THE DEVEREUX EARLY CHILDHOOD WEB-BASED

ASSESSMENT LICENSE

Licensor: The Devereux Foundation   and   Kaplan Early Learning Company
                  444 Devereux Drive   1310 Lewisville Clemmons Road
                  Villanova, PA 19085   Lewisville, NC 27023

Licensee: Purchaser of the e-DECA2.0 Web-system

For and in consideration of the agreements set forth below, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, as of the Effective Date, Licensor and Licensee agree as follows:

1. <u>Definitions</u>.

(a) "Administration" shall mean the creation of one (1) DECA rating with the Software.

(b) "Administration Fees" shall mean the fees paid by Licensee to Licensor to cover each Administration in one of two forms:

(i) "By Child Option" shall mean the fee charged by Licensor for unlimited administrations on one child."

(ii) "By Administration Option" shall mean the fee charged by Licensor for a package of a predetermined quantity of Administrations.

         (c) "Administrator" shall mean the program level individual with the authority to set up and maintain the sites, teachers, and classroom records in the database; to create additional users; and to access the e-DECA support line.

(d) "Annual Term" shall mean each one (1) year term of this Agreement commencing on the Contract Year and each anniversary thereof thereafter and continuing for one year or until this Agreement is otherwise terminated, as defined in Section 6 of this Agreement.

(e) "Annual License Fee" shall mean the sum to be paid by Licensee to Licensor annually for each Administrator.

(f) "Business Hours" shall mean Monday through Friday between the hours of 9:00 am and 5:00 pm Eastern Standard or Eastern Daylight Time, as applicable, federal and state holidays excepted.

(g) "Catalog" shall mean the product catalog issued by Kaplan Early Learning Company annually.

(h) "FERPA" shall mean the Family Educational Rights and Privacy Act.

(i) "Contract Year" shall mean the date on which Licensor provides Licensee with access to the Software.

(j) "The DECA" for the purposes of this agreement shall include the Assessment Record Form, User's Guide and Technical Manual for each of The Devereux Early Childhood Assessments, including The Devereux Early Childhood Assessment for Preschoolers, Second Edition, the Devereux Early Childhood Assessment for Infants and Toddlers, and the Devereux Early Childhood Assessment Clinical Form.

(k) "Software" shall mean *e*-DECA, which is the automated implementation of the administration, scoring, interpretation and results reporting features of the The DECA, together with data storage features, all improvements and modifications to, and derivative works of, such Software, and any related user manuals and documentation, whether in hard copy or electronic format

(l) "Web Site" shall mean the Internet web site named and located at www.e-deca2.org, e-deca2.org or such other name and location as Licensor may provide to Licensee from time to time.

2. License. For each Annual Administration Fee paid to Licensor, Licensor grants to Licensee one (1) non-exclusive, non-transferable license to use the Software on the Web Site. Licensee will use the Software only for its own internal data processing purposes, and Licensee will not sublicense, distribute or otherwise make the Software available to any third party (including, without limitation, any affiliate, subsidiary, parent, contractor, franchisee, agent or dealer of Licensee) without first obtaining (a) the written consent of Licensor to that use, which consent may be withheld by Licensor in its sole discretion; and (b) the written agreement of the third party to comply with the terms of this Agreement and pay any fees required by Licensor for use of the Software. Except as set forth in this paragraph, Licensee agrees that only its agents or employees shall use the license granted under this Agreement and Licensee shall ensure all such individuals adhere to the terms and conditions of this Agreement as if such persons were parties to this Agreement.

3. Licensor's Services.

(a) Software Maintenance. Licensor will use its best efforts to correct errors in the Software within a reasonable time after written notice by Licensee. Licensor may provide updates to the Software from time to time, but is under no obligation to do so.

(b) Administrator Support. Licensor shall provide Licensee with administrator support in connection with the functionality and features of the Software only, at no additional charge to Licensee. Such assistance shall be provided by a support line which shall be staffed during Business Hours. Licensee may contact the support line by telephone at 1-866-872-4687, or such other number as Licensor may make available to Licensee from time to time, and Licensor agrees to return the call within twenty-four (24) hours, weekends and holidays excepted, and to respond to Licensee within a reasonable time. Licensee is responsible for resolving all problems not related to the functionality and features of the Software at its own expense.

(c) Set-up. Licensor will contact Licensee to schedule a mutually convenient time to instruct Licensee on the initial set-up, including defining the structure of Licensee's program.

(d) <u>Data Storage</u>. Licensor shall provide Licensee with electronic data storage for all data entered into and results produced from the Software. Licensor agrees to back-up such date storage daily and in the event of a failure of a data storage device or other event which causes a loss of Licensee's data, Licensor's sole responsibility and Licensee's sole remedy shall be the restoration of such data from the most recent back-up.

