NOMS Data Collection and Registration Checklist

Please carefully read the following instructions prior to submitting your NOMS Registration. For assistance, please contact NOMS@asha.org.	✓
Gain the support of your clinical staff and the approval from your administration to participate in NOMS data collection. In exchange for NOMS participation and submission of data to ASHA's national registry, your organization will have access to the NOMS data collection tool, the NOMS scales (ASHA's Functional Communication Measures) and comparative data reports for benchmarking purposes.	
1. Ensure that your organization meets the eligibility requirements for NOMS participation. • Individual health care facility or school: 100% of your speech-language pathologists must be ASHA-certified and 100% must be ASHA members. • Entire health care or school system: 100% of your speech-language pathologists must be ASHA-certified and 75% must be ASHA members. *Note: If you do not meet the eligibility requirements as an organization and you are interested in submitting data as an individual, please contact NOMS@asha.org.*	
2. Designate a NOMS Subscriber. The Subscriber is the liaison between your organization and ASHA responsible for: • ensuring that all staff become Registered NOMS Users through successful completion of the training for data collection; • ensuring that there are regular submissions to ASHA of NOMS data on all applicable patients/clients; • notifying ASHA of any organizational changes affecting NOMS data collection, including the addition or elimination of programs and/or staffing changes using the NOMS Subscriber Dashboard	
3. Complete one Registration Form for your facility, school, or health care system. • The registration form provides ASHA will all of the necessary information to set up your clinicians and organization for NOMS data collection. • Individual clinicians or facilities/schools within your organization do not need to submit separate registration forms. Use page 2 of this registration form to provide ASHA with information about additional facilities/schools within your organization.	
4. Carefully review and execute the Community Subscription Agreement for your facility, school, or health care system. Determine the appropriate representative within your organization who has the authority/permission to execute an agreement for NOMS data collection within your organization (e.g., you, your organization's compliance officer, clinical director, school or health care administrator). ASHA's Community Subscription Agreement is the standard contract for NOMS participation and outlines the terms and conditions for use of NOMS which includes a) submission of data to the NOMS registry for all eligible patients/clients receiving speech-language pathology treatment and b) completion of the NOMS training by clinicians within 90 days of registration.	
5. Execute the optional Database License Agreement if your organization will be transmitting data to ASHA electronically through your documentation system.	
6. The completed Checklist, Registration, Community Subscription Agreement and Database License Agreement, if applicable, should be scanned and sent electronically to: NOMS Data Registry Associate, Cynthia Brennan Email: cbrennan@asha.org	

Instructions: Please complete and submit the following registration and contractual agreement(s) for your facility/school or system to participate in data collection. Indicate one clinician as the NOMS Subscriber, the liaison between ASHA and your organization for the coordination of data collection within your organization.

Subscriber Name: _____

Subscriber's ASHA Membership Number: _____

Telephone Number: _____

Preferred Email Address: _____

A. Is your organization/program part of a larger health care or school system?

☐ Yes   *Name of healthcare or school system:* _____

☐ No

B. How do you intend to participate in NOMS data collection?

☐ Single facility/school

☐ Entire healthcare/school system

   Health care or school system main/corporate office address:
   _____
   _____
   _____

Note: If you are registering as a system, only one registration form and one community subscription agreement should be submitted on behalf of your entire system. If your health care/school system has already registered, you do not have to complete an individual registration form. Instead, contact your organization's NOMS Subscriber for more information.

C. How do you intend to submit your data to ASHA?

☐ Online data submission through the NOMS web-based portal

☐ Electronic data transmission through documentation system. (*Note: The execution of the included database license agreement is required for electronic data transmission*)

   Name of EMR_____

D. Number of SLPs and facilities/schools participating in data collection:
SLPs: _____ Facilities/Schools: _____

Note: For the purposes of NOMS, a facility is a central location or building with one or more treatment programs (e.g., acute care hospital, skilled nursing facility, pre-kindergarten center). Do not separate facility/school by treatment program type unless a treatment program(s) takes place at a different location(s).

E. Facility/School Information: This information should be provided for each facility that will be participating in data collection. In order to receive comparative data reports across facilities/locations, separate information must be provided for each location. *Duplicate this sheet for each facility/school as needed.*

Facility/School Name:	
Facility/School Address:	
Telephone Number:	

F. NOMS Component(s): Please select the NOMS Component(s) for which data will be collected within this facility.

☐ Adult ☐ Pre-Kindergarten

G. Clinician Information: List the clinicians who will be participating in data collection at the above location and select the component(s) for which they provide services. If a clinician works at multiple locations, his or her name must be entered on each sheet.

Name	ASHA Number	CFY (Y/N)	If CF, include NSSHLA # or home address	NOMS Component	
				Adult	**Prek**
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					
Note: ASHA will periodically audit clinicians to ensure an organization maintains the eligibility requirements for NOMS participation. In order to participate in NOMS, **all speech-language pathologists must be ASHA certified**; 100% must also be ASHA members for facility-level participation or 75% must be ASHA members for system-level participation. Clinical fellows must become certified members of ASHA upon completion of their CF year.					

COMMUNITY SUBSCRIPTION AGREEMENT

1. Overview

1.1 This Community Subscription Agreement (the "Agreement") is entered into and effective as of this ___ day of _____, 201_ (the "Effective Date"), by and between the American Speech-Language-Hearing Association ("ASHA," "We" or "Us") and the person accepting this Agreement on behalf of itself and the Organization (as defined below) ("You") (each a "Party," and collectively the "Parties"). Your participation in the ___ Adult Health Care and/or ___ Pre-Kindergarten component(s) of ASHA's National Outcomes Measurement System for Speech-Language Pathology, including any use by You of all related data collection instruments, training materials, data, databases, specifications, schema, systems, software, services and documentation contained therein (collectively, "NOMS") and any data, reports or other output regarding treatment results generated through the NOMS reporting tool (the "NOMS Data") shall be solely for the purpose of improving treatment outcomes, research, patient/client advocacy, and public policy discussions in the field of speech-language pathology (the "Purpose"). The terms of this Agreement, the responsibilities for both ASHA and You (including responsibilities for Your Administrator, Your Subscribers, and other Users of NOMS) are set forth in this Agreement.

