

## DATA SHARING AGREEMENT

This Data Sharing Agreement (the “Agreement”) is made between the Ector County Independent School District, a political subdivision of the State of Texas and a legally constituted independent school district located in Ector County, Texas (“District” and/or “ECISD”) and Air Tutors (“ORGANIZATION”). The District and ORGANIZATION may be referred to individually as a “Party,” and collectively as the “Parties.”

### 1. PURPOSE

- 1.1 For ORGANIZATION to provide certain services to ECISD it may become necessary for ECISD to share certain Data with ORGANIZATION. Specific services provided by ORGANIZATION are included in the applicable scope of work from the Contract for Services Agreement entered upon October 2021.
- 1.2 The purpose of this Agreement is to outline the responsibilities and commitments of the Parties in providing the Data that is specifically outlined in **Exhibit A** of this Agreement. The specific Data sharing process will be, as outlined in **Exhibit B** of this Agreement.

### 2. DEFINITION, USE, AND TREATMENT OF DATA

- 2.1 “Data” – shall include, but is not limited to, the following: student data, employee data, metadata, user content, course content, materials, and any and all data and information that the District (or any authorized end user(s)) uploads, enters, or submits to ORGANIZATION, including through the use of ORGANIZATION’s products or services. “Data” also specifically includes all personally identifiable information in education records, directory data, and other non-public information.
- 2.2 “Personally Identifiable Information” – As used in this Agreement, “Personally Identifiable Information” or “PII” means any representation of information that permits the identity of an individual to whom the information applies to be reasonably inferred by either direct or indirect means. Further, PII is defined as information: (i) that directly identifies an individual (e.g., name, address, social security number or other identifying number or code, telephone number, email address, etc.); or (ii) by which an agency intends to identify specific individuals in conjunction with other data elements, i.e., indirect identification. PII also means any student information, if any, identified as such in the Family Educational Rights and Privacy Act (“FERPA”), 20 U.S.C., Sec 1232g and specifically in the definition of “Personally Identifiable Information” in 34 C.F.R. 99.3.
- 2.3 “De-identified Information” – As used in this Agreement, “De-identified Information” means data or information that neither identifies nor provides a reasonable basis to identify an individual where, without limitation, the following identifiers have been removed: the name; the name of a parent or other family members; the address or the address of a family member; a personal identifier, such as a social security number, student/employee number, or biometric record; other indirect identifiers, such as the date of birth, place of birth, and mother’s maiden name; other information that, alone or in combination, is linked or linkable to a specific individual that would allow a reasonable person in the community and/or school community, who does not have personal knowledge of the relevant circumstances, to identify the person with reasonable certainty; or information requested

by a person who ORGANIZATION reasonably believes knows the identity of the individual to whom the record relates.

- 2.4 All Data accessed or used by the ORGANIZATION shall at all times be treated as confidential by ORGANIZATION and shall not be copied, used or disclosed by ORGANIZATION for any purpose not related to providing services to the District. ORGANIZATION recognizes that PII is protected against disclosure by Federal and State Statutes and Regulations, and ORGANIZATION agrees to comply with said restrictions. Any publication or dissemination of Data by the Parties needs to be converted to De-identified Information as further outlined in this Agreement. The Parties shall not re-disclose PII in any way that causes a breach in confidentiality. The Parties will limit access to the PII only to persons identified in this Agreement as having a legitimate interest in accessing the PII.
- 2.5 The Parties acknowledge that the District is subject to the Family Educational Rights and Privacy Act (20 U.S.C. 12332(g)) (FERPA), which law and supporting regulations generally address certain obligations of an educational agency or institution that receives federal funds regarding disclosure of PII in education records. As detailed in Section 2.6, the Parties agree that ORGANIZATION is a “school official” under FERPA and has a legitimate educational interest in personally identifiable information from education records because ORGANIZATION: (1) provides a service or function for which the District would otherwise use employees; (2) is under the direct control of the District with respect to the use and maintenance of education records; and (3) is subject to the requirements of FERPA governing the use and re-disclosure of personally identifiable information from education records.
- 2.6 The Parties expect and anticipate that ORGANIZATION may receive PII in education records from the District only as an incident of service or training that ORGANIZATION provides to the District. ORGANIZATION shall be permitted to use any such PII in education records as a function of performing its duties and obligations. ORGANIZATION represents that it shall not use or further disclose any PII in education records other than as a function of performing its duties and obligations.
- 2.7 ORGANIZATION acknowledges and agrees that ECISD owns and retains all rights, title, and interest to, or has appropriate possessory rights in Data. ORGANIZATION makes no claim of license, title or ownership to or in Data.

