

**DATA USE & SECURITY AGREEMENT
BETWEEN**

_____ **School District**

(Hereinafter called "*the District*")

AND

THE HIGHER EDUCATION STUDENT ASSISTANCE AUTHORITY (HESAA)

(Collectively the "Parties")

RECITALS

WHEREAS, students are required to file a Free Application for Federal Student Aid (FAFSA) to receive access to Title IV student aid programs such as the Federal Pell Grant and Federal student loans. The FAFSA or the New Jersey Alternative Application for Financial Aid is also used by colleges and universities in awarding most state-based or other higher education, institutional-based aid;

WHEREAS, under the FAFSA Completion Initiative the U.S. Department of Education (the "Department") has authorized State Grant Agencies, including HESAA, to provide limited Free Application for Federal Student Aid (FAFSA) information to local educational agencies (LEAs) and secondary schools when the LEA and/or secondary school has an Established Relationship with a student FAFSA applicant. HESAA is participating in the FAFSA Completion Initiative in order to promote students' access to financial aid that can help increase college enrollment and completion;

WHEREAS, in the case of an LEA, an Established Relationship exists where the student FAFSA applicant is enrolled in a secondary school under the legal authority of the LEA or the LEA otherwise is providing services to the FAFSA applicant. In the case of a secondary school, an Established Relationship exists where the student FAFSA applicant is enrolled in the secondary school itself or the secondary school otherwise is providing services to the FAFSA applicant;

WHEREAS, the District desires HESAA to provide such limited FAFSA Filing Status Information so as to assist students in completing the FAFSA; and

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants contained herein, the District and HESAA hereby agree as follows:

1. Incorporation of Recitals

The matters recited above are hereby incorporated into and made part of this Agreement.

2. Scope of Services

- a. HESAA agrees to provide access to limited student FAFSA Filing Status Information through the New Jersey Financial Aid Management System (NJFAMS) to the District as set forth in EXHIBIT A ("Data Access"), in accordance with the terms and conditions of this agreement.

- b. In exchanges for the Data Access provided by HESAA to the District, the District shall use its best efforts to encourage its students to complete the FAFSA or New Jersey Alternate Application for Financial Aid.
- c. The parties may, from time to time, request changes in the Scope of Services. Any such changes shall be documented by a written amendment to this Agreement signed by both parties. Such amendment must be consistent with the terms of HESAA's agreement with the Department and applicable law.

3. **Compensation**

Each party agrees to provide the services described in Section 2 ("Scope of Services") at no cost or at no reimbursement of expenses to the other party.

4. **Term and Termination**

a. **Term**

The initial term of the Agreement will begin as of the date of HESAA's notice to the District that this Agreement has been accepted and will end September 30, 2022. The agreement shall automatically renew on October 1, 2022 for a period of twelve (12) months and, thereafter renew annually on October 1st of each subsequent year, unless terminated earlier in accordance with this Agreement.

b. **Termination**

- i. Termination for Convenience. Each Party may, at its sole discretion, terminate this Agreement upon ten (10) days' written notice to each other.
- ii. Termination for Cause. Each Party may terminate this Agreement at any time, with cause, upon five (5) days' written notice to the other Party of the other Party's violation of its obligations herein that is not cured (if curable) within such five (5) day period. Each Party may further terminate this Agreement upon notice of any Breach.
- iii. Change in Law/Interpretation. Each Party may terminate this Agreement immediately upon notice to the other in the event federal or state law is enacted, amended, or judicially interpreted so as to render continued fulfillment of the Agreement, on the part of the Party terminating the Agreement, wholly unreasonable or impossible. HESAA reserves the right, at its sole discretion, to amend this Agreement throughout the Agreement Term to incorporate any modifications necessary for compliance with all applicable state and federal laws, rules, regulations, requirements, and guidelines.
- iv. Effect of Termination. Upon any termination, all provisions of this Agreement which by their nature should survive termination shall survive termination, including all indemnities, confidentiality, records retention, and right to audit, and will remain in full force and effect.