1.2 In addition to agreeing to be bound by this Agreement and related NOMS terms of use, You hereby agree to:

    1.2.1 meet and maintain the eligibility requirements for use of NOMS, as such requirements may be modified by ASHA from time to time (which, as of the date hereof, currently require that all speech-language pathologists must be ASHA certified and 100% must be ASHA members for NOMS facility-level participation or all speech-language pathologists must be ASHA certified and 75% must be ASHA members for system-level participation);

    1.2.2 designate a Subscriber (as further described in Section 2.2);

    1.2.3 ensure that all Subscribers and Users have been trained to use NOMS pursuant to ASHA's training requirements communicated to You from time to time;

    1.2.4 submit all data and information specified on the ASHA-provided admission and discharge forms collected by You from Your patients receiving speech-language treatment ("Treatment Data") to NOMS within ninety (90) days of entering into this Agreement and maintain such data submission on a monthly basis (Adult component) or semiannual basis (Pre-Kindergarten component) while this Agreement is in effect; and

1.3 You also hereby acknowledge and agree to ASHA's right to terminate this Agreement and/or terminate any use of NOMS by Subscriber or any User as contemplated by Section 8 below.

2. Definitions

2.1 "User" means an ASHA-certified speech-language pathologist(s) who evaluates and/or treats individual patients/clients for whom data are reported after successful completion of the NOMS Adult Healthcare and/or Pre-Kindergarten User Training. A User may be a data analyst acting under the supervision of a Subscriber or other User.

2.2 "Subscriber" means an ASHA member in good standing who represents the Organization and serves as the primary point of contact between the Organization and ASHA.

2.3 "Organization" means the facility or facilities under whose auspices the User(s) provide speech-language pathology evaluation/treatment.

3. Responsibilities of ASHA

3.1 ASHA shall use reasonable efforts to make NOMS available to each Subscriber and User(s) under this Agreement, as described in the documentation and specifications it publishes from time to time.

3.2 During the Term (as defined below), and subject to the terms and condition set forth herein and any other applicable requirements promulgated by ASHA, ASHA hereby grants to You, as well as any Users or Subscribers employed by You, a non-exclusive and revocable license, subject to all of ASHA's rights in NOMS and the NOMS Data and the terms of this Agreement, to display, copy, report and publish the NOMS Data, solely for the Purpose stated above, including for marketing the treatment provided by Your Organization and the results of Your Organization's treatment against NOMS benchmarks and for demonstrating quality treatment to payers and other relevant parties. For the avoidance of doubt, and without limiting any of Your other obligations under this Agreement, You shall have no right or license, and shall not disclose to any third party, any Confidential Information (as defined below) of ASHA, including ASHA's data collection instruments and Functional Communication Measures, training materials, specifications, schema, systems, and documentation.

3.3 The NOMS data collection system which enables Your Organization to submit Treatment Data to ASHA as required under this Agreement is set up so that no personally identifiable data can be submitted into NOMS.

4. Responsibilities of Organization

4.1 You hereby represent and warrant that:

    4.1.1 Any Treatment Data provided to ASHA has been collected by You and transmitted to ASHA in compliance with all applicable laws, rules, and regulations (including the Health Insurance Portability and Accountability Act of 1996 as amended);

    4.1.2 You are authorized and have all necessary rights to collect any Treatment Data transmitted to ASHA pursuant to this Agreement and to export, transmit, and provide ASHA with access to such data as required hereunder;

    4.1.3 The Treatment Data will be current, accurate and complete as of the date it is transmitted to ASHA; and

    4.1.4 You will use NOMS and the NOMS Data in strict compliance with all applicable laws, rules, and regulations.

4.2 You hereby grant, and agree to grant, ASHA and all other Users of NOMS, a royalty-free, perpetual, irrevocable, transferable, sublicenseable, worldwide, non-exclusive license under all of Your and Subscriber's rights in and to such data, to copy, publicly display, store and retrieve in a database, extract, create derivative works of, report, publish and otherwise fully exploit all such data, including for the Purpose and for purposes of operating, improving, supplementing, updating, or otherwise modifying or maintaining NOMS or the NOMS Data.

4.3 Organization shall be responsible for all acts and omissions of Subscriber and each of its Users.

5. Responsibilities of Subscriber

5.1 An individual designated as a Subscriber will be responsible for disseminating all information pertaining to training, data collection and reporting to all Users employed by or otherwise associated with Subscriber's associated Organization at such Organization's sole expense, and shall be responsible for notifying ASHA of changes in employment status and eligibility status of any User(s).

5.2 Subscriber accepts ASHA's right to terminate Subscriber or any User that ASHA may determine to be insufficiently qualified to use NOMS pursuant to the process and requirements described in Section 8.3 below.

5.3 Subscribers may designate one or more Users within Subscriber's Organization to use NOMS and the NOMS Data. Subscriber and each User shall also accept and be subject to the any terms of use and privacy policies applicable to NOMS and NOMS Data.

5.4 Subscriber shall be responsible for coordinating the collection and submission to ASHA of the Treatment Data within Your Organization, ensuring that all Users comply with the terms of this Agreement, and all other activities relative to NOMS, as further described in Section 1.2 above.

6. Responsibilities of Users

6.1 Users shall be responsible for complying with all applicable terms contained in this Agreement.

6.2 User is responsible for administering a patient/client's NOMS admission and discharge, but not necessarily all of the treatment.

