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IdahoDigitalLearning.org

## **Memorandum of Understanding**

This Memorandum of Understanding (MOU) is entered into as of this day, by and between the Idaho Digital Learning Alliance (IDLA) and the signing Local Education Agency (identified herein as the local education agency or LEA), subject to the terms and conditions outlined herein. IDLA and LEA are sometimes collectively referred to herein as the "Parties."

### **RECITALS**

WHEREAS, IDLA is authorized by Idaho Code §§33-5501 et seq. to establish a comprehensive digital learning environment for Idaho children of school age and to enter into agreements with other public agencies, including school districts and public charter schools, for the provision of services and offering of courses; and

WHEREAS, LEA desires to provide access for its students to IDLA's programs and courses; and

WHEREAS, IDLA desires to provide access to its programs and courses to LEA's students on the terms and conditions stated herein.

NOW, THEREFORE, it is understood and agreed between the Parties as follows:

1. **AUTHORITY.** This MOU is entered into pursuant to Idaho Code §§ 33-512, 33-5504 and 67-2332 through 67-2333.

2. **OBJECTIVE AND RESPONSIBILITIES OF THE PARTIES.**

A. **OBJECTIVE.** The objective of this MOU is to allow IDLA to provide the LEA and its students with online courses wherein the LEA serves as the Public School Program of Record, provides an individual to act as Site Coordinator, and meets the terms of this MOU.

B. **RESPONSIBILITIES.**

**I. IDLA WILL PROVIDE THE FOLLOWING:**

- a. Courses taught by highly-qualified, Idaho-certified instructors utilizing best practices in online distance education. Courses will be aligned to state content standards and meet curriculum requirements as outlined by the Idaho State Department of Education.
- b. Learning management system, registration system, student information system, and technical support for district personnel to access, manage, and support student learning.
- c. Secure access and management of student data based on stringent data retention and privacy policies, including but not limited to the Family Educational Rights and Privacy Act of 1974 ("FERPA"), the Children's Online Privacy Protection Act ("COPPA"), and Idaho Student Privacy Laws.
- d. An online principal to supervise each IDLA instructor to assure accountability and consistency.
- e. A grade report to the LEA, within two weeks of course completion, for each student enrolled at the completion of an IDLA course.
- f. Report to the LEA any disciplinary matters of which IDLA becomes aware, including violations of the acceptable use policy and plagiarism.

## **II. LEA WILL PROVIDE THE FOLLOWING:**

- a. **PROGRAM OF RECORD.** The LEA will serve as the Public School Program of Record which includes transcribing IDLA credits and issuing diplomas.
- b. **SITE COORDINATOR.** The LEA will identify, for each student enrolled in an IDLA course, an employee of the LEA, to counsel and enroll the student and act as the LEA's Site Coordinator.
  - i. The responsibility of the Site Coordinator includes but is not limited to: advising the student on appropriate courses for registration, ensuring that the student is completing work on a timely basis, checking grades regularly, and proctoring exams.
  - ii. The Site Coordinator is responsible for facilitating communications with the student's parents/guardians, regarding course progress, and the IDLA online instructor. The Site Coordinator is not expected to be a subject area expert. Rather the role of the Site Coordinator is to regularly motivate and monitor student progress. It is highly recommended that a Site Coordinator also be accessible during the summer session, when local students are enrolled.
  - iii. The Site Coordinator is a school's contact point for the IDLA instructor and staff. Frequent email or phone communication between the IDLA instructor and Site Coordinator is required. The Site Coordinator is expected to make regular contact with the student and assess the student's progress.

iv. The Site Coordinator will be provided access to the free Site Coordinator Course provided by IDLA. It is highly recommended that a trained site coordinator be located at each building site where there are IDLA-enrolled students.

c. SPECIAL EDUCATION/504/LIMITED ENGLISH PROFICIENT. By law, any services identified on a student's IEP, Section 504 plan or ELP plan (either under the Individuals with Disabilities Education Act 2004 or under Section 504 of the Rehabilitation Act and/or Education Learning Plan for Limited English Proficient (LEP) Students authorized under Idaho Law: IDAPA 08.02.03 – 111.04.c) must be met by the student's home campus.

