

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("Agreement") is entered into as of Nov 14, 2014 among THE SCHOOL DISTRICT OF PHILADELPHIA (the "School District") and THE JUVENILE BRANCH OF THE FAMILY DIVISION OF THE COURT OF COMMON PLEAS OF THE FIRST JUDICIAL DISTRICT OF PENNSYLVANIA (the "Philadelphia Family Court, Juvenile Branch") and the CITY OF PHILADELPHIA ACTING THROUGH ITS DEPARTMENT OF HUMAN SERVICES ("DHS").

BACKGROUND

In the City of Philadelphia, many children who attend School District schools are also involved in other City systems including DHS and Philadelphia Family Court, Juvenile Branch. For such children, it is imperative that these systems have appropriate information regarding the child's educational needs. Children that have been adjudicated dependent and/or delinquent and are living away from their families need consistency in educational services. As part of monitoring the progress of children through the dependency and delinquency systems, DHS and Philadelphia Family Court, Juvenile Branch require education records, including without limitation certain personally identifiable information contained therein, created and maintained by the School District ("Education Records") to assess the educational needs of such juveniles.

Additionally, Philadelphia public school students are referred to Philadelphia Family Court, Juvenile Branch for violating the attendance rules of the Pennsylvania Public School Code of 1949 as amended, and to ensure appropriate planning and service delivery, the Philadelphia Family Court, Juvenile Branch needs certain educational information from the School District. In the City of Philadelphia, there are currently four regional truancy courts in the Philadelphia Family Court, Juvenile Branch. These truancy courts process cases of chronically truant Philadelphia public school students in collaboration with the School District and DHS.

DHS and Philadelphia Family Court, Juvenile Branch staff work together to develop and implement comprehensive strategies to ensure educational stability and increase school attendance and educational success through education support services, truancy prevention case management services, case management, reintegration, and other child welfare programs in conjunction with the School District.

In an effort to enable the Philadelphia Family Court, Juvenile Branch and DHS to assess truant, delinquent, and dependent children, and children accepted for DHS Services under the Child Protective Services Law, 23 Pa.C.S. §§ 6301 *et. seq.* ("CPSL") and implementing regulations, and to

place such children in appropriate educational environments pursuant to the Fostering Connections to Success and Increasing Adoptions Act, 42 U.S.C. §675(1)(G), the School District, Philadelphia Family Court, Juvenile Branch, and DHS agree to follow certain processes and procedures in order to share certain Education Records and information about truant, delinquent or dependent children or children accepted for DHS services, in compliance with federal, state and local law, including without limitation, the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g and the regulations promulgated thereunder ("FERPA").

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein contained, the parties, intending to be legally bound, hereby agree as follows:

1. Term. The Term of this Agreement shall be for a period of five (5) years from December 1, 2014 through November 30, 2019 ("Term") unless it is terminated earlier in accordance with this Agreement.

2. Definitions. For purposes of this Agreement, the following words shall have the following meanings:

a. "Accept for service" shall have the meaning set forth in CPSL at 23 Pa.C.S. §6303.

b. "Delinquent" shall have the meaning set forth in the Juvenile Act at 42 Pa.C.S. § 6302.

c. "Dependent" shall have the meaning set forth in the Juvenile Act at 42 Pa.C.S. § 6302.

d. "DHS" shall mean all DHS staff, social workers, administrators, and contracted providers, including community umbrella agencies and provider agencies.

e. "DHS Information" shall include, without limitation:

- i. Child's name
- ii. DHS case number and suffix
- iii. Name of DHS staff
- iv. Community Umbrella Agency
- v. Provider agency
- vi. Placement and discharge dates
- vii. Placement zip code
- viii. Final status of the investigation/report only if the School District is the reporter
- ix. Type of placement (foster, congregate or residential treatment)
- x. Upcoming court dates
- xi. Status of parent's educational rights

f. “Education Records” shall have the meaning set forth in FERPA at 20 U.S.C. § 1232g(a)(4) and 34 C.F.R. Part 99, and include but are not limited to such records for children in early childhood education programs. Education Records shall include, without limitation:

