

The School District of Philadelphia
Standard Terms
for
Research Data License Agreements

The School District of Philadelphia (the “School District”) has received and carefully considered your request for certain data held by the School District in connection with certain academic research or an evaluation you seek to carry out.

This agreement applies to, and represents an agreement by and among the Institution (the “Institution”) named in the Data Request Form or research proposal submitted to the School District’s Research Review Committee, the individual(s) named and Authorized Recipients, if any, named elsewhere therein, and the School District. “You” and “your” means the Institution, the Authorized Recipients and these individual(s).

You have described the purpose of your research or evaluation, your research project, the data you request from the School District, and how you anticipate publishing or distributing your research in the Data Request Form or research proposal submitted to the School District’s Research Review Committee.

In its written response to your request, the School District has agreed to provide you with the data (the “Data”) described therein, on the condition that you hereby agree to comply with the terms, conditions and limitations set forth in this agreement. Subject to the duties, conditions and limits set forth in this agreement, the School District hereby grants you a limited, nontransferable, revocable, non-exclusive license to use the Data solely for the purposes and solely in the manner set forth in this agreement. This limited, nontransferable, revocable, non-exclusive license does not permit you to use the Data for any other purpose or in any manner other than as expressly set forth in the Data Request Form or research proposal submitted to the Research Review Committee.

For purposes of your research project, you may share the Data solely with the other persons listed on the Data Request Form or research proposal submitted to the Research Review Committee (the “Authorized Recipient(s)”; each of whom must be an employee of Institution. To add, delete or change an Authorized Recipient, you must give notice to the Chief Accountability Officer at the School District. You shall ensure that each Authorized Recipient implements and fully complies with the same restrictions and conditions that apply through this agreement to you with respect to the Data. Authorized Recipients shall sign a copy of this letter agreement and deliver the signed copy to the School District, prior to receipt of any Data.

In its approval of your request, the School District has specified the expiration date of this agreement. The School District may terminate this agreement if you breach it. If you have not published or submitted your research for publication by the date this agreement expires, you may not thereafter use the Data in your research. Not later than two (2) weeks after the expiration date you shall either destroy the Data or return the Data to the School District (you may not keep a copy of the Data in any form or format).

You covenant and agree with the School District as follows:

1. You shall comply strictly with all state and federal law that applies to the use of the Data, including but not limited to the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g and its regulations, 34 C.F.R. Part 99 (“FERPA”). When necessary to comply with FERPA, you agree to procure the consent of parents or students in connection with your receipt and use of the Data, and you agree to maintain and to make available to the School District written proof of parent or student consent.

a. The School District provides the Data to you under the authority of 20 U.S.C. § 1232g(b)(1)(F) and 34 C.F.R. § 99.31(a)(6)(i)(C). Accordingly, you agree to make available to the School District for the improvement of instruction the results of your research, at the request of the School District. The District provides the Data to you solely for the research or evaluation, and publication or distribution described in the Data Request Form or research proposal submitted to the Research Review Committee, and for no other purpose. You may not publish or distribute, or conduct any other research or evaluation involving the Data in any way, without making a request to and procuring the consent of the School District regarding such other research or evaluation.

b. You acknowledge and covenant to comply with the re-disclosure limitations set forth in FERPA, including in 34 C.F.R. § 99.33.

c. The United States Department of Education, Family Policy Compliance Office, provides more information concerning FERPA at its web pages, at:

www.ed.gov/policy/gen/guid/fpc/ferpa/index.html.

2. You shall keep in strict confidence all information provided by the School District in connection with your research project, except that you may publish or distribute your analysis of the Data, as part of your final research, as noted in the Data Request Form or research proposal submitted to the Research Review Committee. The School District shall disclose the Data solely to you and no one else. You may not transmit the Data via unencrypted e-mail, but must rely solely on secure transmission methods, including hand delivery in a sealed envelope. As to any studies developed as a result of this data agreement, except as permitted by FERPA and other applicable law, you shall not publish confidential information or any other information which identifies students, employees or officers of the School District by name without first obtaining written consent from such individuals, or in the case of a student, his or her parent or legal guardian. Also, you shall remove the School District’s name, and any or information identifying the School District, from the publication if the School District requests, and you shall not make any statement to the media relating to the subject matter of this agreement without the School District’s prior consent.

