



Data Sharing Agreement
Between the Arizona Department of Education and
Otis Educational Systems, Inc.

This Data Sharing Agreement (Agreement) is made between the Arizona Department of Education (Department or ADE) and Otis Educational Systems, Inc. (OtisEd).

RECITALS:

The Arizona Department of Education is a state educational agency, authorized to collect and maintain student educational records and to receive information from public educational agencies (PEAs) consistent with applicable state and federal laws and subject to the federal Family Educational Rights and Privacy Act (FERPA), as authorized by 20 U.S.C. § 1232g(b) and 34 CFR Part 99. Consistent with FERPA, the Department may disclose Personally Identifiable Information (PII), as FERPA defines that term, from students' education records without prior parental or student consent to its authorized representatives for audit, evaluation, and compliance purposes, as FERPA defines those terms.

Otis Educational Systems is a Georgia, for-profit corporation with the purpose of supporting education agencies and institutions in data management solutions and software research and development. OtisEd acknowledges that it will handle Personally Identifiable Information, and will be responsible for complying with the terms of this Agreement and with FERPA.

The purpose of this agreement is for ADE to designate OtisEd as its authorized representative, as FERPA defines that term, so that OtisEd may have access to PII about students on the terms, and for the purposes, stated herein. In furtherance of those purposes, ADE has provided and will continue to provide OtisEd with the data requested by means of a secure file transfer. ADE may provide additional data elements upon OtisEd's written request, subject to the same terms and conditions as stated in this Agreement, and for the purposes stated in this Agreement.

The parties to this Agreement acknowledge that if ADE has provided OtisEd with certain student data in the past, including PII, OtisEd will protect such data by the means described in previous agreements, and will destroy or return such data no later than the termination date of this agreement.

This Agreement is intended to follow U.S. Department of Education initiatives on Safeguarding Student Privacy (<http://www2.ed.gov/policy/gen/guid/fpco/ferpa/safeguarding-student-privacy.pdf>) as well as FERPA and its implementing regulations.

TERMS AND CONDITIONS:

To affect the transfer of data and information that is subject to state and federal confidentiality laws and to ensure that the required confidentiality of personally identifiable information shall always be maintained, OtisEd and the Department agree as follows:

1. The Department agrees not to permit unauthorized access to, and to take reasonable steps to protect, the confidentiality of OtisEd's information, marked "confidential," "proprietary," or with a similar legend indicating its sensitive nature. The Department agrees to treat as confidential information all OtisEd techniques, processes, methods, and know-how observed at the State's facilities. Except as otherwise provided in this Agreement, the Department acknowledges that all processes and materials used or furnished by OtisEd pursuant to this Agreement have been developed at great expense to OtisEd, contain trade secrets of OtisEd, are the sole property of OtisEd and shall be kept confidential by ADE. The Department's obligations shall not apply to any portion of the confidential information: (i) which was rightfully known or becomes rightfully known to the Department without confidential restrictions from a source other than OtisEd; (ii) which was or becomes publicly available or a matter of public knowledge generally, through no fault of the Department; (iii) which is approved by OtisEd, in writing, for disclosure without restrictions; (iv) which is independently developed by ADE; (v) which is generalized know-how or skills; or (vi) which ADE is legally compelled to disclose, provided that the Department has given OtisEd reasonable notice and opportunity to contest such compulsive disclosure, and OtisEd requests that the information be treated as confidential. OtisEd acknowledges that the Department is a public entity, and thus bound by Arizona open meetings and open records laws. It is not a breach of this Agreement for ADE to take any action that it reasonably believes is necessary to comply with open records or open meetings laws.
2. For purposes of this paragraph, "State Proprietary Information" shall include all information disclosed to OtisEd by the Department. OtisEd acknowledges that it shall have a duty to not disclose any State Proprietary Information to any third person for any reason without the express written permission of an ADE officer or employee with authority to authorize the disclosure. OtisEd shall not: (i) disclose any State Proprietary Information to any third person unless otherwise specifically allowed under this Agreement; (ii) make any use of State Proprietary Information except to exercise rights and perform obligations under this contract; (iii) make State Proprietary Information available to any of its employees, officers, agents, or subcontractors except those who have agreed to obligations of confidentiality at least as strict as those set out in this Agreement and who have a need to know such information. OtisEd is held to the same standard of care in guarding State Proprietary Information as it applies to its own confidential or proprietary information and materials of a similar nature, and no less than holding State Proprietary Information in the strictest confidence. OtisEd shall protect confidentiality of the Department's information from the time of receipt to the time that such information is either returned to ADE or destroyed to the extent that it cannot be recalled or reproduced. OtisEd agrees to return all information received from the Department to ADE's custody upon the end of the term of this Agreement, unless otherwise agreed in a writing signed by both parties.
3. State Proprietary Information shall include but not be limited to: (i) names, social security numbers, employer numbers, addresses, and all other data about applicants, employers, or

other clients to whom the Department provides services of any kind; and (ii) personally identifiable student information. OtisEd understands that this information is confidential and protected under state and federal law and agrees to immediately notify the Department if the information is disclosed, either intentionally or inadvertently. If work assignments performed in the course of this Agreement require additional security requirements or clearance, OtisEd will be required to undergo investigation.

