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DATA SHARING AGREEMENT

A Legally Binding Document

Between

Name (Tribe or Tribal Organization)

And

Name (Contractor or Agency or Organization)

1. **ENTITIES RECEIVING - AND - PROVIDING, AND/OR GATHERING DATA**

(e.g. Tribe, Tribal Organization)

ENTITY PROVIDING and RECEIVING DATA: (NAME)

RESPONSIBLE PERSON

OFFICE: (e.g. department)

CONTACT PERSON: (Name)

TITLE: (Position)

ADDRESS:

PHONE NUMBER: ( ) -

EMAIL @

FAX NUMBER: ( ) -

(e.g. Contractor or Evaluator)

ENTITY GATHERING DATA: (NAME)

CONTACT PERSON: (Name)

TITLE:

ADDRESS:

PHONE NUMBER: ( ) -

EMAIL: @

FAX NUMBER: ( ) -

1. **PURPOSE, AUTHORITY AND TERM OF AGREEMENT**
2. PURPOSE

To facilitate the health (or other purpose) of XXXX (e.g. Indian tribe(s) and Individual American Indians and Alaska Natives) in the XXXX (e.g. area of country/state), {Name of Tribe} will provide defined/specific/limited data access to XXXX (Contractor). The XXXX (Contractor) must request {Name of Tribe} permission for collection and use of specified data. Because the {Name of Tribe} is a federally recognized government, pursuant to the Bureau of Indian Affairs; and is committed to maintaining health and wellbeing its community. The duly elected Tribal Council is responsible for all functions and activities of the Tribe. The Tribal Council has an inherent and legal responsibility to protect Tribal affairs, businesses, and traditional values and customs. Included in Tribal responsibilities is the ability to develop and maintain policies to protect the integrity of operations and guard against predatory and harmful use of data against the population they serve. This is an absolute and non-negotiable function of the Tribe to ensure present and continued viability of all future generations.

The outcome of the work or activities of this Agreement must contribute to the overall Tribal mission of improving the XXXX (e.g. quality of health for the tribe(s), the {Name of Tribe} agrees to make specified access to (and or ability to gather data) data available to the XXXX Contractor, under the terms listed hereafter.

1. LEGAL AUTHORITY
2. The {Name of Tribe} is a federally recognized (e.g. tribe or tribal organization under ….) *AND OR*;
3. *Optional* - The XXXX (PROVIDER OF DATA) is a/an XXXX an Indian Organization as defined by federal law in the Indian Self-determination and Education Assistance Act, 25 U.S.C. S450b(1).
4. The XXXX (e.g. contractor or evaluator) ENITY(s) will gather DATA to be submitted to the {Name of Tribe or Tribal Organization}. The XXXX is a (e.g. university, a state agency, other) operating under the authority of the XXXX whose mission is XXXX (e.g. teaching, research and dissemination of knowledge for public benefit).

C. PERIOD OF PERFORMANCE

This Agreement shall be effective when signed by both/all parties and shall continue until terminated pursuant to the termination clause contained herein.

**III DESCRIPTION OF DATA/DATA WORKPLAN**

The following data will be provided under this agreement:

Data collected by XXXX (e.g. contractor or evaluator) including the instruments/protocols (may or may not be mandated by a grantor) is intended to be used to monitor/provide ability for informed decisions of {Name of Tribe} for XXXX (e.g. population/area/community). This information will facilitate development of a better understanding of the impact and success of culturally relevant health care/services for AI/AN children/youth/adults in the {Name of Tribe} community/area. This information will be especially useful for targeting effective interventions, for evaluating the efficacy and cost-effectiveness of those interventions and for monitoring AI/AN health trends in the XXXX area (location/community).

All data generated by this project shall be the exclusive property of the {Name of Tribe}. Any reports, analyses, products (e.g survey tools, forms, program tools, recordings, videos) may not be distributed by the XXXX (e.g. contractor or evaluator) without the written approval of the XXXX (e.g. tribe or tribal organization).

**IV**. **ACCESS TO DATA**

1. METHOD OF ACCESS AND TRANSFER (if using a Contractor to collect data)

Data will be obtained in the following manner: Data will be collected by the XXXX (Contractor) and provided to {Name of Tribe}. All data will be protected as determined in Appendix XXXX. (e.g. locked cabinet, in locked office/secure area; telecommunicated data by exclusive password).