(e) <u>Compliance</u>. Licensor agrees to comply with legal and regulatory requirements related to security, maintenance, and disclosure of the data.

(f) <u>Security.</u> In order to protect the security of the data collected during administration of this software, licensor has implemented protections including but not limited to the following measures:

(i) The data shall be encrypted during transmission as well as at rest;

(ii) Access to the data shall be restricted to authorized personnel and authorized users only allowing access from designated IP addresses as well as by requiring identifiers and passwords; and

(iii) The physical facilities where the servers are located are compliant with ISO 27001:2013 and SOC 2 Type 2 security standards.

(g) <u>Limitations of Service</u>. Licensor will use commercially reasonable efforts to ensure that the website is available to Licensee during Business Hours. The foregoing notwithstanding, Licensor will not be liable for loss of service, access, or data for any reason, including but not limited to, any unforeseen or preventable failure related to changes in the infrastructure or traffic capabilities, failure or break down of the Internet, the Word Wide Web, any related telecommunications equipment or systems, or any computer hardware or software.

4. <u>Licensee's Responsibilities</u>. In addition to the obligations of Licensee as otherwise specified in this Agreement, Licensee shall be solely responsible for the accuracy of all data used with the Software and any losses of data, programs, breaches of security, viruses, and disabling or harmful devices that Licensee may download or otherwise experience as a result of Licensee's use of the Internet or the World Wide Web. Licensee further agrees to comply with FERPA as applicable to Licensee's use of the Software, including the requirement of obtaining any necessary consent from the parents of subject children and providing access to the assessment information. Licensee shall inform Licensor when the data is no longer needed for the purpose for which the assessments are conducted and shall authorize Licensor to destroy the data. (If Licensee does not so inform Licensor sooner, Licensor may destroy the data one year after Licensee fails to renew this Software License). Licensee acknowledges that Licensor may destroy the data by removing all student/family identifiers. Licensee acknowledges that Licensor is actively involved in ongoing research in connection with The DECA and the social and emotional development of young children. To assist Licensor in its research, Licensee hereby grants Licensor a perpetual, royalty free, non-exclusive, nontransferable license to use the data created by Licensee and maintained using the Software solely for such research purposes provided that Licensor first removes any identifiable data as required by FERPA.

5. <u>Fees</u>. Except as otherwise provided by Licensor, the Annual License fee, the By Child Option fee and the by Administration Option fee shall be as set forth in the then current Catalog. For the services rendered by Licensor and in consideration of the license granted by Licensor to Licensee to use the Software, Licensee shall pay Licensor as follows:

(a) <u>Annual Fee</u>: Licensee shall pay Licensor an Annual License Fee for each Administrator. The Annual Administrator Fee is nonrefundable. If additional Annual Administrator Fees are purchased during the 12 month period following the Contract year, the annual fee will be prorated.

(b) <u>Administration Fees</u>: Licensee shall pay Licensor the Administration Fees as follows:

(i) Licensee may elect either to pay Licensor a by Child Option or a by Administration Option Fee.

(ii) If Licensee elects the by Child Option, then Licensee shall pay Licensor an amount equal to the number of children that Licensee estimates will be processed using the Software during the Annual Term multiplied by the by Child Option Fee. The Software will track the number of children entered into the database and notify the Licensee when usage nears the purchased limit. In the event that Licensee processes Administrations for children *above* the number of children for which it has paid a by Child Option Fee, then Licensor will notify Licensee and Licensee is responsible for paying Administration Fees for such children. In the event that Licensee has processed Administrations for children *below* the number of children for which it has paid a by Child Option Fee, then Licensee may carry its Administrations for that number of children into the next Annual Term if this License is extended pursuant to the terms of Section 6. If this License is not extended, however, all remaining Administrations purchased on a by Child Option fee basis shall expire and Licensor shall not be obligated to refund to Licensee the cost of the by Child Option fees related to such unused Administrations.

