**Annex 1**

State Wage Interchange System (SWIS) Data Sharing Agreement FERPA Written Agreement

## BACKGROUND

Performance Accountability Customer Information Agencies (PACIAs) that are signatories to the SWIS Data Sharing Agreement need to receive and redisclose personally identifiable information (PII) from student Education Records protected by the Family Educational Rights and Privacy Act (FERPA), 20 USC 1232g, and its implementing regulations, 34 CFR part 99, in order to meet the reporting requirements outlined in the Workforce Innovation and Opportunity Act (WIOA).

PACIAs are comprised of Access PACIAs and Non-Access PACIAs, as defined in Section V.N. of the SWIS Data Sharing Agreement. Some, but not all, Access PACIAs (state educational authority Access PACIAs) and Non-Access PACIAs (state educational authority Non-Access PACIAs) also constitute “state educational authorities” under FERPA, as defined in Section V.X. of the SWIS Data Sharing Agreement, that exercise authority over the Federally and state- supported “Education Programs,” as defined in Section V.I. of the SWIS Data Sharing Agreement. This Annex 1, SWIS Data Sharing Agreement/FERPA Written Agreement (this Agreement), pertains to the designation of authorized representatives by these state educational authority Access PACIAs and/or state educational authority Non-Access PACIAs, as described further below.

## PURPOSES

PII from Education Records disclosed without prior written consent to state educational authority Access PACIAs and/or state educational authority Non-Access PACIAs and their authorized representatives may only be used to evaluate and/or audit programs referenced in Section IX of the SWIS Data Sharing Agreement if those programs constitute “Federally- or state-supported education programs” under FERPA. This Agreement is entered into to document the terms under which state educational authority Access PACIAs and/or state educational authority Non- Access PACIAs are permitted under FERPA to receive, use, and further disclose, without prior written consent, PII from students’ Education Records for the purpose of evaluating and/or auditing Federally-supported education programs authorized under WIOA.

State educational authority Access PACIAs and/or state educational authority Non-Access PACIAs signed to the SWIS Data Sharing Agreement may receive and then may make further disclosures of PII from Education Records, without prior consent, to additional parties to the SWIS Data Sharing Agreement both by designating these additional parties as the state educational authority Access PACIAs’ and/or state educational authority Non-Access PACIAs’, respectively, “authorized representatives” for the purpose of evaluating and/or auditing

Federally-supported education programs authorized under WIOA (or other Federally- or state- supported education programs) and by complying with the other written agreement provisions in the FERPA regulations at 34 CFR 99.35(a)(3). This Agreement serves to secure compliance with the written agreement provisions in the FERPA regulations by state educational authority Access PACIAs and state educational authority Non-Access PACIAs and any entities that are both parties to the SWIS Data Sharing Agreement and listed as authorized representatives in Section IV of this Agreement. For entities that are not parties to the SWIS Data Sharing Agreement but that are listed as entities that may be designated as additional authorized representatives in Section IV of this Agreement, additional written agreements (not appended or attached hereto) must be entered into with these entities to bind them to the terms and conditions of the SWIS Data Sharing Agreement and to meet the requirements of 34 CFR 99.35(a)(3).

Further, this Agreement will not suffice to secure compliance with the written agreement provisions in the FERPA regulations for Access PACIAs that do not constitute “state educational authorities” (under FERPA, entities that exercise authority over the Federally- and state- supported education programs referenced in Section IX of the SWIS Data Sharing Agreement) and are not herein designated by a state educational authority Non-Access PACIA as an authorized representative of the applicable state educational authority Non-Access PACIA. These Access PACIAs would need to execute another Agreement, the Supplemental FERPA Agreement to the SWIS Data Sharing Agreement, in order to be designated as the authorized representative of the applicable state educational authority, to permit the Access PACIA to re- disclose, without prior written consent, PII from Education Records further to additional authorized representatives of that state educational authority that are also parties to the SWIS Data Sharing Agreement, and to otherwise comply with the requirements set forth in FERPA.

## AUTHORITY

The Authority for this Agreement is set forth in Section III of the SWIS Data Sharing Agreement, as well as in 20 USC 1232g(b)(3) and (b)(5), 34 CFR 99.31(a)(3)(iv), 99.33, and 99.35(a)(3).