6.3 User is responsible for maintaining sufficient qualifications, as specified by ASHA in its sole and complete discretion, to qualify for access to and use of NOMS and NOMS Data.

7. Disclaimers

7.1 ASHA DOES NOT REPRESENT OR WARRANT THAT NOMS OR THE NOMS DATA, OR REPORTS GENERATED THEREFROM, WILL BE AVAILABLE, ERROR-FREE, COMPLETE, ACCURATE, SECURE OR COMPATIBLE OR SAFE TO USE WITH ANY SYSTEMS.

7.2 ASHA UNDERTAKES NO DUTY TO CORRECT OR PREVENT ANY MISTAKES, MISINFORMATION, BUGS, FLAWS OR INCOMPATIBILITY OF ANY SOFTWARE OR SYSTEM WITH NOMS OR THE NOMS DATA. YOUR USE OF NOMS IS ON AN AS-IS BASIS WITH ALL FAULTS. ASHA MAKES NO EXPRESS WARRANTIES AND DISCLAIMS ALL IMPLIED WARRANTIES, ORAL OR WRITTEN, INCLUDING MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR COMPLIANCE WITH LAWS AND REGULATIONS.

7.3 YOU HAVE NOT ENTERED INTO THIS AGREEMENT IN RELIANCE UPON ANY REPRESENTATION, WARRANTY, COVENANT, OR UNDERTAKING OF THE OTHER PARTY THAT IS NOT SET OUT OR REFERRED TO IN THIS AGREEMENT.

8. Audits; Inactive Status

8.1 You shall maintain and make available to ASHA records sufficient to permit ASHA (or its agents) to verify Your full compliance with the terms and requirements of the Agreement and to ensure Your, and Your Subscribers' and Users', eligibility and data collection requirements for use of NOMS. Upon reasonable notice by ASHA, You will allow ASHA (or its agents), at its expense, to audit such records and Your compliance with this Agreement. Any such audits shall be performed during regular business hours. In addition, You agree that, from time to time, ASHA may utilize its automated audit tools to verify Your compliance with this Agreement.

8.2 If ASHA notifies Your Organization, or any User or Subscriber, that Your organization has failed to comply with the requirements set forth in Section 1.2 above (including a failure to meet and maintain the eligibility requirements for the use of NOMS, to properly train the Subscriber and Users as required under Section 1.2.3 above or to maintain submissions of Treatment Data to ASHA in compliance with Section 1.2.4 above), then Your Organization shall have forty-five (45) days to cure such failure. If Your Organization fails to cure such failure within forty-five (45) days after the notice, then Your Organization shall be classified as an "Inactive Entity" and this Agreement (including Your Organization's license to use NOMS and the NOMS Data specified in Section 3.2 above, as well as any license held by any Users or Subscribers to use NOMS and the NOMS Data) shall immediately terminate.

8.3 If ASHA notifies You or any User or Subscriber that such User or Subscriber has been determined by ASHA in its sole discretion to be insufficiently qualified to use NOMS in accordance with the requirements specified herein (including if any such Subscriber or User is not properly trained as required under Section 1.2.3 above), then Your Organization shall have forty-five (45) days to cure such failure. If such failure is not cured within forty-five (45) days after the notice, then such Subscriber or User shall be classified as an "Inactive User" and its license to use NOMS or the NOMS Data shall immediately be terminated.

8.4 Inactive Entities and Inactive Users must cease use of NOMS and any NOMS Data and return to ASHA any proprietary materials associated with NOMS (including data collection instruments and Functional Communication Measures, training materials, specifications, schema, systems, and documentation). An Inactive Entity must enter into new Community Subscription Agreement to again be eligible for use of NOMS or the NOMS Data.

9. Confidentiality

9.1 You recognize that NOMS, ASHA's data collection instruments and Functional Communication Measures and any and all training materials, specifications, schema, systems, documentation and any other information disclosed to You by ASHA in connection with this Agreement is the proprietary and confidential information of ASHA ("Confidential Information") and is exclusively owned by ASHA. Accordingly, You shall hold all Confidential Information in strict confidence and shall use at least the same degree of care the applicable Organization employs with respect to its own proprietary or confidential information, but in no event less than a

reasonable standard of care. You shall not, without the prior written consent of ASHA, disclose or reveal to any third party or utilize for Your own benefit the Confidential Information, or any part thereof, other than as expressly permitted under this Agreement. You shall ensure that Subscriber and any Users comply with the obligations and restrictions set forth in this Section.

9.2 The Organization shall implement and maintain security measures and safeguards which are adequate to prevent the unauthorized access, use, destruction, loss, or alteration of the Confidential Information.

9.3 Notwithstanding anything to the contrary contained herein, if You breach any of Your obligations contained herein with respect to confidentiality and unauthorized use of Confidential Information under this Agreement, ASHA, without limiting or waiving any other rights or remedies and without being required to post a bond, interim, interlocutory and permanent injunctive relief without the necessity of proving either actual damage or that any irreparable harm would or might result from a failure to obtain such relief, shall be entitled to equitable relief to protect its interests therein, including injunctive relief and money damages, it being acknowledged and agreed by You that any such breach may cause irreparable harm to ASHA and that monetary damages, alone, will not provide an adequate remedy (provided, that no provision of this Agreement shall preclude ASHA from seeking and collecting monetary damages).

9.4 Any data or other information provided to ASHA by the Organization for the purpose of data collection for the NOMS database will be reported only in aggregated form to maintain confidentiality. No clients, individual programs, facilities or systems will be identified in any of the aggregated data reports.

10. **Limitations of Liability**

10.1 Except as provided in Section 10.2 below, in no event will either Party be liable to the other for any consequential, indirect, special, punitive, or incidental damages, whether based on breach of contract, tort (including negligence and strict liability) or otherwise, including lost data and lost profits, arising from this Agreement, even if such Party has been advised of the possibility of such damages. ASHA's aggregate liability to Your Organization, its Subscriber and Users and any third party under this Agreement, whether based on breach of contract, tort (including negligence and strict liability), or otherwise, will be limited to $50.

