

## NON-DISCLOSURE AGREEMENT REGARDING STUDENT RECORD INFORMATION

WHEREAS, on October 17, 2000, the Cambridge School Committee by School Committee Order Number C00-49, has authorized and agreed that the School Health Program of the Cambridge Public Health Department shall have the responsibility for providing health services and mandated screening programs consistent with M.G.L.c. 71, §57 as well as additional school health services as a recipient of the Essential School Health Services Grant, which are school district institutional services and functions that will require student data in order to perform those services and functions;

WHEREAS the School Health Program of the Cambridge Public Health Department provides health care services to children and families of the Cambridge Public Schools and the Dental Services Program of the Cambridge Public Health Department provides dental services to children and families of the Cambridge Public Schools (hereinafter collectively referred to as "CPHD") under strict compliance with the federal Health Insurance Portability and Accountability Act ("HIPAA");

WHEREAS, Kenneth N. Salim, Ed.D., the Superintendent of Schools, has, consistent with the above referenced School Committee Order, authorized the CPHD, by and through its School Health Program and Dental Services Program and its clinical manager, Tracy Rose-Tynes and the school health nurses of the School Health Program of the CPHD to collect and receive certain student record information and data in connection with the provision of school health services and mandated screening programs (hereinafter collectively referred to as "Services");

NOW THEREFORE, CPS and CPHD agree as follows:

1. In the course of performing the Services, CPHD will obtain confidential student records and/or confidential student record information that contain personally identifiable student records, data and/or personally identifiable information and/or other non-public information, including but not limited to, student data, meta data and user content ("Data Files"). CPS and CPHD acknowledge and agree that this Agreement is for the purpose of sharing Data Files between the parties in a manner consistent with the Family Education Records Privacy Act of 1974 ("FERPA") and Massachusetts student record regulations, 603 C.M.R. 23.00 ("State Regulations"). The Data Files will be used by the Contractor's employees to populate student data for the purpose of delivering these Services. CPHD further acknowledges and agrees that all copies of such Data Files, including any modifications or additions to Data Files or any portion thereof from any source, are subject to the provisions of this Agreement in the same manner as the original Data Files. The ability to access or maintain Data Files and/or any personally identifiable student data contained therein under this Agreement shall not under any circumstances transfer from CPHD to any other party.

2. CPHD acknowledges and agrees that it is providing institutional services or functions for CPS and that it is under direct control of CPS with respect to the use and maintenance of Data Files in connection with these Services. CPHD additionally acknowledges and agrees that at no point in time is the CPHD the owner of the Data Files. Ownership rights are maintained by CPS and CPS reserves the right to request the prompt return of any portion of the Data Files and/or all Data Files at any time for any reason whatsoever. CPHD further acknowledges and agrees that it shall adhere to the requirements set forth in both federal and state law regarding the use and re-disclosure of the Data Files or any portion thereof, including without limitation, any student data, meta data, user content or other non-public information and/or personally identifiable information contained within the Data Files. CPHD also acknowledges and agrees that it shall not make any re-disclosure of any Data Files or any portion thereof,

including without limitation, any student data, meta data, user content or other non-public information and/or personally identifiable information contained in the Data Files, without the express written consent of CPS. Additionally, CPHD agrees that only authorized employees of the CPHD directly involved in delivering the Services shall have access to the Data Files or any portion thereof, including without limitation, any student data, meta data, user content or other non-public information and/or personally identifiable information contained in the Data Files, and that it and its employees shall protect the confidentiality of the Data Files or any portion thereof, including without limitation, any student data, meta data, user content or other non-public information and/or personally identifiable information contained in the Data Files in such a way that parties other than officials of CPS and their authorized agents cannot identify any students.

3. CPHD also acknowledges and agrees to:
  - (i) use Data Files shared under this Agreement for no purpose other than in connection with and through the provision of the Services.
  - (ii) use reasonable methods, including but not limited to, appropriate technical, physical and administrative safeguards, that reflects technology best practices and is consistent with industry standards, to protect the Data Files or any portion thereof from re-disclosure that is created, sent, received, stored processed or transmitted in connection with the Services under this Agreement while the Data Files or any portion thereof contained therein is both at rest and in transit. CPHD further acknowledges and agrees to conduct periodic risk assessments and remediate any identified security and privacy vulnerabilities in a timely manner.
  - (iii) not share the Data Files and/or any portion thereof received under this Agreement with any other entity without prior written approval from CPS and/or prior written approval of the parent/guardian of the student or eligible student.
  - (iv) not copy, reproduce or transmit the Data Files or any portion thereof, except as necessary to fulfill the Services.
  - (v) not to re-disclose, transfer or sell the Data Files and/or any portion thereof.
  - (vi) not to use the Data Files and/or any portion thereof to market or otherwise advertise directly to students and/or their parents/guardians
  - (vii) not to use the Data Files and/or any portion thereof to inform, influence or guide marketing or advertising efforts or to develop a profile of a student or group of students for any commercial or other purposes.
  - (viii) not to use the Data Files and/or any portion thereof for the development of commercial products or services.
  - (ix) not to mine the Data Files and/or any portion thereof for any purposes other than those agreed to by the parties. Contractor further acknowledges that data mining or scanning of user content for the purpose of advertising or marketing to students or their parents/guardians is expressly prohibited.
  - (x) notify the Chief Information Officer for CPS in writing within three (3) days of its determination that it has experienced a data breach, breach of security, privacy incident or unauthorized acquisition or use of any Data Files and/or ay portion thereof contained therein. CPHD agrees that said notification shall include, to the extent feasible, the date or approximate dates of such incident and the nature thereof, the specific scope of said breach (i.e., what data was accessed, used,