## DESIGNATION OF AUTHORIZED REPRESENTATIVES

Those state educational authority Access PACIAs that are authorized to collect and use PII from student Education Records consistent with applicable state and Federal laws, including FERPA, hereby designate the state Unemployment Insurance Agencies (SUIAs), the Employment and Training Administration (ETA), and the ICON grantee that are parties to the SWIS Data Sharing Agreement as their authorized representatives, consistent with 20 USC 1232g and 34 CFR 99.35 and the terms and conditions of the SWIS Data Sharing Agreement. If the state educational authority Access PACIAs enter into a separate written agreement with their agent(s) or contractor(s) binding them to the terms of the SWIS Data Sharing Agreement and consistent with

the terms of 34 CFR 99.35(a)(3), then the state educational authority Access PACIAs also may designate their agent(s) or contractor(s) as additional authorized representatives. If the SUIAs enter into a separate written agreement with their agent(s) or contractor(s) binding them to the terms of the SWIS Data Sharing Agreement and consistent with the terms of 34 CFR 99.35(a)(3), then the SUIAs also may designate their agent(s) or contractor(s) as additional authorized representatives. If the ICON grantee enters into a separate written agreement with the SWIS Operations Contractor binding the SWIS Operations Contractor to the terms of the SWIS Data Sharing Agreement and consistent with the terms of 34 CFR 99.35(a)(3), then the ICON grantee also may designate the SWIS Operations Contractor as an additional authorized representative.

For state educational authority Non-Access PACIAs that are authorized to collect and use PII from student Education Records consistent with applicable state and Federal laws, including FERPA, these state educational authority Non-Access PACIAs hereby designate the Access PACIA(s) that are not state educational authority Access PACIA(s), the SUIAs, the Employment and Training Administration (ETA), and the ICON grantee that are parties to the SWIS Data Sharing Agreement as their authorized representatives, consistent with 20 USC 1232g and 34 CFR 99.35 and the terms and conditions of the SWIS Data Sharing Agreement. If the state educational authority Non-Access PACIAs enter into a separate written agreement with their agent(s) or contractor(s) binding them to the terms of the SWIS Data Sharing Agreement and consistent with the terms of 34 CFR 99.35(a)(3), then the state educational authority Non-Access PACIAs also may designate their agent(s) or contractor(s) as additional authorized representatives. If the Access PACIAs that are not state educational authorities but that are designated herein as authorized representatives of the applicable state educational authority Non- Access PACIAs enter into a separate written agreement with their agent(s) or contractor(s) binding them to the terms of the SWIS Data Sharing Agreement and consistent with the terms of 34 CFR 99.35(a)(3), then those Access PACIAs also may designate their agent(s) or contractor(s) as additional authorized representatives. If the SUIAs enter into a separate written agreement with their agent(s) or contractor(s) binding them to the terms of the SWIS Data Sharing Agreement and consistent with the terms of 34 CFR 99.35(a)(3), then the SUIAs also may designate their agent(s) or contractor(s) as additional authorized representatives. If the ICON grantee enters into a separate written agreement with the SWIS Operations Contractor binding the SWIS Operations Contractor to the terms of the SWIS Data Sharing Agreement and consistent with the terms of 34 CFR 99.35(a)(3), then the ICON grantee also may designate the SWIS Operations Contractor as an additional authorized representative.

For Access PACIAs that are not “state educational authorities” under FERPA, that have not been designated by state educational authority Non-Access PACIAs as their authorized representatives, and that have, therefore, executed the Supplemental FERPA Agreement to the SWIS Data Sharing Agreement, those Access PACIAs hereby designate the SUIAs, the ETA, and the ICON grantee that are parties to the SWIS Data Sharing Agreement as additional

authorized representatives, consistent with 20 USC 1232g and 34 CFR 99.35 and the terms and conditions of the SWIS Data Sharing Agreement, of the state educational authority. If the Access PACIAs that have executed the Supplemental FERPA Agreement to the SWIS Data Sharing Agreement enter into a separate written agreement with their agent(s) or contractor(s) binding them to the terms of the SWIS Data Sharing Agreement and consistent with the terms of 34 CFR 99.35(a)(3), then those Access PACIAs also may designate their agent(s) or contractor(s) as additional authorized representatives. If the SUIAs enter into a separate written agreement with their agent(s) or contractor(s) binding them to the terms of the SWIS Data Sharing Agreement and consistent with the terms of 34 CFR 99.35(a)(3), then the SUIAs also may designate their agent(s) or contractor(s) as additional authorized representatives. If the ICON grantee enters into a separate written agreement with the SWIS Operations Contractor binding the SWIS Operations Contractor to the terms of the SWIS Data Sharing Agreement and consistent with the terms of 34 CFR 99.35(a)(3), then the ICON grantee also may designate the SWIS Operations Contractor as an additional authorized representative.

