

**North Carolina Longitudinal Data System
Requester Data Use Agreement
between**

**the [NC Department of Health and Human Services, NC Department of Public Instruction,
NC Community College System, University of North Carolina System, NC Independent
Colleges and Universities, NC Department of Commerce, and/or NC Department of
Information Technology] and Requester**

1. **Definitions.** As used in this Agreement, the following terms shall have the meanings established below. In addition to the terms defined below, the definitions in N.C. Gen. Stat. § 116E-1 and 09 NCAC 06D .0101 are incorporated herein by reference.
 - 1.1. **Applicable Law** is defined as all applicable statutes and regulations of the State of North Carolina and United States federal statutes, regulations, standards, and policy requirements.
 - 1.2. **Authorized User** is defined as an employee or individual contractor of Requester who is authorized to access and use Data and/or Reports from the NCLDS solely for the purposes defined herein.
 - 1.3. **Breach, Security Breach** have the meanings assigned in N.C. Gen. Stat. § 75-61, *et seq.*, and all relevant federal privacy laws and regulations, including 45 C.F.R. § 164.402, 33 C.F.R. Part 99, 28 C.F.R. Part 20, 20 C.F.R. Part 603, and 26 U.S. Code § 6103, and includes security incidents.
 - 1.4. **Confidential Report** means a report generated by the System that contains non-public information classified as either medium or high risk in the Statewide Data Classification and Handling Policy (see definition below in 1.22).
 - 1.5. **Confidentiality Agreement** means the Agreement in Appendix C: Project Personnel Confidentiality Agreement.
 - 1.6. **Contributor** is defined as an entity, other than GDAC, that directly discloses data to the System. The Contributors may be one or more of the entities specified in N.C. Gen. Stat. § 116E-5(d)(1) or other entities permitted to disclose Data to the System. Contributors do not include a third-party entity that discloses data to GDAC and authorizes GDAC to disclose its data to the System.
 - 1.7. **Data** is defined as Early Childhood Data, Student Data, and Workforce Data, and other personally identifying data disclosed to the System and any data released from the System in response to data requests.
 - 1.8. **Early Childhood Data** is defined as records and information about an individual during the time period in an individual's life from birth to age eight.
 - 1.9. **NC Longitudinal Data System, System, or NCLDS** means the technical system described in Chapter 116E of the NC General Statutes.
 - 1.10. **Education Records** are defined as described in 20 U.S.C. § 1232g(a)(4) and 34 C.F.R. § 99.3.
 - 1.11. **Effective Date** shall be the date that this Agreement is executed by the Parties.
 - 1.12. **HIPAA Breach** is defined as described in 45 C.F.R. § 164.402.
 - 1.13. **Metadata** is defined as information that identifies, categorizes, or explains what is contained within a set of Data.
 - 1.14. **Personally Identifiable Information or PII** is defined as described in 34 C.F.R. § 99.3 when referring to Education Records; otherwise, it is defined as described in N.C. Gen. Stat. § 75-65(10).
 - 1.15. **Protected Health Information or PHI** is defined as described in 45 C.F.R. § 160.103.
 - 1.16. **Public Official** is defined as described in 20 C.F.R. § 603.2(d).

- 1.17. **Report** is defined as the data table, extract, or file generated by the System using Data on individuals that has been de-identified and/or aggregated before being disclosed to Requesters.
- 1.18. **Request** is defined as an inquiry for a Report for a specified group or cohort of individuals from the System by a Requester.
- 1.19. **Requester** is defined as an entity or individual or team that makes a Request of the System for a Report regarding a specified cohort or cohorts of individuals. In this Agreement, the Requester is *insert name of Requester (and Co-Requester, if applicable)*.
- 1.20. **Secondary Disclosure** is defined as the dissemination of data in a report that, when combined with other data, permits the identification of confidential information.
- 1.21. **Security Incident** is defined as a cybersecurity incident or a significant cybersecurity incident as described in N.C. Gen. Stat. § 143B-1320(a)(4a) and (a)(16a), respectively, and any incident that would violate the NC Identity Theft Protection Act.
- 1.22. **SFTP Site** is defined as a secure transport site or sites leveraged by GDAC to securely upload and make available Reports for authorized Requesters.
- 1.23. **Statewide Data Classification and Handling Policy** means the NC Department of Information Technology policy outlining principles regarding the classification, use, and protection of State data available at: <https://it.nc.gov/documents/statewide-policies/statewide-data-classification-handling-policy>.
- 1.24. **Student Data** is defined as described in N.C. Gen. Stat. § 116E-1(4) and includes Education Records from kindergarten through postsecondary education.
- 1.25. **Third-Party Data** is defined as data submitted to the System directly by GDAC on behalf of an entity that is not a Contributor.
- 1.26. **Unique Identifier or UID** is defined as described in N.C. Gen. Stat. § 116E-1(6).
- 1.27. **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.

