

**MEMORANDUM OF UNDERSTANDING
BETWEEN**

AND

THE KENTUCKY CENTER FOR STATISTICS

**TO DESIGNATE AN AUTHORIZED REPRESENTATIVE FOR THE KENTUCKY DEPARTMENT OF
EDUCATION, THE KENTUCKY COUNCIL ON POSTSECONDARY EDUCATION, KENTUCKY ADULT
EDUCATION, AND THE KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
FOR THE**

**AUDIT/EVALUATION OF EDUCATION PROGRAMS AND
TO AUTHORIZE THE RELEASE AND USE OF CONFIDENTIAL DATA**

*** **

THIS AGREEMENT is made and entered into by and between the Office of the Kentucky Center for Statistics (“KYSTATS”) on behalf of The Commonwealth of Kentucky’s Department of Education (“KDE”), the Kentucky Council on Postsecondary Education (“CPE”), Kentucky Adult Education, the Kentucky Higher Education Assistance (“KHEAA”) and _____ (“Authorized Representative”). Collectively, KYSTATS, KDE, CPE, Adult Education, and KHEAA are referred to as the “Parties.” This Agreement establishes the procedures relating to an exchange of information between the Parties and the Authorized Representative.

WHEREAS, KYSTATS, KDE, Adult Ed, CPE, and KHEAA are public agencies organized under KRS 151B.132, KRS 156.010, and KRS 164.011, 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) and the 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 KYSTATS 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 KYSTATS 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 (“FERPA”), 20 U.S.C. 1232g; 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 Workforce Innovation and Opportunity, Individuals with Disabilities Act, 20 U.S.C. 1400 et seq.; KRS

341.190; and the Personal Information Security and Breach Investigation Procedures and Practices Act, KRS 61.931 et seq.;

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

Section 1. Designation of Authority.

A. KYSTATS hereby designates the Authorized Representative and its subcontractors identified herein as an “authorized representative” of the KYSTATS, 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 legal requirements that relate to those education programs (audit, evaluation, or enforcement or compliance activity) in the KDE’s role as the state education agency and in evaluation of education programs (“audit/evaluation services”) and, specifically, with respect to the use of confidential data disclosed under this agreement.

A. B. KYSTATS 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 KDE shall identify the Authorized Representative as a contractor acting in the place of KDE; shall ensure that the Authorized Representative has demonstrated that the research is on behalf of KDE, 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 KDE’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 KDE’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 KYSTATS 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 the KDE’s audit/evaluation services. The parties further acknowledge that KDE is the owner of the confidential data. 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 KYSTATS and KYSTATS 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 personally identifiable information from education records and other records in order 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 KYSTATS and KYSTATS 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 KYSTATS shall disclose this data to the Authorized Representative, upon written request utilizing the U.S. Department of Agriculture Prototype Agreement, and upon KDE's prior determination that the Authorized Representative has demonstrated that disclosure is allowed by 7 C.F.R. 245.6(f). A description of any data protected by 7 C.F.R. 245.6(f) 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 identified herein, ("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(f) in the case of disclosure of free or reduced price lunch eligibility data which is the student poverty indicator for education programs) or are eligible when dealing with employment and wage information as referred to in the Workforce Innovation and Opportunity Act, 29 U.S.C. 3101 et seq. and KRS 341.190, in the performance of the audit/evaluation services according to the terms of this agreement or any overarching agreement between the KYSTATS and the Authorized Representative in which the Authorized Representative agrees to perform these audit/evaluation services on KYSTATS's behalf ("Master Agreement").
- B. The Authorized Representative shall require all Authorized Users to comply with FERPA and other applicable federal and Kentucky student and non-student privacy laws. The Authorized Representative shall require and maintain confidentiality agreements or the Nondisclosure Statement(s) with each Authorized User of confidential data. If a confidentiality agreement with each Authorized User is used, which is different from the KYSTATS'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 signed confidentiality agreement or the KYSTATS's signed Nondisclosure Statement(s), as appropriate, shall be attached to this agreement as Exhibit B.

- C. 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 number, 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 any agency;
- e) A passport number or other identification number issued by the United States government; or
- f) Individually identifiable health information as defined in 45 C.F.R. sec. 160.103, 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 that has a contract or agreement with KYSTATS and receives (accesses, collects or maintains) personal information from KYSTATS pursuant to the contract or agreement.

