

DATA SHARING AGREEMENT

THIS AGREEMENT is made and entered into as of this ____ day of _____, 2014, by and between

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA
(hereinafter referred to as “SBBC”),
a body corporate and political subdivision of the State of Florida,
whose principal place of business is
600 Southeast Third Avenue, Fort Lauderdale, Florida 33301

and

THE CHILDREN’S SERVICES COUNCIL OF BROWARD COUNTY
(hereinafter referred to as “CSC”),
a special district created by Chapter 2000-461, Laws of Florida,
whose principal place of business is
6600 West Commercial Boulevard, Lauderhill, Florida 33319.

WHEREAS, the CSC and SBBC wish to improve instruction by significantly increasing the number of children ready for school, achieving academically once in school, and staying in school through graduation; and

WHEREAS, the achievement of those goals will greatly benefit the academic progress of district school students within Broward County, Florida; and

WHEREAS, the CSC is willing to provide third party evaluation of individual level test results and data studies to assist SBBC in its achievement of such goals.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

ARTICLE 1 - RECITALS

1.01 **Recitals.** The parties agree that the foregoing recitals are true and correct and that such recitals are incorporated herein by reference.

ARTICLE 2 – SPECIAL CONDITIONS

2.01 **Term of Agreement.** Unless terminated earlier pursuant to Section 3.05 of this Agreement, the term of this Agreement shall commence upon execution by all parties and conclude on June 30, 2016.

2.02 **Purpose and Scope of Data Studies.** The CSC and SBBC agree that the third party evaluation, conducted by the CSC, will provide individual level test results and data studies that will be shared with SBBC staff to:

- (a) Ensure that CSC and community partner funder programs are supporting district student gains during the regular school day;

- (b) Customize CSC and community partner programs to target school district priorities such as decreasing internal/external suspensions, increasing attendance, decreasing attendance, decreasing bullying behaviors, and/or improving academic performance;
- (c) Support and validate success of initiatives spearheaded by the Special Needs Advisory Coalition;
- (d) Measure successful implementation of the School Wellness Program;
- (e) Support SBBC's "Open Access" policy;
- (f) Enhance the quality of CSC and community partner social service programs delivered to district school students and families;
- (g) Provide district schools data assessing the impact of CSC and community partner funded social service interventions; and
- (h) Assess whether leveraging SBBC and CSC resources results in increased district school student achievement.

2.03 **Delivery of CSC Demographic Information.** The parties enter into this Agreement for the purpose of having the CSC perform studies for program evaluation purposes and to identify any necessary mid-course program corrections that will enhance and increase instruction and district school student academic achievement within SBBC's schools. As such, the CSC will utilize the STAR webservice to provide SBBC with files containing program demographic information about CSC and community partner clients who are district school students. The STAR system was created in partnership with SBBC. This shared information will include first and last names, student identification number, dates of birth, race and gender data and the following:

- (a) Data studies measuring attainment of goals listed in 2.02;
- (b) Identifying information of student who participate in programs funded by CSC or by community partners who utilize the CSC's data system;
- (c) Identifying information of students that may be provided to school principals and their appropriate staff to identify participating students;
- (d) Aggregate or disaggregate data by student program or school site obtained from various measurement tools employed in CSC-funded programs such as parent Stress Inventory, Stress Index for Parents of Adolescents, Beck Depression Inventory-2, Jobs-Observation and Behavior Scale (JOBS), JOBS-Opportunity for Self-Determination, Child Behavioral Checklist, Problem Oriented Screening Instrument for Testing, Family Adaptability and Cohesive Evaluation-3, Youth Outcome Questionnaire, Children's Depression Inventory, any other related measurement tools; and
- (e) Any other reasonable analysis services and studies.

2.04 **Proxy Identification by SBBC.** SBBC will convert CSC's program demographic data provided under Section 2.03 into individual proxy IDs that will correspond to

the data specified in Section 2.05. SBBC will provide a list of those students identified to it by CSC for which a data match could not be obtained and for whom no proxy IDs were created.