2. Background and Purpose

- 2.1. Chapter 116E of the North Carolina General Statutes established the NC 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. The System is operated and overseen by the NC Government Data Analytics Center ("GDAC"), which is housed within the NC Department of Information Technology ("DIT").
- 2.2. The purpose of the System is to:
 - 2.2.1. Facilitate and enable the exchange of Early Childhood, Student Data, and Workforce Data among agencies and institutions within the State;
 - 2.2.2. 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
 - 2.2.3. Facilitate and enable the linkage of birth through workforce data utilizing UIDs and other entity matching efforts.
- 2.3. Pursuant to Chapter 116E of the North Carolina General Statutes and 09 NCAC 06D .0104, Requester must enter into this Requester Data Use Agreement ("Agreement") in order to:
 - 2.3.1. Receive a Report from the System;

- 2.3.2. Use the information included in the Report for the Purposes defined herein;
- 2.3.3. Publish findings of studies informed by such Reports, as permitted herein; and
- 2.3.4. Redislose Report information only if it is considered to be public record under the North Carolina Public Records Act, N.C. Gen. Stat. § 132-1, *et seq.*

3. Acknowledgements; Rights of the Parties

- 3.1. Requester and its Authorized Users hereby receive a limited license to access and use Reports generated by the System.
 - 3.1.1. Depending on the nature of the information contained in the Report, Requester may also be permitted to redislose such information or derivations thereof or publish findings from studies or analyses leveraging information provided in Reports pursuant to Attachment B: Permitted Uses and Redislosures.
 - 3.1.2. This Agreement shall not be construed to create a right for Requester to demand receipt, access to, or use of Data and Reports unless explicitly stated otherwise in applicable state or federal law, rules, or regulations.
- 3.2. Requester acknowledges that:
 - 3.2.1. GDAC or one or more Contributors may unilaterally deny the Request at any point prior to the disclosure of the Report or may request modifications to proposed publications pursuant to Section 4.1.6 and Section 6 to prevent the risk of privacy and confidentiality breaches; and
 - 3.2.2. Ownership of all information contained in Reports shall remain with the respective Contributor(s) that originally disclosed Data to the System in order to generate the Report.

4. Obligations

- 4.1. **Requester shall:**
 - 4.1.1. Download approved Reports within three (3) calendar days of upload to the SFTP Site.
 - 4.1.2. Notify GDAC in writing by emailing NCLDShelp@nc.gov that the Report has been downloaded from the SFTP Site.
 - 4.1.3. Maintain the confidentiality of any usernames and passwords given to Requester in order to access the SFTP Site.
 - 4.1.4. Comply with all terms of this Agreement and Applicable Law, including the relevant statutes and regulations cited herein and in Attachment A.
 - 4.1.5. Ensure all Authorized Users who will have access to, use, view, or process information to sign a Confidentiality Agreement if Requester is receiving a Confidential Report. Requester shall provide GDAC a list of all potential and actual Authorized Users, as well as any updates to the list of Authorized Users through the Term of this Agreement.
 - 4.1.6. Allow GDAC and Contributors at least thirty (30) calendar days to review any proposed publications, of any type and format, or studies generated from Reports and comply with any requests for modification if one or more Parties have a bona fide concern regarding components of the publication (including but not limited to rediscovery of Report components) potentially impacting privacy and confidentiality thereof. Disputes shall be settled according to Section 4.2.4.
 - 4.1.7. Only publish or rediscover aggregate or summary level information for public review.
 - 4.1.7.1 With respect to small-cell suppression for reporting aggregate person value (count or percent) data, Requester shall:
 - (a) For all person-level value (count or percent) data:
 - (1) Suppress any numerator or count <5
 - (i) In addition, suppress any numerator when the numerator divided by the denominator is ≥95% or ≤5%