10.2 The limitations on consequential and other damages set forth in the first sentence of Section 10.1 shall not apply to any of the following: (a) any breach by You of any obligations, representations, or warranties applicable to You and contained in Sections 1.2, 4 and 5; (b) a breach of the confidentiality obligations set forth in Sections 9.1 and 9.2 herein; (c) Your infringement or misappropriation of any of ASHA's intellectual property or other proprietary rights in or to NOMS or the NOMS Data; and (d) fraud, gross negligence, willful misconduct or violation of applicable law, rules or regulations by You.

11. **Ownership**

11.1 You acknowledge and agree that NOMS and the NOMS Data are the sole and exclusive property of ASHA. Except for the licenses expressly granted in Section 3.2, neither You nor Subscriber or any User is granted any intellectual property rights in or to NOMS or the NOMS Data, whether by implication, estoppel or other legal theory, and all rights in and to the NOMS and the NOMS Data not expressly granted in this Agreement are hereby reserved and retained by ASHA.

11.2 You will not copy, disclose or publish NOMS, the NOMS Data, or any information contained therein to any third party except in accordance with this Agreement.

12 **Term; Effect of Termination**

12.1 This Agreement is effective as of the Effective Date and will remain in effect for one (1) year thereafter (the "Initial Term"). Thereafter, this Agreement shall automatically renew for successive one (1) year periods, unless either Party gives at least thirty (30) days prior written notice to other Party for termination. The "Term" shall collectively mean the Initial Term and any renewal periods.

12.2 Upon expiration or termination of this Agreement, whether Your Organization or ASHA terminates this Agreement, the Organization, Subscriber and User(s) must immediately cease use of NOMS, the NOMS Data, or other ASHA proprietary materials (data collection instruments and its Functional Communication Measures, training materials, specifications, schema, systems, and documentation) and promptly return all copies of same to ASHA.

13 **General Terms**

13.1 Governing Law. This Agreement shall be governed by the laws of Maryland, except for its conflicts of law rules, and You hereby consent to and accept the jurisdiction of the federal and state courts of Maryland in case of any dispute hereunder.

13.2 Entire Agreement. This Agreement constitutes the entire agreement between the Parties and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter.

13.3 No Waivers. Either Party's failure to enforce any of the provisions of this Agreement, or to exercise any option, shall not be construed as a waiver of such provisions, rights, or options, or affect the validity of this Agreement.

13.4 Severability. If any provision of this Agreement shall be invalid or unenforceable, then such invalidity or unenforceability shall not invalidate or render unenforceable the entire Agreement. The entire Agreement shall be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligations of the Parties shall be construed and enforced accordingly.

13.5 Publicity. Neither Party will use the name, logo, trademarks, trade names, or other marks of the other Party (or its affiliates), or issue a press release or other public statement regarding the subject matter of this Agreement, without the other Party's prior written consent. However, subject to the restrictions set forth in Section 3.2 above, nothing will restrict Organization from publicizing the fact that Your Organization is a user of NOMS.

13.6 Notices. Notices concerning this Agreement shall be in writing and shall be given or made by means of facsimile transmission, electronic email, certified or registered mail, express mail or other overnight delivery service, or hand delivery, proper postage or other charges paid and addressed or directed to the respective Party using the contact information provided on the signature page hereto (or such other contact information provided from time to time in accordance with this provision). A notice that is sent by facsimile or electronic mail shall also be sent by one of the other means described in this Section 13.6.

13.7 Construction. Whenever the words "include," "includes" or "including" are used in this Agreement, they will be deemed to be followed by the words "without limitation."
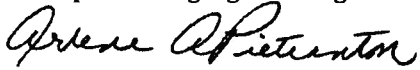
13.8 <u>Relationship of the Parties</u>. Neither Party undertakes to perform or discharge any liability or obligation of the other Party, whether regulatory or contractual, or to assume any responsibility whatsoever for the conduct of the business or operations of the other Party. Nothing contained in this Agreement is intended to give rise to a partnership or joint venture between the Parties or to impose upon the Parties any of the duties or responsibilities of partners or joint venturers.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed by their respective duly authorized representatives as of the Effective Date.

Organization Administrator

By: _____

Date: _____

American Speech-Language-Hearing Association

By: _Arlene A. Pietranton, PhD, CAE_____
CEO
Dec 23 2015 11:14 AM   C>Sign

Date: _____

Organization Subscriber

By: _____

Date: _____

ASHA Membership No. _____

Name and Address of Organization:

_____

_____

_____

_____

Email:

_____

Name and Address of Healthcare/School System:
(if applicable)

_____

_____

_____

_____

Email:

_____

Notice Information for ASHA:

Rob Mullen
<u>American Speech-Language-Hearing Association</u>
2200 Research Blvd. #245
Rockville, MD 20850

_____

_____

Email: RMullen@asha.org

If you indicated on the registration form that you would be transmitting data through your organization's documentation system, then the attached Database License Agreement must also be submitted.

NOMS DATABASE LICENSE AGREEMENT

This NOMS Database License Agreement (this "Agreement") is entered into and effective as of this ___ day of _____, 201_ (the "Effective Date"), by and between the American Speech-Language-Hearing Association ("ASHA") and _____ ("Licensee") to incorporate the _____ Adult Health Care and/or _____ Pre-Kindergarten component(s) of ASHA's National Outcomes Measurement System for Speech-Language Pathology into Licensee's electronic medical record. In this Agreement, ASHA and Licensee are sometimes referred to individually as a "Party," and collectively as the "Parties."