### 3. TERM AND TERMINATION

- 3.1 This Agreement will commence as of the later date that both Parties have signed the agreement below and shall terminate on July 31, 2023. At any time, this Agreement may be extended by mutual agreement of the Parties in writing.
- 3.2 Either Party may terminate this Agreement for any reason by giving thirty (30) days’ written notice of termination to the other Party.

### 4. METHOD OF DATA COLLECTION, USE, ACCESS, AND TRANSFER

- 4.1 ORGANIZATION will only collect Data as necessary to fulfill its duties and services under this Agreement.

- 4.2 ORGANIZATION will use Data only for the purpose of fulfilling its duties, provide services, and improve its services under this Agreement.
- 4.3 The ORGANIZATION and its agents will establish specific safeguards to assure the confidentiality and security of PII. If encrypted identifiable information is transferred electronically through means such as the Internet, then said transmissions will be consistent with the rules and standards promulgated by Federal statutory requirements regarding the electronic transmission of PII. ORGANIZATION shall store and process Data in accordance with industry best practices. This includes appropriate administrative, physical, and technical safeguards to secure Data from unauthorized access, disclosure, and use.
- 4.4 ORGANIZATION must maintain reasonable administrative, technical, and physical safeguards to protect the confidentiality of information transmitted online, including but not limited to encryption, firewalls, and Secure Sockets Layer (SSL). If applicable, ORGANIZATION must implement policies and practices pursuant to various security rules and regulations relating to the security and safeguarding of data, including the Payment Card Industry Security Standards (PCI-DSS). All of the ORGANIZATION's personnel handling Data must be trained by ORGANIZATION on information security. ORGANIZATION's information security policy must require that all personnel who come into contact with District Data receive training on the proper techniques for handling such Data.
- 4.5 ORGANIZATION shall also have a written incident response plan, which shall include but is not limited to, prompt notification to the District in the event of a security or privacy incident, as well as procedures for responding to a breach of any of the District's Data that is in ORGANIZATION's possession. ORGANIZATION agrees to share its incident response plan upon request.
- 4.6 ORGANIZATION shall not use any Data to advertise or market products or services to ECISD students, their parents, or ECISD employees or officials.
- 4.7 ORGANIZATION is prohibited from mining Data for any purposes other than those agreed in writing to by the Parties. Data mining or scanning of user content for the purpose of advertising or marketing to District students or their parents, or to District employees is prohibited. Data mining is defined as the process of analyzing data from different perspectives and summarizing it into useful information by finding correlations or patterns among data fields in relational databases.

## 5. CONFIDENTIALITY

- 5.1 To the extent that both Parties will come into possession of student records and information, and to the extent that both Parties will be involved in the survey, analysis, or evaluation of students incident to this Agreement, both Parties agree to strictly comply with all the applicable requirements of the FERPA, the Children's Online Privacy Protection Act (COPPA), and the Protection of Pupil Rights Amendment ("PPRA").
- 5.2 Subcontractors: ORGANIZATION may employ third parties to assist with the performance of the services; however, ORGANIZATION is solely responsible for ensuring that any third party performing services under the Agreement is bound by the obligations of confidentiality and assignment provided herein. ORGANIZATION shall pay

all fees, wages, salaries, and other amounts due any third party in connection with ORGANIZATION's performance of its obligations under the Agreement, if any, and shall be responsible for all reports and obligations respecting any such third party relating to any taxes, insurance, and similar matters.