- i. Child’s Name
- ii. Child’s Address
- iii. School District Student ID
- iv. State Student ID
- v. Demographic Information
- vi. All schools attended
- vii. Attendance (excused and unexcused absences)
- viii. Disciplinary/behavioral record, including suspensions/expulsions and reasons for suspensions/expulsion (if applicable)
- ix. Report card data
- x. High school credits earned
- xi. Enrollment status (including graduation status)
- xii. Special education status and information, including Individualized Education Plan
- xiii. Standardized test scores

g. “Family Court, Juvenile Branch Information” shall include, without limitation:

- i. Child’s name
- ii. Child’s address
- iii. Name of probation officer assigned to such child
- iv. Services mandated by Juvenile Branch.
- v. Guardian for such child
- vi. Next Court Date
- vii. Disposition of children referred by the School District through Philadelphia Family Court, Juvenile Branch’s Truancy program

3. Philadelphia Family Court, Juvenile Branch’s Legitimate Educational Interests Under FERPA.

a. The School District has determined that the Philadelphia Family Court, Juvenile Branch constitutes a school official under FERPA, 20 U.S.C. § 1232g(b)(1)(A), and has legitimate educational interests, including the educational interests of each truant, delinquent and dependent child in Philadelphia, in connection with the release of Education Records. Accordingly, the School District may release Education Records, in compliance with the terms and conditions set forth in this Agreement for the Philadelphia Family Court, Juvenile Branch’s use in the manner contemplated in this Agreement.

b. Philadelphia Family Court, Juvenile Branch designates the following persons (singularly, a “Designated Person” or collectively, “Designated Persons”) as the only persons to whom the School District shall release Education Records or personally identifiable information contained in Education Records:

- i. Administrative Judge, or designees
- ii. Chief of Juvenile Probation or designees
- iii. District Court Administrator
- iv. Deputy Director, Juvenile Probation
- v. Chief, Court Operations or designee.
- vi. Probation Officers

Family Division, Court of Common Pleas
 First Judicial District of Pennsylvania
 1801 Vine Street
 Philadelphia, PA 19103
 Telephone No.: 215-686-7970

4. DHS's Legitimate Educational Interests Under FERPA.

a. The School District has determined that DHS constitutes a school official under FERPA, 20 U.S.C. § 1232g(b)(1)(A), and has legitimate educational interests, including the educational interests of each truant, delinquent and dependent child in Philadelphia and of children accepted for DHS services, in connection with the release of Education Records. Accordingly, the School District may release Education Records in compliance with the terms and conditions set forth in this Agreement for DHS's use in the manner contemplated in this Agreement.

b. DHS designates the following persons (singularly, a "Designated Person" and collectively, "Designated Persons") as the only persons to whom the School District shall release Education Records:

- i. DHS Commissioner or designee
- ii. DHS Deputy Commissioner, Performance Management and Accountability or designee
- iii. DHS Deputy Commissioner, Children and Youth Division or designee
- iv. DHS Deputy Commissioner, Juvenile Justice Services or designee
- v. Administrator, DHS Education Support Center or designee
- vi. DHS Directors from the following divisions: Children and Youth, Juvenile Justice Services, Community-Based Prevention Services, and Performance Management and Accountability or designee

Department of Human Services
 1515 Arch Street
 Philadelphia, PA 19102
 Telephone No.: 215-683-4010

5. Prior Parental/Guardian Consent for Delinquent and Dependent Children, for Children Accepted for DHS Services or for Children Involved in Philadelphia Family Court, Juvenile Branch's Truancy Program.

a. Philadelphia Family Court, Juvenile Branch and DHS shall use their best efforts to obtain consents from parents or guardians of each truant, delinquent and dependent child and of each child accepted for DHS services for the release of Education Records, except that no such consent need be requested by DHS for a child in its legal custody. Philadelphia Family Court, Juvenile Branch and DHS shall use the consent forms attached hereto as Exhibit A.

b. Philadelphia Family Court, Juvenile Branch has designated Chief of Probation, and/or his or her designee or successor, to answer any questions from parents or guardians in connection with the consent forms.

c. DHS has designated the Education Support Center Administrator, or his or her designee, and the Education Support Center Liaison Supervisor, or his or her designee, to answer any questions from parents or guardians in connection with the consent forms.

d. Philadelphia Family Court, Juvenile Branch shall prepare a notation in the Philadelphia Family Court, Juvenile Branch's data system as to the consent request and the consent received.

e. DHS shall retain copies of all consents and consent requests to parents and guardians and shall make them available to the School District upon request.

f. If, upon initial request, consent has not been obtained from a parent or guardian for a particular child, DHS shall again attempt to obtain consent from the parent or guardian six (6) months after the initial consent request.

