

**Memorandum of Understanding**  
**By and Between the Ohio Department of Education and \_\_\_\_\_**

This agreement is entered into by the Ohio Department of Education (“ODE”) and \_\_\_\_\_ (“Researcher”) for the purpose of sharing information between the parties in a manner consistent with the Family Educational Rights and Privacy Act of 1974 (“FERPA”). The information will be used by Researcher to conduct evaluative studies designed to improve instruction for children in the state of Ohio. Topics of these studies will include the following: Implementation and impact of evidence-based early literacy practices to improve outcomes for students in preschool through grade three. In order to complete these studies and in order to have a positive impact on the instruction of children, Researcher requires the use of student data from the ODE.

The Family Educational Rights and Privacy Act (FERPA) describes circumstances under which State Educational Agencies (SEAs) are authorized to release data from an education record. This information can be disclosed to organizations conducting studies on behalf of SEAs, provided that federal, state or local law authorizes the evaluation in question. Ohio Revised Code § 3301.12 grants to the Ohio State Superintendent of Public Instruction the authority to conduct studies of education programs, but the provision prohibits the ODE’s access to a student’s name, address or social security number.

- I. **PARTIES.** The ODE is an SEA that is authorized to receive information from local educational agencies (“LEAs”) subject to FERPA, as authorized by 34 CFR Section 99.31. Researcher desires to conduct studies on behalf of the ODE for the purpose of improving instruction in Ohio public schools in accordance with the Scope of Work Agreement attached hereto as Appendix A. The parties wish to share data collected by the ODE regarding education in Ohio, none of which will allow the identification of individual students.
  
- II. **COMPLIANCE WITH LAW.** To affect the transfer of data subject to FERPA and other regulations, Researcher agrees to:
  1. In all respects comply with all applicable provisions of Ohio and federal laws including FERPA. For purposes of this agreement, “FERPA” includes any amendments or other relevant provisions of federal law, as well as all requirements of Chapter 99 of Title 34 of the Code of Federal Regulations. Nothing in this agreement may be construed to allow either party to maintain, use, disclose or share student information in a manner not allowed by state or federal law or regulation.
  
  2. Use the data shared under this agreement for no purpose other than research authorized under Section 99.31(a)(3)(iv) or 99.31(a)(6) of Title 34 of the Code of Federal Regulations. Researcher further agrees not to share data received under this MOU with any other entity without the ODE’s approval.
  
  3. Allow the Office of the State Auditor, subject to FERPA restrictions, access to data shared under this agreement and any relevant records of Researcher for purposes of completing authorized audits of the parties. Researcher shall be liable for any audit exception that results solely from its acts or omissions in the performance of this agreement. The ODE shall be liable for any audit exception that results solely from its acts or omissions in the performance of this agreement. In the event that the audit exception results from the act or omissions of both parties, the financial liability for the audit exception shall be shared by the parties in proportion to their relative fault.

4. Require all employees, contractors and agents of any kind to comply with all applicable provisions of FERPA and other federal laws with respect to the data shared under this agreement. Researcher agrees to require and maintain an appropriate confidentiality agreement from each employee, contractor or agent with access to data pursuant to this agreement. Nothing in this paragraph authorizes sharing data provided under this agreement with any other entity for any purpose other than completing Researcher's work authorized under this agreement.
5. Maintain all data obtained pursuant to this agreement in a secure computer environment and not copy, reproduce or transmit data obtained pursuant to this agreement except as necessary to fulfill the purpose of the original request. Ensure that computing services operate at the moderate level baseline as defined in the National Institute of Standards and Technology (NIST) 800-53 Rev. 3 moderate baseline requirements and are consistent with Federal Information Security Management ACT (FISMA) requirements. All copies of data of any type, including any modifications or additions to data from any source that contains information regarding students, are subject to the provisions of this agreement in the same manner as the original data. The ability to access or maintain data under this agreement shall not under any circumstances transfer from Researcher to any other institution or entity.
6. Not to disclose any data obtained under this agreement in a manner that could identify an individual student to any other entity in published results of studies as authorized by this agreement. Not to provide any data obtained under this agreement to any party ineligible to receive data protected by FERPA or prohibited from receiving data from any entity. Contact the ODE promptly in the event of a breach or potential breach of the security of, or loss of, student data. Such contact will be made to the ODE's Chief Legal Counsel, Diane Lease (614-995-5927), and Chief Information Security Officer, Matt Williams (614-728-8105), or their successors. Researcher will cooperate and provide reasonable assistance to the ODE, at no charge, in the investigation of such breach or loss.
7. Notify the ODE in advance of any new project or research question Researcher proposes to address and identify linkages of all data possessed by Researcher under this agreement and covered by FERPA to specific research studies and related publications.
8. Provide to the ODE any materials designed for public dissemination, based in whole or in part on data obtained under this agreement, at least 21 days prior to public release.
9. Destroy all data obtained under this agreement, within the time period indicated in Appendix A, when they are no longer needed for the purpose for which they were obtained. Nothing in this agreement authorizes Researcher to maintain data beyond the time period reasonably needed to complete the purpose of the request. All data no longer needed shall be destroyed or returned to the ODE in compliance with 34 CFR Section 99.35(b)(2). Researcher agrees to require all employees, contractors or agents of any kind to comply with this provision.

