

# STATE OF LOUISIANA DEPARTMENT OF EDUCATION DATA SHARING AGREEMENT

WHEREAS, the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g and its implementing regulations codified at 34 C.F.R 99.1 et seq. and La. R.S. 17:3914 make personally identifiable student information and other student level data in education records confidential and, subject to certain exceptions, prohibit the disclosure of such information to third parties and impose penalties, including criminal penalties, for unauthorized disclosures of such data to third parties,

WHEREAS, FERPA and its implementing regulations allow for an educational agency or institution to share personally identifiable student-level data with contractors performing work on their behalf,

WHEREAS, the Louisiana Department of Education (hereinafter referred to as "State") and AvenirEducation, Inc. (hereinafter referred to as "Contractor") have entered into a contractual arrangement, pursuant to which Contractor will provide the services to State.

WHEREFORE, the State and Contractor do enter into this Agreement subject to the terms and conditions as specified herein.

## **1. Purpose of the Research**

Contractor agrees to use any data disclosed to it pursuant to this Agreement solely for the purposes of the providing a customized analytical report (referred to as the "Work") to the State in order to identify effective practices for special education students in the State of Louisiana.

## **2. Data**

The State agrees to provide Contractor with the following raw data (collectively referred to as the "Data") solely for the purposes of completing the Work.

- Demographics
- Academic achievement and functional performance
- Annual goals
- Special education and related services information
- Participation with children without disabilities and placement
- Participation and results in state assessments

The State reserves the right to withhold any of the foregoing Data if the State determines, in its sole discretion, that disclosure of such Data would violate any provision of state or federal law.

## **3. Confidentiality**

This Agreement is entered into by Contractor and the State in accordance with the provisions of the Family Educational Rights and Privacy Act, 20 U.S.C. Section 1232(g), et seq., (FERPA) and RS

17:3914. Contractor hereby acknowledges that all documents which include personally identifiable information contained in or derived from a student's education records are deemed confidential pursuant to FERPA and RS 17:3914 and will not be disclosed by Contractor to any third party.

Contractor shall not at any time remove or in any way permit or facilitate the removal of the Data from the geographic boundaries of the State of Louisiana. Contractor 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 those who have a need for the Data to perform the services. Contractor shall maintain the Data, whether in hard copy or electronic form, in an area that has limited access only to Contractor's authorized personnel. Contractor shall not permit removal of the Data from the limited access area. Contractor will ensure that access to the Data maintained on computer files or Databases is controlled by password protection. Contractor shall establish procedures to ensure that the target Data cannot be extracted from a computer file or database by unauthorized individuals. Contractor 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. Contractor shall, under supervision of the State, destroy the Data provided to Contractor, including all copies, whether in electronic or hard copy form, when the services are completed or this Agreement is terminated, whichever occurs first.

#### **4. Restrictions on Use**

Contractor shall not use the Data for any purpose not expressly permitted in this Agreement without the prior written approval of the Louisiana State Superintendent of Education. Contractor may utilize, share, disclose and/or publish the results, analysis or other information developed as a result of any research based on the Data provided under this Agreement only in summary or aggregate form, so as to prevent the disclosure of any personally identifiable student information. Contractor cannot publish 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 in datasets and/or cell sizes of less than ten (10) or under any circumstances which would directly or indirectly make a student's identity easily traceable. Contractor shall provide the State with a copy of any document containing, incorporating, referencing, or which Contractor has prepared in any way utilizing, any Data provided to Contractor pursuant to this Agreement, whether in hard copy or electronic form, that Contractor intends to publish, at least 7 business days prior to its first disclosure or publication. Advance copies of such documents shall be forwarded to:

Kim Nesmith  
Data Quality Director  
Louisiana Department of Education  
1201 N. Third Street  
Baton Rouge, LA 70802  
225.342.1840  
[kim.nesmith@la.gov](mailto:kim.nesmith@la.gov)

#### **5. Indemnification**

Contractor shall defend, indemnify and hold harmless the State and any and all of the State'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 Contractor's and/or any student, teacher or any other third party as a result, directly or indirectly, of any disclosure of Data by the State pursuant to this Agreement or any re-disclosure of such Data by Contractor.

## **6. Ownership**

All records, reports, documents and other material delivered or transmitted to Contractor by State shall remain the property of the State, and shall be returned by Contractor to State, at Contractor's expense, at termination or expiration of this contract. All work undertaken by Contractor shall be work made for hire. The State shall have all right, title and interest, including all intellectual property rights, including but not limited to copyright, in any work product developed under this contract. The State grants Contractor an irrevocable, non-exclusive, non-transferable, royalty-free license to use and to reproduce, in whole or in part, and to make any alterations to, and to make derivative works from the Work. The State shall have no right to any of the Contractor's source code, underlying programming materials, methodology, algorithms, ETL process and content, or related development documentation developed by Contractor.