Within one week of the beginning of class, the Site Coordinator/District Representative is responsible to upload the student's entire IEP/504/ELP to a FERPA compliant online form found on the Site Coordinator resources page:

<https://www.idahodigitallearning.org/site-coordinators/resources/>.

Copies should not be sent directly to an IDLA teacher, Regional Coordinator, or other IDLA staff. Upon receipt of the individual plan, the IDLA instructor will provide accommodations, according to the student's plan, in the online classroom environment. Any additional requirements of the IEP/504/LEP plan are the responsibility of the LEA.

d. STUDENT WORK AND ETHICAL CONDUCT. Acceptable use and behavior in a distance-learning environment is determined by the LEA's policies and is covered by the LEA's Acceptable Use Policy (AUP). The student must also agree to abide by IDLA's AUP specifically governing behavior in an online environment. IDLA will notify the LEA of violation of the AUP, plagiarism, or other disciplinary issues. The LEA is responsible for the appropriate disciplinary action. IDLA must be notified by the LEA of any disciplinary action related to a student's participation in an IDLA course. IDLA reserves the right to deny disruptive students from future IDLA courses and/or to remove them from an existing course. Appeals to the denial or removal from a course may be made in writing to the IDLA Board of Directors. The IDLA Board of Directors will review the appeal, and hold a telephone conference to allow the student an opportunity to speak to the issue. The IDLA Board of Directors will issue a final decision within ten (10) days of the telephone conference.

e. TEXTBOOKS, LIBRARY ACCESS, AND COURSE CONTENT RIGHTS. IDLA provides online textbooks for the majority of content areas and provides access to Libraries Linking Idaho (LiLI-D). In cases where an online textbook is unavailable, The LEA, will ensure that all required textbooks, not provided by IDLA, are available to the student prior to the start of the class. For example, advanced placement, dual credit, Medical Terminology, and English courses may require additional textbooks or required readings not available online.

f. LEA FEES. The LEA agrees to the IDLA Fee Policy as posted on IDLA's website. LEA fees are set by the IDLA Board of Directors and may be revised at any time at the discretion of the Board of Directors. IDLA will communicate to the LEA any changes to the Fee Policy. It is the responsibility of the LEA to abide by the Fee Policy as posted on IDLA's website. The Fee

Policy as posted on IDLA's website is the definitive source for IDLA's LEA fees. Per Idaho Code, IDLA course fees are paid by the LEA unless otherwise directed by the LEA's Policy.

i. Invoicing: LEA will make payment in full upon receipt of an IDLA invoice. Failure to pay within thirty (30) days of invoice date may result in discontinued enrollments in IDLA. Interest may also be assessed to unpaid invoices exceeding thirty (30) days of invoice date.

ii. Financial assistance: IDLA will ensure that all students have an equitable opportunity to participate in online courses delivered by IDLA. In any case where a student is required by local LEA policy to pay a fee associated with an IDLA class, and where the cost is not refunded by the State's Advanced Opportunities Program, IDLA can grant waivers to alleviate any financial burden to the student. This financial assistance is initiated through the LEA Site Coordinator.

g. TECHNOLOGY AND TIME. The LEA agrees to place students in IDLA courses who have access to a computer and Internet connection either through LEA access or via a home Internet connection. The LEA is also aware that students need sufficient time to complete assignments. For example, a 16-week course requires approximately 5 to 7 hours of student work per week. Flex courses are open entry and mastery based and a student may progress through each course at an accelerated pace, but must finish by the deadline set forth by IDLA.

h. DATA. The LEA grants IDLA a limited right to store, host, and maintain LEA data including Student Data solely for the purposes of providing educational services to the LEA's users.