Data will be extracted and de-identified. All data will be entered into a specially designed HIPAA-compliant database. Data methods and procedures, as well as tools (e.g. questionnaires) must be approved by the {Name of Tribe} Institutional Review Board. All HIPAA compliant data forms will be sent to {Name of Tribe} via secure computer fax and/or Fed Ex.

1. PERSONS HAVING ACCESS TO DATA

All persons who will have access to data must complete a data privacy training provided by XXXX (e.g. Tribe).

The XXXX Principal Investigator and authorized XXXX evaluators (or surveyors) who specifically require access to such data in the performance of their assigned duties shall have access to identified data. Prior to any data transfer under this Agreement, all staff members who will have access to the information will be notified of the use and disclosure requirements. Also prior to the transfer of any data, ALL staff members who will have access to the data, including researchers, evaluators, surveyors shall must sign the Use and Disclosure of Client Information (Attachment A), signed copies must be provided to XXXX (e.g. Tribe) before any data activities.

1. FREQUENCY OF DATA EXCHANGE

Data will be exchanged XX (e.g. as needed to meet reporting requirements, monthly or weekly or daily).

V. **SECURITY OF DATA**

All electronic data will be password-protected. XXXX (e.g. contractor or evaluator) will not attempt to identify individuals’ records by any method. Some datasets may need to be encrypted for participant protection. All reasonable precautions shall be taken to secure the data from individuals who do not specifically have authorized access. Data shall be kept on a password-protected file server located in a secure environment. Project data will be kept in a separate directory on the server, which is also password-protected and will be accessible only by XXXX Contractor or staff members specifically authorized for access as provided in this Agreement.

**VI. CONFIDENTIALITY**

1. REGULATIONS COVERING CONFIDENTIALITY OF DATA

The use and disclosure of information obtained under this Agreement shall be subject to CFR 45 Section 164.502. Contractor shall maintain the confidentiality of any information, which may, in any manner, identify an individual.

Further, Contractor shall not link the data with individually identifiable data from any other source unless specifically authorized in this Agreement.

Example: *As this project is specific to AI/AN children and youth, all data collected, including only aggregate data, will have the potential to identify XXXX AI/AN children and youth [because of geographical location or small population])*. Confidentiality of all data therefore must be ensured. Unique methods may need to be developed or certain data excluded that would have the potential to identify any population or community that would result in adverse implications or responses to the data findings.

1. NON-DISCLOSURE OF DATA

XXXX Contractor shall not disclose, in whole or in part, the data described in this Agreement to any individual or agency not specifically authorized by this Agreement.

XXXX Contractor will document uses and users of the data and will report this information routinely (may need to define “routinely in this section) back to the {Name of Tribe}.

1. XXXX Contractor will not disclose directly to, or use for the benefit of, any third party, any proprietary or secret or confidential information, knowledge or data acquired by virtue of its relationship with {Name of Tribe}, without the express prior written approval of {Name of Tribe}. It is understood and agreed by the parties that the obligations of this paragraph shall survive the expiration of termination of this Agreement.

**VII. CRIMINAL PENALTIES**

Any breach of the items listed in this Agreement are subject criminal penalties. The misuse/lost of confidentiality/exposure of private individual or tribal information shall be construed as a breach. The penalty for such a breach is a minimum of ten thousand dollars ($10,000) and five (5) years in prison. There is no maximum limit on punitive damages or imprisonment.

**VIII. PROPERTY RIGHTS (if using a contract evaluator)**

All original materials prepared by XXXX Contractor in connection with the performance of services under this Agreement, including, without limitation: all reports, proposals, analysis, writings, sound recordings, pictorial reproductions or materials of any type whatsoever, are and shall remain the sole and exclusive property of {Name of Tribe}. XXXX Contractor will assert no right, claim or interest of any nature whatsoever, present and future, with respect thereto, including specifically but, without limitation, any claim to statutory copyright or patent.

**IX. RIGHTS IN DATA**

XXXX Contractor may request data from {Name of Tribe} for development of papers, reports, or presentations. Such papers, reports, presentations must have the specific written approval of {Name of Tribe} before such products are submitted for presentation or publication.

(If so chosen) the {Name of Tribe} shall be cited as the source of the data in all tables, reports, presentations, and scientific papers. Any interpretations, calculations, and/or manipulations of the data must be approved by the {Name of Tribe}.

At least forty five (45) days prior to submission or presentation at a meeting/conference, the XXXX Contractor will furnish a copy of a proposed publication or presentation to {Name of Tribe} for review and comment. The {Name of Tribe} will have thirty (30) days after receipt of the proposed materials to make a request for change (e.g. remove confidential or sensitive information from the materials). The XXXX Contractor will have 30 days to resubmit for approval. The {Name of Tribe} will have 30 days to review changes and approve or disapprove. All approval must be in writing and noted as such in the paper/report/or presentation.

