# DATA SHARING AGREEMENT

# BETWEEN

# \_\_\_\_\_\_\_\_\_\_\_

# AND

# \_\_\_\_\_\_\_\_\_\_\_

This Data Sharing Agreement is entered into by the [Name of District] also known as the Local Educational Agencies (LEA) and [Tribe/Nation/Pueblo], hereinafter collectively “the Parties”.

# RECITALS

**WHEREAS,** in December of 2015, the Every Student Succeeds Act (ESSA) was signed into law and New Mexico' s state plan includes a continued commitment to robust college and career ready standards and assessments, meaningful school accountability, a commitment to ensure that all students are served by excellent educators, and dynamic strategies for turning around the state's struggling schools;

**WHEREAS,** New Mexico adopted the Common Core State Standards (CCSS), a set of high-quality standards for social studies, science, technical subjects, and added an additional 15% of state-specific standards focusing on culturally relevant texts and instruction to the CCSS in English language arts (ELA);

**WHEREAS** [Tribe/Nation/Pueblo] is a federally recognized Sovereign Government, and the Governor's Office \_\_\_\_\_\_\_\_\_\_\_\_\_, as a branch of [Tribe/Nation/Pueblo], has responsibility to oversee the education of its tribal members; and

**WHEREAS** the Indian Self-Determination and Education Assistance Act 25 USC 450 (P. L. 93- 638 enacted January 4, 1975) and the Indian Employment, Training, and Related Services Demonstration Act 25 USC 3401 (P. L. 102-477, enacted October 23, 1992) authorize and delegate to [Tribe/Nation/Pueblo] the responsibility to operate programs on behalf of the federal government, which responsibility is carried out through the [Tribal Education Department].

**WHEREAS t**he Parties seek to close the opportunity gap, increase the graduation level and improve the academic progress of Native American students.

**WHEREAS** the parties seek to establish an agreement to share information between the parties in a manner in adherence to the Family Education Records Privacy Act of 1974, including Title 20 U.S. Code Section 1232g and 34 CFR § 99 et seq.

**AGREEMENT**

1. **RESPONSIBILITIES OF THE PARTIES.**
   1. The Parties shall comply with the provisions of FERPA and applicable regulations in all respects.
   2. The Parties shall maintain, use, disclose, or share student information in a manner only as provided by federal law.
   3. The [Name of District] shall provide the [Specify Tribe/Nation/Pueblo Entity receiving data from school district.] the data referenced in Section II *Scope of Data to be Disclosed*, and the [Specify Tribe/Nation/Pueblo Entity receiving data from school district.] shall use the data as provided in Section III *Compliance with FERPA.*
2. **SCOPE OF DATA TO BE DISCLOSED.**

The following will be the data shared under this agreement:

1. Short Cycle Assessments/Interim Assessments (K-2) Beginning of Year (BOY), Middle of Year (MOY), End of Year (EOY)
2. Short Cycle Assessments Grades 3-8 (ELA, Math, SLA) BOY, MOY, EOY
3. Summative Assessment for Science, Grades 5, 8 and 11
4. SAT Reading and Math Grade 11
5. Advanced placement for PSAT or NMSQT broken down by grades 9-12 and by school
6. Summative Assessments for Math and ELA Grade 3-8
7. Student Quantile Information
8. Attendance Information
9. Early Warning System Attendance Information with 5 or more days absent
10. Suspensions or Expulsions
11. Information regarding students who are in danger of failing or are in need of credit recovery to increase graduation success and to support the Summer School Program and,
12. **COMPLIANCE WITH FERPA.**
13. The Family Educational Rights and Privacy Act (FERPA) and its implementing regulations govern access to the “student education records” of children attending a school that receives federally administered funds, including public schools. The term “education records” is defined as those records that are: (1) directly related to a student; and (2) maintained by an educational agency or institution, or by a party acting for the agency or institution. Student education records includes attendance, grades, test scores, and other similar records. *See* 34 CFR § 99.3.
14. FERPA protects the privacy of students’ education records from public release. The general rule under FERPA is that the “personally identifiable information,” defined in FERPA at 34 C.F.R. § 99.3, in student educational records cannot be disclosed without written consent from the parent/guardian or eligible student, such as a student 18 years old or older. “Disclose” or “disclosure” means the release, transfer, or other communication of personally identifiable information contained in education records by any means, including oral, written, or electronic means, to any party except the party that provided or created the record. 34 C.F.R. § 99.33.