3. OWNERSHIP OF MATERIALS. Any educational materials provided or developed in relation to this MOU shall remain the property of the IDLA and may not be duplicated or used for purposes not approved by the IDLA Board of Directors.

4. STUDENT DATA PRIVACY. The Parties understand and agree that they may from time to time collaborate to develop and deliver courses offered through IDLA which may require disclosure of education records as defined in FERPA and the Idaho student data law, Idaho Code §33-133, by IDLA to LEA. The Parties further acknowledge and agree that in such circumstances, each participating LEA, and its authorized employees and agents, will be deemed a "school official with a legitimate educational interest" in having access to such student data, as set forth in 34 C.F.R. §99.31(a)(1). Any such disclosure of student data shall be governed by special terms and conditions, as set forth in Exhibit A attached hereto and incorporated herein by this reference as if set forth in full.

5. SUFFICIENT FUNDING. The Parties understand and agree that because each party is a separate governmental entity, this MOU shall in no way bind or obligate the Parties beyond the term of any particular appropriation of funds by the Idaho State Legislature. Both Parties reserve the right to terminate the MOU, in whole or in part, if the Idaho State Legislature does not appropriate sufficient funds as deemed necessary by either Party. Any termination notice shall follow Section IX.

6. NO AUTHORITY TO BIND OTHER PARTY. One party under this MOU shall have no authority to enter into contracts or agreements on behalf of the other party. All contracts or agreements shall be entered on behalf of the executing party or executed jointly by both parties. The procedures set forth in this MOU are intended for the sole use and benefit of IDLA and LEA. No third party or other State entity may rely on these procedures. Any failure by IDLA or the LEA to follow any or all of these procedures, or any future amendment or modification of these procedures, shall not establish any liability of IDLA or LEA to any third party or other entity of the State of Idaho.

7. LIMITATIONS. This MOU does not create or give the IDLA or the LEA any powers that they would otherwise not have. Rather, this MOU is only to provide for the exercise of existing powers so as to achieve a more efficient operation of government. For this reason, this MOU sets forth the understanding of the parties in achieving a common purpose, and is not intended to provide a basis for legal action upon breach of any of its provisions.

8. TERM OF AGREEMENT. This MOU shall be in force and continue from year to year until modified by the parties, or the MOU is terminated pursuant to Section 10 below.

9. INFORMAL DISPUTE RESOLUTION. Except for the right of either party to apply to a court of competent jurisdiction for a temporary restraining order or preliminary injunction to preserve the status quo or to prevent irreparable harm, the parties agree to attempt, in good faith, to resolve through informal dispute resolution methods any dispute arising under this MOU.

10. EFFECTIVE DATE AND TERMINATION. This MOU is effective upon signature of the parties. Either party may terminate this MOU at any time, with or without cause, upon thirty (30) calendar days' written notice to the other party specifying the date of termination. Upon termination, the parties shall: (i) promptly discontinue all work, unless the termination notice directs otherwise; (ii) promptly return to the other party any property provided by the other party pursuant to this MOU; and, (iii) make available to the other party all data, reports, estimates, summaries and such other information and materials as may have been accumulated in performing this MOU, whether completed or in process. Notwithstanding termination, the parties shall remain obligated as otherwise set forth in this MOU to the extent of costs or obligations to third parties incurred pursuant to the Agreement prior to the termination.

11. DISCRIMINATION. The Parties hereby agree that no person shall, on the basis of race, color, creed, national origin or gender, be excluded from or denied participation in or otherwise subjected to discrimination in relation to any activity associated with this MOU.

12. ASSIGNMENT. The Parties respective obligations and duties as set forth herein are to be performed by the Parties and may not be assigned or subcontracted by either party without the written consent of the other party.

13. AMENDMENTS. This MOU may be modified or amended upon written agreement of the parties. Any amendment or modification will be effective upon execution by the parties.

