DATA SHARING AGREEMENT #xxxxTP-xxx

BETWEEN

THE OFFICE OF SUPERINTENDENT OF PUBLIC INSTRUCTION (hereinafter referred to as "OSPI")

AND

DATA REQUESTOR (hereinafter referred to as "INSTITUTION)

In consideration of the promises and conditions herein, OSPI and INSTITUTION (collectively "PARTIES"), do hereby mutually agree as follows.

1. PURPOSE AND AUTHORITY FOR DATA SHARING

INSTITUTION submitted a completed Request Form for Student-Level Data (Exhibit A) to OSPI. The purpose of this agreement is to outline the conditions under which OSPI will release student-level data to the INSTITUTION and the governance of the confidential information as authorized under the following law(s) and statute(s):

STATUTE 1

STATUTE 2

STATUTE 3

2. DEFINITIONS

"Agreement" means this Data Sharing Agreement.

"Authorized User" means an individual or individuals with an authorized business need to access Confidential Information under this DSA.

"Confidential Information" means information that is exempt from disclosure to the public or other unauthorized persons under Chapter 42.56 RCW or other federal or state laws. Confidential Information comprises both Category 3 and Category 4 Data as described in Section 10, Data Classification, which includes, but is not limited to, Personal Information.

For purposes of this DSA, Confidential Information means the same as "Data" and includes Personally Identifiable Information.

"Contract Administrator" means the individual designated to receive legal notices and to administer, amend, or terminate this DSA.

"Contract Manager" means the individual identified on the cover page of this DSA who will provide oversight of the activities conducted under this DSA.

"**Data**" has the same meaning as Confidential Information.

"Disclosure" means the release, transfer, provision of, access to, or divulging in any other manner of information outside the entity holding the information.

"DSA" means this Data Sharing Agreement.

"**Education Records**" has the same meaning as set forth in FERPA, specifically 34 C.F.R. 99.

"**FERPA**" means The Family Educational Rights and Privacy Act, 20 USC §1232g, which applies to Education Records of individual students held by the Parties.

"Institution" means any party accessing Confidential Information pursuant to this DSA, and includes the entity's owners, members, officers, directors, partners, trustees, employees, and Subcontractors and their owners, members, officers, directors, partners, trustees, and employees.

"Personally Identifiable Information" or "PII" is student or education information or data governed by FERPA that includes direct identifiers, indirect identifiers or other information, alone or in combination, which can be used to distinguish or trace an individual's identity either directly or indirectly through linkages with other information.

"Security Incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information, or interference with system operations in an information system.

3. DESCRIPTION OF DATA TO BE SHARED

GENERAL DESCRIPTION FROM DATA REQUEST FORM.

The specifications of the data to be shared are further outlined in Exhibit E – Data approved for sharing.

4. PERIOD OF AGREEMENT

OSPI will not disclose the data prior to the occurrence of each of the following conditions: (1) This Agreement must be executed by a representative of OSPI and INSTITUTION; (2) INSTITUTION must submit a data request form identified as Exhibit A to OSPI's Contract Manager; and (3) INSTITUTION'S confidentiality agreements attached as Exhibit B must be executed.

The term of this Agreement is as follows, subject to the three prior conditions to OSPI's commencement of performance set forth immediately above and except as otherwise provided in this Agreement:

Month Day, Year or date of execution, whichever is later, through Month Day, Year.

5. CONTACTS

The following Contract Manager for each of the parties shall be the contact person for all communications regarding the performance of this Agreement.

Contract Manager OSPI	Contract Manager INSTITUTION
Darby Kaikkonen	
Director of Student Information	
Old Capitol Building, P.O. Box 47200 Olympia, WA 98504-7200	
360-725-6247	
Darby.kaikkonen@k12.wa.us	

6. GENERAL TERMS AND CONDITIONS

This Agreement does not constitute a release of the Data for discretionary use. INSTITUTION will collect and use the data provided under this Agreement only for the purposes, scope, and duration identified in Exhibit A.

INSTITUTION is prohibited from charging OSPI to get access to contract data.

INSTITUTION agrees to provide a copy of any products or reports with OSPI before they are released, published, or otherwise made available.