## 6. RESPONSIBILITY FOR IMPROPER DISCLOSURE OF PERSONALLY IDENTIFIABLE INFORMATION

- 6.1 TO THE EXTENT PERMITTED UNDER TEXAS LAW, ORGANIZATION SHALL BE RESPONSIBLE FOR DAMAGES CAUSED BY THE IMPROPER DISCLOSURE OF PII TO THE EXTENT CAUSED BY THE CONDUCT OF ORGANIZATION, ITS BOARD MEMBERS, OFFICERS, EMPLOYEES, OR AGENTS. ORGANIZATION AGREES TO INDEMNIFY ECISD AND HOLD ECISD HARMLESS FOR ANY DAMAGES CAUSED BY THE IMPROPER DISCLOSURE OF PII, TO THE EXTENT CAUSED BY THE CONDUCT OF ORGANIZATION, ITS BOARD MEMBERS, OFFICER, EMPLOYEES, OR AGENTS, AND TO DEFEND ECISD AGAINST SUCH CLAIMS FOR DAMAGES.
- 6.2 The Parties agree that the terms and requirement in this Section shall survive the expiration of the term of this Agreement.

## 7. ASSURANCES AND NOTIFICATIONS

- 7.1 By signing this Agreement, each Party represents to the other Party that it has not been previously determined by a court of law, administrative agency, hearing officer, or similar decision-maker, to be in violation of FERPA, Texas law, or federal or state regulations governing the handling and disclosure of PII, and that no court of law, administrative agency, hearing officer, or similar decision-maker has determined that the conduct of the Party or its officers or employees have caused any district to be in violation of the laws and regulations governing PII. If any such determination is made during the term of this Agreement, the violating Party shall promptly notify the other Party.
- 7.2 ORGANIZATION shall notify ECISD promptly in writing if ORGANIZATION determines, or knows, that PII has been improperly disclosed to ORGANIZATION personnel, an entity with whom ORGANIZATION contracts, or to any other third-party who does not have a legitimate interest in the PII under this Agreement. ORGANIZATION shall take immediate steps to limit and mitigate the damage of such security breach to the greatest extent possible (Tex. Bus. & Com. Code § 521.001-152).
- 7.3 ORGANIZATION, unless otherwise prohibited by law, shall promptly notify ECISD if ORGANIZATION determines or knows if a court of law, administrative agency, hearing officer, or similar decision-maker determines, that ORGANIZATION has improperly disclosed PII that ORGANIZATION obtained from ECISD. The Parties agree that this notification requirement all survive the expiration of the term of this Agreement and for as long as ORGANIZATION has access to ECISD PII.

## 8. GENERAL CONDITIONS

- 8.1 To affect the transfer of Data and to ensure that the required confidentiality of PII shall always be maintained, both Parties agree:

