

Minnesota State Colleges and Universities

Office of General Counsel

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Sample Agreement Terms for Outside Service Providers* Who Need Access to Educational Data

Background

* Service providers are third parties that the college or university consider to be “school officials” because they perform work or a function for a college or university for which the school would otherwise use employees and requires use of education records. A common term for this arrangement is “out-sourcing.” Service providers include vendors, service technicians, contractors, consultants, volunteers and others, and colleges and universities may permit them access to education records without a student’s consent to do their assigned work but only if certain conditions stated in the FERPA Regulations are met.

In general, these conditions are long-standing, but comments to the 2009 FERPA amendments emphasize that colleges and universities are responsible for the privacy and security of their students’ education records in the hands of third parties they choose to act on their behalf as “school officials.” The regulations do not dictate how colleges and universities discharge their control responsibilities. Where a contract is generally used, adding new terms, or amending an existing contract through an addendum, specifying appropriate access and use of education records is recommended. *A sample addendum is below.* In other situations, for example, a one-time use of volunteers with very restricted records access, appropriate privacy control may be achieved by brief training.

Regardless of how colleges and universities use outsourcing, they must include a description of such service providers within their policy definition of “school officials.” Colleges and universities are further advised to review campus policies and procedures to align with the recent clarifications of the FERPA regulations that service providers acting as school officials must:

- 1) be under the “direct control” of college or university policies re: maintenance and use of education records, including having access to only information for which there is a “legitimate educational interest;”
- 2) agree to use the information only for the purposes for which disclosure was made; and
- 3) permit no re-disclosure except as authorized by the college or university, applicable law, or the student.

A contract containing additional terms is required for disclosure to research organizations or other entities for audit or evaluation purposes and colleges and universities should consult with the Office of General Counsel for assistance.

The following provisions may be incorporated into the main body of a Contract or used as an Addendum. These provisions are intended to be used together; consult with the OGC or AGO if substantive changes or deletions are suggested.

Minnesota State Colleges and Universities

Addendum to Contract

This Addendum (“Addendum”) amends and is hereby incorporated into the existing Contract entered into by and between _____ and its subcontractors/agents (“Service Provider”) and the State of Minnesota (“State”) by Minnesota State Colleges and Universities through [name of college or university] on the date of _____ (Contract”). This Addendum is effective as of: _____.

The State and Service Provider mutually agree to modify the Contract to incorporate this Addendum to comply with the requirements of the Family Educational Rights and Privacy Act (FERPA) and other applicable privacy laws. Service Provider agrees to abide by the limitations on re-disclosure of personally identifiable information from education records set forth in FERPA at 34 CFR 99.33 (a)(2) and with the terms set forth below. Officers, employees and agents of a party that receives education record information from the State college or university may use the information, but only for the purposes for which the disclosure was made. 34 CFR 99.33 (a)(2).

If any conflict exists between the terms of this Addendum and the Contract, the terms of this Addendum shall govern.

Definition: *Educational Data* is information from education records that includes data classified as “private” by FERPA and the Minnesota Government Data Practices Act, Minn. Stat. § 13.32, Subd. 3, in any medium, which is supplied by the state [OPTIONAL: as well as any data provided by the college or university’s students] to the Service Provider.

Acknowledgment of Access to Educational Data: Service Provider acknowledges that the Contract allows the Service Provider access to educational data.

Prohibition on Unauthorized Use or Disclosure of Educational Data: Service Provider agrees to hold educational data in strict confidence. Service Provider shall not use or disclose educational data received from or on behalf of the State [or its students] except as permitted or required by the Contract, this Addendum, as otherwise required by law, or as authorized in writing by the State or subject student. Service Provider agrees not to use educational data for any purpose other than the purpose for which the disclosure was made.

Return or Destruction of Educational Data: Upon termination, cancellation, expiration or other conclusion of the Contract, Service Provider shall return all educational data to the originating State college or university or, if return is not feasible, destroy any and all educational

data. If the Service Provider destroys the information, the Service Provider shall provide the State college or university with a written statement confirming the date of the destruction of the data.

Remedies: If the state reasonably determines in good faith that the Service Provider has materially breached any of its obligations under this Addendum, the State, in its sole discretion, shall have the right to require the Service Provider to submit to a plan of monitoring and reporting; provide Service Provider with a fifteen (15) day period to cure the breach; or terminate the Contract immediately if cure is not possible. Before exercising any of these options, the State shall provide written notice to the Service Provider describing the violation and the action it intends to take. If the U.S. Department of Education determines that the Service Provider improperly disclosed personally identifiable information obtained from the State college or university's education records, the State college or university may not allow the Service Provider access to education records for at least five years.

Maintenance of the Security of Electronic Information: Service Provider shall develop, implement, maintain, and use appropriate administrative, technical and physical security measures to preserve the confidentiality, integrity and availability of all electronically maintained or transmitted educational data received from, or on behalf of the State college or university [or its students]. These measures will be extended by contract to all subcontractors used by the Service Provider.

Reporting Unauthorized Disclosures or Misuse of Educational Data: Service Provider shall, within one day of discovery, report to the State college or university any use or disclosure of educational data that is not authorized by the Contract or this Addendum or in writing by the college or university. Service Provider's report shall identify: (i) the nature of the unauthorized use or disclosure; (ii) the educational data used or disclosed; (iii) who made the unauthorized use or received the unauthorized disclosure; (iv) what measures the Service Provider has done or shall do to mitigate any adverse effect of the unauthorized use or disclosure, and (v) what corrective action Service Provider has taken or shall take to prevent future similar unauthorized use or disclosures. Service Provider shall provide such other information, including a written report, as reasonably requested by the State college or university.

Indemnification: Service Provider shall indemnify and hold the State college or university harmless from all claims, liabilities, damages, or judgments involving a third party, including the State college or university's costs and attorney fees, and shall, subject to the approval of the Minnesota Attorney General, defend the State college or university from all claims, liabilities and actions, which arise as a result of Service Provider's failure to meet any of its obligations under this Addendum.

(Signatures Continued on Next Page)

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

Minnesota State Colleges and Universities

Service Provider

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____