6. Release of Education Records.

a. For any child in the legal custody of DHS, the School District shall provide such child's Education Record to DHS upon request or DHS's Designated Persons may access the School District's SCN to obtain such child's Education Record without obtaining a signed consent from the parent or guardian.

b. With Parental/Guardian Consent.

i. Once Philadelphia Family Court, Juvenile Branch or DHS obtains a signed consent from the parent or guardian of a delinquent or dependent child, of a child accepted for DHS service or of a child receiving services through Philadelphia Family Court, Juvenile Branch's truancy program; Philadelphia Family Court, Juvenile Branch or DHS may provide a written request for copies of such child's Education Record to School District Student Transition Center. Upon receipt of such written request, the School District shall provide such child's Education Record to Philadelphia Family Court, Juvenile Branch's Academic Help Center via the Education Stability Coordinator or DHS.

ii. Once the Philadelphia Family Court, Juvenile Branch or DHS obtains a signed consent from the parent or guardian of a delinquent or dependent child, or of a child accepted for DHS service or a child receiving services through Philadelphia Family Court, Juvenile Branch's truancy program; the Philadelphia Family Court, Juvenile Branch's Designated Persons or DHS's Designated Persons may access the School District's School Computer Network ("SCN") to obtain such child's Education Record.

c. Without Parental/Guardian Consent.

If after two documented attempts, the Philadelphia Family Court, Juvenile Branch or DHS cannot obtain a parental/guardian consent for the release of Education Records for a delinquent or dependent child, for a child accepted for DHS service or for a child receiving services through Philadelphia Family Court, Juvenile Branch's truancy program, the Philadelphia Family Court, Juvenile Branch or DHS may request Education Records by one of two ways:

i. Philadelphia Family Court, Juvenile Branch and DHS may provide a written request for such child's Education Record to, School District Student Transition Center. Upon receipt of such written request, the School District shall provide such child's Education Record to Philadelphia Family Court, Juvenile Branch's Academic Help Center via Education Stability Coordinator or DHS. Or

ii. The Philadelphia Family Court, Juvenile Branch's Designated Persons or DHS's Designated Persons may access the SCN to obtain such child's Education Record.

d. For each report card period, at the end of the school year and upon mutual agreement, DHS may submit a request for Education Records to the School District Information Systems department, in a spreadsheet format or by written or electronic means, listing dependent children and children accepted for DHS service. Upon receipt of such request, the School District shall provide Education Records for all children in the School District information system.

e. Unless prohibited otherwise, in the absence of a written request for Education Records, authorized staff at School District may still disclose information to the Philadelphia Family Court, Juvenile Branch, and/or to DHS if the School District finds it is necessary for the party receiving the information to carry out its responsibilities to meet the needs of the child, in compliance with the terms and conditions in this Agreement.

7. Process of Release of Certain DHS Information to the School District.

a. The School District may submit a written or electronic request for certain DHS Information about dependent children, or about children accepted for DHS service, to the following persons at DHS or their successors:

- i. DHS Information and Referral
- ii. DHS Deputy Commissioner, Performance Management and Accountability

iii. Administrator, DHS Education Support Center

b. For each report card period, at the end of the school year and upon mutual agreement, the School District may submit a request for DHS Information about such dependent children, or about children accepted for DHS service, in a spreadsheet format by written or electronic means to:

Deputy Chief of Prevention & Intervention
Office of Student Services & Transition
440 North Broad Street, Suite 243
Philadelphia, PA 19130
Telephone: 215-400-6872

c. Unless prohibited otherwise, in the absence of a written request for DHS Information, authorized staff of DHS, including contracted providers, may still disclose information at any time about a dependent child or child accepted for DHS service to the School District if DHS finds it is necessary for the School District to carry out its responsibilities to meet the needs of the child, in compliance with the terms and conditions in this Agreement.

d. The School District shall maintain a record of all requests for DHS Information.