INSTITUTION agrees to permit OSPI, at OSPI's cost and upon written reasonable request, to inspect, review, or audit INSTITUTION to confirm that the INSTITUTION is complying with this Agreement, including, without limitation, the data security policies and procedures identified in Exhibit A, and the methods of data destruction described in Exhibit C.

7. SPECIAL TERMS AND CONDITIONS

SPECIAL TERMS AND CONDITIONS FOR THE AGREEMENT.

8. DATA ACCESS/AUTHORIZED USERS

The individuals who are the designated Authorized Users for INSTITUTION with respect to this Agreement are listed with their contact information in Exhibit D.

9. ASSIGNMENT

The INSTITUTION will not assign rights or obligations derived from this DSA to a third party.

10. DATA CLASSIFICATION

The State classifies data into categories based on the sensitivity of the data pursuant to the Security policy and standards promulgated by the Office of the state of Washington Chief Information Officer (OCIO) and included in OCIO Standard No. 141.10. The highest classification for Data that is the subject of this DSA is classified as indicated below but may include data that can be classified Category 1-3:

☐ Category 1 – Public Information
>Public information is information that can be or currently is released to the public. It does not need protection from unauthorized disclosure but does need integrity and availability protection controls.

☐ Category 2 – Sensitive Information
>Sensitive information may not be specifically protected from disclosure by law and is for official use only. Sensitive information is generally not released to the public unless specifically requested.

☐ Category 3 – Confidential Information
>Confidential information is information that is specifically protected from release or disclosure by law. It may include but is not limited to:
>- Personal Information about individuals, regardless of how that information is obtained.
>- Information concerning employee personnel records.
>- Information regarding IT infrastructure and security of computer and telecommunications systems.

☐ Category 4 – Confidential Information Requiring Special Handling
>Confidential information requiring special handling is information that is specifically protected from disclosure by law and for which:
>- Especially strict handling requirements are dictated, such as by statutes, regulations, or agreements.
>- Serious consequences could arise from unauthorized disclosure, such as threats to health and safety or legal sanctions.
>- The INSTITUTION agrees to protect data in a manner that does not permit personal identification of confidential information. This includes not publishing results for student aggregations fewer than 10 as well as appropriately applying complementary suppression techniques or blurring of reported data such that the values of suppressed cells (fewer than 10 students) may not be inferred or calculated by subtracting reported values from row or column totals.

11. REDISCLOSURE

INSTITUTION will not publish, copy, or disclose the data to any other party, except a) those employees of INSTITUTION and INSTITUTION'S subcontractors (collectively, Authorized Users') that are directly involved and have a legitimate interest or 'need to know' according to the terms of this agreement, or b) as set forth herein or required by law.

If INSTITUTION becomes legally compelled to disclose any data (whether by judicial or administrative order, applicable law, rule or regulation, or otherwise), the INSTITUTION must use all reasonable efforts to provide OSPI with prior notice before disclosure so that OSPI may seek a protective order or other appropriate remedy to prevent the disclosure or to ensure OSPI's compliance with the confidentiality requirements of federal or state law. If a protective order or other remedy is not obtained prior to the deadline by which any legally compelled disclosure is required, INSTITUTION will disclose only that portion of the data that Contractor is compelled to disclose under law.

12. AUTHORIZED USERS

The INSTITUTION must require all Authorized Users to comply with applicable state and federal student privacy laws, including without limitation the Family Education Rights Privacy Act, 20 U.S.C. 1892(g); the Richard B. Russell National School Lunch Act, 42 U.S.C. 1751 et seq.; the Child Nutrition Act of 1966, 42 U.S.C. 1771 et seq. INSTITUTION must require each Authorized User to execute OSPI's Non-Disclosure Statement. Alternatively, INSTITUTION may require each Authorized User to execute a confidentiality agreement that must contain, at a minimum, the terms and conditions of this Agreement. Executed copies of INSTITUTION's confidentiality agreement or OSPI's Non-Disclosure Statement(s), as appropriate, shall be attached to this Agreement as Exhibit B.

