

# **INTERAGENCY COOPERATIVE AGREEMENT STATE LEVEL SPECIAL EDUCATION**

June 1, 2023-May 31, 2028

## **UTAH DEPARTMENT OF WORKFORCE SERVICES, UTAH STATE OFFICE OF REHABILITATION**

Division of Rehabilitation Services

## **UTAH STATE BOARD OF EDUCATION**

Special Education Programs

## **UTAH SCHOOLS FOR THE DEAF AND THE BLIND**

### **INTRODUCTION AND GOALS**

The purpose of this interagency cooperative agreement is to fulfill mandates found in the Individuals with Disabilities Education Act (IDEA) and the Rehabilitation Act as amended by the Workforce Investment and Opportunities Act (WIOA). The focus is to successfully facilitate the postsecondary transition of students who are individuals with disabilities in the provision of a free appropriate public education (FAPE) under the responsibility of the Utah State Board of Education (USBE), to the provision of Vocational Rehabilitation (VR) services, as deemed eligible and appropriate, under the responsibility of the Utah State Office of Rehabilitation (USOR). In addition, USBE and USOR will collaborate to ensure a smooth postsecondary transition from school to work for eligible and potentially eligible students with disabilities, including pre-employment transition services, postsecondary transition services, and VR individualized services to eligible students.

This agreement has eight overall goals and objectives:

1. To comply with federal legal mandates under the Rehabilitation Act of 1973 as amended and the Individuals with Disabilities Education Act of 2004 (IDEA);
2. To provide guidance and expectations to the Local Education Agency (LEA), special education and general education teachers, nurses, psychologists, administrators, school counselors, and any other appropriate school personnel regarding postsecondary transition Services and supports;
3. To provide guidance and expectations to vocational rehabilitation counselors regarding postsecondary transition Services and supports;
4. To provide information and resources on Pre-Employment transition Services (Pre-ETS) and postsecondary transition Services to students and their parents/guardians starting at age 14 so they will have the knowledge and ability to fully participate in postsecondary transition planning and execution;
5. To provide information and guidance to community partners in order to improve postsecondary transition

Services, create common understanding; establish collaborative efforts and increase employment and post-secondary education outcomes for individuals with disabilities.

6. To facilitate and coordinate the smooth postsecondary transition of students with disabilities from school to post-school activities, including the receipt of Pre-ETS, postsecondary transition services and other VR services.
7. To address documentation requirements set forth by section 511 of the Rehabilitation Act as amended by WIOA with regard to youth with disabilities who are seeking subminimum wage employment.
8. To provide assurance that neither the State Education Authority or Local Education Agency will enter into an arrangement with an entity holding a special wage certificate under section 14(c) of the Fair Labor Standards Act for the purposes of employing a youth with a disability in a subminimum wage employment.

## **STATEMENT OF NEED**

USOR and USBE have identified a need for coordination in the provision of postsecondary transition Services, including Pre-ETS, to students with disabilities as they move from the school setting into a post-secondary education and/or an integrated, competitive employment setting. Students with disabilities are defined as individuals who are aged 14-21; are enrolled in an educational institution; and are eligible for and receiving special education or related services under the Individuals with Disabilities Education Act (IDEA), or considered an individual with a disability for purposes of section 504 of the Act.

In Utah, there are approximately 83,288, students, age 3-22, with disabilities and 26,888 individuals who are transition-aged students with a disability, ages 14-21 (FY22). USOR served approximately 15,876 individuals with disabilities during FY22 with 4,895 being students with disabilities. Fifty-nine percent of USBE post-school survey respondents (FFY 2021) are or have been competitively employed in the year since exiting high school. An average of eleven percent reported contacting or receiving services from Vocational Rehabilitation (Utah USBE FFY 2021 Annual Performance Report).

Under IDEA, students with disabilities must receive appropriate postsecondary transition Services to gain the knowledge and skills necessary to achieve individual post-secondary goals in education/training, employment, and independent living. This interagency cooperative agreement is intended to clearly define the necessary roles and responsibilities, collaborative relationships, and policies and procedures between USOR and USBE Special Education Programs. This agreement has been established to create common understandings, and direct collaborative efforts, regarding postsecondary transition Services that will ultimately improve post-secondary education and employment outcomes for eligible students with disabilities.

## **AUTHORITY AND SCOPE**

This interagency agreement is mandated under the Individuals with Disabilities Education Act 34 CFR 300.154(a) and under the Rehabilitation Act of 1973 as amended Section 101(a)(11)(D) and 34 CFR 361.22(b).

### **USBE**

USBE ensures that all children ages 3 through 22 with disabilities are provided free and appropriate public education (FAPE) under IDEA. For the purposes of this agreement, USBE has responsibility for educating students between age 14 and school

exit through graduation, reaching maximum age, or no longer IDEA-eligible.

## IDEA

### 34 CFR 300.154 Methods of ensuring services

(a) Establishing responsibility for services. The Chief Executive Officer or designee of that officer must ensure that an *interagency agreement* or other mechanism for interagency coordination is in effect between each non-educational public agency.

## Child Find System

LEAs submit evidence of Child Find that documents efforts to identify, locate and evaluate all students, including students ages 0–21, students in private schools including religious school students, highly mobile students such as migrant and homeless, and students advancing from grade to grade who are suspected of being students with a disability and in need of special education and related services.

## USOR

Under the authority granted by the Rehabilitation Act, the Utah State Office of Rehabilitation (USOR) may provide any service necessary to achieve the employment goal stated in the Individualized Plan for Employment (IPE). Funding may be limited by state and federal purchasing regulations, availability of comparable benefits, and USOR policies.

## Rehabilitation Act

### 34 CFR 361.22 Coordination with education officials

(b) Formal *interagency agreement*. The State Plan must include information on a formal interagency agreement with the State educational agency.

## DEFINITIONS

### Postsecondary transition Services-USBE/USOR

IDEA *Transition Services* are a coordinated set of activities for a student with a disability designed within a results-oriented process, that is focused on improving the academic and functional achievement of the student, to facilitate movement from the school to post school activities, including post-secondary education, vocational training, counseling and guidance, integrated employment (including supported employment), adult services, independent living or community participation. The coordinated set of activities shall be based upon the individual student's needs, taking into account the student's strengths, preferences and interests, and shall include instruction, related services, community experiences, the development of employment and other post school adult living objectives, and when appropriate, acquisition of daily living skills and functional vocational evaluation (34 CFR 300.43).

The Rehabilitation Act further states that Transition Services are for a student or youth with a disability must promote or facilitate the achievement of the employment outcome identified in the student's Individualized Plan for Employment (IPE), and includes outreach to and engagement of the parent, or as appropriate, the representative of such a student or youth with a disability (34 CFR 361.5 (55)).