3. Because the Data contains confidential information, you agree to be fully bound by the following terms and conditions:

a. the Data are, and at all times shall remain, the sole property of the School District. Except as expressly provided in this agreement, the School District retains all right, title and interest in and to the Data, and all copies thereof (including, without limitation, all copyrights, trade secrets, trademarks, patents and other similar proprietary rights therein). The rights and Data contained herein are non-transferable;

b. you shall maintain and protect the confidentiality of the Data and keep the Data in a secure environment, with access restricted solely to the person or persons who conduct the research project described in the Data Request Form or research proposal submitted to the Research Review Committee; persons whom you shall make aware of, and whom you shall cause to agree to abide by, the terms set forth in this letter;

c. you shall not release or otherwise reveal, directly or indirectly, the Data to a third party and you shall not transfer or assign any right hereunder, in whole or in part, whether voluntarily or by operation of law, without the prior written consent of the School District, which the School District may grant, condition or withhold in its sole discretion;

d. you shall permanently destroy the Data, and any and all copies thereof and shall send written certification to the School District that you have permanently destroyed all Data, upon the earlier of the termination of this agreement, or the expiration date set forth in the Data Request Form or research proposal submitted to the Research Review Committee;

e. if and when you produce a written work, including but not limited to a research report, that uses the Data, you shall acknowledge the Data as property of the School District by displaying the disclaimer: “Source: derived from data provided by The School District of Philadelphia. © 2010 The School District of Philadelphia. All rights reserved.”;

f. you shall forward to the School District, free of charge and within thirty (30) days, a copy of any research report that is generated using the Data, to the attention of David Weiner, Chief Accountability Officer;

g. you shall not under any circumstances distribute, reprint, alter, sell, assign, edit, modify or create derivative works or any ancillary materials from or with the Data, including but not limited to, question and answer forms, without obtaining the prior written permission of the School District;

h. you represent and warrant that you have caused this agreement to be duly authorized, executed and delivered by and through a person with the authority to execute this agreement;

EXCEPT AS EXPRESSLY PROVIDED HEREIN, THE SCHOOL DISTRICT PROVIDES THE DATA “AS IS”, WITHOUT WARRANTY OF ANY KIND, AND EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES IN RESPECT THEREOF, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A

PARTICULAR PURPOSE. YOU AGREE THAT CERTAIN OBLIGATIONS UNDER THIS AGREEMENT, WHICH, BY THEIR NATURE WOULD CONTINUE BEYOND THE TERMINATION OR EXPIRATION OF THIS AGREEMENT, SHALL CONTINUE IN FULL FORCE AND EFFECT NOTWITHSTANDING THE TERMINATION OR EXPIRATION OF THIS AGREEMENT. SUCH OBLIGATIONS INCLUDE, BY WAY OF ILLUSTRATION ONLY AND NOT LIMITATION, OBLIGATIONS TO MAINTAIN CONFIDENTIALITY OF THE DATA AND OWNERSHIP OF THE DATA.

4. You shall not discriminate in any manner on the basis of age, race, color, sex, sexual orientation, handicap, disability, religious creed, ancestry, national origin or Vietnam-era or other veteran status.

5. You shall defend, indemnify and hold harmless the School District, the members of the School Reform Commission and the School District's officers and employees against any claims by any third parties arising out of your receipt, use and re-disclosure, if any, of any of the Data, including but not limited to any breach by you of this agreement. You shall give the School District prompt notice of any legal claims, notices or actions concerning the Data or your use of the Data, and you shall cooperate with the School District in the defense of the School District and its interests in connection with any such legal notice, claim or action. The School District does not waive its governmental immunity under 42 Pa.C.S.A. §§ 8501 and 8541 *et seq.*, or the official immunity of its Commissioners, Board Members, officers and employees, or any other defenses or immunities available to it or any of them.

6. You agree that you shall not violate the School District's Code of Ethics, nor pursue any course of conduct that represents a conflict of interest with respect to the School District or the Data, including but not limited to the receipt of any gifts or other inducements in any manner that may affect or may reasonably appear to affect your impartiality. Except as otherwise disclosed to and independently approved by the School District, no School District employee may benefit in any manner from this agreement.

7. If you fail to comply with the terms, conditions and limits set forth in this agreement, the School District may by notice to you hold you in default of this agreement, and, if you fail to cure such alleged breach or default in not later than five (5) business days, the School District shall have the right, at its option, to (a) terminate this agreement; (b) seek the remedy of specific performance to compel you to comply with this agreement, (c) seek any other remedy available at law or in equity, or (d) pursue any combination of these remedies. You acknowledge and agree that the Data contains very sensitive information, and based on this fact, the School District may seek the expedited legal and equitable relief noted above, in the event you breach any term set forth in this agreement.

8. The parties shall give any notices in writing, delivered by U.S. Mail, return receipt requested, nationally recognized overnight courier, or by hand delivery.

