**Memorandum of Understanding
for the Exchange of Longitudinal Data Between Contributors:
Consolidated Version**

A note about this document: This document is a single-version combination of the foundational NCLDS Contributor MOU (originally submitted for signature on 6 3 2020 and signed by all original Contributors by 2 8 2021) and all subsequent amendments and other changes. This version is not a formal legal document; the formal original MOU and all subsequent amendments and versions are stored in separate files by the NC Government Data Analytics Center and include separate official signature pages. The purpose of this document is to provide a single, up-to-date, readable copy that reflects all changes to date to the foundational document.

The Board approved the first amendment during its 11 21 23 meeting (signed 1 17 24)

**Memorandum of Understanding
for the Exchange of Longitudinal Data Between Contributors**

This Memorandum of Understanding for the Exchange of Longitudinal Data Between Contributors ("MOU" or "Agreement") is made and entered into between the North Carolina Department of Information Technology's Government Data Analytics Center (hereinafter "GDAC") and the signatories herein, which are agencies and organizations who intend to or have disclosed early childhood, student, or workforce data to the State of North Carolina's Education Longitudinal Data System (hereinafter "Contributor," and together with GDAC, the "Parties" or each a "Party"), for the purpose of outlining the procedure for Contributors to authorize GDAC to disclose student and workforce data to other Contributors and Requestors as defined herein. This MOU additionally outlines the procedure used by GDAC regarding requests for data received by GDAC from a Third party that has agreed to allow GDAC to disclose certain data to the System. [*Amd 1, 11 21 23*]

1. **Definitions**. For the purposes of this Agreement, the following terms shall have the meanings assigned to them below. All defined terms are capitalized throughout this Agreement. Certain terms are defined by N.C. Gen. Stat. § 116E-1; however, the Parties agree to be bound by the definitions stated herein while performing the duties and obligations found in this Agreement.

   a. "**Applicable Law**" is defined as all applicable statutes and regulations of the State of North Carolina and all applicable United States federal statutes, regulations, standards, and policy requirements.

   b. "**Contributor**" is defined as an entity, other than GDAC, that directly discloses data to the System. A Contributor does not include a Third-party entity that discloses data to GDAC and authorizes GDAC to disclose its data to the System. [*Amd 1, 11 21 23*]

c. "**Data**" is defined as individual level Early Childhood Data, Student Data, Workforce Data, or other data disclosed by the Contributors to the System and any data released from the System In response to data requests.

d. "**Early Childhood**" is defined as the time period in an individual's life from birth to age eight.

e. "**Education Longitudinal Data System**" or "**System**" is defined as the Longitudinal Environment operated by GDAC along with the technical systems maintained and operated by the Contributors to collect, store, aggregate, and report or disclose Data solely when those systems are being utilized to respond to a Request pursuant to this Agreement and Chapter 116E of the North Carolina General Statutes. The Contributors' technical systems may include, but are not limited to, NC SchoolWorks ("P-20W"), North Carolina Early Childhood Integrated Data System ("ECIDS"), and Common Follow-up System ("CFS") relating to Workforce Data as defined herein. Notwithstanding the foregoing, for the purposes of this Agreement, GDAC shall not have oversight or control over the Contributors' technical systems.

f. "**Education Records**" are defined as described in 20 U.S.C. § 1232g(a)(4) and 34 C.F.R. § 99.3.

g. "**Effective Date**" shall be the date that this Agreement is executed by GDAC and two or more Contributors.

h. "**HIPAA Breach**" is defined as described in 45 C.F.R. § 164.402.

i. "**Longitudinal Environment**" Is defined as the technical environment within the GDAC environment where GDAC shall collect, link, de-identify. and/or aggregate Contributors' Data prior to disclosure to the Parties or to Requestors in Reports.

j. "**Metadata**" is defined as information that identifies, categorizes, or explains what is contained within a set of Data.

k. "**Personally Identifiable Information**" or "**PII**" is as defined as described in 34 C.F.R. § 99.3 when referring to Education Records; otherwise, it is defined as a person's first name or first initial and last name in combination with identifying information as defined in N.C. Gen. Stat. § 14-113.20(b).