- 8.1.1. To comply in all respects with the provisions of the Family Educational Right to Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99) and Texas law as they apply to PII. Parties will notify each other in writing in the event of a security breach of any measures to keep confidential the PII received pursuant to this Agreement. Parties will also make all reasonable efforts to cure any such security breach and to prevent further security breaches, and to inform *each other* of such efforts. Nothing in this Agreement shall be construed to allow Parties to maintain, use, disclose, or share PII received pursuant to this Agreement in a manner prohibited by any federal or Texas laws or regulations. ORGANIZATION shall not provide any PII obtained under this Agreement to any entity or person ineligible to receive PII protected by FERPA, or prohibited from receiving PII from any entity by virtue of a finding under 34 CFR § 99.31 (a)(6)(iv). As may be applicable, the Parties will also comply with the provision of the Health Insurance Portability and Accountability Act (“HIPAA”).
- 8.1.2. That for purposes of this Agreement and for ensuring Parties’ compliance with the terms of this Agreement and all applicable local and federal laws, ORGANIZATION shall designate an official to act as temporary custodian of the PII received by ECISD pursuant to this Agreement and the contact person for all matters related to this Agreement. The ORGANIZATION will promptly notify ECISD in writing of the name and contact information for any newly designated Temporary Custodian. The Temporary Custodian shall be responsible for transmitting all data requests and maintaining a log or other record of all data requested and received pursuant to this Agreement, destruction of data, when appropriate, and certification of that destruction. This Temporary Custodian shall be the only official who serves in the capacity described in this sub-section. No other official or staff person shall serve in this capacity unless otherwise agreed to in writing.
- 8.1.3 That ORGANIZATION shall put procedures in place to safeguard the confidentiality and integrity of PII, to place limitations on its use and to maintain compliance with applicable privacy laws. ORGANIZATION shall require all of its employees, contractors, and agents with access to ECISD PII to comply with this Agreement and all applicable provisions of FERPA and other laws with respect to the PII shared under this Agreement.
- 8.1.4 That PII collected and shared is confidential. ORGANIZATION will not disclose Data produced under this Agreement in any manner that could identify any student, except as authorized by FERPA, to any entity other than each other, or authorized employees, contractors and agents of the Parties. Parties and persons participating on behalf of ORGANIZATION shall neither disclose nor otherwise release data and reports relating to any student, nor disclose information relating to a group or category of individuals without ensuring the confidentiality of individuals in that group.
- 8.1.5 Publications and reports of PII and information related to them, including preliminary project descriptions and draft reports, shall involve only De-Identified Information and no PII that could lead to the identification of any individual student and/or person.

- 8.1.6 If applicable, ORGANIZATION is not authorized to continue research using the PII obtained under this Agreement upon the termination of this Agreement. ORGANIZATION will destroy all PII obtained under this Agreement in accordance with Section 8.1.11.
- 8.1.7 That Parties have the right, to present, publish, or use the PII that they have gained in the course of the research under this Agreement, if any, but ORGANIZATION may only present, publish, and use the Data in an aggregated form, converted to De-Identified Information, with no PII included. ORGANIZATION may share De-Identified Information with the other Party's partners who have executed a written confidentiality agreement with the ORGANIZATION agreeing not to share or disseminate such Data provided by ORGANIZATION. No PII will be shared with these members except to the extent specific written authorization for such PII sharing has been provided for by District and all state and federal laws have been complied with.
- 8.1.8 If applicable, ORGANIZATION agrees to provide to ECISD any proposed publications or presentations, which are to make public any findings, data, or results related to ECISD (collectively "Publications") for ECISD's review, comment, and approval at least fourteen (14) days prior to proposed publication date. Lack of response by ECISD to ORGANIZATION by the proposed publication date will be considered approval of the Publications as presented. If there are no changes to the Publications, only changes to the layout and design of the Publications, then the fourteen (14) day approval is waived. ECISD shall confirm in writing if only changes to the layout and design of Publications are required.
- 8.1.9 That ORGANIZATION will provide ECISD with one electronic and at least one paper copy of the final versions of all reports and other documents, if any, associated with this Agreement, as detailed in Section 8.1.8.
- 8.1.10 That ORGANIZATION will use Data shared under this Agreement for no purpose other than to meet the objectives of the research study specified under this Agreement.
- 8.1.11 ORGANIZATION will destroy all ECISD files and hard copy records that contain ECISD Data and purge any copies for such Data from its computer system. Within thirty (30) business days after receipt of a written request from ECISD that the Data is no longer needed for the purposes stated in this Agreement.
- 8.1.12 ORGANIZATION will ensure that all Data in the possession of any subcontractors or agents to which the ORGANIZATION may have transferred Data are destroyed or transferred to the District under the direction of the District when the Data is no longer needed for the specific purpose or at the termination of this Agreement.
- 8.2 ORGANIZATION understands that this Agreement does not convey ownership of ECISD's Data to ORGANIZATION. Any and all Data shared by ECISD pursuant to this Agreement is, and always will remain, the sole property of ECISD. Parties agree that all rights, including all intellectual property rights, to Data shall remain the exclusive property of the District, and ORGANIZATION has a limited, nonexclusive license solely for the purpose of performing its obligations as outlined in the Agreement. This Agreement does

not give ORGANIZATION any rights, implied or otherwise, to Data, content, or intellectual property, except as expressly stated in the Agreement. This includes the right to sell or trade Data.