2.05 **Delivery of SBBC Proxy Academic Information.** SBBC will provide the CSC an electronic file containing for each proxy ID the following associated data:

- (a) The student's demographic characteristics including race, gender, disability, home language, country of origin, eligibility for free and reduced lunch, English proficiency;
- (b) The approximate geographic location of student's home residence;
- (c) The student's and the school's rates of attendance and truancy;
- (d) The disciplinary actions involving the student;
- (e) The student's school mobility;
- (f) The results of student's performance under academic assessments including the reading, writing, science and math tests;
- (g) The student's grades and credits;
- (h) The student's promotion or non-promotion; and
- (i) The student's chronic health conditions and immunizations.

2.06 **Limited Access to TERMS:** SBBC will provide the CSC with access to specified TERMS data as defined in **Exhibit A** attached hereto and incorporated herein by this reference. Such access will be provided via the web portal developed for data sharing by SBBC and CSC.

2.07 **CSC-Produced Studies.** The CSC will utilize the SBBC Proxy Academic information to produce studies and a report to be delivered to SBBC measuring improvements in instruction and academic achievement as a result of CSC-funded programs in comparison to outcomes for SBBC students having similar characteristics.

2.08 **Frequency of Data Exchange.** The exchange of CSC demographic information and Proxy Academic information will occur continuously using the procedures described in this Agreement.

2.09 **Confidentiality of Shared Student Records.** SBBC and CSC shall comply with applicable state and federal law and administrative rules regarding the confidentiality of student records. Pursuant to Sections 1002.22 and 1002.221, Fla. Stat., an FERPA and its implementing regulations, 34 CFR Part 99, the information provided by SBBC shall be limited to that which is necessary to effectively serve the student. CSC hereby certifies, by signing this agreement, that the information provided by SBBC will not be re-disclosed to any other party except with the written consent of the student's parent or eligible student, as defined in FERPA, and as provided by law. Each party agrees to safeguard the student records through administrative, physical and technological safety standards to ensure adequate controls are in place to protect these records in accordance with FERPA's privacy requirements and to continually monitor its operations and take all actions necessary to assure that the student information and records are safeguarded in accordance with the terms of this Agreement. A

breach of the confidentiality requirements shall constitute grounds for immediate termination of this Agreement with no further responsibilities or duties to perform under this Agreement. The confidentiality requirements of this Agreement shall survive the termination of all performance obligations under this agreement and shall be fully binding until such time as the student records are destroyed or are returned to SBBC, whichever is earlier. The distribution of the student records, if any, shall be verified by Affidavit executed by an authorized CSC officer who shall warrant that he or she has full legal power to execute said Affidavit on behalf of CSC. Each party agrees, for itself, its officer, employees, agents, representatives, contractors or subcontractors, to fully indemnify and hold harmless SBBC and its officers and employees for any violation of the Confidentiality of Share Student Records provision, including, without limitation, defending SBBC and its officers and employees against any complaint, administrative or judicial proceeding, payment of any penalty, costs, attorney's fees, damages, judgments or losses incurred by or imposed upon SBBC arising out of a breach of this Agreement.

2.10 **Nondisclosure and Ownership.** Unless otherwise permitted by applicable law, the CSC shall not release identifiable student data to any third party without prior approval of the parent of an affected minor student or the consent of an affected adult student. Additionally, the CSC shall not release to any party any aggregate data compiled for groups containing fewer than ten (10) students. SBBC retains ownership of all SBBC-created data used under this Agreement, including the algorithm used to create the proxy identification numbers. The CSC will only provide de-identified, aggregate data to community partners using the CSC data system.

2.11 **Description of Security Measures.** The CSC agrees that it will only permit its personnel having legitimate interests in any personally identifiable student data to have access to such data. The CSC will implement security precautions and protections to ensure that persons not authorized to review personally identifiable student data do not gain access to such information. All studies by the CSC shall be performed in a manner that does not permit the personal identification of students and their parents by persons other than representatives of the CSC and SBBC. CSC shall implement security procedures and protections to assure that the identities of individuals associated with specific records in the data are not revealed without authority or prior consent. When conducting studies involving small areas or numbers, the CSC will limit the release of analyses to those involving aggregate data of ten students or more.

2.12 **Access Limitations to SBBC Plan.** CSC will restrict access to personally identifiable student records to only those CSC project staff members or such third party contractors CSC that may use to conduct the studies required under this Agreement. Other individuals and agencies will have access to maps and analyses that contain aggregated data, but will not have access to personally identifiable student records unless authorized by law.