l. "**Protected Health Information**" or "PHI" is defined as described in 45 C.F.R. § 160.103.

m. "**Public Official**" is defined as described in 20 C.F.R. § 603.2(d).

n. "**Report**" is defined as the report, extract, or file generated by the System using Data on individuals that has been de-identified and/or aggregated before being disclosed to Requestors.

o. "**Request**" is defined as an inquiry for a Report for a specified group or cohort of individuals from the System by a Requestor.

p. "**Requestor**" is defined as an entity or individual that makes a Request of the System for a Report regarding a specified cohort of individuals. A Requestor may also be a Contributor who is a Party to this Agreement.

q. "**Secondary Disclosure**" is defined as the dissemination of data in a report that, when combined with other data, permits the identification of confidential information.

r. "**Security Incident**" is defined as an information technology security incident or a security incident as described in N.C. Gen. Stat. § 143B-1320(12) and (15), respectively, and any incident that would violate the NC Identity Theft Protection Act.

s. "**SFTP Site**" is defined as a secure transport site or sites leveraged by GDAC to securely upload and make available Reports for authorized Requestors.

t. "**Student Data**" means Education Records or other education information regarding students from Early Childhood through post-secondary education.

u. "**Technical Team Users**" are defined as GDAC and Technical Vendor staff who are responsible for the development, design, testing, and implementation of the Longitudinal Environment and other technical functions of the System.

v. "**Technical Vendor**" is defined as the software and data integration vendor that has entered into a contract with the Department of Information Technology to support applications and services provided to GDAC. including the Education Longitudinal Data System.

w. "**Unique Identifier**" or "**UID**" is defined as the identifier assigned to each individual by (i) a local school administrative unit based on the identifier system developed by the Department of Public Instruction, or (ii) an institution of higher education, nonpublic school, or other State agency operating or overseeing an educational or government program if the individual has not been assigned an identifier by a local school administrative unit.

x. "**Workforce Data**" is defined as described in N.C. Gen. Stat. § 116E-1(7) and is required to be kept confidential under 20 C.F.R. Part 603. Workforce Data submitted to GDAC to be used by the System is an individual's social security number, an employer unemployment insurance account number, wages reported by employers for an individual to the North Carolina Department of Commerce, Division of Employment Security, and the North American Industry Classification System ("NAICS") code associated with that employer. Workforce Data authorized to be disclosed or re-disclosed by GDAC is up to twenty (20) quarters of reported individual wages and the NAICS code.

y. "**Third-party data**" is defined as data submitted to the System directly by GDAC on behalf of an entity that is not a Contributor. [*Amd 1, 11 21 23*]

2. Background and Purpose

a. Chapter 116E of the North Carolina General Statutes established the Education Longitudinal Data System, a statewide data system to facilitate the linkage of individual-level Early Childhood Data, Student Data, and Workforce Data from all levels of education and the State's workforce.

b. The purpose of the System is to:

   i. facilitate and enable the exchange of Early Childhood, Student Data, and Workforce Data among agencies and institutions within the State;

   ii. generate timely and accurate information about student performance that can be used to improve the State's education system and guide decision makers at all levels; and

   iii. facilitate and enable the linkage of birth through workforce data utilizing UIDs. The System is intended to allow for the contribution and exchange of Data maintained by the Contributors listed in N.C. Gen. Stat. § 116E-5(d)(1).

c. Pursuant to N.C. Gen. Stat. § 116E-4, GDAC has certain enumerated powers and duties with respect to the operation and oversight of the System. In addition, the System shall be located administratively within the NC Department of Public Instruction.

d. This Agreement is entered into by the Contributors who are signatories to this Agreement and who intend to contribute Data to the System.

e. The Parties acknowledge that certain entities identified in N.C. Gen. Stat. § 116E-5(d)(1) exchange data and generate longitudinal reports through other recognized applications or programs. This Agreement does not preclude the Parties' ability to exchange data with another Party, with other entities, or to fulfill other obligations not governed by Chapter 116E of the North Carolina General Statutes. However, the Parties shall utilize the System to exchange Data for the purposes governed by Chapter 116E of the North Carolina General Statutes unless the System is unable to produce the requested Data or Reports.