(ii) In any tables in which a corresponding % value is generated from an already-suppressed count <5, also mask the corresponding % value
(2) Mask any cell with a value of $\geq 95\%$ or $\leq 5\%$
(3) Present as a range at least one additional count or % in a distribution that otherwise would reveal that a suppressed count or masked % in another cell is ≤ 5 or $\leq 5\%$ (e.g., if the true value of one cell is 4% and all other %s in the table would allow a reader to interpolate that the value of that cell is 4%, the distribution must mask the 4% value and present another value in the distribution as a range instead of as a number [e.g., 15%-20% instead of 16%]; similarly, if the true value of a count is 4 and the addition of all other counts in the distribution would allow a reader to interpolate that the value of that cell is 4, the report must suppress the 4 count and present at least one other count in the distribution as a range instead of as a number [e.g., 15-20 instead of 16]).

(i) Single tables or groups of related tables that include total values directly associated with values for subsets of the same population must suppress or mask values in the subset portions of the table(s) that, in combination with other subset values and/or the total values, would reveal suppressed or masked subset values (e.g., of 11 students who passed an exam, 8 were males and 3 were females; the subset value 3 would be suppressed by the first rule above, but the subset value 8 also must be suppressed because it, in conjunction with the total value of 11, reveals the value of the already-suppressed 3).

(b) In addition, for data for minors or students only, suppress any cell count of any size when the denominator < 20

- 4.1.7.2 The preceding suppression and masking rules only apply to non-zero values; values of zero do not need to be suppressed or masked
- 4.1.7.3 Additional suppression and masking standards may apply for specific datasets and situations, at the discretion of the Data Owner(s)
- 4.1.8. Only request, access, use, or disclose Reports or Data to the minimum extent necessary to fulfill the purpose of the Request.
- 4.1.9. Upon receipt of an approved dataset containing errors and subsequent request for a revised dataset, the Requester shall (a) delete the original dataset before receipt of a revised and corrected dataset; and (b) provide NCLDS with a formal description of method(s) used to delete the original dataset in accordance with Section 6.4 of this Agreement and the NCLDS Privacy and Security policy available at: <https://nclds.nc.gov/documents/nclds-data-privacy-and-security-policy/download?attachment>.
- 4.1.10. Upon completion of the project, provide NCLDS with a formal description of methods employed for the use and analysis of NCLDS data, including such elements as a description of the study sample, data cleaning process, data inclusion and data exclusion rules, data analysis techniques, and a summary of results.
- 4.1.11. Shall notify NCLDS of any changes to security measures to the receiving data server as detailed in subsection 6.1.3.

4.2. GDAC shall:

- 4.2.1. Collect and link approved Data from Contributors within a timely manner.
- 4.2.2. Upload resulting Report to the SFTP Site for up to three (3) calendar days.
- 4.2.3. Remove the Report after either the Requester has notified GDAC of the successful retrieval of the Report or thirty-one (31) days after upload, whichever happens first.
- 4.2.4. With consultation from DIT's privacy and security subject matter experts, review and make a final determination regarding any dispute among the Parties of whether a Requester's proposed publication contains information that could be re-identified or otherwise violates

Applicable Law.

4.3. Contributor shall:

- 4.3.1. Disclose approved Data to the System if such disclosure is approved by Contributor.
- 4.3.2. Review the Report generated by the System in a timely manner in order to either approve or deny disclosure to the Requester.
- 4.3.3. Review the Requester's proposed publications that utilized information contained in Reports within thirty (30) days of Requester providing such proposed publication.

5. Data Privacy

5.1. Data Classification

- 5.1.1. Reports may contain information derived from one or more of the following types of Data:
 - 5.1.1.1. Student Data protected by the Family Educational Rights and Privacy Act ("FERPA") 20 U.S.C § 1232g, and any amendments or other relevant provisions of federal law; Part 99 of Title 34 of the Code of Federal Regulations; and 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.
 - 5.1.1.2. Workforce Data protected by N.C. Gen. Stat. §§ 96-4(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.
 - 5.1.1.3. Health Data protected by 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") or relevant State law regarding the use of personal health records not covered by HIPAA.
 - 5.1.1.4. Early Childhood Data that may be protected by FERPA, IDEA, HIPAA, and all relevant regulations promulgated thereunder.
 - 5.1.1.5. Criminal history record information protected by the Criminal Justice Information Systems ("CJIS"), 28 C.F.R. Part 20.
 - 5.1.1.6. Data protected by the Internal Revenue Code as required by 26 U.S. Code § 6103 and N.C. Gen. Stat. § 116E-5(d)(2).
 - 5.1.1.7. Data subject to additional privacy requirements as required by law.
 - 5.1.1.8. Data subject to privacy requirements required by a Contributor as included in Attachment A of the Data Use Agreement.
- 5.1.2. Data to be disclosed or made accessible by Contributors in order to respond to the Request and the contents of the Report shall be specifically classified in Attachment A: Data Classification pursuant to the Statewide Data Classification and Handling Policy.

