative have all signed it and it shall remain in effect until terminated or cancelled by one of the parties pursuant to the terms herein.

**APPROVED:**

\_\_\_\_\_  
Kate Shirley Akers Date  
Executive Director  
Kentucky Center for Education and  
Workforce Statistics

\_\_\_\_\_  
Research Entity's Authorized Agent Date  
Agent's Title \_\_\_\_\_  
Agent's Name (Typed) \_\_\_\_\_  
Research Entity's Name \_\_\_\_\_

\_\_\_\_\_  
Stephen Pruitt Date  
Commissioner  
Kentucky Department of Education

\_\_\_\_\_  
Robert L. King Date  
President  
Kentucky Council on Postsecondary Education

\_\_\_\_\_  
James Adams Date  
Executive Director  
Kentucky Education Professional Standards Board

\_\_\_\_\_  
Gene Hutchins Date  
CEO/Executive Director  
Kentucky Higher Education Assistance Authority



## Memorandum of Understanding (MOU)

### Description of Exhibits

#### **To authorize the release and use of confidential data under the FERPA Audit and Evaluation Exception**

Exhibits referenced in the Memorandum of Understanding must be completed and incorporated into the final MOU. Exhibits include:

- Exhibit A - Specifics of data being requested
  - Section I - the initial data request that describes the audit/evaluation and data being requested
  - Section II- describes the need for Personally Identifiable Information (PII)
  - Section III - required if requesting Free and Reduced Lunch information
- Exhibit B – Authorized Representative Confidentiality Agreements (one for each data custodian)
- Exhibit C – Authorized Representative data security policy
- Exhibit D - Data destruction plan at completion of audit/evaluation
- Exhibit E - Identification of data custodians
- Exhibit F – Authorized Representative’s Certificate of Data Destruction
- Exhibit G – Statement of Work

*Please refer to The U.S. Department of Education, Family Policy Compliance Office’s [Guidance for Reasonable Methods and Written Agreements](#) for additional information on requirements for data sharing under the Family Educational Rights and Privacy Act (FERPA).*

*Guidance on best practices for data destruction and security policies are provided from the [Privacy Technical Assistance Center\(PTAC\)](#) website.*

PTAC’s [Data Security Checklist](#)

PTAC’s [Best Practices for Data Destruction](#)

**Exhibit A:**

**Contact Information**

Research Entity Legal Name \_\_\_\_\_

Primary Data Custodian Name \_\_\_\_\_, Title \_\_\_\_\_ Phone \_\_\_\_\_  
Email \_\_\_\_\_

Secondary Data Custodian Name \_\_\_\_\_, Title \_\_\_\_\_ Phone \_\_\_\_\_  
Email \_\_\_\_\_

**Section I- to be completed by all requestors:**

**Purpose, Scope and Duration** *Use of data received under this MOU is limited to purpose and scope defined.*

Completely describe the purpose and scope of the audit/evaluation.

Describe how the results will be used.

**Duration of Audit/Evaluation**

Start Date: \_\_\_\_\_ End Date: \_\_\_\_\_

**Data Being Requested**

Provide specific data elements needed to complete audit/evaluation

**School Years included in Audit Evaluation:**

- 2016-17    2015-16    2014-15    2013-14    2012-13    2011-12  
 2010-11    2009-10    2008-09    Other:

Level of detail/aggregation:  Student/Individual  School  District  State

***Please complete Section II if requesting PII detail.***

**Section II- Complete if Personally Identifiable Information (PII) is being requested:**

**Justify your request  
for  
student/individual  
level data**

*Explain why  
audit/evaluation could not  
be completed by using  
aggregate-level data  
without PII*

*Special requirements for requests for Personally Identifiable Information (PII)*

- *Student-Level/Individual detail from education records can only be used to meet the purpose or purposes of the audit/evaluation as stated in this MOU for duration as defined.*
- *Requestor agrees to conduct the audit/evaluation in a manner that does not permit the personal identification of parents, students, individuals by anyone other than designated data custodians.*
- *Authorized Representative agrees to destroy all PII from education records and confidential data from other records.*
- *If Free & Reduced Lunch Status is needed on PII data, complete Section III.*