3. Data Privacy and Applicable Law

a. In performing activities pursuant to and in furtherance of this Agreement, the Parties agree that they shall comply with all Applicable Law and contractual agreements in the protection of all confidential information. Nothing in this Agreement shall be construed to allow any Party to view, access, maintain, use. or disclose Data in a manner not permitted by Applicable Law.

b. The Parties must specifically comply with the following federal and state statutes and regulations where applicable:

   i. **Student Data**. The Parties must comply with the Family Educational Rights and Privacy Act ("FERPA") 20 U.S.C § 1232g, and any amendments or other relevant provisions of federal law, as well as all requirements of Part 99 of Title 34 of the Code of Federal Regulations when exchanging Education Records. The Parties may also be required to comply with the Individuals with Disabilities Education Act ("IDEA"), IDEA Part B and Part C regulations in Title 34. Part 300 and Part 303 of the Code of Federal Regulations, where applicable.

   ii. **Workforce Data**. For the disclosure, access, and use of Workforce Data, the Parties must comply with N.C. Gen. Stat. §§ 9S-4{x); 143B-7; 143B-10; and subpart B of 20 C.F.R. Part 603. Individual level Workforce Data protected by 20 C.F.R. Part 603 can only be disclosed to a public official for use in the performance of their public duties. The System and GDAC are operated by public officials with which a Memorandum of Agreement dated April 1, 2016, between the North Carolina Department of Information Technology and the North Carolina Department of Commerce has been signed and provides for the sharing of Workforce Data with GDAC for use in on-going data sharing efforts including individual level Student Data and Workforce Data integration and sharing. Therefore, the System can receive individual level Workforce Data for the purpose of implementing Chapter 116E of the North Carolina General Statutes.

   iii. **Health Data**. The Parties must comply with the Health Insurance Portability and Accountability Act, Public Law 104-191 and Parts 160 and 164 of Title 45 of the Code of Federal Regulations (together, "HIPAA") when exchanging Protected Health Information.

   iv. **Early Childhood Data**. The Parties must comply with all Applicable Law when using, accessing, or disclosing Early Childhood Data. Relevant Applicable Law may include FERPA, IDEA, HIPAA, and all relevant regulations promulgated thereunder.

c. The linkage of Data shall be limited by N.C. Gen. Stat. § 116E-2(b).

4. **Request Review and Approval Process**

a. A Requestor seeking a Report shall submit a Request to the System that GDAC will then share with the relevant Contributors. Contributors from which Data are needed to fulfill a Request shall be involved in the process of reviewing and approving that Request. Each Party will determine the role(s) played by the staff it designates to support the Request review, the approval process, and the process for finalizing Data extracts and Reports.

b. Contributors whose Data is needed to complete the Request must unanimously approve the Request or the Request is denied.

c. Relevant Contributors shall review Requests within fourteen (14) calendar days of receipt by the designated Contacts for Notice designated pursuant to Section 14(p) of this Agreement and shall communicate the approval or denial of the Request in writing to GDAC and the relevant Contributors within the fourteen-day period.

d. If a Contributor denies a Request, it shall state in writing the reasons for its denial. The reasons for the denial and any suggestions will be disclosed to Requestor. After learning that a Request is denied, the Requestor can elect to revise and resubmit the request.

e. Contributors that are not considered Public Officials can deny Requests if the resulting Report would utilize the non-Public Official's data in addition to de-identified Workforce Data that has not been aggregated.

f. For purposes of this section, upon receipt and review by GDAC of a request for Third-party data, GDAC may decline a request if such request does not meet required request approval criteria. [*Amd 1, 11 21 23*]

5. **Disclosure of Data to the Longitudinal Environment in Response to an Approved Request**

a. Contributors may use discretion in determining what, if any, Data they will disclose to the Longitudinal Environment in response to a Request. However, if a Contributor approves a Request, and the Requestor has signed a Requestor Data sharing agreement, if required, the Contributor is required to disclose the relevant Data to the Longitudinal Environment pursuant to Section 4.

b. In disclosing Data to the Longitudinal Environment in response to an approved Request, each Contributor shall do the following:

   i.   Comply with all Applicable Law whether disclosing Data to or receiving Data from another Party under this Agreement.