A. ASHA has developed and owns the National Outcomes Measurement System for Speech-Language Pathology and all related data collection instruments, outcome measures (Functional Communication Measures), training materials, data, databases, specifications, schema, systems, software, services and documentation (collectively, "NOMS") and maintains NOMS for the purpose of improving treatment outcomes, research, patient/client advocacy, and public policy discussions in the field of speech-language pathology (the "Purpose"); and

B. Licensee is an organization comprised of ASHA-certified speech-language pathology professionals and meets the ASHA requirements referenced herein; and

C. Licensee desires to obtain a license from ASHA to incorporate the fields included in ASHA's NOMS database specifically for the Licensed Component(s) (the "Licensed Fields") into Licensee's electronic medical records or other data collection tool (the "Licensee Data Collection Tool"), and ASHA has agreed to grant Licensee a license to the Licensed Fields, in each case, on the terms and conditions provided in this Agreement; and

Now, therefore, in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, the Parties agree as follows:

1.0 DEFINITIONS

The following capitalized words shall have the meaning given to them below:

1.1 "Affiliate" means, as to any entity, any other entity that, directly or indirectly, controls, is controlled by or is under common control with such entity, where "control" (and its derivatives) means, with respect to any entity, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such entity, whether through the ownership of voting securities (or other ownership interest), by contract or otherwise.

1.2 "Agreement" has the meaning set forth in the Preamble.

1.3 "ASHA" has the meaning set forth in the Preamble.

1.4 "Confidential Information" has the meaning set forth in **Section 7.1**.

1.5 "Effective Date" has the meaning set forth in the Preamble.

1.6 "Licensed Component(s)" means the Adult Health Care and/or Pre-Kindergarten component(s) of ASHA's National Outcomes Measurement System for Speech-Language Pathology, specified on **Exhibit A**.

1.7 "Licensed Fields" has the meaning set forth in the Recitals, specified on **Exhibit A**.

1.8 "Licensee" has the meaning set forth in the Preamble.

1.9 "Licensee Data" has the meaning set forth in **Section 3.2**.

1.10 "Licensee Data Collection Tool" has the meaning set forth in the Recitals.

1.11 "NOMS" has the meaning set forth in the Recitals.

1.12 "Party" and "Parties" have the meaning set forth in the Preamble.

1.13 "Purpose" has the meaning set forth in the Recitals.

1.14 "Specifications" means ASHA's proprietary specifications to be set forth upon receipt of NOMS Database License Agreement between the Parties. Specifications may be modified by ASHA from time to time in its sole discretion.

1.15 "Subscriber" means an ASHA-certified member in good standing who represents Licensee as the point of contact between Licensee and ASHA.

1.16 "Term" has the meaning set forth in **Section 6.1**.

1.17 "Third Party Provider" has the meaning set forth in **Section 2.2**.

1.18 "Updates" has the meaning set forth in **Section 2.3**.

1.19 "User" means an ASHA-certified speech-language pathologist or speech-language pathology clinical fellow employed by Licensee who evaluates and/or treats individual patients/clients for whom data is reported into the Licensed Fields. To qualify as a User, the individual must have successfully completed the necessary training required by ASHA.

2.0 LICENSED DATABASE

2.1 License Grant. During the Term, and subject to the terms and conditions set forth in this Agreement, ASHA hereby grants to Licensee a royalty-free, non-exclusive, non-transferable, non-sublicensable, limited, revocable license to incorporate the Licensed Fields into the Licensee Data Collection Tool and solely in accordance with the Specifications set forth by ASHA. THE LICENSED FIELDS INCLUDE THE 7-POINT NUMERIC SCALE FOR EACH OF THE 15 FUNCTIONAL COMMUNICATION MEASURE DOMAINS, BUT DOES NOT INCLUDE THE PROPRIETARY DESCRIPTIONS OF EACH LEVEL. ASHA reserves all rights not expressly granted herein.

2.2 Third Party Providers. Licensee may permit a third party service provider "Third Party Provider") to incorporate and configure the Licensed Fields into the Licensee Data Collection Tool pursuant to the license set forth in **Section 2.1**. Licensee shall be deemed the agent of the Third Party Provider and shall be responsible for the Third Party Provider's compliance with this Agreement (including the confidentiality obligations set forth in **Section 7.0**) and for all acts and omissions of the Third Party Provider.

2.3 Updates. ASHA may provide Licensee with updates, enhancements or modifications to the Licensed Fields ("Updates") from time to time in ASHA's sole discretion. In the event that ASHA provides Licensee with any such Update, Licensee shall promptly (but in no event more than thirty (30) days) implement such Update into the Licensee Data Collection Tool in accordance with the specifications provided by ASHA.

2.4 Restrictions. Any use of the Licensed Fields not expressly authorized in this Agreement is strictly prohibited. Without limiting the generality of the foregoing, Licensee is expressly prohibited from: (a) distributing, marketing, renting, leasing, transferring, assigning, publishing, sublicensing or reselling the Licensed Fields; (b) using the Licensed Fields in any system, application, tool, service or product not specifically authorized in this Agreement or offering it through any third party; (c) disassembling, decompiling, reverse engineering, modifying or otherwise altering or creating derivative works of the Licensed Fields or any part thereof; (d) reproducing or copying the Licensed Fields, or any portion thereof; (e) using the Licensed Fields for application development or any productive or commercial use; (f) allowing any third party to use or access the Licensed Fields (other than a Third Party Provider solely in accordance with **Section 2.2**) or (g) allowing any facility not covered under the Community Subscription Agreement to use or access the Licensed Fields.

3.0 LICENSEE OBLIGATIONS

3.1 Eligibility Requirements.

(a) At all times during the Term, Licensee shall maintain a separate Community Subscription Agreement with ASHA and meet and maintain ASHA's eligibility requirements for NOMS and the Licensed Fields; as such requirements may be modified by ASHA from time to time. As of the Effective Date, ASHA's eligibility requirements are that all speech-language pathologists must be ASHA certified and either (i) 100% must be ASHA members for NOMS facility-level participation or (ii) 75% must be ASHA members for system-level participation. The Parties acknowledge and agree that, as of the Effective Date, Licensee meets the eligibility requirements set forth in the immediately preceding sentence.