**III- Complete if free or reduced -price lunch eligibility data is required for PII records.**

**Prototype Agreement:**

Disclosure of Free and Reduced Price Information

**A. Purpose and Scope**

Kentucky Department of Education, KCEWS, and \_\_\_\_\_ acknowledge and agree that children’s free and reduced price meal and free milk eligibility information obtained under provisions of Richard B. Russell National School Lunch Act (42 USC 1751 et. seq.) (NSLA) or Child Nutrition Act of 1966 (42 USC 1771 et. seq.) (CNA) and the regulations implementing these Acts is confidential information. This Agreement is intended to ensure that any information disclosed by the KCEWS to the \_\_\_\_\_ about children eligible for free and reduced price meals or free milk will be used only for purposes specified in this Agreement and that the KCEWS and \_\_\_\_\_ recognize that there are penalties for unauthorized disclosures of this eligibility information.

**B. Authority**

Section 9(b)(6)(A) of the NSLA (42 USC 1758(b)(6)(A)) authorizes the limited disclosure of children's free and reduced price meal or free milk eligibility information to specific programs or individuals, without prior parent/guardian consent. Except that, the parent/guardian must be provided the opportunity to decline to share eligibility information prior to the disclosure for identifying children eligible for benefits under or enrolling children in the State Medicaid Program and the State children's health insurance program. Additionally, the statute specifies that for any disclosures not authorized by the statute, the consent of children's parents/guardians must be obtained prior to the disclosure.

The requesting agency certifies that it is currently authorized to administer the following program(s) and that information requested will only be used by the program(s) indicated.

Check all that Apply	Program	Information Authorized
<input type="checkbox"/>	<i>Medicaid or the State children’s health insurance program (SCHIP), administered by a State or local agency authorized under titles XIX or XXI of the Social Security Act.</i> Specify Program: _____	All eligibility information unless parents elect not to have information disclosed.
<input type="checkbox"/>	<i>State health program other than Medicaid/SCHIP, administered by a State agency or local education agency.</i> Specify Program: _____	Eligibility status only; consent not required
<input type="checkbox"/>	<i>Federal health program other than Medicaid/SCHIP</i> Specify Program: _____	No eligibility information unless parental consent is obtained.
<input type="checkbox"/>	<i>Local health program</i> Specify Program: _____	No eligibility information unless parental consent is obtained.
<input type="checkbox"/>	<i>Child Nutrition Program under the National School Lunch Act or Child Nutrition Act</i> Specify Program: _____	All eligibility information; consent not required.
<input type="checkbox"/>	<i>Federal education program</i> Specify Program: _____	Eligibility status only; consent not required.
<input type="checkbox"/>	<i>State education program administered by a State agency or local education agency</i> Specify Program: _____	Eligibility status only; consent not required.

Note: Section 9(b)(6)(A) specifies that certain programs may receive children's eligibility status only, without parental consent. Parental consent must be obtained to disclose any additional eligibility information. Section 9(b)(6)(D)(ii) specifies that for State Medicaid or SCHIP, parents must be notified and given opportunity to elect not to have information disclosed. Social security numbers may only be disclosed if households are given notice of the disclosure and the uses to be made of their social security numbers as required by Sec. 7 of the Privacy Act.

**C. Responsibilities**

Kentucky Department of Education will:

When required, secure parents/guardians consent prior to any disclosure not authorized by the National School Lunch Act or any regulations under that Act, unless prior consent is secured by the receiving agency and made available to the determining agency;

For State Medicaid and SCHIP, notify parents/guardians of potential disclosures and provide opportunity for parents/guardians to elect not to have information disclosed;

Disclose eligibility information only to persons directly connected to the administration or enforcement of programs authorized access under the National School Lunch Act or regulations under the Act or to programs or services for which parents/guardians gave consent.

\_\_\_\_\_will:

Ensure that only persons designated as data custodians and listed on Exhibit E who are directly connected with the administration or enforcement of the \_\_\_\_\_ (program) and whose job responsibilities require use of the eligibility information will have access to children’s eligibility information.