(iii) If Licensee elects the by Administration Option Package, then Licensee shall purchase packages from Licensor of predefined quantities of Administrations and shall pay Licensor the Administration Fees in an amount equal to the number of packages Licensee estimates will be needed to process all of its Administrations during an Annual Term (regardless of the number of children in Licensee's program) multiplied by the by Administration Option Package Fee. The Software will track the number of Administrations entered into the database and notify the licensee when usage nears the purchase limit. In the event that Licensee processes Administrations in excess of the number paid for, then Licensor will notify Licensee and Licensee is responsible for paying Administration Fees for such children. In the event that Licensee has unused Administrations, then those Administrations will be carried forward into the next Annual Term if this License is extended pursuant to the terms of Section 6. Upon the termination of this License, all remaining Administrations purchased on a Per Rating Package Fee basis shall expire and Licensor shall not be obligated to refund to Licensee the cost of any such remaining Administrations. Upon the termination or expiration of this Agreement, Licensee shall remain obligated to Licensor for any shortfalls in the Administration Fees

(c) <u>Adjustment of Fees</u>. Licensor may increase the by Child Option Fee, the by Administration Option Package Fee and the Annual License Fee annually based on the prices as published in its then current Catalog or as provided to Licensee by written notice in connection with issuing a new Catalog. Such increases will be effective on future purchases.

6. <u>Term and Termination</u>. This Agreement shall commence upon the Contract Year and, provided Licensee is not in default hereunder, shall remain in effect on a year-to-year basis (the Annual Term), until terminated by either party (a) upon written notice to the other party no less than sixty (60) days prior to the end of the then current Annual Term; (b) upon a non-monetary default of the other party, such default remaining uncured for thirty (30) days from the date of written notice from the non-defaulting party to the other specifying such default; or (c) upon the bankruptcy or insolvency of the other party. The foregoing notwithstanding, this Agreement shall terminate immediately in the event that Licensor has not received payment of the Annual Administrator Fee for a subsequent Annual Term prior to thirty (30) days after the anniversary of the Contract year.

Licensor further reserves the right in its sole discretion to terminate this Agreement upon ten (10) days prior written notice to Licensee in the event that Licensee exceeds the limits of the Administrations purchased as described in Sections 5(b) and 5(c) above, as applicable, and fails to purchase additional Administrations as required in those Sections of this Agreement. Upon termination or expiration of this Agreement, (a) neither party shall have any obligation under the terms of this Agreement except that Licensee shall be obligated to Licensor for any unpaid Administration Fees; and (b) Licensor shall deactivate Licensee's user identification code(s) and Licensee's access to the Software through the Web Site shall be terminated.

7. <u>Confidential Information and Proprietary Rights</u>.

    (a) <u>Reciprocal Covenant</u>. In the course of their dealings, the parties may disclose to one another confidential information relating to their businesses ("Confidential Information"). Neither party will disclose the other party's Confidential Information to any third party without the prior written consent of the other party, nor will a party make use of any of the other party's Confidential Information except in the performance of rights or obligations under this Agreement. Each party will use at least the same degree of care to avoid disclosure of the other party's Confidential Information as it uses with respect to its own Confidential Information, but in no event shall less than reasonable care be used. Licensor's Confidential Information shall specifically include any user identification codes assigned to Licensee. Confidential Information does not include information: (i) generally available to or known to the public; (ii) previously known to the recipient; (iii) independently developed by the recipient outside the scope of this Agreement; (iv) lawfully disclosed to the recipient by a third party; or (v) disclosed pursuant to a valid court order or as required by a judicial or quasi-judicial court or tribunal.

    (b) <u>Proprietary Information of Licensor</u>. Licensee acknowledges that the Software contains confidential and proprietary information and trade secrets belonging to Licensor, and that title in and rights to the Software and The DECA remain exclusively with Licensor. Licensee's rights to the Software are strictly limited to those granted in this Agreement. Licensee will not attempt to copy or obtain access to the Software source or object code, and Licensee will not decompile, disassemble or otherwise reverse engineer the Software. Licensee further agrees to destroy or return to Licensor any copies of the Software in whatever form that may come into its possession, custody or control. Licensee agrees to respect and not to remove, obliterate, or cancel from view any copyright, trademark, confidentiality or other proprietary notice, mark, or legend appearing on any of the Software or output generated by the Software, and to reproduce and include same on each copy of any output generated by the Software.

    (c) <u>Licensor's Remedies.</u> Licensee acknowledges that the unauthorized use, transfer or disclosure of the Software, its output, or copies thereof will: (1) substantially diminish the value to Licensor of the trade secrets and other proprietary interests that are the subject of this Agreement; (2) render Licensor's remedy at law for such unauthorized use, disclosure or transfer inadequate; and (3) cause irreparable injury in a short period of time. If Licensee breaches any of its obligations with respect to the use or confidentiality of the Software, Licensor shall be entitled to equitable relief to protect its interests therein, including, but not limited to, preliminary and permanent injunctive relief.

    (d) <u>Survival</u> The parties' obligations under this Section will survive the termination of this Agreement or of any license granted under this Agreement.