## REQUIREMENTS

To effectuate the transfer of data and information that is subject to state and Federal confidentiality laws, and to ensure that the required confidentiality of PII from Education Records is maintained, the entities designated as authorized representatives pursuant to either Section IV of this Agreement or the Supplemental FERPA Agreement (*i.e.*, any Access PACIAs that are not state educational authorities that have executed the Supplemental FERPA Agreement to the SWIS Data Sharing Agreement, the SUIAs, the ETA, and the ICON grantee that are parties to the SWIS Data Sharing Agreement) agree:

* 1. That PII from students’ Education Records to be disclosed will consist of student Social Security numbers, and in some cases may also include the credentials that students attained and their program completion status from an eligible training provider. This PII will be used to obtain the students’ Wage Data only for the purposes set forth in Section II of this Agreement.
	2. To destroy all PII from Education Records referenced above in Section V.1 of this Agreement when no longer needed for the purposes outlined in the Section II of this Agreement. Destruction of the PII from Education Records shall consist of, but shall not be limited to, the degaussing of magnetic tape files and permanent deletion of electronic data. Nothing in this Agreement authorizes any authorized representative to maintain the PII for more than five (5) years from the date the Result, as defined in Section V.U. of the SWIS Data Sharing Agreement, is received.
	3. In all respects, to comply with the applicable provisions of FERPA. For the purposes of this Agreement and the specific projects conducted pursuant to this Agreement, FERPA includes any amendments or other relevant provisions of Federal law, as well as all requirements set forth in 20 USC 1232g and 34 CFR part 99. Nothing in this Agreement shall be construed to allow any authorized representative to maintain, use, disclose, redisclose, or share PII from Education Records in a manner not allowed under Federal law or regulation, as set forth above in Section II of this Agreement and in Section IX, Paragraph A, of the SWIS Data Sharing Agreement.
	4. To use PII from Education Records disclosed under this Agreement only for the purposes outlined in Section II of this Agreement. Nothing in this Agreement shall be construed to authorize the authorized representatives to have access to additional PII from Education Records that is not included in the scope of this Agreement and the SWIS Data Sharing Agreement. The authorized representatives further agree not to disclose PII from Education Records received under this Agreement to any other entity without prior written approval of the State educational authority from which the PII originated and as otherwise consistent with state and Federal law, including FERPA.
	5. To comply with the confidentiality provisions in Section XI (Confidentiality/Restrictions on Use of Information) of the SWIS Data Sharing Agreement.

## EFFECT OF AGREEMENT

This Agreement does not, in itself, authorize the expenditure or reimbursement of any Federal or state funds. Nothing in this Agreement shall obligate the parties to expend appropriations or other monies.

This Agreement is not intended to confer any right upon any private person.

Further, this Agreement shall not be interpreted to limit, supersede, or otherwise affect a party’s normal operations or decisions in carrying out its mission, statutory or regulatory.

Amendments to this Agreement must be made in accordance with Section XV of the SWIS Data Sharing Agreement and must be executed in writing and signed by individuals with authority to bind the parties involved. No oral or unilateral amendments will be effective. Only terminations in accordance with Section XIV of the SWIS Data Sharing Agreement will be effective.

## ATTACHMENT 1

Supplemental FERPA Agreement

## PARTIES

The is a state educational authority (state educational authority) under the Family Educational Rights and Privacy Act (FERPA), 20 USC 1232g; and 34 CFR part 99, as defined in Section V.X. of the SWIS Data Sharing Agreement, that exercises authority over the Federally- and state-supported “Education Programs,” as defined in Section V.J. of the SWIS Data Sharing Agreement. The state educational authority is authorized to collect and maintain Personally Identifiable Information (PII) from student Education Records consistent with applicable state and Federal laws.

The Access Performance Accountability and Customer Information Agency (Access PACIA) needs to receive and then share PII from student Education Records for the purposes set forth below. An Access PACIA, as defined in Section V.N. of the SWIS Data Sharing Agreement, is a PACIA that requests data from the State Wage Interchange System on behalf of the state educational authority.