2.13 **Studies Conducted for SBBC.** Under the terms of this Agreement, the CSC will be conducting studies for, or on behalf of SBBC, to: (a) develop, validate or administer predictive tests; (b) administer student aid programs; or (c) improve instruction. The purposes and scope of the study/studies are as described in Section 2.02 of this Agreement. SBBC may disclose personally identifiable information from an education record of a student to CSC in order for it to conduct said study. The type of personally identifiable student information to be disclosed by SBBC to the CSC is as described in Section 2.05. The CSC agrees that the study shall be conducted in a manner that does not permit personal identification of parents and students by individuals other than the representatives of the CSC that have legitimate interests in

the information. The study shall commence upon execution of this Agreement by all parties and conclude on June 30, 2016. The CSC agrees that any disclosed information will be destroyed or returned to SBBC when no longer needed for the purposes for which the study is to be conducted. The CSC acknowledges and agrees that it may use personally identifiable information from education records only to meet the purpose or purposes of the study as stated in this Agreement.

2.14 **Return/Destruction of Information.** The CSC agrees that all personally identifiable student data received from SBBC under this Agreement shall be destroyed by the CSC or returned to SBBC when it is no longer needed for the purposes of the study, but in no event any later than June 30, 2016.

2.15 **Training Requirements.** Each party agrees to provide training to its officers, employees, agents, representatives, contractors or subcontractors (collectively referred to in this section as “Personnel”) assigned to perform duties required under this Agreement to ensure they perform such duties in compliance with the applicable laws and the requirements of this Agreement. Each party agrees to require said Personnel to watch the FERPA training videos available at the website of the United States Department of Education – Privacy Technical Assistance Center.

2.16 **Liability - Student Records:** Each such party agrees, for itself, its officers, employees, agents, representatives, contractors or subcontractors, to fully indemnify and hold harmless SBBC and its officers and employees for any violation of the provisions of this Agreement concerning personally identifiable student data, including, without limitation, defending SBBC and its officers and employees against any complaint, administrative or judicial proceeding, payment of any penalty imposed upon SBBC, or payment of any and all costs, damages, judgments or losses incurred by or imposed upon SBBC arising out of a breach of this covenant by the party, or an officer, employee, agent, representative, contractor, or subcontractor of the party to the extent that the party or an officer, employee, agent, representative, contractor, or sub-contractor of the party shall either intentionally or negligently violate such provisions. This section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.

2.17 **Contact Persons.** When any of the parties desire to give notice to the other, such notice must be in writing, sent by U.S. Mail, postage prepaid, addressed to the party for whom it is intended at the place last specified; the place for giving notice shall remain such until it is changed by written notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for giving notice:

FOR SBBC:	Jeff Stanley, Director, Technology, Application & Integration The School Board of Broward County, Florida 770020 West Oakland Park Boulevard, 2 nd Floor Sunrise, Florida 33351 jstanley@browardschools.com Telephone: 754 321-0329
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FOR CSC: Sue Gallagher, Director Research & Planning
Children's Services Council of Broward County
6600 W. Commercial Boulevard
Lauderhill, Florida 33319
sgallagher@cscbroward.or
Telephone: 954 377-1671

2.18 **Notice.** When any of the parties desire to give notice to the other, such notice must be in writing, sent by U.S. Mail postage prepaid, addressed to the party for whom it is intended at the place last specified; the place for giving notice shall remain such until it is changed by written notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for giving notice:

To SBBC: Superintendent of Schools
The School Board of Broward County, Florida
600 Southeast Third Avenue
Fort Lauderdale, Florida 33301

With a copy to: Director - Technology, Application & Integration
The School Board of Broward County, Florida
7720 West Oakland Park Boulevard, 2nd Floor
Sunrise, Florida 33351

To CSC: Cindy J. Arenberg Seltzer, President/CEO
Children's Services Council of Broward County
6600 West Commercial Boulevard
Lauderhill, Florida 33319

With a copy to: Sue Gallagher, Director, Research, Analysis & Planning
Children's Services Council of Broward County
6600 West Commercial Boulevard
Lauderhill, Florida 33319