8. <u>Warranty</u>. Licensee represents and warrants to Licensor that it has evaluated and tested the Software for use in its business and the Software satisfies Licensee's requirements in all material respects and is fit for such intended uses. Licensor represents and warrants to Licensee that (a) it is the owner of the Software or otherwise has the right to grant Licensee a license to use the Software without

violating any rights of any third party; (b) there is currently no actual or threatened suit or claim by any such third party based on an alleged violation of such right by Licensor; and (b) the Software will perform in all material respects with The DECA. **THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, QUALITY, OR FITNESS FOR A PARTICULAR PURPOSE.**

9. Indemnification.

(a) By Licensor. Licensor will indemnify, defend and hold harmless Licensee, its officers, directors, representatives and employees, from and against any costs, damages, losses and other expenses arising out of or in connection with any third party demands, causes of action, or claims that the Software infringes or violates any intellectual property right of such third party, on the condition that Licensee notifies Licensor promptly of the such claim, gives Licensor sole control of the defense and negotiations for its settlement or compromise, and provides Licensor with all reasonable assistance required in its defense. In the event that the Software or any portion thereof is held to constitute an infringement, or violation of a patent, and its use is enjoined, Licensor shall have the obligation to, at its expense, (i) modify the Software without impairing in any material respect the functionality or performance, so that it is non-infringing or non-violative, (ii) procure for Licensee the right to continue to use the infringing or violative Software, or (iii) replace said Software with equally suitable, non-infringing software. If none of the foregoing alternatives are available to Licensor, Licensee shall receive a repayment of all monies paid to Licensor since the date that the use of the Software was enjoined, and Licensee shall return all of the Software to Licensor.

(b) By Licensee. Except in connection with the foregoing infringement claims, Licensee shall, to the extent permitted by applicable law, indemnify and hold harmless Licensor, its officers, directors, representatives and employees, from and against any costs, damages, losses or expenses, including reasonable attorneys' fees, arising out of or in connection with any third party demands, causes of action or claims, arising out of Licensee's use of the Software.

(c) Compliance with Law. To the extent permitted by applicable law, each party agrees that it shall indemnify and hold harmless the other party, its officers, directors, representatives and employees, from and against any costs, damages, losses or expenses arising out of or in connection with any third party demands, causes of action or claims, arising out of the indemnifying party's obligations under law.

10. Limitation of Liability. Licensee acknowledges and agrees that the consideration which Licensor is charging hereunder does not include any consideration for assumption by Licensor of the risk of Licensee's consequential or incidental damages which may arise in connection with Licensee's use of the Software. Accordingly, Licensee agrees that Licensor shall not be responsible to Licensee for any loss-of-profit, indirect, incidental, special, or consequential damages arising out of this Agreement or use of the Software.

11. Miscellaneous.

(a) Notices. Any notice required to be given pursuant to this Agreement shall be in writing and mailed by certified or registered mail, return receipt requested, or delivered by a national overnight express service to the address listed opposite the party's name in the header to this Agreement. Either party may change the address to which notice or payment is to be sent by written notice to the other party pursuant to the provisions of this Section.

(b) Governing Law; Jurisdiction. This Agreement shall be governed by the laws of North Carolina. All disputes hereunder shall be resolved in the applicable state or federal courts of North Carolina. The parties consent to the jurisdiction of such courts, agree to accept service of process by mail, and waive any jurisdictional or venue defenses otherwise available.

(c) Benefit. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their heirs, administrators, successors and assigns.

(d) Waiver. No waiver by either party of any default shall be deemed as a waiver of any prior or subsequent default of the same or other provisions of this Agreement.

(e) Severability. If any provision hereof is held invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affect the validity or operation of any other provision and such invalid provision shall be deemed to be severed from the Agreement.

(f) Assignability The license granted hereunder is personal to Licensee and may not be assigned by any act of Licensee or by operation of law without the prior written consent of Licensor.

(g) Integration. This Agreement constitutes the entire understanding of the parties, and revokes and supersedes all prior agreements between the parties and is intended as a final expression of their Agreement. It shall not be modified or amended except in writing signed by the parties hereto and specifically referring to this Agreement. This Agreement shall take precedence over any other documents that may be in conflict therewith.

(h) Force Majeure. Neither party will be liable for, nor will be considered to be in breach of or default under this Agreement on account of, any delay or failure to perform as required by this Agreement as a result of any causes or conditions that are beyond such party's reasonable control including, but not limited to, computer or telecommunications failures, and that such party is unable to overcome through the exercise of commercially reasonable diligence. If any force majeure event occurs, the affected party will give prompt written notice to the other party and will use commercially reasonable efforts to minimize the impact of the event.