8. Process of Release of Philadelphia Family Court, Juvenile Branch Information to the School District.

a. The School District may submit a written or electronic request for certain Philadelphia Family Court, Juvenile Branch Information about delinquent children to the Chief Probation Officer, or designee or successor.

b. The School District may submit a written or electronic request for certain Philadelphia Family Court, Juvenile Branch Information regarding a child receiving services through Philadelphia Family Court, Juvenile Branch's truancy program, to the Administrative Judge, and/or designee.

c. The School District shall maintain a record of all requests for Philadelphia Family Court, Juvenile Branch Information.

9. Grant of Use.

a. Subject to the terms of this Agreement, DHS and the Philadelphia Court, Juvenile Branch may use the Education Records to promote the stability and continuity of a child accepted for service and delinquent or dependent child's educational placement; to ensure that delinquent or dependent children have access to an appropriate education; and to consider a delinquent or dependent child's educational needs in planning for appropriate placement or delivery of services, including reintegration services for delinquent youth. It is understood that Education

Records will be disseminated within DHS, including DHS contracted providers and contractors involved in the care of delinquent or dependent children and of children accepted for service in compliance with FERPA, CPSL and the regulations promulgated thereunder, and with the Fostering Connections to Success and Increasing Adoptions Act to enable the Philadelphia Family Court, Juvenile Branch and DHS to improve the educational stability and outcomes of such children. DHS and School District agree that providing the Education Records of the Philadelphia Family Court, Juvenile Branch and DHS's delinquent or dependent children and children accepted for service will enable Philadelphia Family Court, Juvenile Branch and DHS to promote educational stability and continuity and access to education and that proper placement planning and delivery of services is in the child's educational interest. The Philadelphia Family Court, Juvenile Branch and DHS may, therefore, use the Education Records in any practice consistent with its normal operating procedures in providing care to such children. With regard to contracted providers, Philadelphia Family Court, Juvenile Branch and/or DHS shall only disseminate Education Records when the Philadelphia Family Court, Juvenile Branch and/or DHS determine that such information is necessary for the contracted provider to carry out its responsibilities to meet the needs of the child, subject to the confidentiality provisions in Paragraph 12 (Confidentiality).

b. Subject to the terms of this Agreement, the School District may use the Philadelphia Family Court, Juvenile Branch Information and the DHS Information in connection with the educational placement of a delinquent or dependent child, of a child accepted for DHS service or of a child receiving services through Philadelphia Family Court, Juvenile Branch's truancy program, and to ensure that such child has an appropriate education. It is understood that the Philadelphia Family Court, Juvenile Branch Information and the DHS Information will be disseminated to certain offices within the School District in compliance with CPSL and the regulations promulgated thereunder and with the Fostering Connections to Success and Increasing Adoptions Act to enable the School District to improve the educational stability and outcomes of such children. The Philadelphia Family Court, Juvenile Branch, DHS and the School District agree that providing the Philadelphia Family Court, Juvenile Branch Information and the DHS Information of delinquent or dependent children, of children accepted for DHS service or of a child receiving services through Philadelphia Family Court, Juvenile Branch's truancy program, will enable the School District to promote educational stability and continuity and access to education. The School District may, therefore, use the Philadelphia Family Court, Juvenile Branch Information and the DHS Information in any practice consistent with its normal operating procedures in providing education to such children. However, the School District shall only disseminate Philadelphia Family Court, Juvenile Branch Information and the DHS Information when the School District determines that such information is necessary to carry out its responsibilities to meet the educational needs of the child, subject to the confidentiality provisions in Paragraph 12 (Confidentiality).

c. The School District shall maintain all DHS Information and Philadelphia Family Court, Juvenile Branch Information separately from the child's other educational information.

10. Restrictions of Use. Use of the Education Records by DHS and by the Philadelphia Family Court, Juvenile Branch, and use of the DHS Information and the Philadelphia Family Court, Juvenile Branch Information by the School District, shall strictly be governed by this Agreement; specifically, use of any party's information shall be in strict compliance with Paragraph 9 (Grant of Use) and the restrictions set forth in this Paragraph 10. Additionally, all information, including

Education Records, will be disseminated, recorded, held, and used in compliance with all applicable federal, state, and local laws including, but not limited to, FERPA and CPSL and their implementing regulations.