## **7. Security Audits**

Pursuant to in La. R.S. 17:3914, the Contractor shall permit the State or its authorized representatives to carry out security or audit checks pertaining to Contractor's security and usage of PII. Contractor shall cooperate with the State. The State or its authorized representatives shall have access at all reasonable times on working days during working hours at Contractor's business premises to Contractor's employees, together with records, books and correspondence and other papers and documentation or media of every kind in possession of Contractor and Contractor's employees pertaining to this Agreement that are necessary for the State to carry out such security and audit checks. The State or its authorized representatives shall have the right to reproduce and/or retain copies at its expense of any of the aforementioned information and documents.

## **8. Security Breach**

As used in this Agreement "Security Breach" means any act or omission that compromises either the security, confidentiality or integrity of personally-identifiable student information or the physical, technical, administrative or organizational safeguards put in place by Contractor that relate to the protection of the security, confidentiality or integrity of PII, or (ii) receipt of a complaint in relation to the privacy practices of Contractor or a breach or alleged breach of this Agreement relating to such privacy practices.

Contractor shall take commercially reasonable steps and best efforts, in accordance with industry standards, to prevent security breaches. Contractor shall also take commercially reasonable steps, in accordance with industry standards, to immediately remedy any security breach and prevent any further security breach at Contractor's expense in accordance with standard industry practices and applicable law.

Contractor shall:(i) provide the state with the name and contact information for an employee of Contractor who shall serve as the State's primary security contact and shall be available to assist State 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 State in writing of a security breach after Contractor becomes aware of it; and

Immediately following Contractor's notification to the State of a security breach, Contractor and the State shall coordinate with each other to investigate the security breach. Contractor agrees to fully cooperate with State in State's handling of the matter, including, without limitation: (i) assisting with any investigation; (ii) providing the State with physical access to the facilities and operations affected; (iii) facilitating interviews with Contractor'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 State and (v) providing any notices to persons or organizations affected by the security breach as required by law and as required by the State.

## **9. Liaison Officials**

The State's liaison and the Contractor's liaison for the implementation of this Agreement and for receipt of all notices or other communications required or permitted under this Agreement is:

Kim Nesmith  
Data Governance and Privacy Director  
Louisiana Department of Education  
1201 N. Third Street  
Baton Rouge, LA 70802  
225.342.1803  
[kim.nesmith@la.gov](mailto:kim.nesmith@la.gov)

Richard Nyankori  
AvenirEducation, Inc.  
3231 Bay View Drive, Jonesboro, GA 30236  
[rnyankori@me.com](mailto:rnyankori@me.com)  
410-499-5236

## **10. Term of Agreement**

This Agreement shall begin on 1/23/2017 and shall terminate on 1/23/2020. The effective date of this Agreement may be extended only if an amendment to that effect is duly executed by the parties and approved by the necessary authorities prior to said termination date. If either party informs the other that an extension of this Agreement is deemed necessary, an amendment may be prepared by one party for appropriate action by the other party. This Agreement constitutes the entire agreement between the State and Contractor concerning the subject matter set forth herein and supersedes all prior agreements, discussions, representations, warranties and covenants. There are no warranties, representations, covenants or agreements, expressed or implied, between the parties except those expressly set forth in this agreement.

## **11. Termination for Convenience**

The State may terminate this Agreement at any time by giving Contractor written notice of such

termination.

## 12. Assignment of Contract

Contractor shall not assign any interest in this Agreement by assignment, transfer, or novation, without prior written consent of the State.

## 13. Jurisdiction, Venue and Governing Law


Exclusive jurisdiction and venue for any and all suits between the State and Contractor arising out of, or related to, this Agreement shall be in the 19<sup>th</sup> Judicial District Court, Parish of East Baton Rouge, State of Louisiana. The laws of the State of Louisiana, without regard to Louisiana law on conflicts of law, shall govern this Agreement.

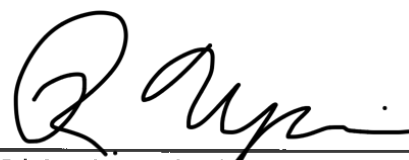
## 14. Survival

Contractor's obligation under Clauses 1, 3,4,5,6, and 13 shall survive expiration and/or termination of this Agreement. Contractor's obligations under Clauses 7 and 8 shall survive expiration and/or termination of this Agreement until Contractor has fully complied with its obligation to destroy Data as set forth herein.

***THUS DONE AND SIGNED*** on the day, month and year first written below.

***IN WITNESS WHEREOF***, the parties have executed this Agreement as of this 13<sup>th</sup> day of February, 2017.

  
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John C. White,  
State Superintendent of Education

  
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Richard Nyankori,  
Contractor