**Pre-Employment Transition Services (Pre-ETS)**

Per the Workforce Innovation and Opportunity Act (WIOA) amendment to the Rehabilitation Act of 1973, USOR will set aside at least 15% of federal funds to provide "pre-employment transition services" to "Students with Disabilities in need of such services, who are eligible or potentially eligible for VR services. USOR will coordinate with USBE to provide Pre-ETS to Students who are eligible and potentially eligible for services. Pre-ETS are the required activities that State Vocational Rehabilitation, in collaboration with local school districts, shall provide, or arrange for the provision of, for all students with disabilities between 14 and 21 years of age in need of such services who are eligible or potentially eligible for VR Services. The following are required activities: Job Exploration Counseling, Work-Based Learning, Counseling on Opportunities for Enrollment in Comprehensive Transition or Post Secondary Educational programs at institutions of higher education, Workplace Readiness Training, and Instruction in Self-Advocacy.

USOR defines a student with a disability as an individual who:

1. Is aged 14-21, or 22 and still being served through FAPE.
2. is eligible for and receiving special education or related services under the Individuals with Disabilities Education Act (IDEA); or considered an individual with a disability for purposes of section 504 of the Act; and
3. is enrolled in an educational program including, but not limited to: Secondary education programs; non-traditional or alternative secondary education programs, including home schooling; postsecondary education programs which result in a vocational or academic credential; and other recognized educational programs, such as those offered through the juvenile justice system.

**Special Education-USBE**

IDEA *Special Education* means specially designed instruction, at no cost to the parents or guardians, to meet the unique needs of a student with a disability including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and instruction in physical education (34 CFR 300.39).

Student with a Disability:

1. A student, ages 3 through 21, evaluated in accordance with Utah Special Education Rules as having autism, a speech or language impairment, deaf-blindness, an emotional-behavioral disability, a hearing impairment including deafness, an intellectual disability, multiple disabilities, an orthopedic impairment, other health impairments, a specific learning disability, a traumatic brain injury, a visual impairment including blindness, or a student ages 3 through 7 experiencing developmental delays whose disability affects their educational performance and who, by reason thereof, needs special education and related services. (USBE SER I.E.40)

**Related Services-USBE**

The term *Related Services* means transportation and such developmental, corrective, and other supportive services including speech-language pathology and audiology services, psychological services, physical and occupational therapy, recreation (including therapeutic recreation), social work services, counseling services (including rehabilitation counseling), orientation and mobility services and medical services (for diagnostic or evaluation purposes only) as may be required to assist a student with a disability to benefit from special education, and includes the early identification and assessment of disabling conditions in students. Related Services do not include services that apply to students with surgically implanted devices, including cochlear implants (34 CFR 300.34).

**Section 504 Accommodation Plan-USBE**

All individuals with a disability under the Individuals with Disabilities Education Act (IDEA) are protected under Section 504 of the Rehabilitation Act of 1973, as amended. However, not all individuals determined to have a disability under Section 504 may be considered eligible under IDEA. There are procedural provisions of Section 504, Subpart D that contain other requirements including accessibility and employment practices with person with disabilities. The IDEA defines as eligible only students who have certain specified types of disabilities which adversely affect educational performance and who need special education (specially designed instruction). Section 504 protects all students with disabilities, defined as those having any physical or mental impairment that substantially limits one or more major life activities, including learning.

Examples of students who are protected by Section 504, but who may not be covered by the IDEA include students with such health impairments as juvenile arthritis, AIDS or ADD/ADHD, whose education is not adversely affected and who do not need special education. However, if their disorders or conditions substantially limit their ability to function at school, they are considered to have a disability under Section 504 and must be provided with reasonable accommodations or related services in the regular education setting in order to participate in school programs. Students eligible for 504 plans should be considered for Vocational Rehabilitation and Independent Living Services.

### **Utah Schools for the Deaf and Blind-USDB**

The *Utah Schools for the Deaf and Blind* offer a variety of postsecondary transition Services, statewide, to students aged 14-22 with hearing and/or vision impairments. These services may include adult living assessments, postsecondary transition consultation, vocational skills training, counseling, and collaboration with LEA personnel and adult service providers; i.e. Vocational Rehabilitation. USOR will coordinate with USDB to provide individualized services to eligible students with disabilities.

## **USOR**

### **A. Individualized Vocational Rehabilitation Services**

The Utah State Office of Rehabilitation provides *Vocational Rehabilitation Services* based on eligibility, as outlined in the Rehabilitation Act. Vocational Rehabilitation Services are any services described in an Individualized Plan for Employment (IPE) necessary to assist an eligible individual with a disability in preparing for, securing, retaining or regaining an employment outcome that is consistent with the strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of that person. VR provides postsecondary transition services to eligible students with disabilities as they transition from school to adult life. VR's goal is to provide students with a smooth transition, holistic team approach, and services that are necessary and reasonable to help prepare for, obtain, and maintain employment.

#### Eligibility Criteria:

1. Has a physical or mental impairment which constitutes or results in a substantial impediment to employment and;
2. Requires vocational rehabilitation services to prepare for, enter, engage in or retain gainful employment and;
3. Can benefit in terms of an employment outcome from vocational rehabilitation services

### **B. Services to Students Potentially Eligible**

USOR may provide approved Pre-ETS to Students with Disabilities who are Potentially Eligible for VR Services. In order to receive Pre-ETS as a student potentially eligible, the student must be aged 14-21 (or 22 and accessing FAPE); have an education goal (enrolled in an educational institution); and have a documented disability. If the student potentially eligible needs VR services beyond the scope of Pre-ETS, they must apply for VR and be determined eligible to receive individualized services.

### **Supported Employment-USOR**

*Supported Employment (SE)* means competitive work in an integrated work setting, or employment in an integrated work setting in which individuals are working toward competitive employment. The employment must be consistent with the strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individual. SE is an appropriate intervention for individuals with the most significant disabilities who are in need of long-term support for successful employment outcomes.

### **WIOA Section 511-Limitations of Sub-Minimum Wage**

Under the section 511 of Rehabilitation Act, as amended by WIOA, 14(c) businesses referred to as "employers" are prohibited from employing any individual with disabilities who is 24 years of age or younger at subminimum wage, unless the individual has received documentation from USOR upon completion of all the following activities:

1. Pre-employment transition services under the Rehabilitation Act, as amended by WIOA, or transition services under the Individuals with Disabilities Education Act (IDEA) and
2. Apply for vocational rehabilitation services and the individual was determined
  1. Ineligible for vocational rehabilitation services.
  2. Eligible for vocational rehabilitation services, had an approved individualized plan for employment, and
  3. the individual was unable to achieve an employment outcome in competitive, integrated employment after a reasonable period of time, and his/her case was closed.
2. Career counseling and information and referral services to federal and state programs to help the individual discover, experience and attain competitive integrated employment and the counseling and information was not for employment at sub-minimum wage.