2.19 **Background Screening:** The CSC agrees to comply with all requirements of Sections 1012.32 and 1012.465, Florida Statutes, and all of its personnel who (1) are to be permitted access to school grounds when students are present, (2) will have direct contact with students, or (3) have access or control of school funds, will successfully complete the background screening required by the referenced statutes and meet the standards established by the statutes. This background screening will be conducted by SBBC in advance of the CSC or its personnel providing any services under the conditions described in the previous sentence. The CSC shall bear the cost of acquiring the background screening required by Section 1012.32, Florida Statutes, and any fee imposed by the Florida Department of Law Enforcement to maintain the fingerprints provided with respect to CSC and its personnel. The parties agree that the failure of the CSC to perform any of the duties described in this section shall constitute a material breach of this Agreement entitling SBBC to terminate immediately with no further responsibilities or duties to perform under this Agreement. To the extent permitted by law, the

CSC agrees to indemnify and hold harmless SBBC, its officers and employees from any liability in the form of physical or mental injury, death or property damage resulting in the CSC's failure to comply with the requirements of this Section or with Sections 1012.32 and 1012.465, Florida Statutes. Nothing herein shall be construed as a waiver by SBBC or the CSC of sovereign immunity or of any rights or limits to liability existing under Section 768.28, Florida Statutes.

2.20 **Indemnification.** Each party agrees to be fully responsible for its acts of negligence, or its employees' acts of negligence when acting within the scope of their employment and agrees to be liable for any damages resulting from said negligence. This section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.

ARTICLE 3 – GENERAL CONDITIONS

3.01 **No Waiver of Sovereign Immunity.** Nothing herein is intended to serve as a waiver of sovereign immunity by any agency or political subdivision to which sovereign immunity may be applicable or of any rights or limits to liability existing under Section 768.28, Florida Statutes. This section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.

3.02 **No Third Party Beneficiaries.** The parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Agreement. None of the parties intend to directly or substantially benefit a third party by this Agreement. The parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against any of the parties based upon this Agreement. Nothing herein shall be construed as consent by an agency or political subdivision of the State of Florida to be sued by third parties in any matter arising out of any contract.

3.03 **Independent Contractor.** The parties to this Agreement shall at all times be acting in the capacity of independent contractors and not as an officer, employee or agent of one another. Neither party or its respective agents, employees, subcontractors or assignees shall represent to others that it has the authority to bind the other party unless specifically authorized in writing to do so. No right to SBBC retirement, leave benefits or any other benefits of SBBC employees shall exist as a result of the performance of any duties or responsibilities under this Agreement. SBBC shall not be responsible for social security, withholding taxes, contributions to unemployment compensation funds or insurance for the other party or the other party's officers, employees, agents, subcontractors or assignees.

3.04 **Equal Opportunity Provision.** The parties agree that no person shall be subjected to discrimination because of age, race, color, disability, gender identity, gender expression marital status, national origin, religion, sex or sexual orientation in the performance of the parties' respective duties, responsibilities and obligations under this Agreement.

3.05 **Termination.** This Agreement may be canceled with or without cause by either party during the term hereof upon thirty (30) days written notice to the other party of its desire to terminate this Agreement.

3.06 **Default.** The parties agree that, in the event that either party is in default of its obligations under this Agreement, the non-defaulting party shall provide to the defaulting party (30) days written notice to cure the default. However, in the event said default cannot be cured within said thirty (30) day period and the defaulting party is diligently attempting in good faith to cure same, the time period shall be reasonably extended to allow the defaulting party additional cure time. Upon the occurrence of a default that is not cured during the applicable cure period, this Agreement may be terminated by the non-defaulting party upon thirty (30) days notice. This remedy is not intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or future exercise thereof. Nothing in this section shall be construed to preclude termination for convenience pursuant to Section 3.05.

3.07 **Annual Appropriation.** The performance and obligations of SBBC under this Agreement shall be contingent upon an annual budgetary appropriation by its governing body. If SBBC does not allocate funds for the payment of services or products to be provided under this Agreement, this Agreement may be terminated by SBBC at the end of the period for which funds have been allocated. SBBC shall notify the other party at the earliest possible time before such termination. No penalty shall accrue to SBBC in the event this provision is exercised, and SBBC shall not be obligated or liable for any future payments due or any damages as a result of termination under this section.