### III. UNAUTHORIZED DISCLOSURE AND INCIDENT REPORTING AND REMEDIATION AND PRIVACY AND SECURITY BREACH NOTIFICATION

1. Incident Reporting: Researcher shall immediately report to the ODE's Chief Legal Counsel and Chief Information Security Officer the following:
  - a. Any use or disclosure of personal information which is not in compliance with the terms of this agreement or applicable law of which Researcher becomes aware; and

- b. Any security incident of which Researcher becomes aware. For purposes of this agreement, "security incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.
2. Within 24 hours of discovery of a suspected reportable incident as described in (1) above, Researcher shall notify the ODE of the existence and nature of the incident as understood at that time. Researcher shall immediately investigate the incident and within 72 hours of discovery shall provide the ODE, in writing, a report describing the results of Researcher's investigation, including:
  - a. What data elements were involved, the extent of the data involved in the incident and, if applicable, the identification of affected individuals;
  - b. A description of the unauthorized persons known or reasonably believed to have improperly used or disclosed personal information, or to have been responsible for the incident;
  - c. A description of where the personal information is believed to have been improperly transmitted, sent or utilized;
  - d. A description of the probable causes of the incident;
  - e. A description of the proposed plan for preventing similar future incidents, including ongoing risk remediation plan approval; and
  - f. Whether Researcher believes any federal or state laws requiring notifications to individuals are triggered.
3. Mitigation: Researcher agrees to mitigate, to the extent practicable, any harmful effect that is known to Researcher of a use or disclosure of personal information by Researcher in violation of the requirements of this agreement, and report its mitigation activity back to the ODE. Researcher shall preserve evidence.
4. Coordination: Researcher will coordinate with the ODE to determine additional specific actions that will be required of Researcher for mitigation of the incident, which may include notification to the individuals, entities or other authorities. Researcher will cooperate and provide reasonable assistance to the ODE, at no charge, in the investigation of such breach or loss. Notifications, if any, will be made at the direction of the ODE.
5. Incident Costs: Researcher shall bear all actual and reasonably incurred costs associated with the incident that may be attributed solely to the negligent actions of Researcher. This may include, but not be limited to, costs associated with notifying affected individuals. It also may include the cost of investigation, remediation and assistance to individuals including services such as a standard level of credit-monitoring such as AllClear ID's standard service or other comparable service available to Ohio agencies under state term schedule. Researcher's obligation to cover these costs, as set forth above, is conditioned on Researcher receiving from the ODE prompt written notice of any incident costs or claims and reasonable cooperation in its investigation and defense. Researcher may defend said claims at own expense with legal counsel of own choice. Notwithstanding the above, Researcher will not be required to cover any costs with respect to losses or expenses caused by the ODE's own negligence or willful misconduct.