released or otherwise breached, including the names of individual students that were affected by said breach) and what actions or steps with respect to the incident that CPHD plans to take or has taken in response to said breach. Additionally, CPHD agrees to adhere to all requirements in the Massachusetts Data Breach law and in federal law with respect to a data breach related to the Data Files including, when appropriate or required, the required responsibilities and procedures for notification and mitigation of any such data breach. CPHD further acknowledges and agrees to have a written incident response plan that reflects best practices and is consistent with industry standards and federal and state law for responding to a data breach, breach of security, privacy incident or unauthorized acquisition or use of Data Files or any portion thereof, including personally identifiable information and agrees to provide CPS, upon request with a copy of said written incident response plan.

- (xi) not provide any Data Files or any portion thereof to any party ineligible to receive student records and/or student record data and information protected by FERPA and State Regulations or prohibited from receiving the Data Files or any portion thereof and/or any personally identifiable from any entity under 34 CFR 99.31(a)(6)(iii).
- (xii) maintain backup copies, backed up at least daily, of Data Files in case of CPHD system failure or any other unforeseen event resulting in loss of Data Files or any portion thereof.
- (xiii) upon receipt of a request from CPS, immediately provide CPS with any specified portion of the Data Files within three (3) days of receipt of said request.
- (xiv) upon receipt of a request from CPS, immediately begin the process of returning all Data Files over to CPS and subsequently erasing and/or otherwise destroying any Data Files, be it digital, archival or physical form, including without limitation any copies of the Data Files or any portions thereof that may reside in system backups, temporary files or other storage media or are otherwise still in CPHD's possession such that CPHD is no longer in possession and/or in the possession of any of its subcontractors or agents to which CPHD may have transferred the Data Files or any portion thereof, in a manner consistent with technology best practices and industry standards for secure data disposal methods such that CPHD and/or any of its subcontractors or agents are no longer in possession of any Data Files and to ensure that the Data Files cannot be recovered and are securely destroyed and to provide CPS with any and all Data Files in CPHD's possession, custody or control within seven (7) days of receipt of said request. CPHD also will provide CPS with written certification, including an inventory of its Data Files destruction, and with written certification, including an inventory of all Data Files returned to CPS, within fifteen (15) days of its receipt of CPS' request for destruction of Data Files.
- (xv) in the event of CPHD's cessation of operations, promptly return all Data Files to CPS in an organized, manageable manner and subsequently erasing and/or otherwise destroying any Data Files, be it digital, archival or physical form, including without limitation any copies of the Data Files or any portions thereof that may reside in system backups, temporary files or other storage media or are otherwise still in CPHD's possession such that CPHD is no longer in possession and/or in the possession of any of its subcontractors or agents to which CPHD

may have transferred the Data Files or any portion thereof, in a manner consistent with technology best practices and industry standards for secure data disposal methods such that CPHD and/or any of its subcontractors or agents are no longer in possession of any Data Files and to ensure that the Data Files cannot be recovered and are securely destroyed. CPHD also will provide CPS with written certification, , including an inventory of its Data Files destruction, and including an inventory of its Data Files destruction, and an inventory of all Data Files returned to CPS, within fifteen (15) days of its cessation of operations.

- (xvi) not use, disclose, compile, transfer, sell the Data Files and/or any portion thereof to any third party or other entity or allow any other third party or other entity to use, disclose, compile, transfer or sell the Data Files and/or any portion thereof.
- (xvii) in the event that the CPHD and/or any of its subcontractors or agents to which the CPHD may have transferred Data Files or any portion thereof has technology or storage media that has failed and needs to be replaced or serviced, to ensure that all Data Files or any portions thereof that are contained therein are sanitized, erased and/or otherwise destroyed. CPHD also will provide CPS with written certification, including an inventory of its Data Files destruction, within fifteen (15) days of any such occurrence.
- (xviii) delete CPS Data Files that it collects or receives under this Agreement once the Services referenced in this Agreement lapses.
- (xix) upon receipt of a litigation hold request from CPS, immediately implement a litigation hold and preserve all documents and data relevant identified by CPS and suspend deletion, overwriting, or any other possible destruction of documentation and data identified in, related to, arising out of and/or relevant to the litigation hold.
- (xx) upon receipt of a request from CPS, allow CPS to audit the security and privacy measures that are in place to ensure protection of the Data Files or any portion thereof.
- (xxi) cooperate fully with CPS and any local, state, or federal agency with oversight authority/jurisdiction in connection with any audit or investigation of the CPHD and/or delivery of Services to students and/or CPS, and shall provide full access to CPHD's facilities, staff, agents and CPS Data Files and all records pertaining to the CPHD, CPS Data Files and delivery of Services to CPS. Failure to cooperate shall be deemed a material breach of this Agreement.
- (xxii) not assign, subcontract or in any way transfer any interest in this Agreement without the prior written consent of CPS.
- (xxiii) seek prior written consent from CPS before using any de-identified CPS Data Files for internal product development and improvement and/or research. CPHD acknowledges and agrees that de-identified CPS Data Files is defined as data files that have all direct and indirect personal identifiers removed, including any data that could be analyzed and linked to other data to identify the student or the student's family members, including without limitation parents/guardians. This includes, but is not limited to, name, ID numbers, date of birth, demographic information, location data, and federal, state and/or local school identification numbers. CPHD also acknowledges and agrees not to