Use children’s free and reduced price eligibility information for the following specific purpose(s):

Describe:

Inform all persons that have access to children’s free and reduced price meal eligibility information that the information is confidential, that children’s eligibility information must only be used for purposes specified above, and the penalties for unauthorized disclosures.

Protect the confidentiality of children’s free and reduced price meal or free milk eligibility information as follows:

Specifically describe how the information will be protected from unauthorized uses and further disclosures.

**D. Effective Dates**

This agreement shall be effective during the dates of duration for the audit/evaluation.

**E. Penalties**

Any person who publishes, divulges, discloses, or makes known in any manner, or to any extent not authorized by Federal law (Section 9(b)(6)(C) of the National School Lunch Act; 42 USC 1758(b)(6)(C)) or regulation, any information about a child's eligibility for free and reduced price meals or free milk shall be fined not more than a \$1,000 or imprisonment of not more than 1 year or both.

**F. Signatures**

The parties acknowledge that children's free and reduced price meal and free milk eligibility information may be used only for the specific purposes stated above; that unauthorized use of free and reduced price meal and free milk information or further disclosure to other persons or programs is prohibited and a violation of Federal law which may result in civil and criminal penalties.

**Requesting Agency/Program Administrator**

Typed or Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_ Phone: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**Determining Agency Administrator**

Name: Stephen L. Pruitt, Ph.D. \_\_\_\_\_

Title: Commissioner \_\_\_\_\_ Phone: 502-564-3141, ext. 4806

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

*\*Any attachments will become part of this agreement.*

**Exhibit B: KENTUCKY CENTER FOR EDUCATION AND WORKFORCE STATISTICS**

**CONTRACTOR'S EMPLOYEE OR CONTRACTOR NONDISCLOSURE STATEMENT**

***After entering each data custodian's information into the form fields, print and obtain the required signatures. Include the completed Nondisclosure Statements or confidentiality agreement with your proposed MOU.***

**Contractor** \_\_\_\_\_

**Contractor's employee or contractor name** \_\_\_\_\_ **Title:** \_\_\_\_\_

**Address** \_\_\_\_\_ **Phone** \_\_\_\_\_

I understand that the performance of my duties as an employee or contractor, of a contractor for the Kentucky Center for Education and Workforce Statistics (KCEWS), may involve a need to access and review confidential information (information designated as confidential by FERPA, NSLA, CNA, KRS 61.931(6), or other federal or state law); and, that I am required to maintain the confidentiality of this information and prevent any redisclosure prohibited under the law as stated below. By signing this document, I agree to the following:

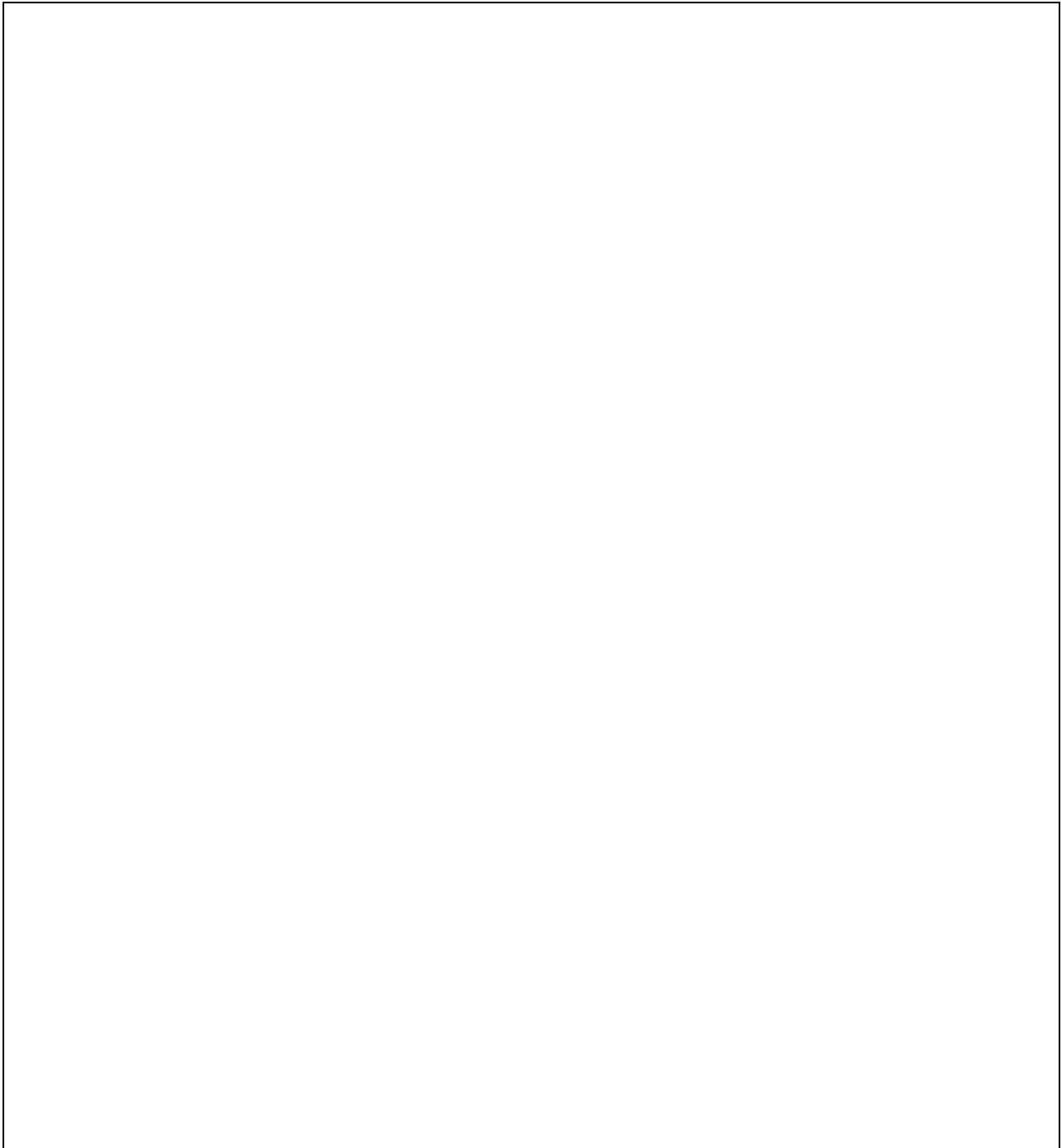
- I will not permit access to confidential information to persons not authorized by the KCEWS and its contractor.
- I will maintain the confidentiality of the data or information.
- I will not access data of persons related or known to me for personal reasons.
- I will not reveal any individually identifiable information furnished, acquired, retrieved, or assembled by me or others for any purpose other than statistical purposes specified in the KCEWS survey, project, or proposed research.
- I will report, immediately and within twenty-four (24) hours, any known reasonably believed instances of missing data, data that has been inappropriately shared, or data taken off site
  - to my immediate supervisor, Associate Commissioner, and
  - to the Division of Human Resources if I am a KCEWS employee or
  - to the KCEWS Office for whom I perform work under the contract if I am a KCEWS contractor or an employee of a KCEWS contractor
- I understand that procedures must be in place for monitoring and protecting confidential information.
- I understand and acknowledge that FERPA-protected information obtained under provisions of Family Educational Rights and Privacy Act of 1974 (FERPA) as a KCEWS contractor's employee or contractor of KCEWS is confidential information.
- I understand that FERPA protects information in students' education records that are maintained by an educational agency or institution or by a party acting for the agency or institution, and includes, but is not limited to the student's name, the name of the student's parent or other family members, the address of the student or student's family, a personal identifier, such as the student's social security number, student number, or biometric record, other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name, and 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.
- I understand that any unauthorized disclosure of confidential information is illegal as provided in FERPA and in the implementing of federal regulations found in 34 CFR, Part 99. The penalty for





**Exhibit C:**

Please describe the measures you take to ensure the protection of PII released to you. If you have a policy, please attach or copy/paste here as Exhibit C. (Include information on the requested delivery method, how we should deliver the data to you, if you have a secure ftp/dropbox site, etc.) Please note that confidential and otherwise personally identifiable data can only be shared using secure/encrypted methods. Any individual level data, regardless of origin or level of sensitivity are considered to be confidential.



