**FERPA AGREEMENT BETWEEN**

**THE XXX EDUCATION DEPARTMENT**

**AND**

**THE YYYYYYYY**

THIS FERPA AGREEMENT(“Agreement”) is made by and between the XXXX Education Department (“XXXX”) and the ZZZZ (“ZZZZ”).

**RECITALS:**

**WHEREAS,** The ZZZZ has requested XXXX student data on reading and mathematics for Navajo students who attend public schools in State school districts that include [Public Schools], which data includes but is not limited to, reading/literacy data collected for students in grades K-2; third grade reading data by student; PreK status for any school years; K-3 Plus status for any school year; Kindergarten reading data by student; and retention data of students; and general reading and mathematics proficiency data for all students for any school years in grades K-12;

**WHEREAS,** the DDDDDD Education Act [State Statutes Annotated] was enacted in 2003 to provide for the study, development and implementation of educational systems that ………………………. State and the ZZZZ to address the unique issues of educating students in ZZZZZ communities that arise due to the location of the ZZZZ in those states;

**WHEREAS,** the purpose of this request is to conduct an evaluation and study of how ZZZZ students are succeeding in State public schools pursuant to the implementation of federal and state educational programs; to establish baseline data that can be used to recommend interventions and alternatives to the XXXX, ………….to recommend interventions to and alternatives by the ZZZZ ……..;

**WHEREAS,** the nature of the ZZZZ’s request would encompass the submission of personally identifiable information of individual students;

**WHEREAS**, the Family Educational Rights and Privacy Act (FERPA), set forth in Title 20 U.S. Code Section 1232g and its regulation at Title 34 CFR § 99.1 et seq. (as amended in 2012) generally prohibit the disclosure of student’s personally identifiable information without consent, subject to certain exceptions;

**WHEREAS,** 34 CFR §99.31(3) and §99.35 allow for distribution of student personally identifiable information to authorized representatives of state authorities in connection with an audit or evaluation of Federal or State supported education programs;

**WHEREAS**, the purpose of this Agreement is to share information between PED and the ZZZZ, in a manner consistent with the Family Educational Rights and Privacy Act of 1974 (“FERPA”) in regard to data necessary to fulfill the request from the ZZZZ, so that it may conduct its evaluation and study of State supported education programs;

**WHEREAS**, FERPA requires that information be shared with in a way which does not permit personal identification of parents and students by individuals other than employees, officers or agents of PED and the ZZZZ and requires further that the information be destroyed when no longer needed for the purposes for which the evaluation and study was conducted;

**WHEREAS**, FERPA provides that if any party allowed access to personally identifiable information does not destroy that information when no longer needed for the purposes for which the evaluation was conducted, then that party will be prohibited from access to future personally identifiable information from educational records for at least five (5) years;

**NOW, THEREFORE, IT IS AGREED** as follows:

**I.** **TERM OF AGREEMENT**

This Agreement shall take effect upon signature by the authorized representatives of the XXXX and the ZZZZ, and shall remain in effect until the sooner of June 30, 2013, or being terminated by XXXX or the ZZZZ pursuant to Paragraph V herein. Upon termination of this Agreement, XXXX and the ZZZZ shall provide assurances to each other by letter and agree that all data obtained under this Agreement will be promptly destroyed or returned in accordance with the requirements of 34 CFR § 99.35(b).

**II. DEFINITIONS AND ABBREVIATIONS**

a) “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 identified as the party that provided or created the record. Further disclosure of any information released to the ZZZZ by the XXXX is prohibited by this Agreement in that it constitutes a redisclosure of information. 34 CFR 99.33.

b) “FERPA” refers to the Family Educational Rights and Privacy Act of 1974 and for purposes of this Agreement means Title 20 U.S. Code Section 1232g as well as all requirements of Part 99 of Title 34 of the Code of Federal Regulations (as amended in 2012), “Family Educational Rights and Privacy”. 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 federal law or regulation.

**III. REQUIRED TASKS UNDER THE AGREEMENT**

**a) Joint Responsibilities**

1. XXXX and the ZZZZ shall comply with the provisions of FERPA in all respects. Nothing in this Agreement may be construed to allow any signatory to this Agreement to maintain, use, disclose or share student information in a manner not allowed by federal law or regulation.

2. XXXX and the ZZZZ shall identify at least one authorized representative or data custodian from their respective agencies who shall be responsible for processing and responding to data requests from the other party. The XXXX and the ZZZZ may each name one authorized representative. Within seven (7) days of signing this Agreement, both sides shall exchange in writing the name(s), mailing address, telephone number, fax number and email address of their authorized representative(s). These names can be changed as conditions change.

3. The XXXX may seek to review or seek written assurances and the ZZZZ shall agree to permit the XXXX to review or to provide written assurances regarding the use of data transmitted under this Agreement. The purpose of this provision is to ensure that appropriate policies and procedures are in place to protect the personally identifiable information and that personally identifiable information has not been redisclosed or released.

**b) Responsibilities of XXXX:**

1.XXXXshall share the requested data with the ZZZZ, but only for purposes of the ZZZZ conducting an evaluation and study of student achievement of ZZZZ Students in grades K-12 in State public schools.

2. XXXX shall assign, and through execution of this agreement, hereby does assign, the ZZZZ as an authorized representative for purposes of having access to personally identifiable information of students as detailed in this agreement and in accordance with 34 CFR 99.35. The ZZZZ is an authorized representative only for the sole purpose of conducting an evaluation and study of federal and State supported education programs as detailed in this agreement.