Except as otherwise permitted by Paragraph (9) (Grant of Use),

- a. No party shall distribute another party's information, in whole or in part, to any unlicensed third party.
- b. No party shall decompile, reverse engineer, disassemble, modify, or, by any means derive or attempt to derive the source code or structure of all or any portion of the another party's information or of any software code (source code or object code) that comprises or is furnished with the information.
- c. No party shall modify or manipulate another party's information by means of computer software program or otherwise.
- d. No party shall publish, display, transmit, or in any way present the other party's information over the Internet or any intranet, extranet, or other public or private computer network without the express, written permission of the City's Chief Innovation Officer if DHS is sharing DHS Information or of the School District's Office of Assessment and Accountability or the Chief of School Operations if the School District is sharing Education Records.

11. Ownership.

- a. Philadelphia Family Court, Juvenile Branch, DHS and the School District acknowledge and agree that the information shared under this Agreement is proprietary to the party sharing that information and contains valuable proprietary information. Philadelphia Family Court, Juvenile Branch, DHS and the School District further acknowledge and agree that the sharer of information retains all right, title and interest (including, without limitation, all rights of authorship, copyright, patent and trademark) that are granted under United States and international copyright, trademark, and patent laws, treaties and agreements, in the information that party shares, including, but not limited to, all data, datasets, and databases included in and/or comprising any data, and all copies and reproductions thereof, in whatever form or medium the information and such copies and reproductions may exist or be maintained, whether electronic, microfilm, microfiche, digital, merged into another program by the receiving party, or is combined with other programs or information, shall continue to be subject to the provisions of this Agreement, and the sharing party retains all ownership of all such information and all such portions.
- b. This Agreement does not constitute a sale or other transfer of any right, title or interest in any information that is not expressly granted by this Agreement, and the sharing party reserves all rights in the information it shares that are not expressly granted by this Agreement. Nothing contained in this Agreement shall confer or be construed to confer any rights to software or information that are proprietary to parties other than the sharing party and all uses of such software or information by the party receiving information are subject to the license terms and terms of use of their owners.

12. Confidentiality and Nondisclosure of Information.

a. All parties to this Agreement, including, but not limited to, employees, agents, subcontractors, consultants, and any person or entity acting on any of the parties' behalf (i) will maintain in strict confidentiality all of the information, including all aspects thereof, together with all materials and knowledge related thereto (the "Confidential Information," as further defined and set forth in Paragraph 12.b below) furnished to it by the sharing party and or obtained by the receiving party by any other means, for any purpose or at any time; (ii) will not, without the sharing party's written permission, divulge, disclose, communicate, or distribute any of the Confidential Information to any person or entity that is not employed or retained by the receiving party for the purposes detailed in Paragraph 9 (Grant of Use); (iii) will not, without the sharing party's written permission, divulge, disclose, communicate, or distribute any of the Confidential Information to any person or entity employed or retained by the receiving party, except as may be strictly necessary for the purposes detailed in Paragraph 9 (Grant of Use); and (iv) will not, without the sharing party's written permission, in any way use any of the Confidential Information for the receiving party's business or other advantage or gain.

b. Except as provided otherwise in this Paragraph 12, the Confidential Information shall include all of the following: any and all information. The Confidential Information shall not, however, include any information that:

- i. Was previously known to the receiving party, free of any obligation to keep it confidential; or
- ii. Was in the public domain at the time of the disclosure or falls into the public domain other than through breach of this Agreement; or
- iii. Is independently developed by the receiving party without knowledge of the Confidential Information; or
- iv. Is disclosed to third parties by the sharing party without restriction; or
- v. Is lawfully received from a third party whose disclosure would not violate any confidentiality or other legal obligation; or
- vi. Is required to be disclosed by law or judicial process.

c. It is understood and acknowledged by the School District that the DHS Information, specifically any information concerning child abuse, is subject to strict confidentiality laws. The School District and Philadelphia Family Court, Juvenile Branch are required to ensure the confidentiality and security of information shared by DHS and is liable for civil and criminal penalties for releasing information to persons who are not permitted access to this information.