8.3 The Parties shall exercise due care to protect all PII from unauthorized physical and electronic access. In so doing, the Parties shall establish and implement at least the following minimum physical, electronic and managerial safeguards for maintaining the confidentiality of PII provided by each Party pursuant to this Agreement:

8.3.1 Access to the PII provided by the Parties will be restricted to only those authorized staff, officials, and agents of the Parties who need it to perform their official duties in the performance of the work requiring access to the PII as detailed in this Agreement.

8.3.2 The Parties will store the PII in an area that is safe from access by unauthorized persons during duty hours as well as non-duty hours or when not in use.

8.3.3 The Parties will protect PII in a manner that prevents unauthorized persons from retrieving the PII by means of computer, remote terminal or other means.

## 9. NOTIFICATION OF AMENDMENTS TO POLICIES

9.1 ORGANIZATION shall not change how Data is collected, used, or shared under the terms of this Agreement in any way without advance notice to and consent from the District.

9.2 ORGANIZATION shall provide notice to the District of any proposed change to its Terms of Use, Privacy Policy, and/or any similar policies/procedures thirty (30) days prior to the implementation of any such change. The District may terminate the Agreement with ORGANIZATION upon notification of amendment to such terms without any penalty.

9.3 The terms and conditions in this Agreement will govern if there is a conflict between the terms or conditions listed in this Agreement and any terms or conditions listed in any applicable Terms or Use, Privacy Policy, and/or any similar policies/procedures of ORGANIZATION.

## 10. NOTICES

The following individuals are the contact points for each Party under this Agreement. These individuals are responsible for the management and coordination of the requirements for each respective Party under this Agreement. Copies of correspondence related to the modification, amendment, extension or termination of this Agreement, or any other legal matter pertaining to this Agreement, shall be furnished to these individuals with additional copies to:

For the District:

Name:

Title:

Address:

Email:

With a copy to:

For the ORGANIZATION:

Name: Hasan Ali  
Title: CEO  
Organization: Air Tutors  
Address: 2830 Sebastan Lane Stockton, CA 95212  
  
Email: hasanali@airtutors.org

## 11. MISCELLANEOUS TERMS

- 11.1 Nothing in this Agreement shall constitute a partnership or joint venture between the Parties, nor authorize either Party to incur any liability on behalf of the other.
- 11.2 Neither the District nor ORGANIZATION shall use the other Party's name, trademarks or other logos, or the names of any individuals involved in the Agreement in any publication or public presentation without the prior written consent of such other Party.
- 11.3 No alteration, cancellation, variation or addition to this Agreement shall be of any force or effect unless reduced to writing as an addendum to this Agreement and signed by the Parties or their authorized signatories.
- 11.4 This document contains the entire agreement between the Parties, and neither Party shall be bound by any undertaking, representation or warranty not recorded herein or added hereto without the consent of the Parties.
- 11.5 None of the provisions of this Agreement shall be considered waived by any Party unless such waiver is given in writing to the other Party. The failure of a Party to insist upon strict performance of any of the terms and conditions hereof, or failure to delay to exercise any rights provided herein or by law, shall not be deemed a waiver of any rights of any Party.
- 11.6 The headings appearing in this Agreement have been used for reference purposes only and shall not affect the interpretation of this Agreement.
- 11.7 If any clause or term of this Agreement should be invalid, unenforceable, or illegal, then the remaining terms and provisions of this Agreement shall be deemed to be severable there from and shall continue in full force and effect.
- 11.8 Neither Party shall assign, cede, or otherwise transfer any of its rights and obligations in terms of this Agreement without the prior written consent of the other Party.
- 11.9 By signing below, each Party represents that they are authorized to execute this Agreement and that each Party is bound to all terms of the Agreement.
- 11.10 This Agreement shall only become effective and legally binding on the Parties once it has been signed by the Parties.