   ii. Disclose UIDs for the purpose of matching the Contributor's Data to the Data of other Contributors that are also responding to the specific Request.

   iii. Utilize the Common Educational Data Standards available at https//ceds.ed.gov or a common industry data classification standard agreed upon by the relevant Contributors when disclosing Student Data or Workforce Data to the System.

   iv. Provide relevant Metadata describing the Data.

   v.   Disclose requested Data to the Longitudinal Environment within fourteen (14) calendar days of approving the Request if technically

possible. If Contributor cannot generate or disclose the Data requested, Contributor must notify GDAC and the other relevant Data Contributors involved in the specific request within fourteen (14) calendar days of approving the Request.

 vi. Transmit Data to the System utilizing secure methodologies and industry practices as described in the North Carolina Statewide Information Security Manual and as agreed upon by the Parties.

 vii. Provide, when necessary, additional data sources solely to facilitate entity resolution between data sets provided by other Contributors, except that Workforce Data is limited to those data fields identified herein.

c. Each Contributor represents and acknowledges the following in the event that Contributor discloses Data to the System:

 i. It has authority to disclose such Data; and

 ii. The Data it provides is:

  1. An accurate representation of the Data contained in, or available through, its technical system:

  2. Sent from a technical system that, if controlled by an agency of the State, employs security controls that meet the North Carolina Statewide Information Security Manual; or

  3. If controlled by an entity other than an agency of the State of North Carolina, is sent from a technical system that employs security controls equivalent to those referenced in the North Carolina Statewide Information Security Manual; and

  4. Provided in a timely manner and in accordance with this Agreement.

d. In the event that Contributors and GDAC use contractors, vendors, and other third parties to perform duties hereunder, the Parties shall ensure such entities comply with the terms of this Agreement and all Applicable Law.

6. Data Access and Use in the System

a. GDAC, through its Technical Vendor, shall leverage its analytics and integration software to support the matching of Contributors' Data. GDAC shall ensure Data is stored and linked in a secure Longitudinal Environment that is only accessible by Technical Team Users who are authorized to access and use the Data and shall comply with the Statewide Information Security Manual.

b. All authorized technical users and administrators with access to Data within the System shall sign a Non-Disclosure and Confidentiality Agreement (NDA) included herein as Attachment B regarding the restricted access, use, and disclosure of Data within and out of the System. Each Party shall be responsible for (i) ensuring their staff members and contractors complete the NDAs prior to gaining access to the System, and (ii) transmitting electronic copies of the NDAs to GDAC for storage and retrieval purposes.

c. GDAC shall ensure that the Technical Vendor immediately terminates an individual's authorized access to the System upon the occurrence of any of the following:

  i. Changes in the individual's job duties that no longer require access;

  ii. Unauthorized access to or use of Data by the individual; or

  iii. Termination of employment.

d. Workforce Data shall not be included as the base set of data from the System upon which to match other Data. Workforce Data shall be matched only when Data from at least one other Contributor has been requested and compiled.

7. **Data Exchange Among the Parties**. The following section pertains solely to Requests made by the Parties to this Agreement.

a. The Parties are permitted and encouraged to exchange Data in accordance with this Agreement for the purposes listed in N.C. Gen. Stat. § 116E-2. A Party can receive a Report from the System only after submitting a Request and may also be required to enter into a Requestor data sharing agreement. Notwithstanding the foregoing. Parties are not required to exchange Data with other Parties through the System if they choose not to do so.

b. Reports requested by and disclosed to a Party shall contain UIDs unless prohibited by Applicable Law or by a restriction put in place by the relevant Contributor. If the Contributors responding to a Request determine that other PII or identified Data should or must be shared to fulfill the Request, other identified Data may be shared upon mutual agreement by the relevant Contributors. The receiving Party must comply with privacy and security protections included in this Agreement and all Applicable Law.

c. Contributors may also share additional Data elements or fields not included in the standard Data selections available to Requestors in the Request form as agreed between the relevant Parties.

