Colorado State Longitudinal Data System
Data Sharing Agreement

This Data Sharing and License Agreement ("Agreement") is entered into by and between the State of Colorado (the "State") acting by and through the [INSERT OFFICIAL NAME OF ENTITY PROVIDING DATA] ("Transferring Entity"), having an address at [INSERT ADDRESS] and the Governor's Office of Information Technology ("Recipient"), whose principal office is located at 1575 Sherman Street, Denver, CO 80203. Transferring Entity and Recipient are each individually a "Party" and together the "Parties."

Whereas, the Colorado General Assembly passed HB24-1364 (as defined below), establishing the Statewide Longitudinal Data System (the "SLDS") to aggregate Data (as defined below) across the state of Colorado over time for the purpose of advancing technology solutions and improving data connectivity and analysis concerning education and workforce readiness statewide;

Whereas, Transferring Entity and Recipient have both executed the SLDS Memorandum of Understanding setting forth the operational and governing principles of the SLDS;

Whereas, Recipient is building, hosting, and managing the daily operations of the SLDS pursuant to HB24-1364. *See* § 24-37.5-125, C.R.S.;

Whereas, Recipient seeks to obtain data from Transferring Entity and maintain the data in the SLDS in furtherance of the purpose of the SLDS as articulated in HB24-1364;

Whereas, Transferring Entity seeks to contribute data to the SLDS in furtherance of the purpose of the SLDS as articulated in HB24-1364; and

Now, therefore, in consideration of the mutual promises contained herein, the sufficiency of which each Party hereby acknowledges as adequate, the Parties agree as follows:

1. **Defined Terms.**

   a) "Anonymized Data" means Data that has been properly De-identified.

   b) "CORA" means the Colorado Open Records Act, § 24-72-200.1, *et seq.*, C.R.S.

   c) "Covered Entity" shall have the same meaning as the term "covered entity" at 45 C.F.R. 160.103.

   d) "Data" means the information described in a Data Sharing Addendum (as defined below).

   e) "Data Breach" means an event resulting in an unauthorized access, use, exposure, disclosure, exfiltration, or loss of Data.

f) "Data Governance" means the oversight of data quality, data management, data policies, business process management, and risk management surrounding the handling of Data.

g) "Data Governance Policies" means the specific policies and procedures approved by the Governing Board concerning Data Governance in the SLDS.

h) "Data Sharing Addendum" means an addendum to this Agreement executed by the Parties that describes the Data to be shared between the Parties, the Purpose, and any restrictions that may apply to the Recipient with respect to the Data to be shared under the Addendum. A template Data Sharing Addendum for use by the Parties is attached to this Agreement as Exhibit A.

i) "Data Steward" means the person(s) identified by Transferring Entity who is responsible for identifying data requirements, data quality, compliance with regulatory requirements, and applying appropriate security controls.

j) "Data Use License" means a contractual agreement between a Data Recipient and OIT that sets forth the conditions under which the Data Recipient may receive and use Data from the SLDS.

k) "De-identified" means the removal of all PII from the Data so that the remaining information does not identify an individual and there is no reasonable basis to believe that the information can be used to identify an individual.

l) "Destroy" means to remove Data from Recipient's systems, paper files, records, databases, and any other media regardless of format, in accordance with the standard detailed in the OIT Security Policies.

m) "HB24-1364" means the Education-Based Workforce Readiness Act, which is codified in relevant part at §§ 24-37.5-105 and 24-37.5-125, C.R.S.

n) "FERPA" means the Family Educational Rights and Privacy Act, which is codified at 20 U.S.C. § 1232g and 34 CFR Part 99.

o) "Higher Education Act" means the Higher Education Act of 1965 and subsequent amendments.

p) "IDEA" means the Individuals with Disabilities Education Act, which is codified at 20 U.SC. § 1400 and 34 CFR Part 300.

q) "Incident" means an event that results in or constitutes an imminent threat of the unauthorized access, use, loss, disclosure, modification, disruption, or destruction of communication and information resources of the State.

r) "OIT" means the Governor's Office of Information Technology.

s) "OIT Security Policies" means the security policies established by OIT to secure information held by State Agencies, which are available at: https://oit.colorado.gov/standards-policies-guides/technical-standards-policies.

t) "Personally Identifying Information" or "PII" means information which can reasonably be used to identify, contact or locate an individual, either alone or in combination with other information.

u) "Purpose" means the purpose for which Data is being shared between the Parties, as described in an applicable Data Sharing Addendum.

v) "SDTSA" means the Student Data Transparency and Security Act, codified at §§ 22-16-101-112, C.R.S.