4. State Proprietary Information shall not include information that: (i) was in the public domain at the time it was disclosed to OtisEd; (ii) was known to OtisEd without restriction at the time of disclosure from the Department; (iii) that is disclosed with the prior written approval of ADE's officers or employees having authority to disclose such information; (iv) was independently developed by OtisEd without the benefit or influence of the Department's information; or (v) becomes known to OtisEd without restriction from a source not connected to the State of Arizona.
5. Any PII disclosed to OtisEd will be for legitimate educational interests. By disclosing this information to OtisEd, ADE is in no way assigning ownership of this information to OtisEd.
6. OtisEd may use PII only for purposes of fulfilling its duties under this Agreement. OtisEd will abide by the security standards of this Agreement to protect this information in such a manner that it will be disclosed only to OtisEd staff whose duties under this Agreement specifically require them to have access to this information. Under no circumstances shall OtisEd disclose PII to any other person. Under no circumstances shall OtisEd disclose any other information to any other person which would allow individual students to be directly or indirectly identified.
7. OtisEd will immediately return or destroy all PII, in any form, upon the completion of its work or termination of its duties under this Agreement. OtisEd will provide ADE with affidavits confirming that all copies of PII have been destroyed.
8. All persons receiving confidential information must acknowledge in writing that they have received and will abide by the provisions of this Confidentiality Provision by signing the certification included as Paragraph 21.
9. The Parties will enforce the terms of this Confidentiality Provision to its fullest extent. The Parties agree to remove any person from performing work under this Agreement that has or is suspected to have violated the terms of this Confidentiality Provision.
10. Violation of this Confidentiality Provision is cause for immediate termination of this Agreement and could subject any violator to criminal prosecution in accordance with state law.

11. Neither this Confidentiality Provision, nor any part thereof, shall establish any privacy rights to, for, or on the part of, any employee of OtisEd or ADE, or waive any remedies against any such person for illegal, improper, or unauthorized use of the computers or any computer system or portion thereof.
12. This Agreement shall become effective on November 20, 2013, and OtisEd's obligations under this Agreement shall survive the termination or expiration of the contract pursuant to which OtisEd is to provide ADE with an education data repository system as described in the Recitals herein.
13. If OtisEd breaches or threatens to breach the obligations of this Agreement, ADE shall have the right to any available remedy at law or in equity.
14. This Agreement and the respective rights and obligations of the Parties hereto shall not be assigned or transferred in any manner without the prior written consent of all Parties, and, in the absence of such consent, any purported assignment shall be wholly void. Other than as expressly provided by this Agreement, any attempted assignment, by operation of law or otherwise, shall constitute a material breach of this Agreement. All of the terms and provisions of this Agreement shall be binding upon and shall inure to the benefits of the Parties and their respective transferee, successors, and assigns.
15. No Party shall be deemed to be the legal representative of the other. Each Party agrees to assume complete responsibility for its own employees with regard to federal or state employer liability and withholding tax, workers compensation, social security, unemployment insurance, and occupational safety and health administration requirements and other federal, state, and local laws.
16. OtisEd shall defend, indemnify, and hold harmless the Department, its officers and employees, from and against any and all losses suffered by the Department, its officers and employees, and any and all claims, liabilities, or penalties asserted against the Department, its officers and employees, by or on behalf of any person, on account of, based upon, resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of OtisEd based upon a disclosure or release of any confidential information and data. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver or sovereign immunity of the Department, which immunity is hereby reserved to the Department. Nothing in this Agreement shall be construed as providing standing for any third party to enforce the terms of this Agreement.
17. In the event that any Arizona or federal law hereafter enacted (including applicable rulings of a state or federal regulatory agency) or any current law prohibits the Department from providing certain or all of the data required by OtisEd, then the Department will be relieved of its obligation to provide same.

18. This Agreement constitutes the entire understanding between the Parties with respect to the subject matter hereof and cannot be modified except by mutual written agreement between the Parties. This Agreement shall benefit and be binding upon the Parties hereto and their respective successor and assigns. This Agreement shall be interpreted under the laws of the State of Arizona and shall be enforceable within the courts of Arizona.
19. This Agreement shall remain in effect until June 30, 2014 unless terminated, canceled or extended as provided herein. All PII provided by ADE must be destroyed by OtisEd by June 30, 2014. This Agreement is renewable upon written approval by the authorized representative of each party. This Agreement may only be amended by a writing signed by both parties.
20. ADE may terminate this Agreement immediately and without notice if there is any violation of the terms of this Agreement.
21. **CERTIFICATION:** I, Tim Nall, have read this Confidentiality Provision, and agree to abide by its terms.

Dated this 2nd day of December, 2013.

22. Notice under this Agreement shall be given to:

Arizona Department of Education at:

Carrie O'Brien

Director of Legal Services

1535 W. Jefferson Street, Bin 62

Phoenix, Arizona 85007

Carrie.O'brien@azed.gov

(602)542-3378

Otis Educational Systems, Inc. at:

Tim Nall

Chief Operating Officer

3845 Powder Springs Road

Powder Springs, GA 30127

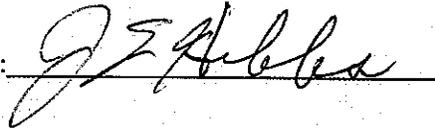
678-810-0080 Ext. 102

23. Notice is given of A.R.S. § 12-133, 12-1518, and 38-511.

ARIZONA DEPARTMENT OF EDUCATION

OTIS EDUCATIONAL SYSTEMS, INC.

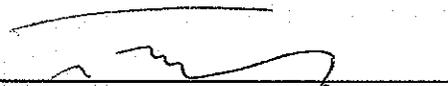
By:



Its:

Deputy Superintendent

By:



Its:

Chief Operating Officer