attempt to re-identify de-identified CPS Data Files and not to transfer de-identified CPS Data Files to any party unless (a) that party agrees in writing not to attempt re-identification, and (b) prior written notice has been given to CPS who has provided prior written consent for such transfer.

4. CPHD certifies under the penalties of perjury that it complies with all federal and state laws, regulations and rules as such laws may apply to the receipt, storing, maintenance or access to personal information, including without limitation, all standards for the protection of personal information of residents of Massachusetts and maintaining safeguards for personal information. CPHD hereby further certifies under penalties of perjury that it has a written comprehensive information security program that is in compliance with the provisions of 201 C.M.R. 17.00 *et seq.* Further, the CPHD hereby certifies under the penalties of perjury that it shall fully comply with the provisions of the federal Family Educational Rights Privacy Act, 20 U.S.C. §1232g and regulations promulgated thereunder and Massachusetts student records law and regulations, including without limitation, 603 C.M.R. 23.00 *et seq.*, and to fully protect the confidentiality of any student data, meta data, user content or other non-public information and/or personally identifiable information provided to it or its representatives. CPHD further represents and warrants that only authorized employees of CPHD directly involved in the collection or statistical analysis of student data and/or the provision of school health services (including without limitation the School Health Program and the Dental Services Program) and mandated screening program shall have access to the Data Files (collectively referred to as "Authorized School Personnel") and that the CPHD and its respective representatives (including without limitation the School Health Program and School Dental Services Program) shall protect the confidentiality of Data Files and any portion thereof in such a way that parties other than officials of CPS and their authorized agents cannot personally identify such students. CPHD further represents and warrants that it has reviewed and complied with all information security programs, plans, guidelines, standards and policies that apply to the work it will be performing, that it will communicate these provisions to and enforce them against its subcontractors and will implement and maintain any other reasonable and appropriate security procedures and practices necessary to protect personal information and/or student record information from unauthorized access, destruction, use, modification, disclosure or loss. CPHD also represents and warrants that if the Data Files or any portion thereof, including without limitation, any student data, meta data, user content or other non-public information and/or personally identifiable information is to be stored on a laptop or other mobile electronic device, that such electronic devices are encrypted and that all such devices will be scanned at the completion of any contract or service agreement and/or research study or project to ensure that no Data Files or any portion thereof, including without limitation, any student data, meta data, user content or other non-public information and/or personally identifiable information is stored on such electronic devices. Furthermore, CPHD represents and warrants that it has in place a service that will allow it to wipe the hard drive on any stolen laptop or mobile electronic device remotely and have purchased locks for all laptops and mobile electronic devices and have a protocol in place to ensure use by employees.

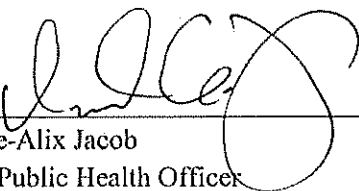
5. Notwithstanding the foregoing, it is expressly understood that the Cambridge Health Alliance, of which CPHD is a part, may separately maintain medical records of individuals who are also students which may not be subject to the provisions of the federal Family Educational Rights Privacy Act, 20 U.S.C. §1232g and regulations promulgated thereunder, and Massachusetts student records law and regulations, including without limitation, 603 C.M.R. 23.00 *et seq.*, and the terms of this Agreement.

6. CPHD represents that it is authorized to bind to the terms of this Agreement, including confidentiality and destruction of Data Files and any personally identifiable student data contained therein, all related or associated institutions, individuals, employees or contractors who may have access to the Data Files and/or any personally identifiable student data contained therein, or may own, lease or

control equipment or facilities of any kind where the Data Files and any personally identifiable student data contained therein is stored, maintained or used in any way.


IN WITNESS WHEREOF, and in consideration of the mutual covenants set forth herein and for other good and valuable consideration, and intending to be legally bound, each party has caused this Agreement to be duly executed as a Massachusetts instrument under seal as of the day and year first written below.

CAMBRIDGE PUBLIC HEALTH DEPARTMENT

  
\_\_\_\_\_  
Claude-Alix Jacob  
Chief Public Health Officer

9/9/16  
Date

CAMBRIDGE PUBLIC SCHOOLS

  
\_\_\_\_\_  
Kenneth N. Salim, Ed.D.  
Superintendent of Schools

9/15/16  
Date