2. **Sharing of Data.** Transferring Entity will share the Data with Recipient using a secure method agreed to by the Parties and in accordance with the OIT Security Policies.

3. **Data Use and Restrictions.** Transferring Entity hereby grants Recipient a limited, revocable right to use the Data solely for the Purposes set forth in applicable Data Sharing Addenda.

   a) **Disclosure to Third Parties.**

      i) **Limited Disclosure to Third Parties.** Subject to any applicable Data Sharing Addenda and applicable Data Governance Policies, Transferring Entity agrees that Recipient may share the Data with third parties, including but not limited to researchers, in accordance with the purpose of the SLDS as articulated in HB24-1364. Recipient agrees that any such third parties must sign a Data Use License and be subject to terms that are at least as restrictive as the terms contained in this Agreement.

      ii) **Generally.** Other than disclosure to third parties in accordance with 3(a)(i) above, Recipient shall not sell, lease, rent, loan, transfer, distribute, alter, mine, or disclose the Data, including but not limited to, metadata and Anonymized Data, with any third party without the prior written consent of Transferring Entity, unless otherwise specified in applicable Data Sharing Addenda.

   b) **Restrictions on Access.** Unless otherwise agreed to in an applicable Data Sharing Addendum, Recipient shall not disclose the Data to anyone other than Recipient's personnel and contractors who have a need to know or access the Data in order to support the Purpose. Recipient agrees that any contractors that are authorized to access the Data must be subject to terms that are as restrictive as the terms contained in this Agreement.

   c) **Data Security Requirements.** Recipient agrees to secure and protect the Data against any unauthorized use or access in accordance with the most recent version of the OIT Security Policies.

d) **Storage of Data.** Recipient agrees to: (i) use, hold, and maintain the Data in compliance with any and all applicable laws and regulations, (ii) store the Data only in facilities located within the United States, and (iii) maintain the Data in a secure environment in accordance with the OIT Security Policies

e) **Destruction of Data.** Upon any termination or expiration of the Agreement, Transferring Entity may request for Recipient to Destroy or return any Data in its possession within a scope permitted by HB24-1364, in accordance with OIT Security Policies. Upon Transferring Entity's request, Recipient shall certify in writing that it has Destroyed such Data within thirty (30) days of Recipient's receipt of Transferring Entity's request.

f) **Reservation of Rights.** Except for the rights explicitly granted under this Agreement, Recipient is not granted any rights in and to the Data, including, but not limited to any Anonymized Data.

g) **Research, Analytics and Published Materials.** Recipient may use the Data to run internal analytics and investigational protocols, and create reports in accordance with HB24-1364. To the extent the Purpose includes the need to publish materials that are based on or include the Data, Recipient may publish and share the results of such research or analytics, provided that such reports include only Anonymized Data. The Parties also may work together, in concert with other contributors to the SLDS, to publish joint reports and publish Anonymized Data on public dashboards.

h) **Linking Data to other Datasets.** Transferring Entity agrees that Recipient may include the Data with data from other sources in carrying out the Purpose. Once included, Transferring Entity agrees that the Data will be integrated into Recipient's databases. Recipient agrees that such combined datasets will treat and safeguard the data in accordance with all applicable laws.

4. **Security Incident and Data Breach.**

a) **Incident Response.** If Recipient becomes aware of an Incident, Recipient shall use commercially reasonable practices to fully investigate and resolve the Incident and take steps to prevent developments that may result in the Incident becoming a Data Breach in accordance with the OIT Security Policies all applicable privacy and security laws.

b) **Data Breach Response.** Immediately upon becoming aware of a suspected or actual Data Breach, Recipient shall: (i) notify Transferring Entity of the Data Breach in writing, (ii) start a full investigation into the Data Breach, (iii) cooperate fully with Transferring Entity's investigation of and response to the Data Breach, and (iv) use commercially reasonable efforts to prevent any further Data Breach in accordance with the OIT Security Policies and all applicable privacy and security laws. If notification of the Data Breach is required pursuant to applicable law, Recipient shall coordinate with Transferring Entity in delivering such notifications and shall be responsible for all costs

associated with such notification. In the event the Parties determine that Recipient should deliver the necessary notifications, Recipient shall obtain Transferring Entity's prior written approval of the notifications prior to distributing such notifications.