(b) At all times during the Term, Licensee shall have designated a Subscriber. The Subscriber shall be responsible for the coordination of all activities relative to the Licensed Fields (including the coordination of the collection of the Licensee Data and the provision of such data to ASHA pursuant to **Section 3.2**).

3.2 Provision of Licensee Data. Beginning no more than thirty (30) days after the Licensed Fields has been incorporated into the Licensee Data Collection Tool, Licensee must export to ASHA, in accordance with the Specifications and maintain data submission on no less than a monthly basis for the Adult Health Care component and a semiannually basis for the Pre-

Kindergarten component, all data and information entered into the Licensed Fields within the Licensee Data Collection Tool by or on behalf of the Users (the "Licensee Data"). Licensee acknowledges and agrees that ASHA will include the Licensee Data into NOMS and will use the Licensee Data for the Purpose.

3.3 Violation. Licensee understands its obligations under this **Section 3.0** are a material inducement for ASHA in granting the license set forth in **Section 2.1** above and that, but for Licensee agreeing to comply with such obligations, ASHA would not have entered into this Agreement. Therefore, in the event of a breach of any of the obligations under this **Section 3.0**, ASHA may immediately terminate this Agreement. In addition, ASHA may immediately suspend or otherwise require the termination of any user's access to the Licensed Fields if ASHA determines any such user to be insufficiently qualified to use the Licensed Fields.

3.4 Consideration. Licensee acknowledges and agrees that the Licensed Fields is being licensed to Licensee without charge and solely in exchange for Licensee's compliance with Licensee's obligations set forth in this **Section 3.0** and elsewhere in this Agreement, which is a material inducement for ASHA to grant the rights and licenses under this Agreement.

4.0 REPRESENTATIONS AND WARRANTIES

4.1 Mutual. Each Party represents and warrants that it has the necessary power and authority to enter into and perform its obligations under this Agreement.

4.2 Licensee. Licensee represents and warrants that:

(a) all Licensee Data has been collected by Licensee and transmitted to ASHA in compliance with all applicable laws, rules and regulations (including the Health Insurance Portability and Accountability Act of 1996 as amended);

(b) Licensee is authorized and has all necessary rights to collect the Licensee Data and to export, transmit and provide ASHA with access to all Licensee Data as required herein;

(c) all Licensee Data will be current, accurate and complete as of the date it is transmitted to ASHA; and

(d) Licensee will use the Licensed Fields in strict compliance with all applicable laws, rules and regulations.

4.3 Disclaimer. The Licensed Fields are licensed on an "AS IS, WHERE IS" basis, with all faults, and Licensee's use of or reliance upon the Licensed Fields are at Licensee's sole risk and discretion. ASHA undertakes no duty to correct or prevent any mistakes, misinformation, bugs, flaws or incompatibility of any software or system with the Licensed Fields. Without limiting the generality of the foregoing, ASHA does not represent, warrant or guarantee that (a) the Licensed Fields will meet Licensee's requirements, (b) the information and data contained in the Licensed Fields are current, accurate or complete, (c) the Licensed Fields will operate in the combinations, or in the equipment, software or other materials selected by Licensee or in connection with the Licensee Data Collection Tool, or (d) the Licensed Fields will be available, error-free or without interruption. Nothing contained in this Agreement shall be construed as conferring any right to use, in advertising, publicity or otherwise, any name, trade name or trademark, or any contraction, abbreviation or simulation thereof of ASHA or its Affiliates. EXCEPT AS SET FORTH IN **SECTION 4.1**, ASHA MAKES NO WARRANTIES, EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, TITLE, OR NON-INFRINGEMENT OR ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE.

5.0 PROPRIETARY RIGHTS

5.1 Licensed Fields. Licensee acknowledges that all right, title and interest in and to the Licensed Fields (specifically, the Functional Communication Measures) and including any Updates, alterations or derivative works thereto, regardless of the form of media in which it is contained, shall be retained by ASHA.

5.2 Licensee Data. Licensee hereby grants to ASHA and all other ASHA users of NOMS a royalty-free, perpetual, irrevocable, transferable, sublicenseable, worldwide, non-exclusive right and license to copy, publicly display, store and retrieve in a database, extract, create derivative works of, report, publish and otherwise fully exploit all Licensee Data in connection with ASHA's use and operation of NOMS.

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6.0 TERM; TERMINATION

6.1 <u>Term</u>. Unless earlier terminated as provided herein, the term of this Agreement (the "<u>Term</u>") shall commence on the Effective Date and shall continue for a period of one year thereafter. The Term of this Agreement shall automatically renew for successive twelve (12) month terms unless either Party notifies the other Party in writing of its intention not to renew.

6.2 <u>Termination</u>.

(a) Either Party may terminate this Agreement immediately if the other Party has materially breached this Agreement and the breaching Party fails to cure such breach within thirty (30) days after receipt of written notice thereof.

(b) ASHA may immediately terminate this Agreement by providing Licensee with written notice upon the occurrence of any of the following events:

(i) If the Licensed Fields are not successfully incorporated into the Licensee Data Collection Tool and the data are not submitted to ASHA by the date that is six (6) months after the Effective Date;

(ii) In the event of a breach of any of the obligations under **Section 3.0**; or

(iii) In the event of a breach of any of the representations or warranties of Licensee set forth in **Section 4.0**.