## PURPOSES

This Supplemental FERPA Agreement (this Agreement) documents the terms under which the state educational authority is authorized to release, without prior written consent, certain PII from student Education Records to the Access PACIA, as the state educational authority’s authorized representative, and the Access PACIA is authorized to further release, without prior written consent, said PII to other, specifically listed authorized representatives of the state educational authority, as set forth in Section IV of this Agreement, for the purpose of evaluating and/or auditing Federally-supported education programs authorized under Workforce Innovation and Opportunity Act (WIOA). This Agreement also documents the requirements under FERPA on the use, further disclosure, protection, and destruction of this PII by these authorized representatives.

PII from Education Records disclosed to the Access PACIA and other specifically listed authorized representatives in this Agreement only may be used to evaluate and/or audit the programs referenced in Section IX of the SWIS Data Sharing Agreement if those programs constitute Federally- or state-supported education programs under FERPA.

## AUTHORITY

The Authority for this Agreement is set forth in Section III of the SWIS Data Sharing Agreement, which is incorporated by reference herein, as well as in 20 USC 1232g(b)(3) and (b)(5), 34 CFR 99.31(a)(3)(iv) and 99.35(a)(3).

## DESIGNATION OF AUTHORIZED REPRESENTATIVES

The state educational authority hereby designates the Access PACIA as its authorized representative for the purposes of evaluation and/or audit of the programs referenced in Section IX of the SWIS Data Sharing Agreement that constitute Federally- or state-supported education programs under FERPA.

The state educational authority further understands and expressly authorizes the Access PACIA to enter into the SWIS Data Sharing Agreement and the Annexes thereto in which state Unemployment Insurance Agencies (SUIAs), the Employment and Training Administration (ETA), and the ICON grantee that are parties to the SWIS Data Sharing Agreement are designated as additional authorized representatives of the state educational authority and in which the Access PACIA’s agent(s) or contractor(s), the SUIA’s agent(s) or contractor(s), and the SWIS Operations Contractor may be further designated as additional authorized representatives of the state educational authority, provided that they have entered into separate written agreements binding them to the terms of the SWIS Data Sharing Agreement and consistent with the terms of 34 CFR 99.35(a)(3).

## AGREEMENT

To effectuate the transfer of data and information that is subject to state and Federal confidentiality laws and to ensure that the required confidentiality of PII from Education Records shall be maintained, the Access PACIA agrees:

* 1. That the PII from students’ Education Records will consist of Social Security numbers and in some cases may also include the credentials that students attained and their program completion status from an eligible training provider. This PII will be used by the Access PACIA to obtain the students’ Wage Data for the purposes set forth in Section II of this Agreement.
	2. To destroy all PII from Education Records referenced above in Section V.1 of this Agreement when no longer needed for the purposes outlined in Section II of this Agreement. Destruction of the PII from Education Records shall consist of, but shall not be limited to, the degaussing of magnetic tape files and permanent deletion of electronic data. Nothing in this Agreement authorizes the Access PACIA to maintain the PII from Education Records for more than five (5) years from the date the Result, as defined by Section V.U. of the SWIS Data Sharing Agreement, is received.
	3. In all respects, to comply with the applicable provisions of FERPA. For the purposes of this Agreement and the specific projects conducted pursuant to this Agreement, FERPA includes any amendments or other relevant provisions of Federal law, as well as all requirements of 20 USC 1232g and 34 CFR part 99. Nothing in this Agreement shall be construed to allow any party to maintain, use, disclose, redisclose, or share PII from student Education Records in a manner not allowed under Federal law or regulation, as set forth above in Section II of this Agreement and in Section IX, Paragraph A, of the SWIS Data Sharing Agreement.
	4. To use PII from Education Records disclosed under this Agreement only for the purposes outlined in Section II of this Agreement. Nothing in this Agreement shall be construed to authorize the Access PACIA to have access to additional PII from Education Records that is not included in the scope of this Agreement and the SWIS Data Sharing Agreement. The Access PACIA is authorized to further disclose PII from Education Records received under this Agreement to other entities that have been designated as authorized representatives pursuant to Section IV of this Agreement and pursuant to the terms and conditions set forth in the SWIS Data Sharing Agreement and the Annexes thereto. However, this Agreement does not authorize the Access PACIA to disclose PII from Education Records to any other entity or under any other terms and conditions without prior written approval from the state educational authority from which the PII originated and as otherwise consistent with state and Federal law, including FERPA.
	5. To comply with the confidentiality provisions in Section XI (Confidentiality/Restrictions on Use of Information) of the SWIS Data Sharing Agreement.
	6. To comply with FERPA’s recordkeeping requirements at 34 CFR 99.32 by keeping a record of any other entity to which PII from Education Records is further disclosed under the terms of the SWIS Data Sharing Agreement and the Annexes thereto, along with such entity’s legitimate interest(s) in obtaining this PII from Education Records. This requirement applies, but is not limited to: (1) the recordation of any disclosure of PII from Education Records to the ICON grantee or SWIS Operations Contractor (as defined in the SWIS Data Sharing Agreement) for the purpose of performing duties imposed upon them pursuant to the terms of the SWIS Data Sharing Agreement; (2) any SUIA that receives a Query for Wage Data (as defined in the SWIS Data Sharing Agreement) pursuant to the terms of the SWIS Data Sharing Agreement; and, (3) any representative of