13. DATA SECURITY

The security requirements in this document reflect the applicable requirements of the Washington Office of the Chief Information Security Offices' Security Standard No. 141.10, Securing Information Technology Assets, specifically SEC-08-01-S Data Classification Standard and SEC-08-02-S Encryption Standard, which OSPI is required to follow.

The INSTITUTION acknowledges it is required to comply with the Washington Office of the Chief Information Security Offices' Security Standard No. 141.10, Securing Information Technology Assets, specifically SEC-08-01-S Data Classification Standard and SEC-08-02-S Encryption Standard. OCIO IT Security Standard 141.10, Securing Information Technology Assets, applies to all OSPI assets stored as part of a service, application, data, system, portal, module, components or plug-in product(s) that are secured as defined by the WaTech OCIO's IT Security Policy 141 and OCIO IT Security Standard 141.10, Securing Information Technology Assets.

As part of Security Standard 141.10, a design review checklist and/or other action may be required, with exceptions of any areas identified and agreed upon by OSPI who may seek a waiver of any identified misalignments. These activities will be managed and coordinated between OSPI and INSTITUTION and shared with OSPI's Information Technology Services. Any related costs to performing these activities shall be at the expense of the INSTITUTION.

The INSTITUTION certifies that it has the capacity to restrict access to the data solely to Authorized Users and to ensure that the data is accessed only for the purpose, scope, and duration described in Exhibit A.

14. TRANSFER PROTOCOL

OSPI and the INSTITUTION agree to work cooperatively to determine the proper medium and method for the transfer of the data between each other and in alignment with OCIO Security Standard No. 141.10 SEC-08-02-S. INSTITUTION will confirm the transfer of confidential data and notify OSPI as soon as practicable of any discrepancies between the actual data transferred and the data described in this Agreement. The same protocol will apply to any transfer of data from INSTITUTION to OSPI.

15. DISPOSITION UPON TERMINATION OR FULFILLMENT OF PURPOSE

Data shall be retained for the period of time mandated by the controlling law and records retention schedule. INSTITUTION shall plan to retain no copies of data beyond the retention period stated in OSPI's record retention schedule unless otherwise required by law.

For agreements authorized under the FERPA Studies Exception or upon OSPI's request:
INSTITUTION agrees to destroy all data within forty-five (45) days after it is no longer needed for the purpose described in Exhibit A, upon OSPI's request, or upon termination of this Agreement, whichever occurs first, and unless agreed otherwise in writing. Contractor must provide written verification of the data destruction (signed copy of Exhibit C) to OSPI within fifteen (15) days after the data is destroyed.

16. DATA BREACH NOTIFICATION

The INSTITUTION agrees to notify OSPI as soon as practicable if INSTITUTION learns of any security breach to the server containing the data or of any disclosure of data to anyone other than the Authorized Users or OSPI officials authorized to receive confidential data. INSTITUTION must cooperate and take all reasonable means prescribed by OSPI to secure any breaches as soon as practicable.

17. TERMINATION

Except as otherwise provided in this Agreement, either party may, by five (5) days written notice terminate this contract in whole or in part. The notice must specify the date of termination.

Either party may terminate this Agreement in the event the other party materially breaches any term, provision, warranty, or representation.

In the event of a breach or threatened breach of this Agreement by INSTITUION, OSPI, in addition to any other rights and remedies available to OSPI under, at law, or in equity, may be entitled to preliminary and permanent injunctions to enjoin and restrain the breach or threatened breach.

18. DISPUTE RESOLUTION

In the event that a dispute arises under this Agreement, the parties shall first attempt to negotiate a mutually satisfactory solution. If the dispute cannot be resolved between the parties, a Dispute Board shall determine resolution in the following manner. Each party to this Agreement shall appoint one member to the Dispute Board. The members so appointed shall jointly appoint an additional member to the Dispute Board. The Dispute Board shall review the facts, contract terms, and applicable statutes and rules and make a binding determination of the dispute.

19. SEVERABILITY

The provisions of this contract are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the contract.

20. CHANGES IN LAW

Parties intend to periodically review privacy and other related laws regarding data to allow this Agreement to remain current. To the extent a law is amended or adopted that impacts the validity, enforceability, and/or legality of any term in the Agreement, the parties agree to work collectively to amend the Agreement to reflect changes in the law. To the extent the parties are

unable to agree on revisions to this Agreement consistent with the change in the law, a Party may terminate this Agreement.

