

***The School District of Philadelphia
Terms of Use of School District Data***

February 2013

By accessing or using any data in the data sets (the “School District Data Sets”) made available by The School District of Philadelphia (the “School District”) on these web pages, the user or users agree to all of the following terms, covenants and conditions (the “Terms of Use”).

1. *Grant of License.* Subject to compliance with all of the terms and conditions set forth in these Terms of Use, the School District hereby grants to the user a personal, non-exclusive, revocable, non-transferable license to use the School District Data Sets and the data therein for governmental, accountability, and evaluative purposes, and to facilitate the School District's use of the School District Data Sets for its own assessments and other evaluative purposes.

2. *Ownership and Copyright Retained.* The user further acknowledges and agrees that, except solely for the license granted in Section 1 above, the School District is and at all times remains the owner of any and all School District Data Sets and all data therein, and of all right, title and interest therein and thereto, including without limitation, all copyright and trademark rights, any and all tradenames, images, designs, names, marks and symbols which have or may hereafter come to be associated with any and all of the School District Data Sets and the data therein. The School District reserves all rights in the School District Data Sets and the data therein not expressly granted by these Terms of Use. Except in compliance with the rights, proper powers, duties, terms, covenants and conditions set forth in these Terms of Use, copying of any of the School District Data Sets or the data therein is expressly prohibited.

3. *Warranties and Disclaimer Thereof; Limitation of Liability.* The School District provides the School District Data Sets to the user, and the user takes and uses the School District Data Sets, solely on an “AS IS” and “WITH ALL FAULTS” basis. The user further acknowledges that the School District Data Sets are complex and may contain one or more nonconformities, defects or errors. The School District does not warrant that the School District Data Sets will meet the user’s or any third party’s needs or expectations, or that the School District can or will correct or attempt to correct any or all nonconformities, defects or errors. The School District assumes no risk, liability or responsibility for the accuracy of the School District Data Sets and the data therein.

THE SCHOOL DISTRICT MAKES AND THE USER, AND ANY PERSON CLAIMING BY, THROUGH OR UNDER USER, INCLUDING BUT NOT LIMITED TO ANY RESEARCHER OR SUBCONTRACTOR, RECEIVES, NO WARRANTY, EITHER EXPRESS OR IMPLIED. THE SCHOOL DISTRICT EXPRESSLY DISCLAIMS AND EXCLUDES ANY AND ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE. THIS SECTION IS THE EXCLUSIVE REMEDY FOR DAMAGES AND IS IN LIEU OF ALL LIABILITIES OR OBLIGATIONS OF THE SCHOOL DISTRICT.

***LIMITATION OF LIABILITY.* IN NO EVENT SHALL THE SCHOOL DISTRICT BE LIABLE FOR ANY DAMAGES, CLAIM, CLAIMS, LOSS OR LOSSES INCURRED BY THE USER, OR ANY PERSON CLAIMING BY, THROUGH OR UNDER THE USER, INCLUDING BUT NOT LIMITED TO ANY RESEARCHER OR SUBCONTRACTOR, 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 ANY SCHOOL DISTRICT DATA SETS OR ANY DATA THEREIN, LOST SCHOOL DISTRICT DATA OR INABILITY TO USE SCHOOL DISTRICT DATA SETS OR ANY DATA THEREIN, IRRESPECTIVE OF WHETHER THE SCHOOL DISTRICT HAS BEEN INFORMED OF, KNEW OF, OR SHOULD HAVE KNOWN OF THE LIKELIHOOD OF SUCH DAMAGES. THIS LIMITATION APPLIES TO ALL CAUSES OF ACTION INDIVIDUALLY AND IN THE AGGREGATE, INCLUDING WITHOUT LIMITATION, BREACH OF CONTRACT, BREACH OF WARRANTY,**

NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATION OTHER TORTS, AND ANY OTHER BASIS OR THEORY OF RECOVERY AT LAW, IN EQUITY, OR UNDER ANY STATUTE.

THE SCHOOL DISTRICT PROVIDES ALL SCHOOL DISTRICT DATA SETS AND ALL DATA THEREIN ON AN “AS-IS” BASIS, AND THE USER SHALL REMAIN FULLY AND SOLELY RESPONSIBLE FOR ANY RESULTS AND CONSEQUENCES OF THE USE THEREOF.

4. *No Endorsement.* When creating any new applications, visualizations or other uses or projects based on the School District Data Sets or any data therein, the user and any person claiming by, through or under the user shall not and may not use any trademark, emblem, logo, seal or statement in any manner which implies the endorsement of the School district respecting such new application, visualization use, project or projects.

