

## DATA LICENSE AGREEMENT & MEMORANDUM OF UNDERSTANDING

This Data License Agreement & Memorandum of Understanding (this “Agreement”) is made effective as of July 1, 2017 (the “Effective Date”) between AvenirEducation, Inc. dba SPEDx (“SPEDx”), a Georgia corporation with its principal offices at 675 Ponce de Leon Avenue NE #8500; Atlanta, GA, 30308 and [Insert Name of LEA] (“Licensor”) located at [Insert Address] (collectively, the “Parties” and individually, each a “Party”).

WHEREAS, Licensor has agreed to provide to SPEDx certain individualized education plan and special education data (the Licensor Data as further defined herein);

NOW THEREFORE, the Parties agree as follows:

1) License Grant.

a) Grant of License to Licensor Data. Licensor hereby grants to SPEDx a non-revocable, non-exclusive, non-transferable license to use the individualized education plan and special education data (the “Licensor Data”) made available by Licensor to SPEDx (as well as any improvements, modifications, replacements, and upgrades to the foregoing made available by Licensor). The Licensor Data is further described in Exhibit A and in the Agreement between Texas Education Agency and SPEDx. In accordance with applicable law, this license permits SPEDx to use, copy, display, transfer, modify, supplement, and create derivative works (such as supplementing, updating, or correcting the Licensor Data or appending the Licensor Data to the SPEDx Data) of the Licensor Data and to otherwise make the Licensor Data a part of SPEDx’s database.

b) Restrictions. All use of Licensor Data shall also be in accordance with any additional data handling limitations identified or made known to SPEDx. SPEDx further understands and acknowledges that SPEDx’s use of the Licensor Data is regulated, defined, and restricted by the applicable law and regulations of that state and that certain uses of that data may be prohibited by state law or regulations. SPEDx agrees that it shall be solely responsible for ensuring that the use of any Licensor Data by SPEDx complies state applicable law and regulations.

c) Grant of License to SPEDx Portal. Subject to the terms and conditions and only during the Term of this Agreement and further, on a limited, non-exclusive, non-transferable, and revocable basis, SPEDx hereby grants to Licensor the right and license to use SPEDx’s online tool, and its related application program interface (collectively, the “SPEDx Portal”) solely to access SPEDx’s research report and analytical data. Licensor shall have no right to any source code, underlying programming materials, or related development documentation and nothing herein shall grant to Licensor any right to modify, reverse engineer, or create derivative works of the SPEDx Portal.

2) Delivery & Access. Licensor Data will be made available to SPEDx in a mutually agreeable form and on a mutually agreeable basis. SPEDx acknowledges that notwithstanding the foregoing delivery or access that Licensor reserves the right to provide modified Licensor Data from time to time in order to comply with applicable law.

3) Performance Obligations. Each party will comply with all applicable laws, regulations, standards, and governing principles (whether state, federal, or international) and shall be solely responsible for taking any required action in order to comply with such laws, regulations, standards, and governing principles (whether state, federal, or international) in connection with its respective performance under this Agreement.

4) Ownership of Licensed Materials.

a) Ownership of Licensor Data. As between SPEDx and Licensor, ownership of Licensor Data remains solely with Licensor and all right, title and interest in such data remains exclusively with Licensor.

b) Ownership of SPEDx Portal. As between SPEDx and Licensor, ownership of SPEDx Portal remains with and vests exclusively with SPEDx and all right, title and interest in SPEDx Portal remains exclusively with SPEDx.

5) Reservation of Rights. Each Party reserves all rights and licenses not expressly granted to the other Party under this Agreement. In particular, nothing herein shall grant to Licensor any permission to use SPEDx’s software, database(s), data, trade names, services marks, trademarks, or trade dress without SPEDx’s prior and express written consent. Nothing herein grants to SPEDx any permission to use Licensor’s trade names, service marks, trademarks, or trade dress without Licensor’s prior and express written consent.