21. ALTERATIONS AND AMENDMENTS

Terms and conditions of this Agreement, including the Exhibits thereto, may only be amended by mutual written consent of both OSPI and INSTITUTION. INSTITUTION will not assign its respective rights or obligations under this Agreement without prior written consent of OSPI. The rights and obligations of each party under this Agreement shall inure to the benefit of and shall be binding upon that party and its respective successors and assigns.

22. ENTIRE CONTRACT

This contract contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.

23. GOVERNING LAW

This Agreement shall be construed and interpreted in accordance with the laws of the State of Washington and the venue of any action brought hereunder shall be in Superior Court for Thurston County.

24. INDEMNIFICATION

Each party shall be responsible for the negligence of its own employees or agents in the performance of this Agreement.

25. PUBLICITY

OSPI is not required to agree with or endorse the conclusions or results of the work for which the data is shared. INSTITUTION agrees to submit to OSPI all advertising and publicity matters relating to this Agreement which in OSPI's judgment, OSPI's name can be implied or is specifically mentioned. INSTITUTION agrees not to publish or use such advertising or publicity without the prior written consent of OSPI. Notwithstanding the foregoing, INSTITUTION may make known in a public fashion the existence of the Agreement without prior consent of OSPI.

26. ORDER OF PRECEDENCE

In the event of an inconsistency in this Agreement, the inconsistency shall be resolved by giving precedence to applicable Federal and state of Washington statutes and regulations.

27. INCORPORATION OF EXHIBITS

Each of the attachments listed below is by this reference hereby incorporated into this contract.

- Exhibit A – Student-Level Data Request Form
- Exhibit B – Statement of Confidentiality and Non-Disclosure
- Exhibit C – Certification of Data Destruction
- Exhibit D – Authorized Users for Contractor

- Exhibit E – Data approved for sharing
- Any other provision, term or material incorporated herein by reference or otherwise incorporated

APPROVAL

This agreement shall be subject to the written approval of OSPI and INSTITUTION's authorized representatives and shall not be binding until so approved. OSPI's signatory for Agreements authorizing identifiable Category 4 data shall be the Contracts Administrator.

INSTITUTION Signatory

Superintendent of Public Instruction
State of Washington

_____
Signature

_____
Signature

_____
Printed Name

_____
Printed Name

_____
Date

_____
Date

EXHIBIT A
STUDENT-LEVEL DATA REQUEST FORM

(This page intentionally left blank.
Data Request Form as a PDF will be inserted prior to agreement execution)

EXHIBIT B
STATEMENT OF CONFIDENTIALITY AND NON-DISCLOSURE
OFFICE OF SUPERINTENDENT OF PUBLIC INSTRUCTION

I acknowledge that I am an "Authorized User" under this Data Sharing Agreement and I understand that I will have access to student-level information provided by OSPI. I understand that the information may be used solely for the purposes of work outlined in Exhibit A.

- I have been informed and understand that all information related to this Agreement is confidential and may not be disclosed to unauthorized persons. I agree not to divulge, transfer, sell, or otherwise make known to unauthorized persons any information contained in this system.
- I also understand that I am not to access or use this information for my own personal information but only to the extent necessary and for the purpose of performing my assigned duties as a Contractor related to this Agreement. I understand that if I participate in any unauthorized disclosure of confidential information I may be subject to applicable disciplinary, civil, and criminal proceedings and/or penalties.
- I will comply with applicable state and federal student privacy laws, including without limitation the Family Education Rights Privacy Act, 20 U.S.C. 1892(g); the Richard B. Russell National School Lunch Act, 42 U.S.C. 1751 et seq.; the Child Nutrition Act of 1966, 42 U.S.C. 1771 et seq.
- I will protect the data in a manner that does not permit personal identification of students.