9. This agreement does not authorize or permit you to have any direct contact with children associated with the School District. The School District has not engaged your services as either an independent contractor or an employee and this agreement does not

create any employment relationship with the School District. You shall not assign any of your rights or duties under this agreement. You may subcontract certain rights and duties, provided that you remain liable to the School District at all times and in all circumstances. You shall retain records documenting your use and re-disclosure, if any, of the Data, for not less than six (6) years after the completion of your research. *See* 24 P.S. § 5-518. The foregoing to the contrary notwithstanding, you acknowledge and agree that 20 U.S.C. § 232g(b)(1)(F) requires that you destroy your copies of the Data itself when no longer needed for your research or evaluation.

10. Terms used but not defined in these Standard Terms have the meanings set forth in the Data Request Form to which the parties have attached these Standard Terms. The parties shall construe and enforce this agreement under the laws of the Commonwealth of Pennsylvania, without regard, however, to its conflict of laws provisions. The parties shall bring suit solely in the federal or state courts sitting in Philadelphia, Pennsylvania. If a court holds any specific term set forth in this agreement invalid or unenforceable, the remainder of this agreement shall remain valid and enforceable. The parties shall make waivers of any of the terms set forth in this agreement solely in writing. The parties do not intend to enter into any partnership or joint venture regarding this agreement or the Data. The parties do not intend any third party to enjoy any benefits or rights, or have any claim, regarding the agreements set forth in this agreement. This agreement sets forth the entire agreement of the parties regarding the Data and their relationship with one another.

11. ***Insurance.*** You shall, at your own expense, procure and maintain the types and minimum limits of insurance specified below. You shall procure all insurance from reputable insurers who are financially responsible and authorized to do business on an admitted basis in the Commonwealth of Pennsylvania or otherwise acceptable to the School District's Office of Risk Management. You shall procure all insurance through an insurance carrier or carriers, each of which shall have at least an A- (Excellent) rating from a reputable agency (*e.g.*, A.M. Best). All insurance herein, except the professional liability insurance, shall be written on an "occurrence" basis and not a "claims-made" basis. In no event shall you commence any part of the research until you have delivered to the School District the required evidence of insurance. The insurance policies shall provide for at least thirty (30) days prior written notice to the School District in the event you and your insurer or insurers materially change, cancel or non-renew any insurance policy. You shall ensure that you name the School District of Philadelphia and its officers, employees and agents shall be named as additional insureds on the general liability insurance policy, and shall ensure that your insurer so endorses said policy. You shall procure an endorsement or endorsements stating that (i) the coverage afforded the School District and its officers, employees and agents as additional insureds shall be primary to any other coverage available to them, and (ii) no act or omission of the School District or its officers, employees and agents shall invalidate the coverage, other than an act or omission that would constitute willful misconduct or gross negligence.

a. *Workers' Compensation and Employer's Liability.* Workers' Compensation limits shall be the statutory limits and employers' liability insurance, with limits of (1) \$100,000 Each Accident-Bodily Injury by Accident; (2) \$100,000 Each Employee-Bodily Injury by Disease; and (3) \$500,000 Policy Limit-Bodily Injury by Disease. Any other states' insurance under

this subsection shall include Pennsylvania.

b. *General Liability Insurance.* Limit of Liability: \$1,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability; \$1,000,000 advertising injury; \$2,000,000 general aggregate and \$2,000,000 aggregate for products and completed operations. The general liability insurance shall cover: premises operations; blanket contractual liability, personal injury liability; products and completed operations; independent contractors, employees and volunteers as additional insureds; cross liability; broad form property damage (including completed operations).

c. *Professional Liability Insurance.* Limit of Liability: \$1,000,000 with a deductible not to exceed \$100,000. The professional liability insurance shall cover errors and omissions, including liability assumed under this agreement. You may permit your insurer to write said coverage on a claims-made basis, provided that coverage for occurrences arising out of the performance of the research shall be maintained in full force and effect under the policy or “tail” coverage for a period of at least two (2) years after completion of the Work.

Certificates of Insurance evidencing the required coverages must specifically reference the School District Data Request Form or research proposal submitted to the Research Review Committee (please type this in the ‘Description’ section of the certificate). You shall deliver the original certificate to:

The School District of Philadelphia
Office of Risk Management
The Education Center
440 North Broad Street
Third Floor
Philadelphia, PA 19130-4015
(215) 400-4590

You shall deliver the certificate of insurance to the School District at least ten (10) days before research begins. Under no circumstances shall you actually begin the research without providing the evidence of insurance. You shall not self-insure any of the coverages required under this agreement without the prior written consent of the School District’s Office of Risk Management. The School District reserves the right to require you to provide certified copies of the original policies of all insurance at any time upon ten (10) days written notice.