c) **Data Breach Report.** If Transferring Entity reasonably determines that a Data Breach has occurred, then Transferring Entity may request that Recipient submit a written report, and any supporting documentation, identifying (i) the nature of the Data Breach including the dates of the Data Breach, when Recipient discovered the Data Breach, and number of impacted individuals, (ii) the steps Recipient has executed to investigate the Data Breach, (iii) what Data or PII was used or disclosed, (iv) who or what was the cause of the Data Breach, (v) what Recipient has done or shall do to remediate any deleterious effect of the Data Breach, and (vi) what corrective action Recipient has taken or shall take to prevent a future Incident or Data Breach. Recipient shall deliver the report within seven (7) days of Transferring Entity's request of the report. If the Recipient learns of more information necessary for understanding the nature of the Data Breach, risk to the Data, remediation efforts, or notification requirements after submitting the report, Recipient shall update Transferring Entity without delay.

d) **Liability for Data Breach.** Without limiting any other remedies Transferring Entity may have under law or equity, Recipient shall reimburse Transferring Entity in full for all costs, including but not limited to, payment of legal fees, audit costs, fines, and other imposed fees arising out of or relating to a Data Breach that Transferring Entity actually incurs. All responsibilities of Recipient under this Section 4 shall be completed by Recipient at Recipient's sole cost, without any right of reimbursement, set-off, payment, or remuneration of any kind from Transferring Entity.

5. **Term.**

a) The "Term" of this Agreement shall be one (1) year from the last date of execution set forth on the signature page. At the end of the Term, this Agreement shall automatically renew for additional one (1) year periods for up to five (5) years.

6. **Notices and Representatives.** Each individual identified as a Principal Representative for this Agreement below shall be the principal representative of the designating Party. All notices required or permitted to be given under this Agreement shall be in writing, and shall be delivered by hand with receipt required, by certified or registered mail to such Party's principal representative at the address set forth below or as an email with read receipt requested to the principal representative at the email address, if any, set forth below. If a Party delivers a notice to another through email and the email is undeliverable, then, unless the Party has been provided with an alternate email contact, the Party delivering the notice shall deliver the notice by hand with receipt required or by certified or registered mail to such Party's principal representative at the address set forth below. Either Party may change its principal representative or principal representative contact information, or may designate

specific other individuals to receive certain types of notices in addition to or in lieu of a principal representative, by notice submitted in accordance with this section without a formal amendment to this Agreement. Unless otherwise provided in this Agreement, notices shall be effective upon delivery of the written notice.

a) Principal Representative for OIT:

_____

_____

_____

Principal Representative for Transferring Entity:

_____

_____

_____

7. **Dispute Resolution.** In the event of a dispute related to this Agreement, the Parties' Principal Representatives shall have ten (10) business days to resolve the dispute. If this fails, both Parties shall submit the matter in writing to the Executive Director of the Department of Personnel and Administration, or their delegate for final resolution.

8. **General Provisions.**

a) **Amendment.** The Parties may amend this Agreement only in a writing signed by both Parties.

b) **Assignment.** Recipient's rights and obligations under this Agreement are personal and Recipient may not transfer or assign its rights without Transferring Entity's prior, written consent. Any of Recipient's attempts at assignment or transfer without such consent shall be void. If Transferring Entity approves any assignment or transfer of Recipient's rights and obligations, this Agreement will continue to govern such rights and obligations.

c) **Authority.** Each Party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such Party's obligations have been duly authorized.

d) **Counterparts.** The Parties may execute this Agreement in multiple, identical, or original counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

e) **Entire Understanding.** This Agreement, including, but not limited to, the recitals, which are incorporated into this Agreement by reference, represents the complete integration of all understandings between the Parties related to the data sharing. All prior representations and understandings related to the data sharing, oral or written, are merged into this Agreement. Prior or contemporaneous additions, deletions, or other changes to this Agreement shall not have any force or effect whatsoever, unless embodied herein.

f) **Severability.** The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect, provided that the Parties can continue to perform their obligations under this Agreement in accordance with the intent of this Agreement.

g) **Survival.** Sections 1, 3, 4, 6 and 7 of this Agreement, as well as any other provisions that by their nature should survive, shall survive any termination of this Agreement.