d. Only persons who agree to the conditions and restrictions of this Agreement, including but not limited to compliance with all applicable laws with respect to confidentiality of DHS Information, Philadelphia Family Court, Juvenile Branch Information, and/or Educational Records, shall be designated to receive such information. Each party to this Agreement shall ensure compliance with this Paragraph. DHS, the School District and Philadelphia Family Court, Juvenile Branch shall ensure that their staffs have been informed that they must comply with all applicable

laws with respect to the confidentiality of the DHS Information, Philadelphia Family Court, Juvenile Branch Information and Education Records.

e. It is understood and acknowledged by the Philadelphia Family Court, Juvenile Branch and DHS that Education Records are subject to FERPA. The Philadelphia Family Court, Juvenile Branch and DHS are required to ensure the confidentiality and security of Education Records shared by the School District under this Agreement.

13. School District, Philadelphia Family Court, Juvenile Branch and DHS Immunity.

a. Notwithstanding any other provisions of this Agreement, or any addendum or exhibit to the contrary, the School District retains its statutory immunity as provided pursuant to the laws of the Commonwealth of Pennsylvania, 42 Pa. C.S.A. §§ 8501 and 8541. Philadelphia Family Court, Juvenile Branch and DHS acknowledge that the School District:

- i. Is a local agency, as defined in 42 Pa. C.S.A. §§8501 and 8541 and,
- ii. Does not waive its defense of statutory immunity derived therefrom.

b. Notwithstanding any other provisions of this Agreement, or any addendum or exhibit to the contrary, Philadelphia Family Court, Juvenile Branch retains its statutory immunity as provided pursuant to the laws of the Commonwealth of Pennsylvania, 42 Pa. C.S.A. §§ 8501 and 8541. The School District and DHS acknowledge that Philadelphia Family Court, Juvenile Branch:

- i. Is a local agency, as defined in 42 Pa. C.S.A. §§8501 and 8541 and,
- ii. Does not waive its defense of statutory immunity derived therefrom.

c. Notwithstanding any other provisions of this Agreement, or any addendum or exhibit to the contrary, DHS retains its statutory immunity as provided pursuant to the laws of the Commonwealth of Pennsylvania, 42 Pa. C.S.A. §§ 8501 and 8541. The School District and Philadelphia Family Court, Juvenile Branch acknowledge that the DHS:

- i. Is a local agency, as defined in 42 Pa. C.S.A. §§8501 and 8541 and,
- ii. Does not waive its defense of statutory immunity derived therefrom.

d. Nothing herein shall waive or amend any defense or immunity that Philadelphia Family Court, Juvenile Branch, DHS, the School District, their officers, agents or employees may have under the Pennsylvania Political Subdivision Tort Claims Act, 42 Pa.C.S.A. §8541 et seq.

14. Termination.

a. Termination for Breach. Any party may terminate this Agreement by giving thirty (30) days' written notice ("Termination Notice") to the other parties in the event of the another party's breach of any material term, including but not limited to a breach of Paragraph 9 (Grant of Use) or Paragraph 10 (Restrictions of Use), or other provision of this Agreement; provided, however, that the breaching party shall have the right to cure any such breach within twenty (20) days following its receipt of the Termination Notice.

b. Termination for Convenience. Any party may terminate this Agreement for its convenience at any time, at its sole discretion, upon thirty (30) days' prior written notice to the other parties of the terminating party's intention to terminate this Agreement and without penalty, cost or liability to either party for any damages or losses. Such termination shall be for any reason or for no reason at all.

15. Notice. Any notice, demand, request, consent or waiver to be given in accordance with this Agreement shall be in writing and shall be sent by United States certified mail, postage prepaid, return receipt requested, or overnight mail through a nationally recognized courier, addressed to the following parties:

To the School District: Chief of School Support Services
The School District of Philadelphia
440 North Broad Street, 2nd Floor
Philadelphia, PA 19130

with a copy to: Office of General Counsel
The School District of Philadelphia
440 North Broad Street, Suite 313
Philadelphia, Pa 19130
Attention: Assistant General Counsel

If to the Juvenile Branch: Administrative Judge
Family Division, Court of Common Pleas
First Judicial District of Pennsylvania
1801 Vine Street
Philadelphia, PA 19103

If to DHS: DHS Commissioner
Department of Human Services
1515 Arch Street
Philadelphia, PA 19102

with copy to: City of Philadelphia Law Department
1515 Arch Street
Philadelphia, PA 19102
Attention: City Solicitor