d. Parties that are Public Officials may receive individual level Workforce Data protected by N.C. Gen. Stat. § 96-4(x) and subpart B of 20 C.F.R. Part 603 from the System solely for use in the performance of their official duties as defined in 20 C.F.R. § 603.5(e)(1). The Public Officials must also enter into a Requestor agreement with, at a minimum, the North Carolina Department of Commerce,

Division of Employment Security, that complies with the requirements of 20 C.F.R. §§ 603.9 and 603.10.

e. Parties that are not Public Officials may only receive de-identified and aggregated Workforce Data protected by subpart B of 20 C.F.R. Part 603.

f. All reports, analyses, and research produced or conducted outside of the System and not in the custody of the Parties shall not include UIDs. It is the responsibility of a Party that receives Data under this Section 7 to de-identify all Data, including removal of UIDs and social security numbers, prior to performing or creating reports, analyses, and research for use and access by external or third parties.

8. **Reports Disclosed to Requestors**

a. GDAC, with assistance from the relevant Contributors, shall

   i. De-identify Data, including the removal of UIDs, before generating Reports for Requestors who are not Parties to this Agreement. The Parties shall assign random unique Identifiers to De-Identified Data in the Reports to replace the UIDs;

   ii. Provide Requestors with relevant Metadata;

   iii. Perform small cell suppression to the most restrictive level based on the Data disclosed by the relevant Contributors; and

   iv. Screen for Secondary Disclosures.

b. GDAC shall make Reports available for review by the relevant Contributors for twenty-one (21) calendar days before disclosing to the Requestor. Where permitted, the relevant Contributors must review the Report and approve, deny, or request an amendment within that timeframe.

c. If a Request would require the disclosure of individual level Workforce Data to the System in addition to Data from a Contributor that is not considered a Public Official, then the resulting Report, in its entirety, must be aggregated and de-identified prior to making the Report available to relevant Contributors for their review.

d. Following review, the relevant Contributors and GDAC must unanimously approve the Report in order for it to be disclosed. Should one Contributor withhold approval of the Report, the Request is denied, and the relevant Contributor shall provide reasons for the denial to the Parties and the Requestor. Requestor can choose to submit an amended Request for reconsideration.

e. GDAC shall upload approved Reports to the designated SFTP Site for Requestor up to thirty (30) calendar days.

f. GDAC shall destroy or return to the relevant Contributors any identified Data temporarily stored in the Longitudinal Environment and used to generate such Report after all of the following occur:

   i. The Report has been generated within the Longitudinal Environment and deemed by GDAC and the relevant Contributors to fulfill the Request;

   ii. The Report is delivered to the SFTP Site; and

   iii. The Requestor has acknowledged receipt of the Report.

g. Reports generated by the System pursuant to the processes established in this MOU and any administrative rules promulgated by GDAC may be disclosed to non-Party entities outside of the established request process unless prohibited by Applicable Law. Prior to disclosure of Reports generated by the System to non-Party entities, GDAC shall make the Reports available for review by the relevant Contributors for up to twenty-one (21) calendar days before disclosing to non-Party entities. Should one Contributor withhold approval of the disclosure, the Report will not be disclosed.

9. Auditing and Tracking

a. Contributors are responsible for auditing and monitoring the disclosure of Data and use of their respective applications and systems.

b. GDAC shall ensure that all activity in the Longitudinal Environment used to receive, link, and disclose Data is audited and tracked.

c. The Parties shall comply with federal audit authority where applicable.

d. **Audit, Access to Records**. Pursuant to N.C. Gen. Stat. § 147-64.7, the State, the State Auditor, appropriate federal officials, and their respective authorized employees or agents are authorized to examine all books, records, and accounts of the Parties insofar as they relate to transactions with any department, board, officer, commission, institution, or other agency of the State of North Carolina pursuant to this Agreement or to costs charged to this Agreement. The Parties shall retain any such books, records, and accounts for a minimum of three (3) years after the completion or termination of this Agreement. Additional audit or reporting requirements may be required by the State, if in the State's opinion, such requirement is imposed by federal or state law or regulation.

e. **Inspection of Sites**. Pursuant to N.C. Gen. Stat. §147-64.7, the State reserves the right to inspect the prospective equipment, tangible goods, or physical facilities of a Party prior to and during the Agreement term as necessary or proper to ensure conformance with the specifications or requirements and their adequacy and suitability for the proper and effective performance of the Agreement. Inspections shall occur during the Party's regular business hours at

a reasonable time, upon notice of not less than two (2) weeks, and at the State's expense.