These requirements should be shared by the SEA with LEAs, parents, guardians, teachers and students and will share this information during IEP meetings for postsecondary transition planning. USOR will maintain the documentation and provide a copy to the individual within the timelines identified as specified under 34 CFR part 397.

Any of the services identified above that the LEA provides must be documented by the LEA and provided to the student and USOR.

USOR, in consultation with the USBE, must develop or use an existing process to document the completion of this process as well as the transmittal of documentation from USBE to USOR, consistent with the confidentiality requirements of the Family Education Rights and Privacy Act (20 USC 11232g(b) and 34 CFR 99.30 and 99.31) and IDEA (20 USC 1417(c) and 34 CFR 300.622) pursuant to section 511(d) of the Act and §397.10. This documentation must contain, at a minimum (§397.10(a)(1)):

- Youth's name;
- Determination made, including a summary of reason for the determination or a description of the activity or service completed;

- Name of individual making the determination or the provider of the service/activity;
- Date determination was made or the required service or activity completed;
- Applicable signatures and dates by USOR or USBE making determination or completion of the required services or activity;
- Signature of the USOR personnel transmitting documentation to the youth with a disability;
- Date and method by which the document was transmitted to the youth; and
- USOR and USBE must retain copies of the documentation in a manner consistent with the requirements of 2 CFR 200.334.

If a youth with a disability or, as applicable, the youth's parent or guardian, refuses, through informed choice, to participate in the activities required by section 511 or the implementing regulations in part 397, documentation must, at a minimum:

- Contain the information in 397.10(a)(2); and
- Be provided by the DSU to the youth within 10 calendar days of the youth's refusal to participate.

## **FINANCIAL RESPONSIBILITIES**

USOR and USBE agree to collaborate on financial responsibility of services, within the guidelines of the Rehabilitation Act and IDEA. Both agencies will respect the resources set forth by policies and procedures that guide each agency's services.

1. Assistive Technology (AT) Services will be supported by both USBE and USOR. If it is determined that AT used throughout school would continue to benefit the student throughout VR Services, VR may purchase the AT if agreed upon by the postsecondary transition team.
2. When a student with a disability is both in school and has an IPE with VR, the cost of services necessary for both education and for the student to become employed, will be negotiated between the LEA representative and the VR Counselor, pending any necessary approval through LEA administration and USOR chain of command;
3. At any time during the postsecondary transition process, comparable benefits or additional agency representatives will be included in the IEP/IPE team as an additional resource for financial responsibility;
4. Agreements on shared cost of required services for the student/client, will be in writing in the IEP and IPE, to ensure collaboration and understanding of agency involvement;
5. If at any time there is a dispute between the LEA representative and the Rehabilitation Counselor, the facts of the dispute shall be referred to the USBE and USOR Postsecondary Transition Specialists. If they cannot be resolved at that level, disputes will be handled at the next highest level with each agency.
6. If at any time there is a dispute between the student/client and the agency representatives, the student will follow dispute resolution through internal USOR Supervisory/Administration Review, and the Client Assistance

Program (CAP), and dispute resolution through USBE, under IDEA.

## **USOR POSTSECONDARY TRANSITION COMMITMENTS**

*Mission Statement:* To assist individuals with disabilities to prepare for and obtain employment and increase their independence.

*Vision Statement and Values:* We envision a community which provides the highest quality of services and empowers clients and staff in an environment of teamwork that results in rewarding employment, independence, and self-fulfillment. In support of our Mission and Vision, we value respect, dignity, trust, kindness, diversity, and integrity.

*USOR Postsecondary Transition Commitments:* USOR provides Pre-ETS to students with disabilities and individualized postsecondary transition services to youth, parents, and schools across the State of Utah. USOR is mandated by the Rehabilitation Act to provide an array of postsecondary transition Services, including Pre-ETS. Therefore, school postsecondary transition teams have access to an assigned VR Counselor to provide Pre-ETS for potentially eligible or eligible students with disabilities, as well as necessary and reasonable services to meet the individual needs of eligible students with disabilities, in order to help them successfully transition from high school, into adult life and services, and into competitive and integrated employment. In addition to providing assigned liaisons with each high school and USOR district in the state, USOR provides leadership, advocacy, technical assistance, vocational assessments, and promotes collaboration with youth, parents, communities, and other agencies.

USOR agrees and commits to:

1. Gather employment outcome data regarding the students who receive postsecondary transition Services under this agreement and share that de-identified information with USBE;
2. Provide consultation and technical assistance to the SEAs and LEAs to assist in planning for the postsecondary transition of students with disabilities from school to post-school employment-related activities, Pre-ETS, and competitive, integrated employment. The consultation and technical assistance provided to SEAs and LEAs by VR may be provided through alternative means, such as conference calls, video conferences as well as shared in-person training opportunities.
3. Advise VR Counselors to attend any and all IEP, 504, and postsecondary transition meetings, as appropriate, when the need for Vocational Rehabilitation Services has been identified;
4. Encourage relationship building across all levels of school personnel, by VR Counselors and other VR personnel;
5. Provide orientations, presentations, and information and guidance, as necessary for the schools and LEAs. Encourage students to apply for VR Services as appropriate
6. Provide or arrange for the provision of individualized VR services required by the IPE goal, when the student has been determined eligible for VR and the services are specific to his/her employment outcome, and are not services customarily provided to the student by the LEA under the Individuals with Disabilities Education Act (IDEA).
7. Provide information to parents and/or guardian(s), student/clients regarding VR eligibility, vocational assessment for employment and postsecondary planning and Client Assistance Program (CAP).

8. Share information regarding policies, procedures, guidelines, programs and services for the purpose of improving the access to, and availability of Pre-ETS and postsecondary transition services.
9. Provide brochures and materials about the VR process and services to the schools for distribution to the students, parents, legal guardians, teachers and others.
10. Provide professional development in postsecondary transition requirements and best practices, including VR Counselor Conferences, and participation in any USBE postsecondary transition training, as appropriate;
11. Cooperate with and collaborate with USBE in efforts to improve statewide VR consistency and level of engagement in the postsecondary transition process;
12. Continued collaboration with the USBE implementation of the Utah State Collaborative on Postsecondary Transition for Students with Disabilities.
13. Encourage and participate in state, local, and community postsecondary transition councils and committees to improve youth services across the state;
14. Share responsibility and dissemination of this agreement;
15. Provide a designated liaison counselor to each school and LEA, having readily available information and documentation needed to promote VR Services.
16. Provide consultation to school district staff on postsecondary transition planning to prepare a student to move from school to work or postsecondary education in accordance with the student's unique needs as determined through the IEP process and provision of Pre-ETS.
17. Maintain publicly-reported non-identifiable aggregate student data securely; make these data available only to identified employees who have a right and a need to use these data to satisfy the purposes of this Agreement and return these data or notify the USBE when these data are destroyed, unless this Agreement is renewed and USBE student data continue to be necessary to satisfy the purposes of the Agreement.
18. Work collaboratively to accept referrals and provide Pre-ETS to Students with Disabilities identified as requiring these services, who are eligible or potentially eligible for Vocational Rehabilitation Services.
19. Pre-EETS will be provided by VR Counselors, Pre-ETS Instructors, as a fee for service option, and through contracts. USOR will partner with USBE to assist in the provision of Pre-ETS.
20. USOR will comply with regulatory requirements as defined in the Workforce Innovation and Opportunity Act, Section 511-Limitation of Use of Subminimum Wage. See definition above on WIOA Section 511-Limitations of Sub-Minimum Wage for documentation requirements.