5.2. Authorized Use; Prohibitions

- 5.2.1. Access, use, and redisclosure of Confidential Reports or information contained therein is strictly limited to Requester's Authorized Users pursuant to the Permitted Uses in Attachment B. Further use, access, and redisclosure is strictly prohibited unless: (i) explicitly permitted by the Parties in a written amendment to this Agreement, and (ii) any and all authorized third-party recipients or Authorized Users sign a Confidentiality Agreement.
- 5.2.2. Requester is required to abide by the applicable law regarding the confidentiality cited in Attachment A at all times.
- 5.2.3. Requester is strictly prohibited from directly or indirectly performing any action that could result in the re-identification of Individuals in Reports.

6. Security

6.1. IT System Standards

- 6.1.1. If Requester is an agency of the State of North Carolina:
 - 6.1.1.1. Requester and Requester's Authorized Users must at all times comply with the NC Statewide Information Security Manual.
- 6.1.2. If Requester is not an agency of the State of North Carolina:
 - 6.1.2.1. As a precondition to receiving a Confidential Report, Requester is required to complete a Privacy Threshold Analysis ("PTA") for submission to and approval by NCDIT Enterprise Security and Risk Management Office ("ESRMO") and comply with, at a minimum, Moderate controls listed in the National Institute of Standards and Technology ("NIST") 800-53 when storing, handling, and transmitting such Report, or other standard as determined by ESRMO. Moderate controls include secure protocols and encryption methods to protect Reports in transmission and at rest and tracking and auditing use, access, and disclosure of confidential information.
 - 6.1.2.2. ESRMO may require Requester to agree to additional privacy and security assurances, provide additional documentation, or both as a precondition to Requester's access to Confidential Reports.
- 6.1.3. Failure to comply with Section 6.1.1 or receive approval from ESRMO under Section 6.1.2 will result in the denial of access to Confidential Reports.
- 6.1.4. It is the individual responsibility of Requester and Data Contributor to assess their respective security.
- 6.1.5. If any changes occur that impact existing security measures for the receiving data server, the Requester is required to immediately provide written notification of such changes to NCLDS, and the Parties agree that data shall not be moved out of the original data server without an amendment to this Agreement reflecting such changes, subject to the existing security requirements set out in this section.

6.2. Security Incidents

- 6.2.1. If Confidential Reports or any information therein are involved in any unauthorized use, disclosure, access, loss, or theft, Requester shall provide Notice to DIT within twenty-four (24) hours of discovery of the confirmed Incident pursuant to Section 12.16.
- 6.2.2. Requester must also email NCLDShelp@nc.gov and submit a cybersecurity incident ticket to DIT through the following website: <https://it.nc.gov/resources/cybersecurity-risk-management/statewide-cybersecurity-incident-report-form>.

6.3. Data Retention

- 6.3.1. If Requester is an agency of the State, Requester must abide by the State record retention schedules for the information contained in the Report.

6.4. Data Deletion

- 6.4.1. Requester must follow data deletion and media sanitization requirements in compliance with NIST 800-88 rev 1 when deleting Confidential Reports or information extracted from such Reports that have been stored by Requester or its Authorized Users.
- 6.4.2. If verification of data deletion is required by one or more Parties to this Agreement, pursuant to guidance from NIST 800-88 rev. 1, Requester must send a formal letter to DIT explaining the methods used to delete the Confidential Report and all subject information from any technical system that housed such Report and information.
- 6.4.3. Requester must delete all record-level data governed by this Agreement, as well as any aggregate data identified by one or more Contributors as set out in Attachment A, in accordance with the NCLDS Privacy and Security policy available at: <https://nclds.nc.gov/documents/nclds-data-privacy-and-security-policy/download?attachment>.