h) **Waiver.** A Party's failure or delay in exercising any right, power, or privilege under this Agreement, whether explicit or by lack of enforcement, shall not operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege preclude any other or further exercise of such right, power, or privilege.

i) **Legal Requests.** Transferring Entity acknowledges and agrees that Recipient, or its contractors, may be required to share the Data to respond to a subpoena, court order, open records request or valid legal request (each a "Legal Request"). To the extent permitted by law, Recipient will refer the Legal Request to Transferring Entity of any disclosure of the Data so that Transferring Entity may seek a protective order at its own cost.

j) **CORA.** The Parties agree to coordinate if either Entity receives a CORA request for data that is subject to this Agreement. CORA requests are time sensitive and must be referred to the Parties within one (1) business day to meet statutory open records requirements. To the extent not prohibited by applicable law, this Agreement may be subject to public release through CORA.

k) **Independent Contractor.** Each Party shall perform its duties hereunder as an independent contractor and not as an employee. Neither Party, nor any agent or employee of either Party shall be deemed to be an agent or employee of the other Party. Neither Party shall have authorization, express or implied, to bind the other Party to any agreement, liability or understanding, except as expressly set forth herein.

l) **Third-Party Beneficiaries.** No third party shall be able to enforce or have the benefit of any of the provisions of this Agreement.

m) **Consents and Compliance with Law.** Each Party shall comply with (i) all applicable federal and State laws, rules, and regulations, that apply to their obligations under the Agreement, including, but not limited to,   [INSERT SPECIFIC LAWS HERE] (collectively, "Laws"); and (ii) shall obtain all necessary consents to transfer and use the Data for the Purpose in accordance with such Laws. In the event a consent is revoked by an individual in accordance with applicable Laws, the Party that receives the revocation of consent will immediately notify the other Party of the revocation of consent. Upon receipt of a revocation of consent, Recipient shall Destroy and cease using the Data associated with that consent from the date Recipient receives the notice of revocation.

Exhibit A

DATA SHARING ADDENDUM No. [_]

This Data Sharing Addendum (the "Addendum") is entered into by the [INSERT OFFICIAL NAME OF ENTITY PROVIDING DATA] ("Transferring Entity"), having an address at [INSERT ADDRESS] and the Governor's Office of Information Technology ("Recipient"), whose principal office is located at 1575 Sherman Street, Denver, CO 80203, pursuant to the Data Sharing Agreement executed by the Parties on [INSERT DATE] (the "Agreement"). This Addendum hereby incorporates the terms contained in the Agreement by reference, and any capitalized terms not defined herein shall have the meanings set forth in the Agreement.

Term

This Addendum shall be effective upon the date of execution of this Addendum.

Data to be Shared

[DESCRIBE PARTICULAR DATA TO BE SHARED]

Purpose

Data shared by Transferring Entity and Recipient may be incorporated into and maintained in the SLDS. Specifically, the Data may be used to [DESCRIBE UTILITY OF INCLUDING DATA IN THE SLDS].

Legal Authority

[OPTIONAL SECTION; INCLUDE IF DATA IS GOVERNED BY PARTICULAR LAWS AND CITE AUTHORITY/INCLUDE REQUIRED LANGUAGE AS NEEDED TO EFFECTUATE DATA SHARING.]

Data Steward(s)

Transferring Entity designates the following [team/office/individual(s)] as Data Stewards for the Data described in this Addendum: [Describe role or roles who will manage data on behalf of Transferring Entity. Naming an individual is optional. E.g, "Manager of Universal Pre-K Program or Designee"].

Additional Restrictions or Terms

[OPTIONAL SECTION; DESCRIBE ANY APPLICABLE RESTRICTIONS NOT ALREADY IN DSA.]

Linking Data to other Datasets

Transferring Entity agrees that Recipient may include the Data with data from other sources in carrying out the Purpose. Once included, Transferring Entity agrees that the Data will be

integrated into the SLDS. Transferring Entity acknowledges and agrees that Recipient will treat and safeguard such combined datasets will in accordance with its own data governance policies, including, but not limited to, all applicable laws.

Disclosure to Third Parties

[Transferring Entity agrees that the Data may be shared with third parties in accordance with Section 3(a)(i) of the Agreement. Recipient must obtain Transferring Entity's prior written consent, which may be by email, before entering into a data use agreement with a third party.] OR

[Recipient acknowledges and agrees that the Data may not be disclosed to any third parties.]