6) Confidentiality.

a) Definition. "Confidential Information" shall mean any information of a proprietary or confidential nature that is provided by either Party to the other (either oral, written, or digital) (including any director, officer, employee, agent, or representative of the other) or obtained by either Party from the other (including any director, officer, employee, agent, or representative of the other) including, but not limited to, that which relates to technical data, research, product plans, products, markets, software, programming code (source and object), algorithms, developments, inventions, processes, designs, drawings, engineering, hardware configuration information, or marketing or finances of the disclosing Party. Without limitation of the foregoing, all SPEDx Data shall be the Confidential Information of SPEDx, and the Licensor Data is the Confidential Information of Licensor. Confidential Information shall not include: (i) information that is publicly known or available, or becomes publicly known or available, without breach of this Agreement; (ii) any information already (i.e., prior to disclosure by the other Party) rightfully in the possession of the receiving Party without an obligation of confidence; (iii) any information that is rightfully received by the receiving Party from a non-party who is not bound to an obligation of confidence; or (iv) any information that is independently developed by the receiving Party of the disclosing Party and which can be verified through reasonable documentation.

b) General Obligation. Each Party agrees to preserve the confidentiality of all Confidential Information of the other Party, and shall not, without the prior written consent of the other Party, disclose or make available to any person, or use for its own benefit other than as contemplated by this Agreement, any Confidential Information of the other Party. Each Party shall exercise reasonable efforts to safeguard the Confidential Information received from the other. Upon termination or expiration of this Agreement, each Party shall return to the other Party, upon request, all Confidential Information of the other Party and promptly certify in writing to the other Party, if requested by the other party, that all such Confidential Information has been returned. The obligations of confidentiality shall survive any termination or expiration of this Agreement for a minimum of seven years or longer if such information remains a trade secret.

7) Security Audits; Notice of Security Breach.

a) SPEDx shall permit reasonable security audit checks pertaining to SPEDx's security and usage of student data. SPEDx shall reasonably cooperate with all security audits. Reasonable access shall be made available to SPEDx's business premises, during normal business hours, to SPEDx's necessary employees, together with records, books and correspondence and other papers and documentation or media of every kind in possession of SPEDx and SPEDx's employees pertaining to this Agreement. No Licensor personnel or entity will access personally identifiable information contained in the Licensor Data except as authorized by law.

b) As used in this Agreement "Security Breach" means any act or omission that compromises either the security, confidentiality or integrity of student information or the physical, technical, administrative or organizational safeguards put in place by SPEDx that relate to the protection of the security, confidentiality or integrity of personally-identifiable student information, or receipt of a complaint in relation to the privacy practices of SPEDx or a breach or alleged breach of this Agreement relating to such privacy practices. SPEDx shall take commercially reasonable steps, in accordance with industry standards, to prevent security breaches. SPEDx shall also take commercially reasonable steps in accordance with industry standards, to immediately remedy any security breach and prevent any further security breach at SPEDx's expense in accordance with standard industry practices and applicable law.

c) SPEDx shall: (i) provide the Licensor with the name and contact information for an employee of SPEDx who shall serve as the Licensor's primary security contact and shall be available to assist Licensor twenty-four (24) hours per day, seven (7) days per week as a contact in resolving issues and fulfilling obligations associated with a security breach; (ii) immediately notify the Licensor via email, SMS text, or a phone call to the Licensor contacts which have been provided to SPEDx once SPEDx becomes aware of a security breach. Immediately following SPEDx's notification to Licensor of a security breach, SPEDx and the Licensor shall coordinate with each other to investigate the security breach. SPEDx agrees to fully cooperate with Licensor in their handling of the matter, including without limitation: (i) assisting with any investigation; (ii) providing physical access to the facilities and operations affected; (iii) facilitating interviews with SPEDx's employees and others involved in the

matter; and (iv) making available all relevant records, logs, files, data reporting and other materials required to comply with applicable law or industry standards and as otherwise required by the Licensor and (v) providing any notices to persons or organizations affected by the security breach as required by law and as required by the Licensor.