f. Contributors may perform an on-site audit and inspection of the System whenever, and as often as, the Contributor deems appropriate and reasonable, but no more than twice annually. Such audits may be conducted to ensure that the confidentiality requirements of this Agreement and all applicable laws and regulations, including applicable amendments, are satisfied.

g. Contributors may perform an on-site audit and inspection of other Contributors that have received Data whenever, and as often as, the Contributor deems appropriate and reasonable, but no more than twice annually. Such audits may be conducted to ensure that the confidentiality requirements of this Agreement and all applicable laws and regulations, including applicable amendments, are satisfied.

10. IT Security Incidents and Data Breaches

a. GDAC affirms that Longitudinal Environment that will store Data is maintained with active security management, and that the Technical Team Users have been property trained in the protection and management of PHI, Pll, Early Childhood Data, Student Data, and Workforce Data in accordance with all applicable laws.

b. In the event that either a HIPAA Breach or a Security Incident occurs within the Longitudinal Environment, GDAC shall follow the State's incident reporting policy available at https://it.nc.gov/document/statewide-infomation-security-manual.

c. The Parties shall notify relevant Contributors, as quickly as possible, in a time frame not to exceed 24 hours, if a HIPAA Breach or Security Incident involving that Contributors' Data has occurred by utilizing the DIT Incident tracking system pursuant to Section 14.p) (Notices).

d. In the event of a HIPAA Breach or Security Incident the Parties will work collaboratively to resolve the Breach or Incident, mitigate any damages, and notify affected individuals.

e. In the event of a HIPAA Breach or Security Incident, GDAC shall have the authority to suspend exchange of Data and generation of Reports until such time that the incident or threat of further incidents has ended.

f. Compliance with this Section shall not relieve any Parties of other security incident or breach reporting requirements under Applicable Law including, but not limited to, those related to affected consumers.

11. Liability of the Parties

a. Each Party shall be responsible for its own acts and omissions and not for the acts or omissions of any other Party. This Section shall not be construed as a hold harmless or indemnification provision.

b. EXCEPT AS REPRESENTED IN SECTION 5.c), CONTRIBUTORS' DATA IS PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT ANY WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT. IT IS EXPRESSLY AGREED THAT IN NO EVENT SHALL THE PARTIES BE LIABLE FOR ANY SPECIAL. INDIRECT, CONSEQUENTIAL. OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUES, LOSS OF USE. OR LOSS OF INFORMATION OR DATA. WHETHER A CLAIM FOR ANY SUCH LIABILITY OR DAMAGES IS PREMISED UPON BREACH OF CONTRACT, BREACH OF WARRANTY. NEGLIGENCE. STRICT LIABILITY. OR ANY OTHER THEORIES OF LIABILITY. EVEN IF THE PARTIES HAVE BEEN APPRISED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES OCCURRING. THE PARTIES DISCLAIM ANY AND ALL LIABILITY FOR ERRONEOUS TRANSMISSIONS AND LOSS OF SERVICE RESULTING FROM COMMUNICATION FAILURES BY TELECOMMUNICATION SERVICE PROVIDERS OR OTHER THIRD PARTIES. Nothing herein shall limit any defenses or immunities provided by Applicable Law. including limitations of liability provided to NCICU and private colleges and universities in N.C. Gen. Stat § 116-229.1 and non-public schools in N.C. Gen. Stat § 115C-566.1.