Authorized Representative shall not redisclose, without written consent of the KYSTATS, any “personal information,” as defined in KRS 61.931(6), or any other personally identifiable information of a student or other persons, such as employees.

- D. The Authorized Representative hereby agrees to cooperate with KYSTATS 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, KYSTATS, the Commissioner of the Kentucky State Police, the Auditor of Public Accounts, the Kentucky Attorney General, and the Commonwealth Office of Technology of a determination of or knowledge of a breach, unless the exception set forth in KRS 61.932(2)(b)2 applies and the Authorized Representative 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 Authorized Representative 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 Authorized Representative shall notify the Executive Director of KYSTATS in the same manner as above. If the agency is an educational entity listed under KRS 61.931(1)(e), the Authorized Representative 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 1:016.

- F. The Authorized Representative hereby agrees that the Commonwealth may withhold payment(s) owed to the Authorized Representative 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: [Security Policies, Standards and Procedures](#).
- J. If Authorized Representative is a cloud computing service provider (as defined in KRS 365.734(1)(b) as “any person other than an educational institution that operates a cloud computing service”), 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, Authorized Representative may assist an educational institution to conduct educational research as permitted by the Family Educational Rights and Privacy Act, 20 U.S.C.1232g.
 - Pursuant to KRS 365.734, 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, Authorized Representative shall not sell, disclose, or otherwise process student data for any commercial purpose.
- Pursuant to KRS 365.734, Authorized Representative shall certify in writing, by its signature on this MOU, 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 KYSTATS. The Authorized Representative shall store all confidential data on secure data servers in the contiguous United States using current industry best practices. The Authorized Representative shall notify the KYSTATS 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 KYSTATS officials authorized to receive confidential and otherwise personally identifiable data. The Authorized Representative shall cooperate and take all reasonable means prescribed by KYSTATS to secure any breaches as soon as practicable.

- L. The Authorized Representative shall not disclose KYSTATS'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 Kentucky 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 KYSTATS'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 KYSTATS within forty-five (45) days after the data is destroyed by completing Exhibit F.
- O. The Authorized Representative shall permit KYSTATS, at KYSTATS'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 KYSTATS'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 KYSTATS perform audit/evaluation services related to the activities outlined in this agreement.
- Q. The Authorized Representative shall obtain prior written approval from KYSTATS before accessing confidential and otherwise personally identifiable data for activities beyond the scope specified in this agreement; and any access beyond the scope of this agreement shall be consistent with federal and Kentucky law requirements. Any confidential and otherwise personally identifiable data collected by the Authorized Representative under activities approved by KYSTATS 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.

- R. 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 KYSTATS with prior notice before disclosure so that KYSTATS may seek a protective order or other appropriate remedy to prevent the disclosure or to ensure KYSTATS's compliance with the confidentiality requirements of federal or Kentucky 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.
- S. 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 ("Guidance") issued pursuant to the requirements of the Family Educational Rights and Privacy Act. The Guidance is available by clicking the following hyperlink, [Guidance for Reasonable Methods and Written Agreements](#) and made a part of this agreement as if stated fully herein.
- T. The Authorized Representative shall also, if the data shared by KYSTATS 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 applicable to KDE.

Section 4. Permission to Use Data.

KYSTATS 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. 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. At least five days prior to Authorized Representative's public disclosure of conclusions, results, or product(s) resulting from the audit/evaluation (e.g., article, report, book, etc.), the Authorized Representative shall provide a copy of same to KYSTATS for review and approval. Authorized Representative shall not disclose publicly the conclusions, results or product(s) resulting from the audit/evaluation without KYSTATS approval.

Section 5. Transfer Protocol.

The KYSTATS 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 KYSTATS 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 KYSTATS.

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 KYSTATS 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, KYSTATS or any other effected party to this Agreement may, in addition to any other rights and remedies available to KYSTATS as allowed by federal and Kentucky law, 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), KYSTATS 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 the Parties and the Authorized Representative, and the Authorized Representative shall not assign its respective rights or obligations under this agreement without prior written consent of KYSTATS. 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, construction or performance of this agreement or any of its terms shall be governed by the laws of the Commonwealth of Kentucky. Any suit, action, or other proceeding regarding the execution, validity, interpretation, construction, or performance of this agreement shall be filed in the Franklin Circuit Court of the Commonwealth of 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.