7. Term

- 7.1.** This Agreement shall be effective from the date of its full execution by the Parties. The term of the Agreement shall be for one (1) year unless an extension is requested and approved in writing by GDAC and the Contributors.
- 7.2.** The Parties may terminate this Agreement with or without cause with thirty (30) days' written notice to the contacts pursuant to 12.16. Requester shall comply with Section 6.4 prior to the date of termination.
- 7.3.** This Agreement shall be automatically terminated as follows:
 - 7.3.1.** For Confidential Reports:
 - 7.3.1.1.** Requester no longer intends to access, use, or redisclose the Report or information therein;
 - 7.3.1.2.** Requester no longer intends to publish any findings or analyses generated from use of the Report; and
 - 7.3.1.3.** Requester receives DIT approval of the letter verifying the Report and associated information has been deleted pursuant to Section 6.4.
 - 7.3.2.** For a Report that solely contains non-confidential information:
 - 7.3.2.1.** The Report and information therein have been designated as a public record by all Parties; and
 - 7.3.2.2.** Requester has successfully retrieved the Report.

8. Fees

- 8.1.** No fees will be charged for the Request to be fulfilled at this time unless otherwise agreed upon by the Parties.
- 8.2.** All costs incurred by the Requester are the responsibility of the Requester and/or its sponsoring organization.

9. Liability

- 9.1.** Requester shall be solely responsible for any unauthorized access, use, or redisclosure of Reports caused by an act or omission of Requester, its Authorized Users, or third-party entities that obtain access to Data or Reports through the acts or omissions of Requester.
- 9.2.** REPORTS ARE 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.
- 9.3.** IT IS EXPRESSLY AGREED THAT IN NO EVENT SHALL THE GDAC OR THE CONTRIBUTORS 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 NOT BEEN APPRISED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES OCCURRING. GDAC AND THE CONTRIBUTORS DISCLAIM ANY AND ALL LIABILITY FOR ERRONEOUS TRANSMISSIONS AND LOSS OF SERVICE RESULTING FROM COMMUNICATION FAILURES BY TELECOMMUNICATION SERVICE PROVIDERS OR OTHER THIRD PARTIES.
- 9.4.** Requester agrees that: (i) all Reports generated by the NCLDS are created using Data drawn from various sources, and (ii) GDAC can only confirm that, at the time the Data is utilized to generate a Report, the information within the Report is an accurate representation of Data contained in, or available through, the LDS.

- 9.5. Nothing herein shall limit any defenses or immunities provided to agencies of the State and Contributors by Applicable Law, including limitations of liability granted 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.
- 9.6. In addition to potential civil or criminal penalties, a Requester's failure to abide by the terms of this Agreement with respect to Security Incidents and the safeguarding of Data may, at the sole discretion of a Data Contributor, result in consequences including, but not limited to:
 - 9.6.1. The immediate and automatic termination of Requester's access and other privileges to the Contributor's Data or other Contributor resources;
 - 9.6.2. Ceasing additional disclosure of the Contributor's Data to Requester;
 - 9.6.3. Additional safeguards to protect Contributor Data and resources;
 - 9.6.4. Any remedy available to the Contributor under Applicable Law; and
 - 9.6.5. Requiring Requester to:
 - 9.6.5.1. Investigate and respond to the Contributor regarding any alleged failure and promptly resolve any problems identified by the investigation;
 - 9.6.5.2. Submit a corrective action plan including: (i) steps designed to prevent any future failure, (ii) mitigation and remediation activities, and (iii) agreed upon timelines to complete (i) and (ii);
 - 9.6.5.3. Require that all of the Contributor's Data be returned or, if infeasible, be destroyed immediately; and
 - 9.6.5.4. Reimburse the Contributor or otherwise be held responsible for the costs associated with giving affected persons written notice of a privacy or security breach, as required by Applicable Law, when the failure arises out of the failing Party's performance under this Agreement.

10. NC Public Records Law and Confidentiality

- 10.1. 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.
- 10.2. Parties that are not agencies of the State of North Carolina expressly acknowledge that their communications with State agencies may be subject to disclosure as public records.
- 10.3. All Data or other records held or stored by GDAC as a result of this Agreement shall be considered the property of, and in the custody of, the relevant Contributor for purposes of the North Carolina Public Records Act. In the event of a request made to Requester for access to Reports or information therein pursuant to the North Carolina Public Records Act, Requester shall object to such request and indicate to the entity making the request that Requester is not the custodian of such records. Requester will forward the request to GDAC and the Contributors as soon as is reasonable under the circumstances in order to provide those Parties with an opportunity to state or otherwise argue its own position concerning such request.
- 10.4. In the event that a subpoena or other legal process in any way concerning the Report or information therein is served upon Requester, Requester agrees to notify the Parties 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.