1. The purpose of this data sharing agreement is to close the opportunity gap, increase the graduation level and improve the academic progress of Native American students. This agreement is entered in the spirit of building community relationships and cultural understanding to improve the success of Native American students.
2. FERPA includes an audit or evaluation exception that permits the disclosure of education records, including personally identifiable information, without prior parental/guardian/ eligible student consent in connection with an audit or evaluation of Federal or State supported education programs. See 20 U.S.C. 1232g(b)(1)(C), (b)(3), and (b)(5) and §§99.31(a)(3) and 99.35)
3. FERPA includes an exception that permits the disclosure of education records, including personally identifiable information, without prior parental/guardian/ eligible student consent when the disclosure is to organizations conducting studies for, or on behalf of, educational agencies or institutions to (A) Develop, validate, or administer predictive tests, (B) Administer student aid programs; or (C) Improve instruction.
4. To effect the transfer of data subject to FERPA,[Tribe/Nation/Pueblo] agrees to:
5. In all respects, comply with the provisions of FERPA. For purposes of this agreement, FERPA includes any amendments or other relevant provisions of federal law, as well as requirements of Chapter 99, Title 34 of the Code of Federal Regulations. Nothing in this agreement may be construed to allow either party to maintain, use, disclose or share student information in a manner not allowed by FERPA.
6. Use the data shared under this agreement for no purpose other than to support the academic success of Native American and [Tribe/Nation/Pueblo] students and to offer services to Native American and [Tribe/Nation/Pueblo] families.
7. Require all employees, contractors, and agents of any kind to comply with all applicable provisions of FERPA and other federal laws with respect to the data shared under this agreement.
8. Maintain all data obtained pursuant to this agreement in a secure computer environment and not copy, reproduce, or transmit data obtained pursuant to this agreement except as necessary to fulfill the purpose of the original request. All copies of data of any type, including any modification or additions to data from any source that contains information regarding students, are subject to the provisions of this agreement in the same manner as the original data.
9. Not disclose any data obtained under this agreement in a manner that could identify any individual student to any other entity, nor attempt to infer or deduce the identity of any individual student based on data provided by [Name of District], nor claim to have identified or deduced the identity of any student based on data provided by [Name of District].
10. Not provide any data obtained under this agreement to any party ineligible to receive data protected by FERPA, or any party prohibited from receiving data from any entity.
11. Promptly after termination of this Agreement pursuant to Paragraph VII, destroy all data obtained under this agreement in accordance with 34 CFR Section 99.35(b)(2). Nothing in this agreement authorizes either party to maintain data beyond the time period reasonably needed to complete the purpose of this data-sharing. [Tribe/Nation/Pueblo] agrees to require all employees, contractors, or agents of any kind to comply with this provision.

**IV. AUTHORIZED REPRESENTATIVE.**

[Tribe/Nation/Pueblo] has designated herein a single authorized representative able to request data under this agreement. The authorized representative shall be responsible for transmitting all data requests and maintaining a log or other record of all data requests and received pursuant to this agreement, including confirmation of the completion of any projects and the return or destruction of data as required by this agreement. The [Name of District] or its agents may upon request review the records required to be kept under this Article. The name and contact information of the designated authorized representative for [Specify Tribe/Nation/Pueblo Entity receiving data from school district.] is: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_; \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

**V. RELATED PARTIES.**

[Tribe/Nation/Pueblo] represents that it is authorized to bind to the terms of the agreement, including those related to confidentiality, maintenance, publication, and destruction or return of data shared pursuant to the agreement, all related or associated institutions, individuals, employees, contractors and agents who may have access to the data or may own, lease, or control equipment or facilities of any kind where the data is stored, maintained or used in any way by [Tribe/Nation/Pueblo].