the Secretary of Labor or the Secretary of Education to carry out their duties pursuant to the terms of the SWIS Data Sharing Agreement.

* 1. To submit a signed copy of this Agreement to the ETA, as set forth in Section XXIII of the SWIS Data Sharing Agreement, to accompany the state’s signed copy of the SWIS Data Sharing Agreement before PII from Education Records is exchanged under the SWIS Data Sharing Agreement.

The state educational authority agrees to transmit PII from Education Records to the Access PACIA in conformity with applicable confidentiality provisions, including FERPA and state laws governing the confidentiality of the information.

## EFFECT OF AGREEMENT

This Agreement does not in itself authorize the expenditure or reimbursement of any Federal or state funds. Nothing in this Agreement shall obligate the parties to expend appropriations or other monies, or to enter into any contract or other obligation.

This Agreement is not intended to confer any right upon any private person.

Further, this Agreement shall not be interpreted to limit, supersede, or otherwise affect either party’s normal operations or decisions in carrying out its mission, whether statutory or regulatory.

Amendments must be bilaterally executed in writing, signed by authorized representatives of the parties involved. No oral or unilateral amendments will be effective. Only terminations done in accordance with the terms of this Agreement may be done unilaterally.

The terms of this Agreement shall be governed by and construed in accordance with the applicable state or Federal laws, including FERPA.

## EFFECTIVE DATE, DURATION, TERMINATION, AND AMENDMENT

This Agreement shall become effective upon the date of the last signature of the undersigned parties and will expire five (5) years from the effective date unless terminated by any party to this Agreement. At the expiration of five (5) years, the parties may jointly agree in writing, at their sole discretion, to renew the Agreement for an additional five (5) years. The parties shall submit a fully executed copy of this Agreement, as well as any subsequent written renewal or termination of this Agreement, to the SWIS Advisory Group, as defined in the SWIS Data Sharing Agreement. This Agreement may be terminated in writing, upon thirty (30) calendar days’ written notice delivered by either party to the other party. Any such termination shall become effective thirty (30) calendar days after the date upon which the non-terminating party receives written notice from the terminating party. In no case will any oral termination be

effective. This Agreement shall automatically terminate in the event that the SWIS Data Sharing Agreement terminates in accordance with Section XIV of said SWIS Data Sharing Agreement.

Upon the effective date of the termination of this Agreement, the Access PACIA will no longer have the authority to use or further disclose PII from Education Records and thus must promptly destroy all PII from Education Records in accordance with the terms set forth in Section V.2. of this Agreement. Termination of this Agreement shall not relieve the Access PACIA of its obligation to destroy all PII from Education Records.

This Agreement may be amended by a written Agreement that is signed by authorized representatives of both parties, if the amendment is approved by the Advisory Group, as defined in the SWIS Data Sharing Agreement, and is appended to the SWIS Data Sharing Agreement.

## SIGNATORIES

Each Party to this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each party represents and warrants that the execution and delivery of the Agreement and the performance of such party’s obligations hereunder have been duly authorized and that the Agreement is a valid and legal Agreement binding on such party and enforceable in accordance with its terms.

For the [State Educational Authority]

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| --- | --- | --- |
|  |  |  |
| Print Name |  | Signature and Date |

For the [Access PACIA]

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| Print Name |  | Signature and Date |