14. AUTHORIZATION. The signatories must be the executive officer of the LEA and agree to strive to reach, to the best of his/her ability, the terms and provisions as stated in this MOU. By signing this MOU, the executive officer indicates the desire to participate in the IDLA.



Brian D. Smith, CPA  
Director of Operations

LEA Executive Officer:

Title:

Date:

After Hours Emergency School Contact Information: In the event that an online student confides information that is directly related to student safety, Idaho Digital Learning will need to contact an authorized school official.

**SECONDARY - Contact information**

**ELEMENTARY - Contact information**

Name:

Name:

After hours phone #:

After hours phone #:

Email address:

Email address:

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**EXHIBIT A**

**STUDENT DATA PRIVACY SPECIAL TERMS AND CONDITIONS**

1. IDLA and LEA may contract for collaboration to provide delivery and support of courses to be offered through IDLA (the "Services"), which are institutional services and functions, to IDLA. In the course of performing the Services, LEA will obtain confidential student records or confidential student record information that contain personally identifiable student records, data, or personally identifiable information and other non-public information, including, but not limited to: student data, meta data, and user content ("Data Files"). IDLA and LEA acknowledge and agree that this Agreement is for the purpose of sharing Data Files between the Parties in a manner consistent with FERPA and the Idaho student data law, Idaho Code §33-133. The Data Files will be used by the LEA and its employees to populate student data only for the purpose of

delivering these Services. LEA further acknowledges and agrees that all copies of such Data Files, including any modifications or additions to Data Files from any source, are subject to the provisions of this Agreement in the same manner as the original Data Files and that the defined term "Data Files" as used herein shall refer to individual data points defined above, all student data collectively, or any portions or copies thereof. The ability to access or maintain Data Files under this Agreement shall not under any circumstances transfer from LEA to any other party.

2. IDLA and LEA acknowledge and agree that the Parties are providing institutional services or support for IDLA students and that the Services are under the direct control of IDLA with respect to the use and maintenance of Data Files in connection with these Services. LEA additionally acknowledges and agrees that at no point in time is the LEA the owner of the Data Files. Ownership rights are maintained by IDLA and IDLA reserves the right to request the prompt return of any portion of the Data Files or all Data Files at any time for any reason. LEA further acknowledges and agrees that it shall adhere to the requirements set forth in both federal and state law regarding the use and re-disclosure of the Data Files, including without limitation, any student data, meta data, user content or other non-public information, or personally identifiable information contained within the Data Files. LEA also acknowledges and agrees that it shall not make any re-disclosure of any Data Files, including without limitation, any student data, meta data, user content or other non-public information, or personally identifiable information contained in the Data Files, without the express written consent of IDLA. Additionally, LEA agrees that only authorized employees of LEA directly involved in delivering the Services shall have access to the Data Files, including without limitation, any student data, meta data, user content or other non-public information, and personally identifiable information contained in the Data Files and that LEA and its employees shall protect the confidentiality of the Data Files in such a way that parties other than officials of IDLA and their authorized agents cannot identify any students.

3. LEA also acknowledges and agrees to:

- i. Use Data Files shared under this Agreement for no purpose other than in connection with and through the provision of the Services provided under this Agreement with IDLA;
- ii. Use reasonable methods, including but not limited to, appropriate technical, physical, and administrative safeguards, that reflect technology best practices and are consistent with industry standards, to protect the Data Files from re-disclosure that are created, sent, received, stored, processed, or transmitted in connection with the Services under this Agreement while the Data Files are at rest or in transit. LEA further acknowledges and agrees to conduct periodic risk assessments and remediate any identified security and privacy vulnerabilities in a timely manner;
- iii. Not share the Data Files received under this Agreement with any other entity without prior written approval from IDLA and the prior written approval of the parent/guardian of the student or eligible student;