12. Term; Termination

a. This Agreement shall begin on the Effective Date and shall continue to be effective to the Parties unless amended, superseded, or terminated. The Parties may review this Agreement annually or when any major change occurs to the System.

b. In the event that a Party fails to comply with any of the privacy and security requirements required by this Agreement, any Party has the option to cease disclosure of Data to the System. The breaching Party must notify all other Parties within ten (10) calendar days about corrective action it has taken or will take to cure the breach.

c. The Parties can resume Data sharing activities if all Parties are satisfied that corrective action has been taken and there will be no continuing breach. In the absence of prompt and satisfactory corrective action, this Agreement can be terminated by the Parties solely as to the breaching Party, and such breaching Party will surrender to the Contributors al Data then in the possession of control of such Party that has not previously been returned. However,

notwithstanding anything to the contrary in this Agreement, any Party may terminate its participation at any time upon breach of this Agreement by any other Party or if GDAC determines, in its sole discretion, that safeguards regarding confidentiality have not been or are not being adhered to.

d. If one Party terminates their participation in this Agreement, the Agreement is still effective as to the other Parties who remain signatories to this Agreement Notwithstanding the forgoing, if GDAC terminates their participation in this Agreement as the data broker and entity charged with the oversight of the System, the entire Agreement between all Parties shall be Terminated.

e. In the event that changes in either Stale or federal law or regulations occur which render performance hereunder illegal, void, impracticable, or impossible, this Agreement shall terminate immediately as to the affected Party or Parties only. Conversely, if changes in either state or federal law or regulations occur which makes the Data sought less restricted, the Parties may amend this Agreement consistent thereto.

f. Any Party can terminate their participation in this Agreement with or without cause with thirty (30) calendar days written notice to all Parties pursuant to Section 14.p.

13. Public Records or Document Requests

a. All Parties that are agencies of the State of North Carolina acknowledge that each of them is subject to and must comply with the requirements of laws and regulations controlling the use and disclosure of non-public information, the public records laws found in Chapter 132 of the North Carolina General Statutes, and any other applicable federal laws and North Carolina statutes concerning the disclosure of public or non-public information.

b. Parties that are not agencies of the State of North Carolina expressly acknowledge that their communications with State agencies and State agency may be subject to disclosure as public records. All Data or other records held or stored by GDAC as a result of this MOU shall be considered the property of, and in the custody of, the relevant Contributor. In the event of a request made to GDAC for access to Contributor's Data pursuant to the North Carolina Public Records Act or by other legal process, GDAC will object to such request and indicate to the entity making the request that GDAC is not the custodian of such records. GDAC will notify the relevant Contributor of such request as soon as is reasonable under the circumstances in order to provide the Contributor with an opportunity to state or otherwise argue its own position concerning such request.

c. In the event that a subpoena or other legal process in any way concerning the System or another Contributor's Data is served upon any Party to this Agreement, the receiving Party agrees to notify the other relevant Parties' contact person(s) listed in Attachment 2 promptly following receipt of such

subpoena or other legal process and to cooperate with the Parties in any lawful effort to contest the legal validity of such subpoena or other legal process.

d. In the event that a subpoena or other legal process in any way concerning the GDAC software is served upon a Party, then the Party agrees to notify GDAC's primary contact promptly following receipt of such subpoena or other legal process and to cooperate with GDAC in any lawful effort by GDAC to contest the legal validity of such subpoena or other legal process.

14. Miscellaneous

a. **Governing Law**. This Agreement is made under and shall be governed and construed in accordance with the laws of the State of North Carolina. The place of this Agreement or purchase order, its situs and forum, shall be Wake County. North Carolina, where all matters, whether sounding in contract or in tort, relating to its validity, construction, interpretation and enforcement shall be determined. The Parties agree and submit, solely for matters relating to this Agreement, to the jurisdiction of the courts of the State of North Carolina and stipulates that Wake County shall be the proper venue for all matters.

b. **Authority; No Conflict**. The Parties each represent and warrant to the other as follows: (i) that it is authorized to enter into this Agreement and to perform its obligations hereunder, and that the individual signatory executing this Agreement on its behalf is authorized, and has the capacity, to so execute this Agreement on its behalf, and (ii) that the execution of this Agreement by it and the performance of its obligations hereunder shall not conflict with or result in, with or without the passage of time or the giving of notice thereof, any breach, default or violation of any third party agreement to which it is bound, or any judgment, order or ruling of any court, administrative or regulatory agency or body, or arbitration award, to which it is bound or subject.

c. **Amendment**. This Agreement may be amended by agreement among all of the Parties. However, if the change is required for any Party to comply with Applicable Law, the affected Party may implement the change within a time period the Party determines is appropriate under the circumstances. All Parties shall be required to sign an amendment adopted in accordance with the provisions of this Section or terminate participation in accordance with Section 12.