(c) ASHA may immediately terminate this Agreement by providing Licensee with written notice if (i) Licensee files a voluntary petition in bankruptcy, (ii) Licensee is adjudged bankrupt, (iii) a court assumes jurisdiction of the assets of Licensee under a federal reorganization act, (iv) a trustee or receiver is appointed by a court for all or a substantial portion of the assets of Licensee, (v) Licensee becomes insolvent or suspends its business, or (vi) Licensee makes an assignment of its assets for the benefit of its creditors except as required in the ordinary course of business.

6.3 <u>Effect of Termination; Survival</u>. Upon expiration or termination of this Agreement for any reason, the licenses and rights granted to Licensee hereunder shall immediately terminate and Licensee shall immediately discontinue all further use of the Licensed Fields, use of ASHA's Functional Communication Measures and shall immediately disable all aspects and components of the Licensed Fields from the Licensee Data Collection Tool. Licensee understands that it shall have no further licenses or rights to the Licensed Fields upon expiration or termination of this Agreement for any reason and agrees that it shall not make any claim to the contrary. In addition, Licensee shall (a) immediately return to ASHA, and destroy any and all copies of, the Confidential Information that may be in Licensee's possession or control as of the date of expiration or termination, and (b) certify the same to ASHA in writing within five (5) days after the date of expiration or termination. **Sections 1.0**, **4.2**, **4.3**, **5.0**, **6.3**, **7.0**, **8.0**, **9.0** and **10.0** will survive the expiration or termination of this Agreement for any reason.

7.0 CONFIDENTIALITY

7.1 Licensee recognizes that the Licensed Fields, the Functional Communication Measures, the Specifications and any other training materials, specifications, schema, systems, documentation and information disclosed to Licensee by ASHA in connection with this Agreement is the proprietary and confidential information of ASHA ("<u>Confidential Information</u>") and is exclusively owned by ASHA. Accordingly, Licensee shall hold all Confidential Information in strict confidence and shall use at least the same degree of care Licensee employs with respect to its own proprietary or confidential information, but in no event less than a reasonable standard of care.

7.2 Licensee shall not, without the prior written consent of ASHA, disclose or reveal to any third party or utilize for its own benefit the Confidential Information, or any part thereof, other than as expressly permitted under this Agreement. Licensee shall ensure that the Third Party Provider, the Subscriber and all Users will comply with the obligations and restrictions set forth in this Section **7.0**. In addition, Licensee shall ensure that any Third Party Provider contracted to incorporate and configure the Licensee Fields into the Licensee Data Collection Tool has agreed in writing to obligations of confidentiality and non-use regarding the Confidential Information set forth in Section 7.1 no less restrictive than those set forth herein.

7.3 Licensee shall implement and maintain adequate security measures and safeguards to prevent the unauthorized access, use, destruction, loss, or alteration of the Confidential Information.

7.4 Notwithstanding anything to the contrary contained herein, if Licensee breaches any of its obligations with respect to confidentiality and unauthorized use of Confidential Information under this Agreement, ASHA shall be entitled to equitable relief to protect its interest therein, including injunctive relief and money damages.

8.0 INDEMNITY

Licensee shall defend, indemnify, and hold ASHA, its Affiliates and their respective officers, directors, agents, and employees harmless against all losses, liabilities, damages, fines, penalties, assessments, defaults, deficiencies, interest and expenses (including taxes), and any related claim, judgment, settlement, award, investigation, proceeding and litigation resulting from or arising out (a) the acts or omissions of Licensee, the Subscriber, the Users or any Third Party Provider performing services on behalf of Licensee, (b) a breach of any representation, warranty or covenant of Licensee contained in this Agreement, or (c) the use of the Licensed Fields or the information contained therein by, on behalf of, or through Licensee including any modification of the Licensed Fields or information contained therein or combination of the Licensed Fields or information contained therein with any other materials, data or information, including the Licensee Data Collection Tool.

9.0 LIMITATIONS OF LIABILITY

9.1 EXCEPT AS PROVIDED IN **SECTION 9.2** BELOW, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE OR INCIDENTAL DAMAGES, WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR OTHERWISE, INCLUDING LOST DATA AND LOST PROFITS, ARISING FROM THIS AGREEMENT, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT AS PROVIDED IN **SECTION 9.2** BELOW, EACH PARTY'S AGGREGATE LIABILITY TO THE OTHER PARTY UNDER THIS AGREEMENT, WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), OR OTHERWISE, WILL BE LIMITED TO $50.

9.2 The limitations on amounts and types of damages set forth in **Section 9.1** shall not apply to any of the following: (a) Licensee's breach of the license to the Licensed Fields granted herein; (b) a breach of the confidentiality obligations set forth in **Section 7.0**; (c)

Licensee's infringement or misappropriation of any of ASHA's intellectual property or other proprietary rights in or to the Licensed Fields or NOMS; and (d) fraud, gross negligence, willful misconduct or violation of applicable law, rules or regulations by Licensee or its agents.

9.3 Each Party acknowledges and agrees that the provisions of this Agreement that limit liability, disclaim warranties, or exclude consequential damages or other damages or remedies are essential terms and are fundamental to the Parties' understanding regarding allocation of risk. Accordingly, such provisions shall be independent of any other provisions of this Agreement and shall be enforced regardless of any breach hereof or other occurrence or condition relating in any way to this Agreement. Without limiting the generality of the foregoing, EACH PARTY AGREES THAT ALL LIMITATIONS OF LIABILITY, DISCLAIMERS OF WARRANTIES, AND EXCLUSIONS OF CONSEQUENTIAL DAMAGES OR OTHER DAMAGES OR REMEDIES SHALL REMAIN FULLY VALID, EFFECTIVE AND ENFORCEABLE IN ACCORDANCE WITH THEIR RESPECTIVE TERMS, EVEN UNDER CIRCUMSTANCES THAT CAUSE ANY EXCLUSIVE REMEDY UNDER THIS AGREEMENT TO FAIL OF ITS ESSENTIAL PURPOSE.