- iv. Not copy, reproduce, or transmit the Data Files, except as necessary to fulfill the Services;
- v. Not re-disclose, transfer, or sell the Data Files;
- vi. Not to use the Data Files to market or otherwise advertise directly to students or their parents/guardians;
- vii. Not to use the Data Files to inform, influence or guide marketing or advertising efforts or to develop a profile of student or group of students for any commercial or other purposes;
- viii. Not to use the Data Files contained therein for the development of commercial products or services;
- ix. To not mine the Data Files for any purposes other than those agreed to by the Parties. LEA further acknowledges that data mining or scanning of user content for the purpose of advertising or marketing to students or their parents/guardians is expressly prohibited;
- x. Notify IDLA in writing within three (3) days of its determination that it has experienced a data breach, breach of security, privacy incident or unauthorized acquisition or use of any Data Files contained therein. LEA further agrees that said notification shall include, to the extent feasible, the date or approximate dates of such incident and the nature thereof, the specific scope of said breach (i.e., what data was accessed, used, released or otherwise breached, including the names of individual students that were affected by said breach) and what actions or steps with respect to the incident that LEA plans to take or has taken in response to said breach. Additionally, LEA agrees to adhere to all requirements in state and federal law with respect to a data breach related to the Data Files, including, when appropriate or required, the required responsibilities and procedures for notification and mitigation of any such data breach. LEA further acknowledges and agrees to have a written incident response plan that reflects best practices and is consistent with industry standards and federal and state law for responding to a data breach, breach of security, privacy incident or unauthorized acquisition or use of Data Files, including personally identifiable information, and agrees to provide IDLA, upon request, with a copy of said written incident response plan;
- xi. Not provide any Data Files to any party ineligible to receive student records or student record data and information protected by FERPA and Idaho Code §33-133, or prohibited from receiving the Data Files or any personally identifiable information from any entity under 34 C.F.R. §99.31(a)(6)(iii);
- xii. Maintain backup copies, backed up at least daily, of Data Files in case of LEA system failure or any other unforeseen event resulting in loss of Data Files;
- xiii. Upon receipt of a request from IDLA, immediately provide IDLA with any specified portion of the Data Files within three (3) calendar days of receipt of said request;

xiv. Upon receipt of a request from IDLA, immediately begin the process of returning all Data Files to IDLA and subsequently erasing or otherwise destroying any Data File, whether in digital, archival or physical form. This shall include, without limitation, any copies of the Data Files that may reside in system backups, temporary files, or other storage media and/or are otherwise still in LEA's possession or in the possession of any employees or agents to which the LEA may have transferred Data Files, in a manner consistent with technology best practice and industry standards for secure data disposal methods such that LEA, its employees and agents are no longer in possession of any student data belonging to IDLA and to ensure that the Data Files cannot be recovered and are securely destroyed and to provide IDLA with all Data Files in LEA's possession, custody or control within seven (7) calendar days of receipt of IDLA's request. LEA will also provide IDLA with written certification, including an inventory of its Data Files destruction, and with written certification, including an inventory of all Data Files returned to IDLA, within fifteen (15) days of its receipt of IDLA request for destruction of Data Files;

xv. In the event of any LEA's termination of the MOU, promptly return all Data Files to IDLA in an organized, manageable manner, and subsequently erase or otherwise destroy any Data Files, whether in digital, archival, or physical form. This shall include, without limitation, copies of the Data Files that may reside in system backups, temporary files, or other storage media and/or are otherwise in LEA's possession or in the possession of any employees or agents to which LEA may have transferred the Data Files, in a manner consistent with technology best practice and industry standards for secure data disposal methods such that LEA, its employees and agents, are no longer in possession of any student data belonging to IDLA and to ensure that the Data Files cannot be recovered and are securely destroyed. LEA will also provide IDLA with written certification, including an inventory of its Data Files destruction, and an inventory of all Data Files returned to IDLA, within fifteen (15) days of LEA's termination of the MOU;