d. **Governmental Restrictions**. In the event any restrictions are imposed by governmental requirements that necessitate alteration of the performance of this Agreement, each Party shall provide written notification of the necessary alteration(s) to the other Party's Contract Administrator. The Parties reserve the right to accept any such alterations, or to cancel the Agreement. The Parties shall advise the other Parties of any restrictions or changes in specifications required by North Carolina legislation, rule or regulatory authority that require compliance by the State. In such event, the Parties shall use its best efforts to

comply with the required restrictions or changes. If compliance cannot be achieved by the date specified by the affected Party, the Parties may terminate this Agreement.

e. **Assignment**. No Party shall assign or transfer this Agreement, or any part thereof, without the express written consent of all other Parties. Any assignment that does not comply with the requirements of this Section shall be void and have no binding effect.

f. **Survival**. The Parties' obligations with respect to the safeguarding of Data shall survive any termination of this Agreement In addition, the following provisions shall survive the termination of this Agreement for any reason: Sections 1, 3.9, 10, 11(b) 13,14(o).

g. **Waiver**. No failure or delay by any Party in exercising its rights under this Agreement shall operate as a waiver of such rights, and no waiver of any right shall constitute a waiver of any prior, concurrent, or subsequent right.

h. **Entire Agreement**. This Agreement, together with all Attachments, sets forth the entire and only Agreement among the Parties relative to the subject matter hereof. This Agreement expresses the entire understanding of the Parties with respect to the transactions contemplated herein, and shall not be amended, modified or altered except pursuant to Section 14(c). Any representation, promise, or condition, whether oral or written, not incorporated herein, shall not be binding upon any Party.

i. **Validity of Provisions**. In the event that a court of competent jurisdiction shall hold any Section, or any part or portion of any Section of this Agreement, invalid, void or otherwise unenforceable, each and every remaining Section or part or portion thereof shall remain in full force and effect.

j. **Headings**. The headings throughout this Agreement are for reference purposes only, and the words contained therein may in no way be held to explain, modify, amplify, or aid in the interpretation or construction of meaning of the provisions of this Agreement. All references in this instrument to designated "Sections' and other subdivisions are to the designated Sections and other subdivisions of this Agreement. The words "herein," "hereof," "hereunder," and other words of similar import refer to this Agreement as a whole and not to any particular Section or other subdivision.

k. **Relationship of the Parties**. The Parties are independent contracting entities. Nothing in this Agreement shall be construed to create a partnership, agency relationship, or joint venture among the Parties. The Parties shall not have any authority to bind or make commitments on behalf of another Party for any purpose, nor shall any such Party hold itself out as having such authority. No Party shall be held liable for the acts or omissions of another Party.

l. **Third-Party Beneficiaries**. There shall exist no right of any person to claim a beneficial interest in this Agreement or any rights occurring by virtue of this Agreement.

m. **Force Majeure**. A Party shall not be deemed in violation of any provision of this Agreement if it is prevented from performing any of its obligations by reason of: (a) severe weather and storms; (b) earthquakes or other disruptive natural occurrences; (c) strikes or other labor unrest; (d) power failures: (e) nuclear or other civil or military emergencies; (0 terrorist attacks; (g) acts of legislative, judicial, executive, or administrative authorities; or (h) any other circumstances that are not within its reasonable control. This Section shall not apply to obligations imposed under Applicable Law.

n. **Time Periods**. Any of the time periods specified in this Agreement may be changed pursuant to the mutual written consent of the Parties.

o. **Data Ownership**. Ownership of all data collected and maintained by an approved Requestor or Contributor remains with the Contributor whose data was disclosed. Disclosure of the Data under the terms of this Agreement does not additionally assign ownership of the Data.

p. **Notices**. Notices between the Parties under this Agreement, including but not limited to notices for termination, breach, security incidents, and amendments to the Agreement, must be communicated in writing, including via electronic mail, to the contact persons listed in Attachment A. Amendments lo the contacts for Notice in Attachment 2 may be made by communicating changes to the Parties in writing without requiring an amendment to this Agreement.