16. Warranties Disclaimed. THE PARTIES FURNISH THE INFORMATION UNDER THIS AGREEMENT AND EACH PART AND ELEMENT THEREOF ON AN "AS IS" AND "WITH ALL FAULTS" BASIS. NO PARTY MAKES OR RECEIVES ANY EXPRESS OR IMPLIED WARRANTY OR REPRESENTATION OF ANY KIND WHATSOEVER WITH RESPECT TO THE INFORMATION OR ANY PART OR ELEMENT THEREOF, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OR REPRESENTATION THAT IT IS ACCURATE,

COMPLETE, OR CURRENT; THAT IT IS FREE FROM SOFTWARE OR OTHER DEFECTS OR ERRORS, INCLUDING BUT NOT LIMITED TO, VIRUSES, WORMS OR OTHER HARMFUL COMPONENTS; OR THAT IT WILL MEET ANY PARTY'S NEEDS OR EXPECTATIONS. ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE ARE EXPRESSLY EXCLUDED. THE PARTIES ACKNOWLEDGE AND AGREE THAT IT ASSUMES THE ENTIRE RISK OF ANY LOSS TO ITSELF OR TO OTHERS RESULTING FROM ITS USE OF OR RELIANCE ON THE INFORMATION OR ANY ELEMENT OR PART THEREOF. NO ORAL OR WRITTEN ADVICE OR INFORMATION PROVIDED BY ANY PARTY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES SHALL CREATE ANY WARRANTY OF THE INFORMATION OR ANY PART OR ELEMENT THEREOF, OR IN ANY WAY INCREASE THE SCOPE OF THIS PARAGRAPH 16, AND NO PARTY SHALL BE ENTITLED TO RELY ON ANY SUCH ADVICE OR INFORMATION.

17. Limitation of Liability. IN NO EVENT SHALL ANY PARTY UNDER THIS AGREEMENT BE LIABLE FOR ANY DAMAGES, CLAIM OR LOSS INCURRED BY ANOTHER PARTY (INCLUDING, WITHOUT LIMITATION, COMPENSATORY, INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, LOST PROFITS, LOST SALES OR BUSINESS, EXPENDITURES, INVESTMENTS OR COMMITMENTS IN CONNECTION WITH ANY BUSINESS, LOSS OF ANY GOODWILL, OR DAMAGES RESULTING FROM LOST INFORMATION OR INABILITY TO USE INFORMATION, IRRESPECTIVE OF WHETHER THE PARTY HAS BEEN INFORMED OF, KNEW OF, OR SHOULD HAVE KNOWN OF THE LIKELIHOOD OF SUCH DAMAGES). THIS LIMITATION APPLIES TO ALL CAUSES OF ACTION IN THE AGGREGATE, INCLUDING WITHOUT LIMITATION, BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATION AND OTHER TORTS. IF ANY PARTY'S LIMITATION OF LIABILITY SHALL FOR ANY REASON WHATSOEVER BE HELD UNENFORCEABLE OR INAPPLICABLE, THAT PARTIES AGREES THAT LIABILITY SHALL NOT EXCEED \$100.00.

18. Governing Law; Forum Selection Clause; Consent to Jurisdiction. The Agreement and all disputes arising under the Agreement shall be governed, construed and decided in accordance with the laws of the Commonwealth of Pennsylvania. The parties agree that any lawsuit, action, claim, or legal proceeding involving, directly or indirectly, any matter arising out of or related to this Agreement, or the relationship created or evidenced thereby, shall be brought exclusively in the United States District Court for the Eastern District of Pennsylvania or the Court of Common Pleas of Philadelphia County. It is the express intent of the parties that jurisdiction over any lawsuit, action, claim, or legal proceeding shall lie exclusively in either of these two forums. The parties further agree not to raise any objection to any lawsuit, action, claim, or legal proceeding that is brought in either of these two forums, and the parties expressly consent to the jurisdiction and venue of these two forums. The parties further agree that service of original process in any such lawsuit, action, claim, or legal proceeding may be duly effected by mailing a copy thereof, by certified mail, postage prepaid to the addresses specified in Paragraph 15 (Notice).