## **USBE/SES POSTSECONDARY TRANSITION COMMITMENTS**

*Mission Statement:* In alignment with the Individuals with Disabilities Education Improvement Act (IDEA), (USBE SER VIII.A), and the USBE's Promises to Keep, to provide leadership and support for educators and parents, to ensure students with disabilities will be better prepared to transition to further education, employment, and independent living.

*Vision Statement:* To ensure young adults with disabilities are actively participating in further education, employment, and independent living.

*USBE/SES Postsecondary Transition Commitments:* The USBE/SES provides professional development, technical assistance, and information dissemination on the Individualized Education Program (IEP) 2004 postsecondary transition

requirements and effective practices to educators, youth, parents, and community agency representatives. A major focus of the USBE/SES is to assist school districts and charter schools in meeting the one-hundred percent compliance goal for the State Performance Plan/Annual Performance Report (SPP/APR) Indicator 13, which requires the transition-aged students IEP to contain a complete postsecondary transition plan, including consideration and involvement of community agency representatives as appropriate. Additionally, the USBE/SES collects and reports, in SPP/APR Indicator 14, the rates at which youth with disabilities are involved in postsecondary education, training, and employment one year after leaving the school system.

USBE agrees and commits to:

1. Share or provide publicly reported non-identifiable aggregate data for students with disabilities, regarding postsecondary transition services, postsecondary goals, post high school outcomes, and exiting and environment data as reported in the State Performance Plan and Annual Performance Report to or with the USOR. No personally identifiable student data will be provided or shared by the USBE with the USOR, unless express parental/guardian/eligible student permission is granted (and maintained by the USBE) in writing.
2. Advise school districts and charter schools to invite, only with written parental consent, the VR Counselor assigned to the school to the IEP meeting when the need for Vocational Rehabilitation Services is anticipated; this invitation will be extended as early age 14 and at least one year prior to anticipated high school completion;
3. Provide school districts and charter schools with a list of VR Counselors assigned to identified LEAs to facilitate contact with the assigned VR Counselor;
4. Provide professional development to VR Counselors and other staff in IDEA postsecondary transition requirements and best practices through webinars, in-person training, and conference presentations;
5. Cooperate with and collaborate with USOR in its efforts to improve statewide consistency and level of engagement of VR Counselors in the postsecondary transition process;
6. Continued collaboration with VR in the USBE implementation of the Utah Transition Strategic Plan, review and amend, as appropriate, the Transition Action Guide (TAG), and participate in cross-trainings for VR Counselors and school representatives;
7. Encourage and participate in state, local, and community postsecondary transition councils and committees to improve youth services across the state;
8. To assist USOR and contracted Pre-ETS partners in the facilitation of the provision of postsecondary transition services including: referring to USOR/Contracted providers and collaborating with USOR/Contracted partners when appropriate.
9. Provide the required documentation and data needed by VR prior to the provision of Pre-ETS, coordinating IEP meetings with VR prior to being developed and meetings thereafter for the coordination of services, obtaining the required parental consent as required by State law and the requirement to provide all special educational services or related transition services under IDEA required to be provided by the school system under Free and Appropriate Public Education (FAPE) in accordance with section 101(c) of the Rehabilitation Act and 34 CFR 361.22(c) of its implementing regulations.
10. USBE will comply with documentation of Pre-ETS to students with disabilities provided during their educational enrollment as per WIOA section 511. See definition above on **WIOA Section 511-Limitations of Sub-Minimum Wage** for documentation requirements.

11. As per WIOA, USBE and LEAs will not enter into a contract or other arrangement with an entity, as defined in 34 CFR 397.5(d), for the purpose of operating a program under which a youth with a disability is engaged in work compensated at a subminimum wage.
12. Share responsibility and dissemination of this Agreement.

### TERMS OF AGREEMENT

Attachment A: Standard Terms and Conditions for Services shall apply, as amended and attached.

### RESOLUTION OF CONFLICT

For the resolution of disputes arising over issues addressed in this Agreement, all parties will utilize the appropriate steps and methods as described herein. Attempts will be made to resolve the issue at the lowest level of disagreement. Informal resolution will be the first step in dealing with any disagreements relative to this Agreement. When issues cannot be resolved at the lowest level, they should be referred to the next highest level of command (i.e. following chain of command).

### CONCLUSION

Eligible students will receive continuous provision of services from the Individual Education Program (IEP) with USBE and the Individualized Plan for Employment (IPE) with USOR, in support of each student’s long term vocational goal and intermediate objectives. This cooperative Agreement is not intended in any way to either shift the responsibility of service delivery from education to rehabilitation during transition or to excuse rehabilitation from providing services it would ordinarily provide to individuals with disabilities. It is expected that rehabilitation counselors, special education teachers, and Section 504 coordinators will cooperate in negotiating and documenting responsibility for necessary services and that education and rehabilitation will complement each other and continue to collaborate in the provision of those services, in order to improve post school employment outcomes for students with disabilities.

*Greg Paras*

Greg Paras (May 16, 2023 09:18 MDT)

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DWS Deputy Director, \_\_\_\_\_

Utah Department of Workforce Services

*Jed*

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Superintendent, USDB

Utah Schools for the Deaf and the Blind

05/16/2023

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Date

*5/19/2023*

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Date

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Utah State Board of Education

**ATTACHMENT A: STATE OF UTAH STANDARD TERMS AND CONDITIONS FOR SERVICES  
(Amended Section 12)**

This is for a contract between Government Entities within the State of Utah for services (including professional services) meaning the furnishing of labor, time, or effort by a contractor. These terms and conditions may only be used when both parties are government entities or political subdivisions as defined in the Utah Government Immunity Act.