5. Data Usage and Security

- a. The District shall not disclose or use the FAFSA Filing Status Information it receives from HESAA except as provided for in this Agreement. The District must protect all Federal Student Aid Information from unauthorized disclosure or access and shall restrict access to the data provided or created under this Agreement to only those Authorized Personnel who need the data to perform their official duties in connection with the uses of the data authorized in this Agreement. The District shall advise all Authorized Personnel who have access to the data of the confidential nature of the data and the safeguards required to protect the data.
- b. The District shall not re-disclose or share the FAFSA Filing Status Information obtained from HESAA in personally identifiable form other than (1) to Authorized Personnel of the District, to the FAFSA applicant and to the FAFSA applicant's parents if the applicant is under age 18, to the applicant if the applicant is age 18 or older or enrolled in a postsecondary institution, or to any other party with the consent of the FAFSA applicant or the consent of the FAFSA applicant's parents if the FAFSA applicant is under the age of 18, or (2) if required to do so by law and if such use is consistent with all applicable privacy laws, including the privacy provisions of section 483(a)(3)(E) of the HEA, 20 U.S.C. 1090(a)(3)(E) and the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. 1232g).
- c. Data Ownership. The Parties retain all rights and interest to their own internal data. Each Party retains the right to utilize data resulting from this collaboration for internal use, provided that such use: (a) is not prohibited by this Agreement; and (b) is permitted by law, including but not limited to FERPA.
- d. Authorized Personnel are District employees who require access to the FAFSA Filing Status Information to determine the completion status of a student's FAFSA and facilitate providing assistance to such students in completing the FAFSA (e.g., high school counselors), including both paid and non-paid staff and authorized agents such as contractors, subcontractors, volunteers, or other parties to whom the District has outsourced any of its services or functions. All Authorized Personnel must be under the direct control of the District with respect to the use and maintenance of FAFSA Filing Status Information.

6. Security Incidents:

The District must report immediately to HESAA any security incidents, breaches, potential threats, or vulnerabilities involving the FAFSA Filing Status Information. If a Security Incident occurs, the District must immediately notify HESAA at: **(609)-588-6682**.

The District shall follow-the phone call with written notification sent immediately via overnight mail to HESAA the following address:

New Jersey Higher Education Student Assistance Authority
ATTENTION: Gregory Foster, Esq.
Chief Compliance Officer
4 Quakerbridge Plaza, P.O. Box 545, Trenton, New Jersey 08625

The report of any notice of a breach in data use to HESAA **must** contain:

1. The nature of the unauthorized use, disclosure, or re-disclosure; and
2. The ISIR data or FAFSA Filing Status Information used, disclosed, or re-disclosed; and
3. The person or entity, if known, who made the unauthorized use or received the unauthorized disclosure, or re-disclosure.

The package shall also provide the following information: nature and impact of the Security Incident; actions already taken by the District; the District's assessment of immediate risk; and corrective measures to be taken, evaluation of alternatives, and next steps.

The District shall continue providing (i) appropriate status reports to HESAA regarding the resolution of the Security Incident and prevention of future such Security Incidents, and (ii) cooperation, as reasonably requested by HESAA, in order to further investigate and resolve the Security Incident. HESAA may require that District's access to NJFAMS be suspended or terminated, or other appropriate action be taken pending such resolution.

In turn, HESAA will report to the Department details of the breach in data use reported by the District regarding:

1. What HESAA has done or will do to notify affected FAFSA applicants and to mitigate any deleterious effect of the unauthorized use, disclosure, or re- disclosure; and
2. What corrective action(s) HESAA has taken or will take to prevent future similar unauthorized use, disclosure, or re-disclosure.

In the event that HESAA requests additional information or action from the District concerning the unauthorized disclosures, the District shall exercise all reasonable efforts to comply with such requests.

7. **Audits**

The District shall maintain copies of this Agreement and make its Authorized Personnel aware of the terms of this Agreement. HESAA may, at its discretion, audit and monitor the District's records, processes, procedures, and electronic systems for compliance with the terms of this Agreement, including performance of onsite inspections of the schools in the District. If HESAA determines to conduct a site visit, then such audit will occur during reasonable business hours and with appropriate notice to the District.

8. **Confidentiality**

The District shall protect the confidentiality of FAFSA Filing Status Information so that unauthorized persons cannot retrieve any data by computer, remote terminal, or other means. Authorized Personnel of the District who plan to access FAFSA Filing Status Information data through NJFAMS will use standard NJFAMS security protocol to access these data after completion of an annual verification process conducted by HESAA. The District shall comply with FERPA and protect any confidential student information it receives or accesses that could make a student's identity traceable and well as any confidential data analysis or report.