11. Auditing and Inspections

- 11.1. Pursuant to N.C. Gen. Stat. § 147-64.7, and other North Carolina law, such as [Section 27.10\(b\)](#)

of the Current Operations Appropriations Act of 2023, Joint Legislative Commission on Governmental Operations, the State Auditor and other authorized 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.

- 11.2. Pursuant to N.C. Gen. Stat. § 147-64.7, the State Auditor 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.
- 11.3. Contributors or GDAC may request documentation from Requester to ensure compliance with the terms herein and applicable law. Contributors and GDAC may also perform audits or on-site inspections of the Requester's technical environment or physical facilities if the Parties deem such review to be appropriate and reasonable, but no more than twice annually.

12. Miscellaneous

- 12.1. **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.
- 12.2. **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.
- 12.3. **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 7.
- 12.4. **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 contact. 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.

- 12.5. Availability of Funds.** The performance of obligations by GDAC and the Contributors described herein are expressly contingent upon and subject to the appropriation, allocation, and availability of funds to the Agency for the purposes set forth in this Agreement. If the activities to be performed under this Agreement are funded in whole or in part by federal funds, GDAC and the Contributors' performance shall be subject to and contingent upon the continuing availability of said federal funds for the purposes of the Agreement. If the term of this Agreement extends into fiscal years subsequent to that in which it is approved such continuation of the Agreement is expressly contingent upon the appropriation, allocation, and availability of funds by the N.C. Legislature for the purposes set forth in the Agreement. If funds to effect payment are not available, the Agency will provide written notification to Requester. If the Agreement is terminated under this paragraph, Requester shall relieve the Agency of any further obligation.
- 12.6. 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.
- 12.7. 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, 3.2.2, 5.1, 9, 10, 11.
- 12.8. 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.
- 12.9. 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 12.3. Any representation, promise, or condition, whether oral or written, not incorporated herein, shall not be binding upon any Party.
- 12.10. 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.
- 12.11. 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.
- 12.12. 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.
- 12.13. 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.
- 12.14. 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; (f) 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.

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

12.16. 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 with delivery confirmation, to the contacts listed in Attachment D. Amendments to the contacts in Attachment D may be made by communicating changes to the Parties in writing without requiring an amendment to this Agreement.

IN WITNESS HERETO, this Agreement has been entered into and executed by officials duly authorized to bind their respective Parties as of the dates set forth underneath their electronic signatures below.

Data Requester	
Name	
Title	
Organization	
Email	
Phone	
Signature	
Date	

Data Requester	
Name	
Title	
Organization	
Email	
Phone	
Signature	
Date	

NC Department of Information Technology	
Name	Dallas T. Stallings
Title	Executive Director, NC Longitudinal Data Service
Organization	NC Department of Information Technology
Email	trip.stallings@nc.gov
Phone	(919) 754-6914
Signature	
Date	

[Data Owner A]	
Name	
Title	
Organization	
Email	
Phone	
Signature	
Date	

[Data Owner B]	
Name	
Title	

<i>Organization</i>	
<i>Email</i>	
<i>Phone</i>	
<i>Signature</i>	
<i>Date</i>	

[Data Owner C]	
<i>Name</i>	
<i>Title</i>	
<i>Organization</i>	
<i>Email</i>	
<i>Phone</i>	
<i>Signature</i>	
<i>Date</i>	

[Data Owner D]	
<i>Name</i>	
<i>Title</i>	
<i>Organization</i>	
<i>Email</i>	
<i>Phone</i>	
<i>Signature</i>	
<i>Date</i>	

[Data Owner E]	
<i>Name</i>	
<i>Title</i>	
<i>Organization</i>	
<i>Email</i>	
<i>Phone</i>	
<i>Signature</i>	
<i>Date</i>	

[Data Owner F]	
<i>Name</i>	
<i>Title</i>	
<i>Organization</i>	
<i>Email</i>	
<i>Phone</i>	
<i>Signature</i>	
<i>Date</i>	

Attachment A – Data Classification

Data from: *Insert Name of Contributor*

Attachment B – Permitted Uses

- I. Requester is strictly prohibited from accessing, using, or redisclosing Reports or Data therein for purposes not listed below.
- II. Requester is permitted by the Contributors to use and analyze the Data listed in Attachment A to address the following research questions:
 - a) *Insert research questions*

