



This Memorandum of Agreement (Agreement) is made and entered into by and between the Montana Office of Public Instruction (OPI) and _____.

1. **Parties.** The OPI is a state educational agency that is authorized to access, use, and disseminate student educational records and receive information from local educational agencies (LEAs) consistent with the Family Educational and Privacy Act (FERPA), 20 U.S.C. §1232g and 34 CFR Part 99 as well as additional applicable state and federal laws.
2. **Purpose.** This Agreement sets out the terms under which the OPI is authorized to release personally identifiable information (PII) to _____ pursuant to the OPI policy 7.2.01 in compliance with FERPA.
3. **Legal Authority/FERPA Exceptions.** FERPA set forth in Title 20 U.S. Code Section 1232g and its regulation at Title 34 CFR § 99.1 et seq. generally prohibits the disclosure of a student's PII without consent, subject to certain exceptions which includes the audit or evaluation exception. This exception allows for the disclosure of PII from education records to authorized representatives of the Comptroller General of the U.S., the Attorney General, the Secretary of Education, and state or local LEAs for audit or evaluating a federal or state supported education program, or to enforce or comply with federal legal requirements that relate to those education programs. 20 U.S.C. 1232g(b)(1)(C), (B)(3), and (b)(5) and §§99.31(a)(3) and 99.35.

The OPI and _____ agree that _____ is an individual or organization to whom the OPI can disclose without consent student PII from educational records, under the audit or evaluation exception of FERPA. Nothing in this Agreement may be construed to allow either party to maintain, disclose, or share student information in a manner not allowed by federal law.

4. **Term of Agreement.** This Agreement shall take effect upon signature of the authorized representatives of the OPI and _____, and shall remain in effect until terminated by either party as set out in Section 8 below.
5. **Definitions.**
 - a. **"Disclose" or "disclosure"** means to permit access to or the release, transfer, or other communication of education records, or a student's PII contained in those records, to any party, by any means, including oral, written, or



electronic means. Unless otherwise required by law, further disclosure of any student PII released to _____ by the OPI is prohibited by this Agreement in that it constitutes a re-disclosure of information. 34 CFR §99.33.

- b. **“Personally Identifiable Information” (PII)** means educational records which pertain to an individual student and may easily lead to that student’s identity with reasonable certainty. FERPA regulations list personally identifiable student information as including, but is not limited to, the following:
- the student's name;
 - the name of the student's parent or other family member;
 - the address of the student or student's family;
 - a personal identifier such as social security number or student number;
 - a list of personal characteristics that would make the student's identity easily traceable; or
 - other information that would make the student's identity easily traceable.
- c. **“Subcontractor”** means an individual or entity which:
- has been contractually engaged by _____ to provide or assist in carrying out the audit, evaluator, or compliance activity as set out in this Agreement; and
 - has been recognized by the OPI as an authorized representative pursuant to 34 CFR §99.33.

6. Terms and Conditions.

- a. The OPI designates _____ as authorized representative for purposes of disclosing student information including PII, for use as described in this Agreement. _____ designates _____ as the authorized representative able to request and receive data under this Agreement and to ensure _____’s compliance with the terms of the Agreement and applicable law. The OPI shall release data only to the named authorized representative who will be responsible for transmitting all data requests and maintaining a record of all data requested and received, including confirmation to the OPI of the completion of the project and return or destruction of data as required by this agreement. Within seven days of signing this Agreement, both sides shall exchange in writing the mailing address, telephone number, fax number, and email address of their

Student Records Confidentiality

Resource H—FERPA Memorandum of Understanding Audit-Evaluation Exception

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authorized representative. These names can be changed upon written notice to the other party.

- b. The student PII being disclosed is identified as the following:

_____.

- c. The purpose for disclosure of the student PII to the authorized representative is to carry out an audit or evaluation of federal or state supported education programs or to enforce or to comply with federal legal requirements that relate to those programs:

_____. (

Please describe with specificity the purpose for the student PII being disclosed and how it is in furtherance of an audit, evaluation, or compliance activity and a description of how the PII will be used. Attach a separate addendum if necessary. Any such addendum is hereby incorporated into this Agreement.)

- d. Unless otherwise required by law, _____ agrees not to share or re-disclose student PII received under this Agreement with any other entity, organization or individual (other than _____'s subcontractors) without prior written approval from the OPI.
- e. _____ agrees to maintain all PII data in a manner that does not permit personal identification of parents or students by anyone other than _____'s representatives with legitimate interests.
- f. _____ agrees to establish procedures and systems such that student PII data is kept in secured facilities and media and that access to such records is restricted to _____ and _____'s subcontractors who are authorized to have access to the data.
- g. Pursuant to Section 2-6-504 MCA, _____ shall immediately, within one business day of learning a breach has occurred, report to the OPI the



incident in which student PII is reasonably believed to have been acquired by an unauthorized person.

h. _____ agrees to promptly notify the OPI in writing when the audit, evaluation, or compliance activity is complete. When the OPI receives such notification, this Agreement is terminated.

i. Within 30 days after termination of this Agreement, _____'s authorized representative agrees to destroy or return to the OPI all student PII obtained under this Agreement. Any destruction of the student PII must be witnessed by one other person who can later attest the complete destruction of PII occurred. _____ agrees to submit a letter to the OPI within 30 days of the termination of this Agreement attesting to the destruction of any student PII received pursuant to this Agreement. If the student PII data will be destroyed, it will be destroyed using the following procedures:

j. Under no circumstances shall _____ become owners, proprietors, or custodians of any PII data provided by the OPI under this Agreement.

k. Prior to the initial receipt of the OPI's student PII under this Agreement, each of _____'s employees shall have signed the OPI's Contractor Nondisclosure Statement, a copy of which is attached and is hereby incorporated into this Agreement by reference.

l. Periodic reports on the status of the project will be provided as requested by the OPI.

7. Scope of Agreement. This Agreement incorporates all the understandings between the OPI and _____ concerning the disclosure of student PII for the purposes set forth in this Agreement. The parties agree that the exchange of any confidential information other than the student PII identified in this agreement shall be handled under a separate mutually executed confidentiality agreement.



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

8. **Termination of Agreement.** This Agreement shall terminate automatically when the OPI receives notification the audit, evaluation, or compliance activity is completed, as set forth in Section 6(h) above. In the alternative, this Agreement may be terminated by the OPI or _____, upon written notice delivered to the other not less than 14 days prior to the intended termination date. By such termination notice, neither the OPI nor _____ shall negate obligations already incurred or required to be performed prior to the effective date of the termination. The OPI may terminate the Agreement immediately upon confirmation of fraud, negligence, or abuse of confidentiality restrictions.

Montana OPI

By _____ Date _____

By _____ Date _____