Signature _____Date _____

Printed Name, Title

_____

INSTITUTION hereby assures the Office of Superintendent of Public Instruction (OSPI) that: (1) the above named person has been informed of the obligations and limitations respecting the non-disclosure of information established by the Data Sharing Agreement between INSTITUTION and OSPI, (2) no student-level information will be disclosed to any person or entity not expressly authorized by or pursuant to the Agreement to receive such information, (3) INSTITUTION shall adequately safeguard all such confidential information from disclosure or access to by unauthorized persons (4) all confidential information provided by or through OSPI will be returned to OSPI or destroyed prior to the expiration of the Agreement, or immediately upon termination of the Agreement by either party; and (5) INSTITUTION has adequate supervision and control over its employees, officers, contractors, and subcontractors to ensure their compliance with these Assurances.

Signature _____ Date_____

Printed Name, Title

_____
(An original of this signed document must be returned to the Office of Superintendent of Public Instruction.)

EXHIBIT C
CERTIFICATION OF DATA DESTRUCTION

This form must be signed by INSTITUTION and returned to OSPI within 15 days of the date of disposal.

Acceptable destruction methods for various types of media include:

1) If student-level information has been contained on optical discs (e.g. CDs, DVDs, Blu-ray), the data recipient shall either destroy by incinerating the disc(s), shredding the discs, or completely deface the readable surface with a coarse abrasive.
2) If student-level information has been stored on magnetic tape(s), the data recipient shall destroy the data by degaussing, incinerating or crosscut shredding.
3) For paper documents containing student-level information, a contract with a recycling firm to recycle confidential documents is acceptable, provided the contract ensures that the confidentiality of the data will be protected. Such documents may also be destroyed by on-site shredding, pulping, or incineration.
4) If data has been stored on server or workstation data hard drives, encrypted archival tape, or similar media, the data will be destroyed by:
     - Using a wipe utility which will overwrite the Data at least three (3) times using either random or single character data; or,
     - Encrypted archives containing the de-identified data will be purged from storage arrays and decryption keys will be purged from User's key management system, rendering any data remnants of the archive, as they exist at the block level on storage arrays and backup archives, completely inaccessible and irrecoverable.
     - Degaussing sufficiently to ensure that the Data cannot be restructured; or
     - Physically destroying the disk

☐ All copies of any data sets related to Data-Sharing Agreement #xxxxID-xxx/Contract # XXXXXXXX have been destroyed in accordance with procedures reviewed and approved by OSPI's Chief Information Officer.

☐ All products or reports generated with the data provided through Data-Sharing Agreement #xxxxID-xxx/Contract # XXXXXXXX have been or will be sent to OSPI before they are released, published, or otherwise made available.

Date of Disposition _____

INSTITUTION hereby certifies, by signature below, that the data disposition requirements outlined above been fulfilled.

Signature of INSTITUTION_____ Date: _____

EXHIBIT D
AUTHORIZED USERS FOR INSTITUTION

The individuals below are authorized to have access to or work directly with data provided in this agreement.

At any point in time through the duration of the data sharing agreement individuals are to be added as authorized users for research, written notification of the individual(s) to add and a signed original Exhibit B Statement of Confidentiality and Non-Disclosure for each person must be provided to OSPI, prior to providing access to the data.

At any point in time through the duration of the data sharing agreement any of the staff listed below are removed from the project, written notification must be provided to OSPI immediately.

Name	Title	Email address

EXHIBIT E
DATA APPROVED FOR SHARING

The parties agree that data listed below are to be shared and used only for the purpose detailed in this Agreement.

Activity for which data is needed

INSTITUTION is requesting [question 10 response on data request form] data under the FERPA exception [question 11 response on data request form]. The purpose and scope of the project is [question 13 on data request form].

Description of Data

[If requesting batch files only] The data tables below contain the student-level 'batch files' with a Research ID to be shared.

[If requesting data other than batch files] [question 22 response on data request form].

CEDARS and Assessment Batch Files

	First Year	Last Year	Approval	Approval Date
CEDARS				
Course Catalog				
District Programs				
Detailed Race and Ethnicity				
Enrollment & Demographics				
Free/Reduced Price Lunch				
LAP student Growth				
Limited English Proficiency				
Migrant				
School Programs				
Special Education				
Staff Schedule				
Student Absence				
Student Discipline				
Student Grade History				
Student Schedule				
ASSESSMENT				
Early Learning Assessment				
English Language Proficiency				
Student Growth Percentile				
Spring Summative				