The Parties 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 Agreement are listed in Exhibit E with their contact information.

Section 13. Term and Termination.

The term of this agreement shall be the latter of the duration set forth in Exhibit A or the date the requirements for destruction of all confidential and otherwise personally identifiable data are met which includes submittal of a completed Exhibit F to KYSTATS. Either party may cancel this agreement at any time for cause or may cancel without cause on thirty (30) days’ written notice.

Section 14. Effective Date of This Agreement.

This agreement will become effective upon execution by all Parties and the Authorized Representative have signed.

APPROVED:

_____ / _____

Authorized Representative’s Authorized Agent Signature/Date

Authorized Representative’s Authorized Agent’s Name: _____

Authorized Representative’s Authorized Agent’s Title: _____

Authorized Representative’s Entity Name: _____

Phone: _____

APPROVED:

_____ / _____

Signature/Date

Matt Berry, Executive Director

Kentucky Center for Statistics

APPROVED:

Signature/Date

Dr. Robbie Fletcher, Commissioner

Kentucky Department of Education

APPROVED:

_____ / _____

Signature/Date

Aaron Thompson, President

Kentucky Council on Postsecondary Education

APPROVED:

_____ / _____

Signature/Date

Diana Barber, COO

Kentucky Higher Education Assistance Authority

APPROVED:

_____/_____
Signature/Date

John C. Gregory, Executive Director

Kentucky Adult Education

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

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).

Exhibit A: Specifics of Data Being Requested

Section I – Required for all requestors

Contact Information

Requesting Entity Legal Name: Primary Data Custodian Name: _____, Title: _____ Phone: _____ Email: _____ Secondary Data Custodian Name: _____, Title: _____ Phone: _____ Email: _____

Purpose, Scope and Duration

Use of data received under this MOU is limited to purpose, scope and duration defined.

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

[Click here to enter text.](#)

Describe how the results will be used:

[Click here to enter text.](#)

Audit/Evaluation Start Date: _____ Audit Evaluation End Date: _____

Data Being Requested

School Years included in Audit/Evaluation:

- 2022-23 2021-22 2020-21 2019-20 2018-19 2017-18 2016-17
- 2015-16 2014-15 2013-14 2012-13 2011-12 2010-11 2009-10
- 2008-09 Other: [Click here to enter text.](#)

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

If requesting Personally Identifiable Information (PII), check Student/Individual box. For aggregate level, select School, District and/or State.

Provide specific data elements needed to complete audit/evaluation:

See attached data dictionary.

Section II – Special requirements for requests for Personally Identifiable Information (PII)

Complete if Personally Identifiable Information (PII) is being requested.

- 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.
- Authorized Representative 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.

Justify your request for student/individual level data:.

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

Click here to enter text.

Section III – Prototype Agreement: Disclosure of Free and Reduced-Price Information

Complete Section III if Free or Reduced-Price Lunch eligibility data is required for PII records.

A. Purpose and Scope

Kentucky Department of Education, KYSTATS, 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 KYSTATS 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 KYSTATS 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.

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

Authorized representative: 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) described:

[Click here to enter text.](#)

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:

[Click here to enter text.](#)

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

[Click here to enter text.](#)

D. Effective Dates

The term of this agreement shall be the latter of the duration set forth in Exhibit A or the date the requirements for destruction of all confidential and otherwise personally identifiable data are met which includes submittal of a completed Exhibit F to KYSTATS.

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 Signature/Date

Requesting Agency/Program Administrator Signature Typed or Printed Name: _____,

Title: _____

Phone: _____

_____/_____

Determining Agency Administrator Signature/Date

Determining Agency Administrator Printed Name: Robbie Fletcher

Title: Commissioner

Phone: (502) 564-3141, ext. 4806

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

Exhibit B: Authorized Representative Confidentiality and Nondisclosure Agreement

Complete and submit one for each data custodian. Include the completed nondisclosure statements or confidentiality agreement with your proposed MOU. A data custodian is anyone who has access to KYSTATS confidential information.