xvi. Not use, disclose, compile, transfer, or sell the Data Files to any third party or other entity or allow any other third party or other entity to use, disclose, compile, transfer, or sell the Data Files;

xvii. In the event that LEA or any of its employees or agents to which LEA may have transferred Data Files has technology or storage media that has failed and needs to be replaced or serviced, to ensure that all Data Files that are contained therein are sanitized, erased, or otherwise destroyed. LEA also will provide IDLA with written certification, including an inventory of its Data Files destruction, within fifteen (15) days of any such occurrence;

xviii. Delete IDLA Data Files that it collects or receives under this Agreement once the Services referenced in this Agreement lapses;

xix. Upon receipt of a litigation hold request from IDLA, immediately implement a litigation hold and preserve all documents and relevant data identified by IDLA and suspend deletion, overwriting, or any other possible destruction of documentation and data identified in, related, to, arising out of, or relevant to, the litigation hold;

xx. Upon receipt of a request from IDLA, allow IDLA to audit the security and privacy measures that are in place to ensure protection of the Data Files;

xxi. Cooperate fully with IDLA and any local, state, or federal agency with oversight authority or jurisdiction in connection with any audit or investigation of LEA or delivery of the Services to students and IDLA, and shall provide full access to LEA's facilities, staff, agents and IDLA Data Files and all records pertaining to LEA, the IDLA Data Files, and delivery of Services to IDLA. Failure to cooperate shall be deemed a material breach of the MOU;

xxii. Not assign, subcontract, or in any way transfer any interest in this Agreement without the prior written consent of IDLA.

4. LEA certifies under the penalties of perjury that it complies with all federal and state laws, regulations and rules as such laws may apply to the receipt, storing, maintenance, or access to personal information, including without limitation, all standards for the protection of personal information under FERPA and Idaho Code §33-133. Further, LEA hereby certifies under penalty of perjury that it shall fully comply with the provisions of FERPA and regulations promulgated thereunder, and Idaho Code §33-133, and to fully protect the confidentiality of any student data, meta data, user content or other non-public information, and personally identifiable information provided to it or its representatives. LEA further represents and warrants that it has reviewed and complied with all information security programs, plans, guidelines, standards, and policies that apply to the work it will be performing, that it will communicate these provisions to and enforce them against its employees and agents, and will implement and maintain any other reasonable and appropriate security procedures and practices necessary to protect personal information and student record information from unauthorized access, destruction, use, modification, disclosure, or loss. LEA also represents and warrants that if the Data Files are to be stored on a laptop or other mobile electronic device, that such electronic devices are encrypted and that all such devices will be scanned at the completion of any contract or service agreement, research study or project to ensure that no personal information or student record information is stored on such electronic devices. Furthermore, LEA represents and warrants that it has in place a service that will allow it to wipe the hard drive on any stolen laptop or mobile electronic device remotely and have purchased locks for all laptops and mobile electronic devices and has a protocol in place to ensure use by employees.

5. To the extent allowed by Idaho law, LEA shall be liable for any and all damages, costs and attorneys' fees which IDLA may incur as a result of any claims, suits and judgments against IDLA which arise out of the acts or omissions of LEA, its employees, servants, representatives or agents during the term of this Agreement.

6. No delay or omission of IDLA to exercise any right hereunder shall be construed as a waiver of any such right and IDLA reserves the right to exercise any such right from time to time, as often as may be deemed expedient.

7. LEA represents that it is authorized to bind to the terms of this Agreement, including confidentiality and destruction of Data Files and any portion thereof contained therein, all related or associated institutions, individuals, employees or contractors who may have access to the Data Files, or may own, lease or control equipment or facilities of any kind where the Data Files and portion thereof are stored, maintained or used in any way.

8. The terms and conditions of this Agreement may not be modified unless such modifications are agreed to in a written document signed by the Parties.