5. *User’s Sole Responsibility.* The user assumes sole responsibility for any and all applications, visualizations and other uses or projects created using the School District Data Sets or any data therein. The School District has no legal duty or responsibility, and no legal or other duty or obligation, to indemnify or otherwise protect the user or any other person, for any applications, visualizations or other uses or projects created using the School District Data Set or any data therein.

6. *Removal of Data Sets and Data.* The School District reserves the right to remove any School District Data Set or Sets or any data therein at any time and without prior notice to any user or any other person.

7. *Modification of these Terms of Use.* The School District reserves the right to modify these terms of use at any time and without any prior notice.

8. *Notice.* Users shall give notices and other communications required under these Terms of Use to:

General Counsel
The School District of Philadelphia
The Education Center
440 North Broad Street
Suite 313
Philadelphia, PA 19130-4015
Telephone: (215) 400-4120
Fax: (215) 400-4121

9. *Indemnity.* The user shall indemnify, defend and hold harmless the School District, its officers, employees, agents and the members of the School Reform Commission and the Board of Education, from and against any and all losses, expenses, including, but not limited to, litigation and settlement costs and attorneys’ fees and costs, claims, suits, actions, damages, liability and expenses for or on account of actual or alleged personal injury or damage to property, that arise out of or are related to the use by the user of the School District Data Set or Sets or any data therein by the user or the user’s agents, subcontractors, assignees, independent contractors, employees or servants, or for or on account of actual or alleged violation of any third party’s copyright, trademark, patent, trade secret or other valid proprietary right, or any intentional acts or omissions, that may arise out of or are related to the use by the user of the School District Data Set or Sets or any data therein by the user or the user’s agents, subcontractors, assignees, independent contractors, employees or servants. If the user receives notice of a legal claim against it in connection with or in any way related to the School District Data Set or Sets or any data therein, or these Terms of Use, the user shall within five (5) business days of receipt of notice of the claim, give notice of such claim to the School District.

10. *School District Immunities; Self-Insurance.* Any other term, covenant or condition of these Terms of Use to the contrary notwithstanding, the School District, its officers, employees and agents, and the members of the School Reform Commission and the Board of Education, retain their statutory governmental, official and any other immunity provided pursuant to the laws of the Commonwealth of Pennsylvania, including under 42 Pa. C.S.A. §§ 8501 and 8541 *et seq.*, and do not waive the defenses of governmental and official immunity under these laws. The School District does not waive for itself or for its officers, employees, agents, or for the members of the School Reform Commission and Board of Education, any other defenses or immunities available to it or any of them. The

user acknowledges and agrees that the School District self-insures for liability purposes.

11. *Applicable Law; FERPA.* The user shall comply with all applicable law in connection with its use of any School District Data Set and any data therein, including but not limited to the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g (“FERPA”). The School District does not intend to release any School District Data Set or any data therein in violation of FERPA and the license set forth above in these Terms of Use shall not extend to any release or releases, including the effect of successive releases, that may result in a violation of FERPA. The user acknowledges and agrees that federal law imposes sanctions for violations of federal law, including FERPA, respecting the privacy of individuals, including students and parents. The user shall not violate any such laws, including but not limited to FERPA.

12. *Definitions.* Capitalized terms used in these Terms of Use have the meanings specified in this section.

a. *Applicable Law.* “Applicable Law” means and includes all federal, state, and local statutes, ordinances, resolutions and regulations, including the rules and regulations of any government authority, and School District rules, regulations and policies, applicable to the School District, the user and the use and license to use the School District Data Set and the data therein, and includes all applicable case law, court orders, injunctions and consent decrees. Applicable Law includes FERPA.

b. *Person.* “Person” means any individual, association, partnership, limited partnership, joint venture, corporation, limited liability company or other form of entity or association recognized at law.

13. *Other Terms.*

a. *Applicable Law; Venue.* These Terms of Use shall be construed and enforced under the law of the Commonwealth of Pennsylvania, regardless of its conflict of laws provisions, and without the aid of any canon, custom or rule of law requiring construction against the draftsman.

b. *Severability.* If a court holds any term, covenant or condition of these Terms of Use invalid, such holding shall not affect or impair the validity of any other terms, covenants or conditions of these Terms of Use, which the user and the School District hereby deem severable and which shall remain in full force and effect.

c. *Waiver.* No one shall or may find, hold or determine that a the School District has waived any term, covenant or condition set forth in these Terms of Use, unless the School District has set forth its waiver in a signed writing.

d. *Entire Agreement; Amendment.* These Terms of Use constitute the entire agreement between the parties and supersede all prior and contemporaneous oral and written agreements and statements, all of which have been fully integrated herein. These Terms of Use also supersede any course of conduct, performance or dealing between the parties.