8) Representations & Warranties.

a) Each Party represents and warrants to the other that (i) it is authorized to enter into this Agreement; (ii) it has the right to carry out all of its respective obligations herein, including with respect to having all rights necessary to make the grants herein; (iii) this Agreement has been duly executed by it (in accordance with all necessary corporate or organizational approval and the authorization of any necessary personnel or board) and is a valid and legally binding obligation of such Party and enforceable against such Party (and, in the case of Licensor, its Authorized Users) in accordance with its terms; (iv) it will not create a conflict with or breach the terms of any other agreement to which it is a party by executing or performing this Agreement; and (v) the execution, delivery and performance by the Parties of this Agreement will not violate any statute, rule or regulation applicable to either, or any order, writ, judgment, injunction, or decree of any court, governmental, or regulatory authority, or arbitrator to which either respective Party is subject.

b) Licensor further represents and warrants that (i) the Licensor Data will meet any other written specifications agreed upon by SPEDx and Licensor; (ii) the Licensor Data is compliant and will remain compliant with all applicable federal, state and local laws, statutes, codes, ordinances and regulations as well as industry standards governing both its performance under this Agreement and its collection and sharing of the Licensor Data with SPEDx; (iii) it has all necessary rights and permissions to make available the Licensor Data for use by SPEDx in connection with this Agreement.

c) This Agreement is entered into by SPEDx and the Licensor in accordance with the provisions of the Family Educational Rights and Privacy Act, 20 U.S.C. Section 1232(g), et seq., ("FERPA") and Tex. Gov. Code Section 552.114. SPEDx hereby acknowledges that all documents which include information contained in or derived from a student's education records are deemed confidential pursuant to FERPA and Tex. Gov. Code Section 552.114 and therefore will not be disclosed by SPEDx to any third party. SPEDx shall comply with the terms and conditions set forth in this Agreement in its collection, receipt, transmission, storage, disposal, use and disclosure of Licensor Data that includes personally-identifiable information and be responsible for the unauthorized collection, receipt, transmission, access, storage, disposal, use and disclosure of Licensor Data under its control or in its possession. Personally-identifiable information is defined as information provided to SPEDx by or at the direction of Licensor, or to which access was provided SPEDx by or at the direction of Licensor, in the course of SPEDx's performance under this Agreement: (i) identifies or can be used to identify an individual (including, without limitation, names, signatures, addresses, telephone numbers, e-mail addresses and other unique identifiers) (ii) parent or student's government-issued identification number (including social security number, driver's license number or state-issued identified number); and (iii) health data.

d) SPEDx shall retain the original version of the data at a single location and shall not make a copy or extract of the data available to anyone except personnel who have a need for the data to perform the services referenced above. SPEDx shall maintain the data in hard copy or electronic form, in an area that has limited access only to SPEDx's authorized personnel. SPEDx shall not permit removal of the data from the limited access area. SPEDx will ensure that access to the data maintained on computer files or databases is controlled by password protection. SPEDx shall establish procedures to ensure that the target data cannot be extracted from a computer file or database by unauthorized individuals. SPEDx shall maintain all printouts, discs, or other physical products containing student-level data in locked cabinets, file drawers, or other secure locations when not in use. SPEDx shall, under supervision of the Licensor, destroy the data provided to SPEDx, including all copies, whether in electronic or hard copy form, when the services are completed or this Agreement is terminated, whichever occurs first.

e) SPEDx shall not use the data for any purpose not expressly permitted in this Agreement. SPEDx cannot disclose any document, whether in hard copy or electronic form, or otherwise disclose to any third party any student-level data or information in any form whatsoever or under any circumstances which would directly or indirectly makes a student's identity traceable.

9) Indemnification. SPEDx shall defend, indemnify and hold harmless Licensor and any and all of the Licensor's directors, officers, officials, employees, agents, contractors and representatives against and from any and all costs, expenses, damages, injury or loss, including reasonable attorney's fees, to which they or any of them may be subject from any claims arising out of any cause related to the collection, transfer, keeping or securing of student data, except to the extent that they are due to the fault or negligence of the Licensor.

10) Term. This Agreement shall begin on the Effective Date and continue in effect for a period of thirty-six (36) months (the "Initial Term"). Any further renewal shall require the mutual agreement of the Parties.