#### IV. DATA REQUESTS.

1. The ODE may decline to comply with a request if it determines that providing the data in the manner requested would violate FERPA and/or would not be in the best interest of current or former students in Ohio public schools. All requests shall include a statement of the purpose for which data are requested and an estimation of the time needed to complete the project for which the data are requested. Data requests may be submitted by post, electronic mail or facsimile.
  2. Researcher agrees that the ODE makes no warranty concerning the accuracy of the student data provided.
- V. **AUTHORIZED REPRESENTATIVE.** Researcher shall designate in writing a single authorized representative able to request data under this agreement. The authorized representative shall be responsible for transmitting all data requests and maintaining a log or other record of all data requested and received pursuant to this agreement, including confirmation of the completion of any projects and the return or destruction data as required by this agreement. The ODE or its agents may upon request review the records required to be kept under this section.
- VI. **RELATED PARTIES.** Researcher represents that it is authorized to bind to the terms of this contract, including confidentiality and destruction or return of student data, all related or associated institutions, individuals, employees or contractors who may have access to the data or may own, lease or control equipment or facilities of any kind where the data is stored, maintained or used in any way by Researcher. This agreement takes effect only upon acceptance by an authorized representative of Researcher, by which that institution agrees to abide by its terms and return or destroy all student data upon completion of the research for which they were intended or upon the termination of the ODE's current relationship with Researcher.
- VII. **TERM.** This agreement takes effect upon signature by an authorized representative of each party and will remain in effect until \_\_\_\_\_. The parties further understand that the ODE may cancel this agreement at any time for reasonable cause, upon thirty-day written notice. Notice of such cancellation shall be sent or otherwise delivered to the persons signing this agreement. The ODE specifically reserves the right to immediately cancel this agreement upon discovery of non-compliance with any applicable federal or state laws, rules or regulations. Further, the ODE specifically reserves the right to immediately cancel this agreement should the ODE, in its sole discretion, determine that student information has been released in a manner inconsistent with this agreement, has not been maintained in a secure manner, or that substantially similar data access has become generally available for research purposes through any other mechanism approved by the ODE. In the event of immediate cancellation, a notice specifying the reasons for cancellation shall be sent as soon as possible after the cancellation to the persons signing the agreement.
- VIII. **BREACH AND DEFAULT.** Upon breach or default of any of the provisions, obligations, or duties embodied in this agreement, the parties may exercise any administrative, contractual, equitable, or legal remedies available, without limitation. The waiver of any occurrence of breach or default is not a waiver of such subsequent occurrences, and the parties retain the right to exercise all remedies mentioned herein.
- IX. **AMENDMENT.** This agreement may be modified or amended provided that any such modification or amendment is in writing and is signed by the parties to this agreement. It is agreed, however, that any amendments to laws, rules, or regulations cited herein will result in the correlative modification of this agreement, without the necessity for executing written amendment.

- X. ASSIGNMENT OF RIGHTS. Neither this agreement, nor any rights, duties, or obligations described herein shall be assigned by Researcher without the prior express written consent of the ODE.
- XI. ENTIRETY OF AGREEMENT. All terms and conditions of this agreement are embodied herein and in the Scope of Work Agreement attached hereto as Appendix A. No other terms and conditions will be considered a part of this agreement unless expressly agreed upon in writing and signed by both parties.

Entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

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Dr. Lonny J. Rivera  
Interim Superintendent of Public Instruction

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Dr. Heather Boughton  
Director, Office of Data Quality

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[Printed Name – authorized signatory for agreement]  
[Title]  
[Name of Organization]

**Ohio Department of Education  
Memorandum of Understanding  
Appendix A: Scope of Work Agreement**

**I. Scope of Work**

*Provide a brief description of the research study for which the researcher is requesting data per this data sharing agreement. Include a description of the research questions being addressed, as well as a description of any reports expected to be generated as a result of this research study. Note that Ohio's MOU (Section II.7) requires the researcher to provide the ODE with annual updates on the list of research studies for which the data shared per this agreement is being used.*

**II. Estimated Project Timeline**

*Provide a brief description of the estimated timeline for the research study supported by this MOU. Note that Ohio's Memorandum of Understanding (Section VII) requires the researcher to identify an effective end date for the MOU. Include in this description the estimated time frame needed to destroy or return the data in accordance with the MOU (Section 11.8). Any extensions to the effective end date or the time frame for destruction or return of the data will require a signed addendum to the original MOU.*

**III. Authorized Representative**

*Ohio's Memorandum of Understanding (Section V) requires the researcher to designate in writing a single authorized representative responsible for transmitting all data requests and maintaining a log or other record of all data requested and received pursuant to this agreement, including confirmation of the completion of any projects and the return or destruction of data as required by this agreement.*

[Printed Name – authorized representative for data transactions]

[Title]

[Name of Organization]

[Physical Address]

[Phone Number]

[Email Address]

**IV. Description of Data Being Requested**

*Provide a detailed description of the data elements requested per this data sharing agreement. Include in your description information about the years of data being requested, the educational entities for which you would like data (i.e., all schools, specific schools, specific types of schools, etc...), and the specific data elements being requested for this research study.*