**VI. BREACH AND DEFAULT.**

Any misuse by the [Tribe/Nation/Pueblo] of data shared pursuant to the agreement, including, but not limited to, unauthorized use or release of the data, or storage of the data in an unsecure manner shall constitute a default under this agreement. Upon default or breach of any of the provisions, obligations, or duties embedded in this agreement, the parties may exercise any administrative, contractual, equitable, or legal remedies available, without limitation. The waiver of any occurrence of breach or default is not a waiver of such subsequent occurrences, and the parties retain the right to exercise all remedies mentioned herein.

**VII. TERM.**

This agreement shall take effect upon signature by the authorized representatives of each party, and shall remain in effect until June 30, \_\_\_\_\_\_\_\_\_\_. The parties to this agreement shall review this agreement annually and may elect to renew this agreement through subsequent annual agreements. The agreement may also be terminated by either party upon fourteen days written notice pursuant to Paragraph X herein.

**VIII. TERMINATION.**

This agreement may be terminated by [Name of District] or [Tribe/Nation/Pueblo] upon written notice delivered to the other not less than fourteen (14) days prior to the intended termination date. By such termination notice, neither [Name of District] nor [Tribe/Nation/Pueblo] shall negate obligations already incurred or required to be performed prior to the effective date of termination. [Name of District] specifically reserves the right to immediately cancel this agreement should [Tribe/Nation/Pueblo], in its sole discretion, determine that student information has been released in a manner inconsistent with this agreement, has not been maintained in a secure manner, or that substantially similar data access has become generally available for research purposes through any other mechanism approved by the [Name of District]. In the event of immediate termination, a notice specifying the reasons for termination shall be sent as soon as possible after the termination to the persons signing the agreement.

**IX. AMENDMENT.**

This agreement may be modified or amended provided that any such modification or amendment is in writing and is signed by the parties to this agreement. It is agreed, however, that any amendments to laws, rules, or regulations cited herein will result in the correlative modification of this agreement, without the necessity for executing written amendment.

**X. ASSIGNMENT OF RIGHTS.**

Neither this agreement, nor any rights, duties, nor obligations described herein shall be assigned by [Tribe/Nation/Pueblo] without the prior express written consent of [Name of District].

**XI. GOVERNING LAW; CONSTRUCTION.**

This agreement will be governed, construed and enforced under Federal Law and jurisdiction for any dispute will be in the U.S. Federal Courts for the District of New Mexico. This agreement will be construed neutrally and not in favor or against any party. Nothing in this agreement shall be construed as a waiver of sovereign immunity of [Tribe/Nation/Pueblo].

**XII. ENTIRETY OF AGREEMENT.**

All terms and conditions of this agreement are embodied herein. No other terms and conditions will be considered a part of this agreement unless expressly agreed upon in writing and signed by both parties.

**IN** **WITNESS WHEREOF,** the parties have caused this agreement to be executed on the year and date indicated, with the effective date being the most recent signature.

# Reviewed and Agreed Upon by:

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# Name of Governor, Date

# Governor, Pueblo of\_\_\_\_\_\_\_\_\_

# ­­­­­­­­­­­­­­­­­­­­­­­­­­

# \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_

# Name of School Board President Date

# President, \_\_\_\_\_\_\_ [Name of District] Board

# \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_

# Name of Superintendent Date

# Superintendent, of [Name of District]

# ­­­­­­­­­­­­­­­­­­­­­­­­­

# \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_

# Name of Chairman of the Board of Education Date

# Chairman, [Pueblo, Tribe, Nation] Board of Education

# \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_

# Name of Tribal Education Director, Date

# Director, \_\_\_\_\_ [Pueblo, Tribe, Nation] Department of Education