3.08 **Excess Funds.** Any party receiving funds paid by SBBC under this Agreement agrees to promptly notify SBBC of any funds erroneously received from SBBC upon the discovery of such erroneous payment or overpayment. Any such excess funds shall be refunded to SBBC with interest calculated from the date of the erroneous payment or overpayment. Interest shall be calculated using the interest rate for judgments under Section 55.03, Florida Statutes, applicable at the time the erroneous payment or overpayment was made by SBBC.

3.09 **Public Records.** Pursuant to Section 119.0701, Florida Statutes, any party contracting with SBBC is required to (a) keep and maintain available for public inspection any records that pertain to services rendered under this Agreement; (b) provide the public with access to public records on the same terms and conditions that SBBC would provide such records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law; (c) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and (d) meet all requirements for retaining public records and transfer, at no cost, to SBBC all public records in that party's possession upon termination of its contract with SBBC and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All of such party's records stored electronically must be provided to SBBC in a format that is compatible with SBBC's information technology systems. Each party shall maintain its own respective records and documents associated with this Agreement in accordance with the records retention requirements applicable to public records. Each party shall be responsible for compliance with any public documents request served upon it pursuant to Section 119.07, Florida Statutes, and any resultant award of attorney's fees for non-compliance

with that law. Each party acknowledges that this Agreement and all attachments thereto are public records and do not constitute trade secrets.

3.10 **Compliance with Laws.** Each party shall comply with all applicable federal and state laws, codes, rules and regulations in performing its duties, responsibilities and obligations pursuant to this Agreement.

3.11 **Place of Performance.** All obligations of SBBC under the terms of this Agreement are reasonably susceptible of being performed in Broward County, Florida and shall be payable and performable in Broward County, Florida.

3.12 **Governing Law and Venue.** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida.

3.13 **Entirety of Agreement.** This document incorporates and includes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

3.14 **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

3.15 **Assignment.** Neither this Agreement or any interest herein may be assigned, transferred or encumbered by any party without the prior written consent of the other party. There shall be no partial assignments of this Agreement including, without limitation, the partial assignment of any right to receive payments from SBBC.

3.16 **Incorporation by Reference.** Any exhibits attached hereto and referenced herein shall be deemed to be incorporated into this Agreement by reference.

3.17 **Captions.** The captions, section designations, section numbers, article numbers, titles and headings appearing in this Agreement are inserted only as a matter of convenience, have no substantive meaning, and in no way define, limit, construe or describe the scope or intent of such articles or sections of this Agreement, nor in any way effect this Agreement and shall not be construed to create a conflict with the provisions of this Agreement.

3.18 **Severability.** In the event that any one or more of the sections, paragraphs, sentences, clauses or provisions contained in this Agreement is held by a court of competent jurisdiction to be invalid, illegal, unlawful, unenforceable or void in any respect, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect as if such invalid, illegal, unlawful, unenforceable or void sections, paragraphs, sentences, clauses or provisions had never been included herein.

3.19 **Preparation of Agreement.** The parties acknowledge that they have sought and obtained whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to herein expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

3.20 **Amendments.** No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by each party hereto.

3.21 **Waiver.** The parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof. Any party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement unless the waiver is in writing and signed by the party waiving such provision. A written waiver shall only be effective as to the specific instance for which it is obtained and shall not be deemed a continuing or future waiver.

3.22 **Force Majeure.** Neither party shall be obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, wars, sabotage, accident, flood, acts of God, strikes, or other labor disputes, riot or civil commotions, or by reason of any other matter or condition beyond the control of either party, and which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall a lack of funds on the part of either party be deemed Force Majeure.

3.23 **Survival.** All representations and warranties, indemnification obligations, obligations to reimburse SBBC, obligations to maintain and allow inspection and audit of records and property, obligations to maintain the confidentiality of records, reporting requirements, and obligations to return public funds provided herein shall survive the termination of this Agreement.

3.24 **Authority.** Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the date first above written.

FOR SBBC

(Corporate Seal)

THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

ATTEST:

By _____
Patricia Good, Chair

Robert W. Runcie, Superintendent of Schools

Approved as to Form and Legal Content:



Office of the General Counsel

FOR CSC

(Corporate Seal)

CHILDREN'S SERVICES COUNCIL OF
BROWARD COUNCIL

ATTEST:

By _____

, Secretary

-or-

Witness

Witness

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