3. XXXXshall, in light of the December 2011 guidance from the US Department of Education, post for public access a copy of this Agreement on the ……….. Division page of the XXXX’s website.

**c) Responsibilities of the ZZZZ:**

1. The ZZZZ agrees to use data shared under this Agreement for no purpose other than to conduct an evaluation and study of federal and State supported education programs in State public schools.

2. The ZZZZ agrees not to share or re-disclose personally identifiable data received under this Agreement with any other entity, organization or individual without the prior written approval from XXXX. This does not prohibit the ZZZZ or XXXX from sharing aggregate student data.

3. The ZZZZ agrees to maintain all data obtained pursuant to this Agreement separate from all other data files that they possess and not copy, reproduce or transmit data obtained pursuant to this Agreement, except as necessary to fulfill the purpose of this Agreement, or the ZZZZ evaluation and study described in this agreement. Transmission of all FERPA-protected data must be by SECURE electronic systems and/or networks. All copies of data of any type including any modifications or additions to data from any source that contains information regarding individual students, are subject to the provisions of this Agreement in the same manner as the original data.

4. The ability to access or maintain data under this Agreement shall not under any circumstances transfer from or be assigned to any other individual, institution, organization, government or entity.

5. Despite any contrary provisions in the Agreement, the ZZZZ agrees not to disclose any data obtained under this Agreement in a manner which could identify an individual student to any other individual, institution, organization, government or entity.

6. The ZZZZ agrees that procedures and systems will be established to ensure that all confidential data processed, stored, and/or transmitted under the provisions of this Agreement shall be maintained in a secure manner that prevents further disclosure of the data, including the interception, diversion, duplication, or other unauthorized access to said data.

7. The ZZZZ agrees to establish procedures and systems to ensure all personally identifiable data obtained is kept in secured facilities and media and that access to such records is restricted to the ZZZZ personnel who are authorized to have access to said data for the purposes of conducting the aforementioned evaluation.

8. The ZZZZ shall promptly, that is, within one (1) hour of learning, report to XXXX any incidents in detail of any personally identifiable information received from XXXX whose confidentiality was breached or is believed to have been breached.

9. The ZZZZ agrees to destroy or return to XXXX all personally identifiable information obtained pursuant to data requests under this Agreement when it is no longer needed for the purpose for which it was obtained under this agreement. Nothing in this Agreement authorizes the ZZZZ to maintain data received from the other agency beyond the time period reasonably needed to complete the purpose of the request, and in no case beyond the termination date of this Agreement. Any destruction of the referenced data must be witnessed by one other person who can later attest that a complete destruction of the data occurred. The ZZZZ agrees to submit a letter to PED within 30 days of the termination of this agreement, attesting to the destruction of any referenced personally identifiable data received from each other. No new Agreement will be agreed to by the XXXX until the data is returned or destroyed as set forth herein.

10. Unless the data is returned, the ZZZZ shall maintain records that document and verify the destruction of the data provided by XXXX under this Agreement.

11. The ZZZZ agrees to adhere to any XXXX protocols or directives prohibiting disclosure of data, which even though the data may not have been provided by XXXX in a personally identifiable manner, would still permit public identification of students because of the small cell sizes (i.e., subgroups of 10 or fewer students) of the data.  If data is so identified by the XXXX or the data elements, it may only be used in a disaggregated or other manner consistent with generally accepted statistical principles that does not permit identification of students.

12. The ZZZZ shall use some of the requested data in the following way: data will be used to perform descriptive statistical analyses with a variety of predictor variables. Specifically, they will identify students struggling to read by indicators such as free-and-reduced-price lunch status, students with a disability, and student participation in kindergarten programs. Identifying these students along with their specific demographic indicators allows the ZZZZ to identify the backgrounds and experiences common to struggling third grade readers, an integral part of their evaluation of early literacy program effectiveness, and to consider interventions and alternatives.

13. Subject to the agreed-upon and limited use of requested data provided and only for the purposes asserted in this Agreement, there shall be no further disclosure by the ZZZZ of any of the information provided by the XXXX in that this would constitute a redisclosure of information. Under the applicable federal FERPA regulation, that is, 34 CFR 99.33, redisclosure is only permitted upon obtaining prior consent of the parent or eligible student of the personally identifiable information.

14. Under no circumstance shall the ZZZZ become owners, proprietors or custodians of any data or personally identifiable information provided by the XXXX under the terms of this Agreement.

**IV. SCOPE OF AGREEMENT**

This Agreement incorporates all the understandings between XXXX and The ZZZZ concerning the subject matter hereof. No prior Agreement, verbal representations, or understandings shall be valid or enforceable unless embodied in this Agreement.

**V. TERMINATION OF AGREEMENT**

This Agreement may be terminated by the XXXX or the ZZZZ, upon written notice delivered to the other not less than fourteen (14) days prior to the intended termination date. By such termination notice, neither the XXXX nor the ZZZZ shall negate obligations already incurred or required to be performed prior to the effective date of the termination. The XXXX may terminate the Agreement immediately upon confirmation of fraud, negligence or abuse of confidentiality restrictions. This Agreement shall terminate automatically on June 30, 2013, unless extended by a written agreement which can be at nor greater than 1-year intervals.

**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.

**XXXX EDUCATION DEPARTMENT**

By \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 XXXX

 XXXX of Education

**ZZZZ**

By \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 [ZZZZ Official]

 [Title]