**Exhibit D:**

Please describe the methods Authorized Agent will use to irrevocably destroy all confidential data at the completion of audit/evaluation. This includes but is not limited to paper, electronic, magnetic or other media as well as any internal hard drive of a printer or copier that must be irrevocably sanitized when disposed of or sent to surplus. Please specify the date and means of destruction for all forms of media that are applicable.. If you have a policy that describes the methods you will use to destroy all confidential data, it can be attached as Exhibit D. Authorized Representative's Certificate of Destruction (Exhibit F) is required for certification that any forms of personal or confidential data have been irrevocably destroyed, wiped or sanitized.

**Exhibit E:**

In alphabetical order by last name, provide information for those persons designated as data custodians. This should include anyone with access to confidential and otherwise personally identifiable data. A designated primary and secondary data custodian are required and a minimum of four is requested. A signed Confidentiality Agreement or KCEWS’s Nondisclosure Statement labeled Exhibit B is required for each data custodian. Insert the additional pages into the final MOU before submitting to KCEWS.

(Prior to designating additional data custodians who are not listed on Exhibit E at the time the MOU is executed, Researcher must submit a written request and an MOU amendment will be required.)

**Primary Data Custodian**

Last Name, First Name: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_  
Employer: \_\_\_\_\_

Last Name, First Name: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_  
Employer: \_\_\_\_\_

**Secondary Data Custodian**

Last Name, First Name: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_  
Employer: \_\_\_\_\_

Last Name, First Name: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_  
Employer: \_\_\_\_\_

**All Other Data Custodians**

Last Name, First Name: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_  
Employer: \_\_\_\_\_

Last Name, First Name: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_  
Employer: \_\_\_\_\_

Last Name, First Name: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_  
Employer: \_\_\_\_\_

Last Name, First Name: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_  
Employer: \_\_\_\_\_

Last Name, First Name: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_  
Employer: \_\_\_\_\_

Last Name, First Name: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_  
Employer: \_\_\_\_\_

Last Name, First Name: \_\_\_\_\_  
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Employer: \_\_\_\_\_

Last Name, First Name: \_\_\_\_\_  
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Employer: \_\_\_\_\_

Last Name, First Name: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_  
Employer: \_\_\_\_\_

Last Name, First Name: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_  
Employer: \_\_\_\_\_

**Exhibit F:**

**AUTHORIZED REPRESENTATIVE’S CERTIFICATE OF DATA DESTRUCTION**

The Authorized Representative shall irreversibly destroy all copies of all confidential and otherwise personally identifiable data regardless of format (e.g. paper, electronic) within forty-five (45) days after it is no longer needed to perform the studies described in this agreement, upon KCEWS’s request or upon termination of this agreement, whichever occurs first unless agreed otherwise in writing. Using this form, the Authorized Representative shall provide written verification of the data destruction to the KCEWS within forty-five (45) days after the data is destroyed. Scan the signed Certificate of Data Destruction and return it to [KCEWS@ky.gov](mailto:KCEWS@ky.gov).

If the Authorized Representative uses a contractor for data destruction services, a certificate of destruction from the contractor is also required. Please submit the contractor’s certificate of destruction with this signed Certificate of Data Destruction.

Entity’s Name

MOU No. (If you do not know your MOU identification number, contact KCEWS at by email at [KCEWS@ky.gov](mailto:KCEWS@ky.gov).)

In accord with the provisions of the Memorandum of Understanding (MOU) between the Kentucky Center for Education and Workforce Statistics and the (“Authorized Representative”), the confidential and otherwise personally identifiable data were destroyed as required in Section N according to the methods described in Exhibit D of the MOU.

Date submitted:

Scheduled date of destruction (per MOU):

Actual destruction date:

Description of records disposed of:

Media type	Method of Destruction	Comments

I hereby certify that all confidential and otherwise personally identifiable data described above have been destroyed in the manner indicated.

\_\_\_\_\_

Authorized Representative’s Authorized Agent Signature / Date

Agent’s Name (Typed) Agent’s Title