19. Miscellaneous Provisions.

a. Consideration. The Parties acknowledge and agree that the furnishing of information to the respective party pursuant to the terms of this Agreement is good and sufficient consideration for entering into this Agreement.

b. Remedies. In addition to, and not in lieu of, any other remedies that may be available under this Agreement, at law, or in equity, none of which are waived, in the event of any actual or threatened breach of this Agreement by the receiving party, the sharing party shall be entitled to a restraining order, preliminary injunction or any other appropriate relief so as to specifically enforce the terms of this Agreement. The receiving party acknowledges and agrees that a breach of this Agreement would cause the sharing party injury not compensable in monetary damages alone, and that the remedies provided in the foregoing sentence are appropriate and reasonable.

c. No Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended or shall be construed to confer upon or give to any person, firm, corporation, or legal entity, other than the named, signatory parties, any rights, remedies, or other benefits under or by reason of the Agreement.

d. Survival. Any and all provisions set forth in this Agreement which, by its or their nature, would reasonably be expected to be performed after the termination or expiration of this Agreement shall survive and be enforceable after such termination. In addition to and not in lieu of the foregoing sentence, Licensee specifically agrees that the following shall survive the expiration or termination of this Agreement: any and all liabilities, actual or contingent, which shall have arisen in connection with the Agreement; and the terms and conditions set forth in Paragraph 9 (Grant of Use); Paragraph 10 (Restrictions of Use); Paragraph 11 (Ownership); Paragraph 12 (Confidentiality and Nondisclosure of Information); Paragraph 16 (Warranties Disclaimed), Paragraph 17 (Limitation of Liability); Paragraph 18 (Governing Law; Forum Selection; Consent to Jurisdiction); and Paragraph 19(b) (Remedies).

e. Amendments; Waiver. This Agreement may not be changed, amended, augmented, rescinded, or discharged (other than by performance), in whole or in part, except by a written Amendment signed by all parties. Except to the extent that the parties agree in writing, no waiver of any provision of this Agreement shall be deemed: (a) to be a waiver of any other provision in this Agreement; or (b) to be a waiver of any breach of the obligations under this Agreement. Any forbearance by a party in seeking a remedy for any noncompliance or breach by the other party shall not be deemed to be a waiver of rights and remedies with respect to such noncompliance or breach.

f. Severability. The provisions of the Agreement shall be severable. If any provision of the Agreement or the application thereof for any reason or circumstances shall to any extent be held to be invalid or unenforceable, the remaining provisions of the Agreement or the application of such provision to persons or entities other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each provision of the Agreement shall be valid and enforceable to the fullest extent permitted by law.

g. Headings Not Controlling. The headings do not in any way define, limit, describe or amplify the provisions of the Agreement or the scope or intent of the provisions, and are not part of the Agreement.

h. Entire Agreement. This Agreement, together with all appendices and other attachments referenced herein, constitutes the entire agreement between the Parties and supersedes all proposals, oral and written, between the parties on this subject.

i. Authority to Execute. Each of the parties entering into this Agreement represents and warrants that it has caused this Agreement to be duly authorized, executed and delivered by and through persons authorized to execute this Agreement on its behalf; and each of the individuals signing below represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of the party for which he or she has executed it.

IN WITNESS WHEREOF, each of the parties to this Agreement has caused this Agreement to be duly executed on its behalf by its authorized officials on the date first above written.

APPROVED AS TO FORM ONLY:

Rachel Holzman
Rachel Holzman
Attorney for The School District
of Philadelphia

THE SCHOOL DISTRICT OF PHILADELPHIA

By: William R. Hite, Jr.
William R. Hite, Jr., Ed.D.
Superintendent

**FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
COURT OF COMMON PLEAS
FAMILY DIVISION, JUVENILE BRANCH**

By: The Honorable Kevin Dougherty
The Honorable Kevin Dougherty
Administrative Judge

APPROVED AS TO FORM:
SHELLEY R. SMITH, CITY SOLICITOR

Per: Mary Kate Bonner
Mary Kate Bonner
Assistant City Solicitor

**CITY OF PHILADELPHIA
DEPARTMENT OF HUMAN SERVICES**

By: Vanessa Garrett Harley
Vanessa Garrett Harley
Commissioner