Attachment C – Exhibit of Project Personnel and Confidentiality Agreement

North Carolina Longitudinal Data Service (NCLDS) Project Personnel Confidentiality Agreement for Data Obtained Pursuant to

Data Request ID:	
Data Request Title:	

As a member of the Project Team, in consideration of use of the data referenced in the above Data Request, I certify the following:

- I understand that one or more agencies of the State of North Carolina and/or other private organizations or institutions have entered into an NCLDS Data Use Agreement (“DUA”) with my organization or the Requester in order to allow sensitive and confidential information (“Confidential Information”) to be disclosed from the NC Longitudinal Data System.
- This Confidential Information includes personally identifying information under the control of the Contributors, as specified in the DUA.
- I am a project personnel member, which means that: I am an individual other than the Data Requester that has access to Confidential Information; I am subject to the provisions of the DUA governing protection of Confidential Information, including any sanctions specified in applicable law for unauthorized disclosure of Confidential Information; and I am authorized and require access and use of the Data, including any Confidential Information named in the DUA, in order to conduct analyses covered under the DUA.
- I received, read, and understand the provisions of the DUA governing the protection of Confidential Information, which is incorporated by reference into this Agreement.
- I have been instructed about confidentiality requirements and sanctions specified in State and federal law for unauthorized disclosure of information.
- I will fully comply with the terms of the DUA, including:
 - I agree to safeguard the Confidential Information and all other Data associated with this project.
 - I agree to use the Data only for those purposes identified in the DUA.
 - I will not provide the data to anyone other than those who are authorized to use it (i.e., the Data Requester and other project personnel).
 - I will adhere to the requirements and procedures of the DUA with respect to my activity and will report any Breach or Security Incident fully and promptly.
- I further agree:
 - I will destroy all files associated with the above-referenced Data Request when directed by the Data Requester and/or NCLDS to do so.
 - I will not use the Data to attempt to identify any individual.
 - If an individual’s identity is discovered purposely or inadvertently, by another person or by me, I will (1) report the discovery to the Data Requester; (2) make no use of this information in any written or electronic form; and (3) safeguard or destroy the information as directed by the Data Requester.
 - I will not attempt to access this data until approved to do so by the Data Requester.
 - When I am no longer a project personnel, I will not attempt to access or to use the data.

I understand that a violation of these terms may subject my employer and/or institution to liability for

breach of contract and may subject me to disciplinary action by NCLDS. Action may include revocation of access to NCLDS data on the current and/or future projects.

By signing this Agreement, the undersigned acknowledges that the project personnel member has agreed as stated above and will adhere to confidentiality requirements and procedures stated in applicable law and this Agreement and agrees to report any breach, security incident or other infraction to the Government Data Analytics Center (GDAC) fully and promptly using the contact information provided in Attachment D to the DUA.

SIGNATURES AND DATES

Project Personnel Information and Signature	
Name	
Title	
Organization	
Email	
Phone	
Signature	
Date	

Data Requester Information and Signature	
Name	
Title	
Organization	
Email	
Phone	
Signature	
Date	

Attachment D - Contacts for Notice

Contacts listed below should be notified based on situations listed in Section 12.16 above.

Data Requestor	
Name	
Title	
Organization	
Phone	
Email	

Data Requestor	
Name	
Title	
Organization	
Phone	
Email	

NC Department of Information Technology	
Name	Dallas T. Stallings
Title	Executive Director, NC Longitudinal Data Service
Organization	NC Department of Information Technology
Phone	(919) 754-6914
Email	trip.stallings@nc.gov

[Data Owner A]	
Name	
Title	
Organization	
Phone	
Email	

[Data Owner B]	
Name	
Title	
Organization	
Phone	
Email	

[Data Owner C]	
Name	
Title	

<i>Organization</i>	
<i>Phone</i>	
<i>Email</i>	

[Data Owner D]	
<i>Name</i>	
<i>Title</i>	
<i>Organization</i>	
<i>Phone</i>	
<i>Email</i>	

[Data Owner E]	
<i>Name</i>	
<i>Title</i>	
<i>Organization</i>	
<i>Phone</i>	
<i>Email</i>	

[Data Owner F]	
<i>Name</i>	
<i>Title</i>	
<i>Organization</i>	
<i>Phone</i>	
<i>Email</i>	