10.0 MISCELLANEOUS

10.1 Relationship of the Parties. Neither Party undertakes to perform or discharge any liability or obligation of the other Party, whether regulatory or contractual, or to assume any responsibility whatsoever for the conduct of the business or operations of the other Party. Nothing contained in this Agreement is intended to give rise to a partnership or joint venture between the Parties or to impose upon the Parties any of the duties or responsibilities of partners or joint venturers.

10.2 Records; Audit. During the Term and for a period of three (3) years following the expiration or termination of this Agreement, Licensee shall maintain and make available to ASHA records sufficient to permit ASHA (or its agents) to verify Licensee's full compliance with the terms and requirements of the Agreement. Upon reasonable notice by ASHA, Licensee will allow ASHA (or its agents), at its expense, to audit such records and Licensee's compliance with this Agreement. Any such audits shall be performed during regular business hours.

10.3 No Publicity. Neither Party will use the name, logo, trademarks, trade names, or other marks of the other Party (or its Affiliates) or issue a press release or other public statement regarding the subject matter of this

Agreement without the other Party's prior written consent.

10.4   Notices.   Notices concerning this Agreement shall be in writing and shall be given or made by means of facsimile transmission, certified or registered mail, express mail or other overnight delivery service, or hand delivery, proper postage or other charges paid and addressed or directed to the respective Party as follows. A notice that is sent by facsimile shall also be sent by one of the other means set out by this Section:

If to ASHA, to:

Rob Mullen
American Speech-Language Hearing Association
2200 Research Boulevard #245
Rockville, MD 20850
Fax: 301-296-8588

If to Licensee to:

_____
_____
_____
_____
_____

10.5   No Waivers.   Either Party's failure to enforce any of the provisions of this Agreement, or to exercise any option, shall not be construed as a waiver of such provisions, rights, or options, or affect the validity of this Agreement.

10.6   Assignment; Successors.   Licensee may not assign, delegate or otherwise transfer any of its rights or obligations under this Agreement without the written consent of ASHA, and any attempted assignment, delegation or other transfer without such written consent will be null and void. The provisions of this Agreement will be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.

10.7   Governing Law.   The construction, interpretation and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of Maryland, without regard to any conflicts of law principles that would require the application of the laws of any other jurisdiction, and shall be subject to the exclusive jurisdiction of its federal or state courts in Maryland.

10.8   Entire Agreement.   This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements and understandings, both oral and written, between the Parties with respect to the subject matter of this Agreement. No Party has entered into this Agreement in reliance upon any representation, warranty, covenant or undertaking of the other Party that is not set out or referred to in this Agreement.

10.9   Cumulative Remedies.   No right or remedy herein conferred upon or reserved to either Party is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy under this Agreement, or under applicable law, whether now or hereafter existing. The election by a Party of any remedy provided for in this Agreement or otherwise available to such Party shall not preclude such Party from pursuing any other remedies available to such Party at law, in equity, by contract or otherwise.

10.10   Construction.   In this Agreement, except where otherwise provided or where the context expressly otherwise requires: (a) words denoting the singular shall include the plural and vice versa and words denoting any gender include all genders; (b) the words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation"; and (c) in the event of a conflict between a provision in the body of this Agreement and a provision in an Exhibit, the provision in the body of this Agreement shall prevail.

10.11   Severability.   If any provision of this Agreement shall be invalid or unenforceable, then such invalidity or unenforceability shall not invalidate or render unenforceable the entire Agreement. The entire Agreement shall be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligations of the Parties shall be construed and enforced accordingly.

10.12   Counterparts.   This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. This Agreement shall become effective when each Party shall have received counterparts hereof signed by the other Party.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed by their respective duly authorized representatives as of the Effective Date.

American Speech-Language-Hearing Association   **Licensee**

By: _____   By: _____

Name: _____   Name: _____
Arlene A. Pietranton, PhD, CAE
Title: CEO   Title: _____
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EXHIBIT A

LICENSED FIELDS – ADULT NOMS

1. Year of Admission to SLP Services

2. Age at Admission

3. Race/Ethnicity

4. Medical Diagnosis

5. Date of Onset/Exacerbation of Primary Medical Diagnosis

6. SLP Diagnoses

7. Current Treatment Setting

8. Setting Previous to Current Admission

9. Did the Patient Receive SLP Services in the Previous Setting

10. Funding Source at Admission

11. Year of Discharge from SLP Services

12. Were the Treatment Goals for this Level of Care Met

13. Are Continued SLP Services Recommended upon Discharge

14. Patient Setting Subsequent to Discharge

15. Funding Source at Discharge

16. Average Number of Sessions per Week

17. Length of Typical SLP Treatment Session

18. Total Number of SLP Treatment Sessions

19. Total Number of SLP Evaluation Sessions

20. Patient Length of Stay in SLP Treatment (in days)

21. Is English the Primary Language of this Patient

22. Functional Communication Measure Domains and 7-point Numeric Scales. This does not include the proprietary descriptions of each Functional Communication Measure Level.

LICENSED FIELDS – PREK NOMS

1. Year of Admission to SLP Services

2. Age at Admission

3. Race/Ethnicity

4. Treatment Setting

5. Associated Medical Factors

6. Year of Discharge from SLP Services

7. Primary Reason for Discharge

8. Primary Funding Source

9. Was a Structured Home Program Established as a part of the Child's Treatment Program

10. On Average, how often did the Child Receive SLP services

11. What was the Average Length of the SLP Sessions for this Child

12. Total Number of SLP Treatment Sessions

13. Total Number of SLP Evaluation Sessions

14. Total Length of Time in SLP Treatment (in days)

15. During the Course of Treatment, Did the Child Receive SLP Services From Another Program/Facility

16. Functional Communication Measure Domains and 7-point Numeric Scales. This does not include the proprietary descriptions of each Functional Communication Measure Level.

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