1. **DEFINITIONS:** The following terms shall have the meanings set forth below:
  - a) "Confidential Information" means information that is deemed as confidential under applicable state and federal laws, including personal information. The State Entity reserves the right to identify, during and after this Purchase Order, additional reasonable types of categories of information that must be kept confidential under federal and state laws.
  - b) "Contract" means the Contract Signature Page(s), including all referenced attachments and documents incorporated by reference. The term "Contract" may include any purchase orders that result from the parties entering into this Contract.
  - c) "Contract Signature Page(s)" means the State of Utah cover page(s) that the State Entity and Contractor sign.
  - d) "Contractor" means the individual or entity delivering the Services identified in this Contract. The term "Contractor" shall include Contractor's agents, officers, employees, and partners.
  - e) "Services" means the furnishing of labor, time, or effort by Contractor pursuant to this Contract. Services shall include, but not limited to, all of the deliverable(s) that result from Contractor performing the Services pursuant to this Contract. Services include those professional services identified in Section 63G-6a-103 of the Utah Procurement Code.
  - f) "Proposal" means Contractor's response to the State Entity's Solicitation.
  - g) "Solicitation" means the documents used by the State Entity to obtain Contractor's Proposal.
  - h) "State Entity" means the department, division, office, bureau, agency, or other organization identified on the Contract Signature Page(s).
  - i) "State of Utah" means the State of Utah, in its entirety, including its institutions, agencies, departments, divisions, authorities, instrumentalities, boards, commissions, elected or appointed officers, employees, agents, and authorized volunteers.
  - j) "Subcontractors" means subcontractors or subconsultants at any tier that are under the direct or indirect control or responsibility of the Contractor, and includes all independent contractors, agents, employees, authorized resellers, or anyone else for whom the Contractor may be liable at any tier, including a person or entity that is, or will be, providing or performing an essential aspect of this Contract, including Contractor's manufacturers, distributors, and suppliers.
2. **GOVERNING LAW AND VENUE:** This Contract shall be governed by the laws, rules, and regulations of the State of Utah. Any action or proceeding arising from this Contract shall be brought in a court of competent jurisdiction in the State of Utah. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.
3. **LAWS AND REGULATIONS:** At all times during this Contract, Contractor and all Services performed under this Contract will comply with all applicable federal and state constitutions, laws, rules, codes, orders, and regulations, including applicable licensure and certification requirements.
4. **RECORDS ADMINISTRATION:** Contractor shall maintain or supervise the maintenance of all records necessary to properly account for Contractor's performance and the payments made by the State Entity to Contractor under this Contract. These records shall be retained by Contractor for at least six (6) years after final payment, or until all audits initiated within the six (6) years have been completed, whichever is later. Contractor agrees to allow, at no additional cost, State of Utah and federal auditors, and State Entity staff, access to all such records.
5. **CERTIFY REGISTRATION AND USE OF EMPLOYMENT "STATUS VERIFICATION SYSTEM":** INTENTIONALLY DELETED
6. **CONFLICT OF INTEREST:** INTENTIONALLY DELETED
7. **INDEPENDENT CONTRACTOR:** Contractor's legal status is that of an independent contractor, and in no manner shall Contractor be deemed an employee or agent of the State Entity or the State of Utah, and therefore is not entitled to any of the benefits associated with such employment. Contractor, as an independent contractor, shall have no authorization, express or implied, to bind the State Entity or the State of Utah to any agreements, settlements, liabilities, or understandings whatsoever, and agrees not to perform any acts as an agent for the State Entity or the State of Utah. Contractor shall remain responsible for all applicable federal, state, and

local taxes, and all FICA contributions.

8. **INDEMNITY:** Both parties to this agreement are governmental entities as defined in the Utah Governmental Immunity Act (Utah Code Ann. 63G-7-101 et. seq.). Nothing in this Contract shall be construed as a waiver by either or both parties of any rights, limits, protections or defenses provided by the Act. Nor shall this Contract be construed, with respect to third parties, as a waiver of any governmental immunity to which a party to this Contract is otherwise entitled. Subject to and consistent with the Act, each party will be responsible for its own actions or negligence and will defend against any claims or lawsuit brought against it. There are no indemnity obligations between these parties.
9. **EMPLOYMENT PRACTICES:** Contractor agrees to abide by the following employment laws: (i) Title VI and VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e) which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; (ii) Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; (iii) 45 CFR 90 which prohibits discrimination on the basis of age; (iv) Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities; and (v) Utah's Executive Order, dated December 13, 2006, which prohibits unlawful harassment in the work place. Contractor further agrees to abide by any other laws, regulations, or orders that prohibit the discrimination of any kind by any of Contractor's employees.
10. **AMENDMENTS:** This Contract may only be amended by the mutual written agreement of the parties, provided that the amendment is within the Scope of Work of this Contract and is within the scope/purpose of the original solicitation for which this Contract was derived. The amendment will be attached and made part of this Contract. Automatic renewals will not apply to this Contract, even if listed elsewhere in this Contract.
11. **DEBARMENT:** Contractor certifies that it is not presently nor has ever been debarred, suspended, or proposed for debarment by any governmental department or agency, whether international, national, state, or local. Contractor must notify the State Entity within thirty (30) days if debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in any contract by any governmental entity during this Contract.
12. **TERMINATION:** This Agreement may be terminated by either party providing thirty (30) days written notice. Prior to terminating the Agreement, the party wishing to terminate will provide the other reasons for termination and an opportunity to resolve the matter. If the Agreement is terminated, the USOR will return all student data to the USBE within 15 business days.
13. **NONAPPROPRIATION OF FUNDS, REDUCTION OF FUNDS, OR CHANGES IN LAW:** Upon thirty (30) days written notice delivered to the Contractor, this Contract may be terminated in whole or in part at the sole discretion of the State Entity, if the State Entity reasonably determines that: (i) a change in Federal or State legislation or applicable laws materially affects the ability of either party to perform under the terms of this Contract; or (ii) that a change in available funds affects the State Entity's ability to pay under this Contract. A change of available funds as used in this paragraph, includes, but is not limited to, a change in Federal or State funding, whether as a result of a legislative act or by order of the President or the Governor.  
  