**X. SEVERABILITY**

If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, if such remainder conforms to the requirement of applicable law and the fundamental purpose of this Agreement, and to this end the provisions of this Agreement are declared to be severable.

**XI**. **TERMINATION**

Either party may terminate this Agreement upon 30 days prior written notification to the other party.

No data may be used by the XXXX Contractor, after the termination of this Agreement. All data must be returned to the {Name of Tribe} or destroyed. There must be proof of destruction. *(e.g. proof could be in the form of a letter signed by an “authorized signor” that states all data has been destroyed)*

**XII. WAIVER OF DEFAULT**

Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver of a breach of any provision of the Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Agreement unless stated to be such in writing, signed by the XXXX (e.g. Contracting Officer, or Executive Director) of {Name of Tribe} and attached to the original Agreement.

**XIII. HOLD HARMLESS *(if using contracted evaluators – two examples)***

1. To the extent permitted by the XXXX Tort Claim Act and/or the U.S Constitution, Article XX, Section XX, Tribal Constitution; the XXXX Contractor shall defend, protect and hold harmless {Name of Tribe} or any employees thereof, from and against all claims, suits or action arising from any intentional or negligent act or omission of the XXXX Contractor or its employees in the use or disclosure of any data or material provided to {Name of Tribe} under this Agreement. Claims shall include, but not be limited to, assertions that the use or transfer of any software, book, document, report, film, tape or sound reproduction or material of any kind, delivered hereunder, constitutes an infringement of any copyright, patent, trademark, trade name, or otherwise results in an unfair trade practice.
2. To the extent permitted by the XXXX Name of State Tort Claim Act (XX,##.###) and the XXXX State Constitution, Article XX, Section ##) The XXXX Contractor agrees to hold harmless and indemnify the {Name of Tribe} against any and all losses, costs, damages, claims, expenses, or other liability whatsoever, including but not limited to, accidents; injury to persons or property, to the extent caused directly by the XXXX Contractor's negligent; and reckless, or willful acts or failures to act in performance of this Agreement.

**XIV. ALL WRITINGS CONTAINED HEREIN**

This Agreement 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.

**XV. Authorized Signatures**

The signatories below warrant and represent that they have the competent authority on behalf of their respective parties to enter into the obligations set forth in this Agreement. The XXXX Contractor signatory below further acknowledges and agrees that, by his or her signature below, he or she represents XXXX Contractor and is duly authorized to enter into the obligations set forth in this Agreement on behalf of the XXXX Contractor.

Name:

Signature: Date:

Date:

Approved By:

Director, XXXX

Name of XXXX Contractor

Name:

Signature: Date:

XXXX Position

{Name of Tribe}

*May add other signatures, but all must be deemed “authorized signature” of Tribe or Contractor.*

ATTACHMENT A

**USE AND DISCLOSURE OF CLIENT INFORMATION**

Staff with access to confidential data (individual and aggregate) information are responsible for understanding rules for use, disclosure of the information, and penalty for misuse. Outlined below are key elements for staff to remember:

A. CONFIDENTIALITY OF DATA

1. Individually identifiable data is confidential and is protected by various tribal, state, and federal laws.

2. Confidential information includes, but is not limited to: all personal information (e.g., name, birth date, social security number, diagnosis, treatment, etc.) which may, in any manner, identify an individual, or tribe or service provider.

B. USE OF CLIENT DATA

1. Patient/Client data may be used only for purposes directly described in the data sharing agreement between XXXX Contractor and {Name of Tribe}.

2. Any personal use of patient/client information is strictly prohibited and subject to federal “protected information” laws and penalties.

3. Access to data must be limited to those staff whose duties specifically require access to such data in the performance of their assigned duties.

4. Staff will ensure that any discussions or correspondence, are not available for public exposure *(e.g. discussion of private/confidential information is not discussed in public places).*

C. DISCLOSURE OF INFORMATION

1. Identified data or information may not be disclosed to other individuals or agencies.

2. Questions related to disclosure are to be directed to XXXX (e.g. Director of the XXXX of the Tribe).

3. Any disclosure of information contrary to any of the above is deemed to be unauthorized and is subject to penalties identified by law, including fines and imprisonment or both.

Name:

Signature: Date:

Date:

Approved By:

Director, XXXX

Name of XXXX Contractor