Authorized Representative: _____

Authorized Representative's data custodian (employee or contractor) Name: _____, Title: _____

Address: _____, Phone: _____

I understand that the performance of my duties as an employee or contractor, of an authorized representative for the Kentucky Center for Statistics (KYSTATS), 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 Kentucky 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 KYSTATS and its authorized representative.
- I will maintain the confidentiality of the data or information as outlined in the [KYSTATS Acceptable Use Guidelines](#).
- 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 others or me for any purpose other than statistical purposes specified in KYSTATS 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
 - o to my immediate supervisor, Associate Commissioner, and
 - o to the Division of Human Resources if I am a KYSTATS employee or
 - o to the KYSTATS Office for whom I perform work under this agreement if I am a KYSTATS authorized representative or an employee or contractor of a KYSTATS authorized representative
- 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 KYSTATS authorized representative's employee or contractor 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 implementation of federal regulations found in 34 CFR, Part 99. The penalty for unlawful

disclosure is a fine of not more than \$250,000 (under 18 U.S.C. 3571) or imprisonment for not more than five years (under 18 U.S.C. 3559), or both.

- I understand and acknowledge that children’s free and reduced price meal and free milk eligibility information or information from the family’s application for eligibility, obtained under provisions of the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq)(NSLA) or Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.)(CNA) and the regulations implementing these Acts, is confidential information.
- I understand that any unauthorized disclosure of confidential free and reduced price lunch information or information from an application for this benefit is illegal as provided in the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq)(NSLA) or Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.)(CNA) and the regulations implementing these Acts, specifically 7 C.F.R 245.6. The penalty for unlawful disclosure is a fine of not more than \$1,000.00 (under 7 C.F.R. 245.6) or imprisonment for up to one year (under 7 C.F.R. 245.6), or both.
- I understand that KRS 61.931 also defines “personal information” to include 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 number, 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 any agency;
 - e) A passport number or other identification number issued by the United States government; or
 - f) Individually identifiable health information as defined in 45 C.F.R. sec. 160.103, except for education records covered by the Family Educational Rights and Privacy Act, as amended, 20 U.S.C. sec. 1232g.
- I understand that other federal and state privacy laws protect confidential data not otherwise detailed above and I acknowledge my duty to maintain confidentiality of that data as well.
- I understand that any personal characteristics that could make the person’s identity traceable, including membership in a group such as ethnicity or program area, are protected.
- In addition, I understand that any data sets or output reports that I may generate using confidential data are to be protected. I will not distribute to any unauthorized person any data sets or reports that I have access to or may generate using confidential data. I understand that I am responsible for any computer transactions performed as a result of access authorized by use of sign on/password(s).

_____/_____
Authorized representative’s employee or contractor signature/Date

Authorized representative’s or its contractor’s authorized agent signature/Date
Authorized representative’s or its contractor’s authorized agent name (typed): _____

Exhibit C: Authorized Representative Data Security Policy

PII should only be shared using secure/encrypted methods.

Describe the measures you take to ensure the protection of PII released to you. If you have an applicable data protection policy, please attach or copy/paste here as Exhibit C. If using a delivery method other than KYSTATS's managed file transfer service (MOVEit), include information on the requested delivery method.

Describe your data security policy here:

[Click here to enter text.](#)

Exhibit D: Data Destruction Plan

Please describe the methods Authorized Representative 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.

Describe your data destruction plan here:

[Click here to enter text.](#)

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 audit/evaluation services described in this agreement, upon KYSTATS 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 KYSTATS within forty-five (45) days after the data is destroyed. Scan the signed Certificate of Data Destruction and return it by email to KYSTATS@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: [Click here to enter text.](#)

MOU Number: [Click here to enter text.](#)

In accord with the provisions of the Memorandum of Understanding (MOU) between the Kentucky Center for Statistics and the (“**Authorized Representative**”), the confidential and otherwise personally identifiable data were destroyed as required in Section 3(N) according to the methods described in Exhibit D of the MOU.

Date submitted: [Click here to enter a date.](#)

Scheduled date of destruction (per MOU): [Click here to enter a date.](#)

Actual destruction date: [Click here to enter a date.](#)

Description of records disposed of:

Media type	Method of Destruction	Comments
Click here to enter text.	Click here to enter text.	Click here to enter text.
Click here to enter text.	Click here to enter text.	Click here to enter text.
Click here to enter text.	Click here to enter text.	Click here to enter text.
Click here to enter text.	Click here to enter text.	Click here to enter text.

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): [Click here to enter text.](#), **Agent’s Title:** [Click here to enter text.](#)