If a written notice is delivered under this section, the State Entity will reimburse Contractor for the Services properly ordered until the effective date of said notice. The State Entity will not be liable for any performance, commitments, penalties, or liquidated damages that accrue after the effective date of said written notice.
14. **SUSPENSION OF WORK:** Should circumstances arise which would cause the State Entity to suspend Contractor's responsibilities under this Contract, but not terminate this Contract, this will be done by written notice. Contractor's responsibilities may be reinstated upon advance formal written notice from the State Entity.
15. **SALES TAX EXEMPTION:** The Services under this Contract will be paid for from the State Entity's funds and used in the exercise of the State Entity's essential functions as a State of Utah entity. Upon request, the State Entity will provide Contractor with its sales tax exemption number. It is Contractor's responsibility to request the State Entity's sales tax exemption number. It also is Contractor's sole responsibility to ascertain whether any tax deduction or benefits apply to any aspect of this Contract.
16. **INSURANCE:** INTENTIONALLY DELETED
17. **WORKERS COMPENSATION INSURANCE:** Contractor shall maintain during the term of this Contract, workers' compensation insurance for all its employees as well as any Subcontractor employees related to this Contract. Worker's compensation insurance shall cover full liability under the worker's compensation laws of the jurisdiction in which the service is performed at the statutory limits required by said jurisdiction. Contractor acknowledges that within thirty (30) days of contract award, Contractor must submit proof of certificate of insurance that meets the above requirements.
18. **ADDITIONAL INSURANCE REQUIREMENTS:** INTENTIONALLY DELETED
19. **PUBLIC INFORMATION:** Contractor agrees that this Contract, related purchase orders, related pricing documents, and invoices will be public documents, and may be available for public and private distribution in accordance with the State of Utah's Government Records Access and Management Act (GRAMA). Contractor gives the State Entity and the State of Utah express permission to make copies of this Contract, related sales orders, related pricing documents, and invoices in accordance with GRAMA. Except for sections identified in writing by Contractor and expressly approved by the State of Utah Division of Purchasing and General Services, all of which must be in accordance with GRAMA, Contractor also agrees that the Contractor's Proposal to the Solicitation will be a public

document, and copies may be given to the public as permitted under GRAMA. The State Entity and the State of Utah are not obligated to inform Contractor of any GRAMA requests for disclosure of this Contract, related purchase orders, related pricing documents, or invoices.

20. **DELIVERY:** All deliveries under this Contract will be F.O.B. destination with all transportation and handling charges paid for by Contractor. Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to the State Entity, except as to latent defects or fraud.
21. **ACCEPTANCE AND REJECTION:** The State Entity shall have thirty (30) days after delivery of the Services to perform an inspection of the Services to determine whether the Services conform to the standards specified in the Solicitation and this Contract prior to acceptance of the Services by the State Entity.  

If Contractor delivers nonconforming Services, the State Entity may, at its option and at Contractor's expense: (i) return the Services for a full refund; (ii) require Contractor to promptly correct or reperform the nonconforming Services subject to the terms of this Contract; or (iii) obtain replacement Services from another source, subject to Contractor being responsible for any cover costs.
22. **INVOICING:** Contractor will submit invoices within thirty (30) days of Contractor's performance of the Services to the State Entity. The contract number shall be listed on all invoices, freight tickets, and correspondence relating to this Contract. The prices paid by the State Entity will be those prices listed in this Contract, unless Contractor offers a prompt payment discount within its Proposal or on its invoice. The State Entity has the right to adjust or return any invoice reflecting incorrect pricing.
23. **PAYMENT:** Payments are to be made within thirty (30) days after a correct invoice is received. All payments to Contractor will be remitted by mail, electronic funds transfer, or the State of Utah's Purchasing Card (major credit card). If payment has not been made after sixty (60) days from the date a correct invoice is received by the State Entity, then interest may be added by Contractor as prescribed in the Utah Prompt Payment Act. The acceptance by Contractor of final payment, without a written protest filed with the State Entity within ten (10) business days of receipt of final payment, shall release the State Entity and the State of Utah from all claims and all liability to the Contractor. The State Entity's payment for the Services shall not be deemed an acceptance of the Services and is without prejudice to any and all claims that the State Entity or the State of Utah may have against Contractor.
24. **TIME IS OF THE ESSENCE:** The Services shall be completed by any applicable deadline stated in this Contract. For all Services, time is of the essence. Contractor shall be liable for all reasonable damages to the State Entity and the State of Utah, and anyone for whom the State of Utah may be liable, as a result of Contractor's failure to timely perform the Services required under this Contract.
25. **CHANGES IN SCOPE:** Any changes in the scope of the Services to be performed under this Contract shall be in the form of a written amendment to this Contract, mutually agreed to and signed by both parties, specifying any such changes, fee adjustments, any adjustment in time of performance, or any other significant factors arising from the changes in the scope of Services.
26. **PERFORMANCE EVALUATION:** The State Entity may conduct a performance evaluation of Contractor's Services, including Contractor's Subcontractors, if any. Results of any evaluation may be made available to the Contractor upon Contractor's request.
27. **STANDARD OF CARE:** The Services of Contractor and its Subcontractors shall be performed in accordance with the standard of care exercised by licensed members of their respective professions having substantial experience providing similar services which similarities include the type, magnitude, and complexity of the Services that are the subject of this Contract. Contractor shall be liable to the State Entity and the State of Utah for claims, liabilities, additional burdens, penalties, damages, or third party claims (i.e. another Contractor's claim against the State of Utah), to the extent caused by wrongful acts, errors, or omissions that do not meet this standard of care.
28. **REVIEWS:** The State Entity reserves the right to perform plan checks, plan reviews, other reviews, and/or comment upon the Services of Contractor. Such reviews do not waive the requirement of Contractor to meet all of the terms and conditions of this Contract.
29. **ASSIGNMENT:** Contractor may not assign, sell, transfer, subcontract or sublet rights, or delegate any right or obligation under this Contract, in whole or in part, without the prior written approval of the State Entity.
30. **REMEDIES:** Any of the following events will constitute cause for the State Entity to declare Contractor in default of this Contract: (i) Contractor's non-performance of its contractual requirements and obligations under this Contract; or (ii) Contractor's material breach of any term or condition of this Contract. The State Entity may issue a written notice of default providing a ten (10) day period in which Contractor will have an opportunity to cure. Time allowed for cure will not diminish or eliminate Contractor's liability for damages. If the default remains, after Contractor has been provided the opportunity to cure, the State Entity may do one or more of the following: (i) exercise any remedy provided by law or equity; (ii) terminate this Contract; (iii) impose liquidated damages, if liquidated damages are listed in this Contract; (iv) debar/suspend Contractor from receiving future contracts from the State Entity or the State of Utah; or (v) demand a full refund of any payment that the State Entity has made to Contractor under this Contract for Services that do not conform to this Contract.
31. **FORCE MAJEURE:** Neither party to this Contract will be held responsible for delay or default caused by fire, riot, acts of God, and/or war which is beyond that party's reasonable control. The State Entity may terminate this Contract after determining such delay will prevent successful performance of this Contract.

32. **CONFIDENTIALITY:** If Confidential Information is disclosed to Contractor, Contractor shall: (i) advise its agents, officers, employees, partners, and Subcontractors of the obligations set forth in this Contract; (ii) keep all Confidential Information strictly confidential; and (iii) not disclose any Confidential Information received by it to any third parties. Contractor will promptly notify the State Entity of any potential or actual misuse or misappropriation of Confidential Information.

Contractor shall be responsible for any breach of this duty of confidentiality, including any required remedies and/or notifications under applicable law. Contractor shall indemnify, hold harmless, and defend the State Entity and the State of Utah, including anyone for whom the State Entity or the State of Utah is liable, from claims related to a breach of this duty of confidentiality, including any notification requirements, by Contractor or anyone for whom the Contractor is liable.