11) Termination. Each Party may terminate this Agreement in the event that the other has materially breached any obligations under this Agreement, the breaching Party shall have ten (10) days from the receipt of such notice to cure the alleged breach and to notify the non-breaching Party in writing that cure has been effected. If the breach is not cured within ten (10) days, the non-breaching Party shall have the right to terminate the Agreement upon notice to the breaching Party without limitation of any other right or remedy available under law or in equity.

12) Consideration. All license fees are waived during the Term. Each Party shall bear its own costs and expenses of performance and use hereunder.

13) Miscellaneous.

a) No Creation of Agency. The Parties are independent contractors. Nothing in this Agreement creates, implies or evidences any partnership or joint venture and neither Party has any authority to make any representation or commitment, or to incur any liability, on behalf of the other.

b) Governing Law & Venue. This Agreement shall be interpreted and construed according to, and governed by, the laws of the state of Texas, excluding any such laws that might direct the application of the laws of another jurisdiction. The federal or state courts located in Austin, Texas shall have jurisdiction to hear any dispute under this Agreement. Licensor acknowledges and agrees that any applicable state law implementation of the Uniform Computer Information Transactions Act (including any available remedies or laws) shall not apply to this Agreement and is hereby disclaimed.

c) Assignment and Transfer. SPEDx may not assign or delegate, directly or indirectly, all or part of its rights or obligations under this Agreement without the prior written consent of Licensor, which such consent will not be unreasonably withheld. This Agreement is binding upon successors and permitted assigned.

d) Amendment and Third Parties. No modification or claimed waiver of any provision of this Agreement shall be valid except by written amendment signed by authorized representatives of SPEDx and Licensor.

e) Survival. The rights and obligations of the Parties that may apply to time periods after the termination of this Agreement shall survive any termination of this Agreement, including, but not limited to, the rights and obligations under Sections 4 (Ownership of Licensed Material), 6 (Confidentiality), 7 (Security Audits; Notice of Security Breach), 8 (Representations & Warranties), 9 (Indemnification (for a period of two years after termination)), and Section 13 (Miscellaneous).

f) Waiver. Waiver of any provision herein shall not be deemed a waiver of any other provision herein, nor shall waiver of any breach of this Agreement be construed as a continuing waiver of other breaches of the same or other provisions of this Agreement.

g) Severability. If any provision or provisions of this Agreement shall be held to be invalid, illegal, unenforceable or in conflict with the law of any jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

h) Entire Agreement. This Agreement constitutes the entire agreement of the Parties and supersedes all prior communications, understandings and agreements relating to the subject matter hereof, whether oral or written.

i) Counterparts. This Agreement may be executed in one or more counterparts (including by facsimile, by email in portable document format (PDF) or by other electronic means), all of which shall be considered one and the same agreement, and shall become a binding agreement when one or more counterparts have been signed by each Party and delivered to the other Party.

j) Notices. All notices given pursuant to this Agreement shall be in writing and may be hand delivered, or shall be deemed received within 5 days after mailing if sent by registered or certified mail, return receipt

requested. If any notice is sent by facsimile, confirmation copies must be sent by mail or hand delivery to the specified address. Either Party may from time to time change its notice address by written notice to the other Party.

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If to SPEDx: •

If to Licensor:

SPEDx

675 Ponce de Leon Avenue NE #8500

Atlanta, GA 30308

Attn: Richard Nyankori

[Insert Contact Information]

Attn:

Facsimile:

IN WITNESS WHEREOF, the Parties have executed this Agreement by their respective, duly authorized representatives as of the date first above written.

For SPEDx

BY: \_\_\_\_\_ DATE: \_\_\_\_\_

Print Name:

Title:

For LICENSOR:

BY: \_\_\_\_\_ DATE: \_\_\_\_\_

Print Name:

Title:

## EXHIBIT A

The District agrees to provide SPEDx Education with specific student-level data, including and not limited to, the following categories:

- Present level of performance
- Annual goals
- Specialized and related services
- Specific interventions
- Participant w/children without disabilities
- Dates and Location
- Transition Services
- Standardized assessment data from state accountability system
- Measures of progress including narratives
- Student demographic data
- Eligibility determination data

Exact data fields will be determined during the initial phase of the project and approved by Licensor.