- 11.11 No Party shall have the right to commit the other Party to any contractual, legal or financial liability, unless said Party has received the prior agreement from the other Party in writing.
- 11.12 The Parties understand and agree that nothing herein shall be interpreted as establishing any form of exclusive relationship between ORGANIZATION and the District. The Parties further understand and agree that nothing herein shall be interpreted as precluding either Party from entering into agreements similar to this Agreement with third parties or from conducting educational, research, or other activities that may involve the same or similar subject matter as this Agreement, the conduct of which is outside and independent of this Agreement.
- 11.13 The Parties agree that no individual shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with any aspects of this Agreement because of sex, race, creed, religion, color, national origin, age, honorably discharged veteran or military status, sexual orientation, including gender expression or identity, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a person with a disability. The Parties agree to abide by the standards of responsibility toward the disabled as specified by the Americans with Disabilities Act. In the event that either Party refuses to comply with this provision, this Agreement may be canceled, terminated, or suspended in whole or in part by the other Party.
- 11.14 Each Party shall maintain at its sole expense adequate insurance or self-insurance coverage to satisfy its obligations under this Agreement.
- 11.15 Any dispute arising under this Agreement shall be resolved in accordance with the laws of the State of Texas.
- 11.16 The terms of this Agreement may be modified only upon a prior written amendment agreement executed by all Parties to this Agreement.
- 11.17 This Agreement constitutes and contains the entire agreement between the Parties with respect to the subject matter hereof and supersedes any prior and contemporaneous oral or written agreements between the Parties.

[SIGNATURE PAGE FOLLOWS]

12. SIGNATURE CLAUSE

The Parties have caused this Agreement to be executed by their duly authorized representatives. By signing this Agreement, the District and ORGANIZATION signify that each Party understands and will comply with the conditions stated above.

Air Tutors

Ector County Independent School District

By:  \_\_\_\_\_

Name: Hasan Ali

Title: CEO

Date: 08/24/2022

By:  \_\_\_\_\_

Name: Dr. Lilia Nanez

Title: Associate Superintendent C&I

Date: 8/25/2022

**Exhibit A**

**Data Overview and Specific Data Requested**

**Table 1: Data Overview**

Student Data

<b>School Years of Data Requested</b>	2022-2023
<b>Students Included</b>	Participating grades and campuses
<b>Timeframe for Collection</b>	12 Months
<b>Other</b>	N/A

Non-Student Data

<b>Years Requested</b>	N/A
<b>Timeframe for Collection</b>	N/A
<b>Other</b>	N/A

**Table 2: Data Requested**

Student Data

<b>Data Type</b>	<b>Data Details</b>
Student Identifiers	<ul style="list-style-type: none"> <li>ECISD Student ID, Student First Name, Student Last Name</li> </ul>
Static Student Demographics	<ul style="list-style-type: none"> <li>Grade Level, English Learning Status,</li> </ul>
Student Academics	<ul style="list-style-type: none"> <li>Relevant assessment data for learning gaps</li> </ul>
Student Attendance and Referrals	<ul style="list-style-type: none"> <li>N/A</li> </ul>
Other	<ul style="list-style-type: none"> <li>Parent/Guardian First Name, Parent/Guardian Last Name, Parent/Guardian Phone Number, Parent/Guardian Email Address, Parent/Guardian Native Language</li> </ul>

Non-Student Data

<b>Data Type</b>	<b>Data Details</b>
N/A	<ul style="list-style-type: none"> <li>N/A</li> </ul>

## **Exhibit B**

### **Data Sharing Process**

Ector County Independent School District will utilize a secure solution for single sign-on and rostering or other secure methods of data transfer. The District will roster data in bulk directly from the District to mirror the District's SIS rosters. The District requires support for the following single sign-on methods at no additional charge to the District.

- Method One: OneRoster through Clever
- Method Two: SAML or modern authentication methods
- Method Three: LTI (learning tools interoperability)

Describe Data Sharing Process: Air Tutric can use either of these methods. Our preferred method would be through Clever. We can use SAML or LTI if necessary.