Upon termination or expiration of this Contract, Contractor will return all copies of Confidential Information to the State Entity or certify, in writing, that the Confidential Information has been destroyed. This duty of confidentiality shall be ongoing and survive the termination or expiration of this Contract.

33. **PUBLICITY:** Contractor shall submit to the State Entity for written approval all advertising and publicity matters relating to this Contract. It is within the State Entity's sole discretion whether to provide approval, which must be done in writing.
34. **CONTRACT INFORMATION:** INTENTIONALLY DELETED.
35. **INDEMNIFICATION RELATING TO INTELLECTUAL PROPERTY:** Contractor will indemnify and hold the State Entity and the State of Utah harmless from and against any and all damages, expenses (including reasonable attorneys' fees), claims, judgments, liabilities, and costs in any action or claim brought against the State Entity or the State of Utah for infringement of a third party's copyright, trademark, trade secret, or other proprietary right. The parties agree that if there are any limitations of Contractor's liability such limitations of liability will not apply to this section.
36. **OWNERSHIP IN INTELLECTUAL PROPERTY:** The State Entity and Contractor each recognizes that each has no right, title, interest, proprietary or otherwise in the intellectual property owned or licensed by the other, unless otherwise agreed upon by the parties in writing. All deliverables, documents, records, programs, data, articles, memoranda, and other materials not developed or licensed by Contractor prior to the execution of this Contract, but specifically created or manufactured under this Contract shall be considered work made for hire, and Contractor shall transfer any ownership claim to the State Entity.
37. **WAIVER:** A waiver of any right, power, or privilege shall not be construed as a waiver of any subsequent right, power, or privilege.
38. **ATTORNEY'S FEES:** INTENTIONALLY DELETED
39. **PROCUREMENT ETHICS:** Contractor understands that a person who is interested in any way in the sale of any supplies, services, construction, or insurance to the State of Utah is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan, reward, or any promise thereof to any person acting as a procurement officer on behalf of the State of Utah, or to any person in any official capacity participates in the procurement of such supplies, services, construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization.
40. **DISPUTE RESOLUTION:** INTENTIONALLY DELETED.
41. **ORDER OF PRECEDENCE:** In the event of any conflict in the terms and conditions in this Contract, the order of precedence shall be: (i) this Attachment A; (ii) Contract Signature Page(s); (iii) the State of Utah's additional terms and conditions, if any; (iv) any other attachment listed on the Contract Signature Page(s); and (v) Contractor's terms and conditions that are attached to this Contract, if any. Any provision attempting to limit the liability of Contractor or limits the rights of the State Entity or the State of Utah must be in writing and attached to this Contract or it is rendered null and void.
42. **SURVIVAL OF TERMS:** Termination or expiration of this Contract shall not extinguish or prejudice the State Entity's right to enforce this Contract with respect to any default of this Contract or defect in the Services that has not been cured.
43. **SEVERABILITY:** The invalidity or unenforceability of any provision, term, or condition of this Contract shall not affect the validity or enforceability of any other provision, term, or condition of this Contract, which shall remain in full force and effect.
44. **ENTIRE AGREEMENT:** This Contract constitutes the entire agreement between the parties and supersedes any and all other prior and contemporaneous agreements and understandings between the parties, whether oral or written.

(Revision Date: 12 December 2019)

## ADDENDUM TO ATTACHMENT A: STATE OF UTAH STANDARD TERMS AND CONDITIONS FOR SERVICES

The definition of defined terms used in this Addendum are as set forth in Section 1 below, and the Definitions in Section 1 below shall apply only to this Addendum.

1. **DEFINITIONS:** The following terms shall have the meanings set forth below:
  - 1.1. **“Authorized Persons”** means Contractor’s employees, officers, partners, Subcontractors or other agents of Contractor who require access to Data and who have a legitimate educational interest in the education records to enable the Contractor to perform its responsibilities under this Contract.
  - 1.2. **“Confidential Information”** means information that is deemed as confidential under applicable state and federal laws. The State Entity reserves the right to identify, during and after this Contract, additional reasonable types of categories of information that must be kept confidential under federal and state laws.
  - 1.3. **“Contract”** means the Contract Signature Page(s), including all referenced attachments and documents incorporated by reference. The term “Contract” shall include any purchase orders that result from this Contract.
  - 1.4. **“Contract Signature Page(s)”** means the State of Utah cover page(s) that the State Entity and Contractor signed.
  - 1.5. **“Contractor”** means the individual or entity delivering the Procurement Item identified in this Contract. The term “Contractor” shall include Contractor’s agents, officers, employees, and partners.
  - 1.6. **“Data”** includes Student Personally Identifiable Information and Educator Data, and may also include Confidential Information.
  - 1.7. **“Destroy”** means to remove Data such that it is not maintained in retrievable form and cannot be retrieved in the normal course of business.
  - 1.8. **“Educator Data”** includes, but is not limited to, the educator’s name; any unique identifier, including social security number; and other information that, alone or in combination, is linked or linkable to a specific educator.
  - 1.9. **“Incident”** means the potentially unauthorized access to Data that Contractor believes could reasonably result in the use, disclosure or theft of Data within the possession or control of Contractor or Contractor’s Subcontractors.
  - 1.10. **“Metadata”** includes all information created manually or automatically to provide meaning or context to other data.
  - 1.11. **“Procurement Item”** means a supply, a service, construction, or technology that Contractor is required to deliver to the State Entity under this Contract.
  - 1.12. **“Response”** means the Contractor’s bid, proposals, quote, or any other document used by the Contractor to respond to the State Entity’s Solicitation.
  - 1.13. **“Solicitation”** means an invitation for bids, request for proposals, notice of a sole source procurement, request for statement of qualifications, request for information, or any document used to obtain bids, proposals, pricing, qualifications, or information for the purpose of entering into this Contract.
  - 1.14. **“State Entity”** means the department, division, office, bureau, agency, or other organization identified on the Contract Signature Page(s).
  - 1.15. **“State of Utah”** means the State of Utah, in its entirety, including its institutions, agencies, departments, divisions, authorities, instrumentalities, boards, commissions, elected or appointed officers, employees, agents, and authorized volunteers.
  - 1.16. **“Student Personally Identifiable Information”** or **“PII”** has the same meaning as that found in U.C.A § 53E-9-301, and includes both direct identifiers (such as a student’s or other family member’s name, address, student number, or biometric number) and indirect identifiers (such as a student’s date of birth, place of birth, or mother’s maiden name). Indirect identifiers that constitute PII also include metadata or other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty.
  - 1.17. **“Subcontractors”** means a person under contract with a contractor or another subcontractor to provide services or labor as provided herein or for design or construction, including a trade contractor or specialty contractor.
  - 1.18. **“Targeted Advertising”** means advertising to a student or a student’s parent by Contractor if the advertisement is based on information or Data Contractor collected or received under this Contract.
2. **ACCESS TO DATA:**
  - 2.1. Contractor shall limit access to Data to Authorized Persons only and shall require a non-disclosure agreement be signed by all Authorized Persons prior to being granted access to Data.
  - 2.2. Contractor shall maintain past and current lists of all Authorized Persons, maintain each non-disclosure agreement, and shall permit inspection of the same by USBE upon request.
  - 2.3. Contractor shall maintain an audit trail for the duration of this Contract, which reflects the granting and revoking of access privileges to Authorized Persons. A copy of this audit trail may be requested by USBE from Contractor at any time and shall be provided within 10 days of the USBE request.
  - 2.4. Contractor shall have strong access controls in place. Contractor shall disable and/or immediately delete unused and terminated Authorized Persons’ accounts and shall periodically assess account inactivity for potential stale accounts.
  - 2.5. Contractor shall provide annual, mandatory privacy and security awareness and training for all Authorized Persons, maintain past and current lists of Authorized Persons that have completed training, and permit inspection of the same by USBE upon request.
3. **USE AND DISCLOSURE OF DATA:**
  - 3.1. Contractor shall not collect, use, or share Data beyond the purposes set forth as follows:

- 3.1.1.** To carry out the Contractor's responsibilities listed in Exhibit A, Statement of Work.
- 3.1.2.** [Click here to list responsibilities.](#)
- 3.2.** Contractor shall share Data only for the purposes stated in Section 3.1 and only with the following entities:
- 3.2.1.** Law enforcement agencies or individuals only as authorized by law or court order. Contractor receives such a request, Contractor shall notify USBE within two (2) business days of the receipt of the request, as permitted by law.
- 3.2.2.** [Click here to list additional entities.](#)
- 3.3.** If Contractor seeks to publicly release Data, Contractor must aggregate the Data by totaling the Data and reporting it at the group, cohort, school, school district, region, or state level. Contractor shall, upon request of USBE, provide USBE with a document that lists the steps and methods the Contractor shall use to de-identify the information. Any aggregate data that is publicly released without being redacted using the methods in this section shall be considered an Incident. The following methods shall be used on any aggregated reports:
- 3.3.1.** Aggregate data shall be reported publicly only if there is a sufficient number of individuals represented in any demographic or subgroup so that an individual cannot be identified.
- 3.3.2.** Aggregated reports shall be redacted using complementary suppression methods that remove the risk of Data being identifiable using simple mathematics or formulas.
- 3.3.3.** Aggregated reports shall be redacted to remove identifiability risks caused other prior releases of aggregate data by Contractor.
- 3.4.** Contractor shall not use Data for the purposes of Targeted Advertising except under the following conditions:
- 3.4.1.** For adaptive learning or customized student learning purposes.
- 3.4.2.** To market an educational application or product to a parent or legal guardian of a student if Contractor did not use Data, shared by or collected per this Contract, to market the educational application or product.
- 3.4.3.** To use a recommendation engine to recommend to a student (i) content that relates to learning or employment, within the third-party contractor's internal application, if the recommendation is not motivated by payment or other consideration from another party; or (ii) services that relate to learning or employment, within the third-party contractor's internal application, if the recommendation is not motivated by payment or other consideration from another party;
- 3.4.4.** To respond to a student request for information or feedback, if the content of the response is not motivated by payment or other consideration from another party.
- 3.4.5.** To use Data to allow or improve operability and functionality of the third-party contractor's internal application.
- 3.5.** Contractor shall not sell or otherwise monetize Data except Data transferred through the purchase of, merger with, or otherwise acquisition of Contractors provided that all parties remain in compliance with this Contract.
- 4. SECURITY AND PROTECTION OF DATA:**
- 4.1.** Contractor shall notify USBE of material system changes that may negatively impact the security of Data prior to such changes being implemented.
- 4.2.** If Contractor is given Data as part of this Contract, the protection of Data shall be an integral part of the business activities of Contractor to ensure that there is no inappropriate or unauthorized use of Data. Contractor shall safeguard the confidentiality, integrity, and availability of Data.
- 4.3.** Contractor shall comply with and protect and maintain Data using methods that are at least as good as or better than that established in the State of Utah's Department of Technology Policies (<https://dts.utah.gov/policies>).
- 4.4.** Contractor shall only transmit or exchange Data via secure means (ex. HTTPS or FTPS). Contractor shall not use, store or process Data on any unencrypted portable or laptop computing device or any portable storage medium.
- 4.5.** Contractor shall store and maintain all Data in data centers located in the United States.
- 4.6.** Contractor shall permit its employees and Subcontractors to access Data remotely only via a secured manner, such as Virtual Private Networks (VPN).
- 4.7.** Contractor shall store all Data, as well as any backups made of that data, in encrypted form using no less than 128-bit key and include all Data as part of a designated backup and recovery process.
- 4.8.** Contractor shall enforce strong password protections on all devices and networks with access to or that store Data.
- 5. INCIDENTS:**
- 5.1.** If Contractor becomes aware of an Incident involving Data by either Contractor or any of Contractor's Subcontractors, Contractor shall notify USBE within one (1) calendar day and cooperate with USBE regarding recovery, remediation, and the necessity to involve law enforcement, if any.
- 5.2.** Contractor shall produce a written remediation plan that includes information about the cause and extent of the Incident and the actions Contractor will take to remediate the Incident and to reduce the risk of incurring a similar type of Incident in the future. Contractor shall present its analysis and remediation plan to USBE within ten (10) calendar days of notifying USBE of an Incident. USBE reserves the right to adjust this plan, in its sole discretion. If Contractor cannot produce its analysis and plan within the allotted time, USBE, in its sole discretion, may perform such analysis and produce a remediation plan, and Contractor shall reimburse USBE for the reasonable costs thereof.
- 5.3.** In the event of an Incident, Contractor shall provide USBE or its designated representatives with access seven (7) days a week, twenty-four (24) hours a day, for the purpose of evaluating, mitigating, or resolving the Incident.
- 5.4.** Unless Contractor can establish that Contractor or any of its Subcontractors is not the cause or source of the Incident, Contractor shall be responsible for the cost of notifying each person whose personal information may have been compromised by the Incident.

- 5.5.** Disclosure of Data by Contractor or any Subcontractor for any reason may be cause for legal action by third parties against Contractor, the State, or their respective agents. Contractor shall indemnify, save, and hold harmless the State, its employees, and agents against any and all claims, damages, liability, and court awards including costs, expenses, and attorney fees incurred as a result of any act or omission by Contractor, or its employees, agents, Subcontractors, or assignees pursuant to this Contract. Notwithstanding any other provision of this Contract, Contractor shall be liable to the State for all direct, consequential and incidental damages arising from an Incident caused by Contractor or its Subcontractors.