9. **Miscellaneous**

- a. Applicable Law and Venue. This Agreement and any incorporated documents will be governed by and construed in accordance with the laws of the State of New Jersey. The exclusive venue of any suit brought concerning the Agreement and any incorporated documents is fixed in any Court of competent jurisdiction in Mercer County, New Jersey.
- b. Severability and Waiver. The invalidity, illegality, or unenforceability of any provisions of this Agreement will in no way affect the validity, legality, or enforceability of any other provisions. Each and every right granted to the Parties hereunder or under any other document delivered hereunder or in connection herewith, or allowed them by law or equity, will be cumulative and may be exercised from time to time. Failure by HESAA or the District at any time to require strict performance of any contractual provision or obligation contained herein will not constitute a waiver or diminish the rights of either party thereafter to demand strict compliance.
- c. Notwithstanding any provision of this Agreement to the contrary, as a New Jersey state agency, HESAA is subject to and will comply with the New Jersey Open Public Records Act (OPRA) (N.J.S.A 47:1A-1 et. seq.) as interpreted by judicial opinions and opinions of the Attorney General of the State of New Jersey. The District shall cooperate with HESAA in the production of documents responsive to any such requests under OPRA.
- d. To the extent permitted under the Constitution and laws of the State of New Jersey, the District will indemnify and hold harmless HESAA, its officers and employees for any claims for damages that arise from the disclosure by the District of information held by HESAA to which the District is allowed access under this Agreement.
- e. Excluded Parties List System. HESAA is federally mandated to adhere to the directions provided in the President's Executive Order 13224, Executive Order on Terrorist Financing -Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism and any subsequent changes made to it. The District shall be in compliance with the State of New Jersey statutes and rules relating to procurement ensuring vendors are not listed on the federal government's terrorism watch list as described in Executive Order 13224.

- f. **Compliance with Law.** The District shall comply with all Federal, State and local laws, statutes, ordinances, rules and regulations and the orders and decrees of any court or administrative bodies or tribunals in any matter affecting the performance of this Agreement, including, if applicable, workers compensation laws, compensation statutes and regulations, and licensing laws and regulations. When requested to do so by HESAA, the District shall furnish HESAA with satisfactory proof of its compliance. The District shall provide all labor and equipment necessary to perform its services as envisioned under this Agreement. All employees of the District will be a minimum of 18 years of age and experienced in the type of work to be performed.
- g. **Assignment, Delegation, or Subcontracting.** No contractual rights, interests, or obligations assigned, delegated, or subcontracted by the District shall relieve the District of any obligation or responsibility under this Agreement.

10. **Notices**

All legal notices required under this Agreement shall be in writing and sent to the addresses and persons as set forth below. All notices shall be deemed received when (i) delivered personally, or (ii) sent by email (followed by the actual document), or (iii) one day after deposit with a commercial express courier specifying next day delivery, with written verification of receipt. Refusal to accept delivery has the same effect as receipt.

If to HESAA:

Marnie B. Grodman, Esquire
 Director, Legal & Governmental Affairs
 New Jersey Higher Education Student Assistance Authority
 4 Quakerbridge Plaza
 P.O. Box 545
 Trenton, New Jersey 08625
 Email: mgrodman@hesaa.org

If to the District

Name: _____

Title: _____

Name Of District: _____

Address: _____

Address: _____

Address: _____

Email: _____

11. Secondary Schools:

The secondary schools in the District are as follows:

Name of Secondary School	
Contact Person at school	Email
Name of Secondary School	
Contact Person at school	Email
Name of Secondary School	
Contact Person at school	Email
Name of Secondary School	
Contact Person at school	Email
Name of Secondary School	
Contact Person at school	Email
Name of Secondary School	
Contact Person at school	Email
Name of Secondary School	
Contact Person at school	Email
Name of Secondary School	
Contact Person at school	Email
Name of Secondary School	
Contact Person at school	Email

12. Entire Agreement.

This Agreement (including its Exhibits) contains the final, complete and exclusive understanding of the Parties, and supersedes all prior contemporaneous, oral or written understandings, representations, and negotiations between Parties relating to the subject matter of this Agreement. The Parties further agree that this Agreement may not in any way be explained or supplemented by a prior or existing course of dealings between the Parties, by usage of trade or custom, or by any prior performance between the Parties pursuant to this Agreement or otherwise.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives.

Name of District: _____

By: _____

Name: _____

Title: _____

Date: _____

New Jersey Higher Education Student Assistance Authority

By: _____

Name: Marnie B. Grodman

Title: Director, Legal & Governmental Affairs

To Submit Online, You Must Download and Open in Adobe

EXHIBIT A – Data Access Information

HESAA, via the New Jersey Financial Aid Management System (NJFAMS) may only disclose the following FAFSA Filing Status Information to the District:

1. Student first name;
2. Student last name;
3. Student date of birth;
4. Student zip code (not full address);
5. If filed, the date the FAFSA form was submitted to the Department;
6. The date the Department processed the FAFSA form, if applicable;
7. A Selected for Verification flag indicating the need for the FAFSA applicant to provide additional information, if applicable; and
8. A FAFSA completion status indicator, as determined by HESAA (i.e., FAFSA not submitted, FAFSA complete, or FAFSA incomplete).

HESAA is prohibited from disclosing the following FAFSA or Institutional Student Information Record (ISIR) information to the District:

1. Student Social Security Number;
2. Student and parent financial information; and
3. Any other information, except the FAFSA Filing Status Information list above.