

**Educational Services Agreement**

between

**National Center for Hebrew Language Charter School Excellence  
and Development, Inc. d/b/a Hebrew Public**

and

**Staten Island Hebrew Public Charter School**

## EDUCATIONAL SERVICES AGREEMENT

**THIS EDUCATIONAL SERVICES AGREEMENT** (the “Agreement”) is made and entered into as of the 24th day of January 2019 by and between **National Center for Hebrew Language Charter School Excellence and Development, Inc. d/b/a Hebrew Public (“HP”)**, a Delaware non-stock corporation with authority to do business in New York State with its principal place of business located at 555 Eighth Avenue, Suite 1703, New York, New York 10018, and **Staten Island Hebrew Public Charter School (“SIHP”)**, a New York education corporation having an address of c/o Hebrew Public, 555 Eighth Avenue, Suite 1703, New York, NY 10018 . Together, HP and SIHP shall be referred to as the “Parties” and each separately as a “Party.”

**WHEREAS**, HP is an educational service provider with the qualifications, experience, and expertise necessary to effectively provide essential programming and services to charter schools; and

**WHEREAS**, SIHP, led by the Board of Trustees (the “Board”) has a charter (the “Charter”) from the New York State Board of Regents as its authorizer (the “Authorizer”) to operate a charter school in the State of New York (the “State”) pursuant to certain terms and conditions set forth in an approved Charter Application and subsequent Renewal Applications made and approved from time to time incorporated into a Charter Agreement between the Board and the Authorizer (the “Charter Agreement”) as amended from time to time, which shall be incorporated by reference into this Agreement; and

**WHEREAS**, SIHP shall operate the School (the “School”) in accordance with its Charter and the Charter Agreement; and

**WHEREAS**, SIHP is entering into this Agreement with HP in order to meet its obligations under the Charter, specifically its commitment to providing a high-quality education for students enrolled at the School; and

**WHEREAS**, it is the intention of the Parties to create a relationship based on trust, common educational objectives, and clear accountability, through which the Parties will work together to deliver an exceptional education program and experience to the students enrolled at the School; and

**WHEREAS**, the Parties wish to define their relationship and set forth the terms and conditions of their respective rights and responsibilities to each other;

**NOW, THEREFORE**, in consideration of the recitals and the mutual covenants, representations, warranties, conditions, and agreements hereinafter expressed, the Parties agree as follows:

- I. **TERM AND RENEWAL.** The term of this Agreement shall commence as of January 24, 2019 (the “Effective Date”) and shall continue through June 30, 2025 (the “Term”) unless terminated prior to such date in accordance with Section II below. The Parties

agree to give written notice of their intent to renew or not to renew this Agreement on or before and should both Parties desire to renew the Agreement, they shall work diligently to negotiate such agreement by. Notwithstanding the foregoing, the Term shall not extend beyond the term of the Charter.

## 2. REPRESENTATIONS AND WARRANTIES

- a. **Representations and Warranties of HP.** HP represents and warrants as follows:
- i. Organization and Tax-Exempt Status; Authority. HP is a not-profit corporation duly organized under the laws of Delaware with authority to do business in New York and was granted tax-exempt status under Section 501(c)(3) of the Internal Revenue Code and shall at all times during the Term maintain tax-exempt status under Section 501(c)(3) of the Internal Revenue Code. HP possesses, or will take steps to secure, the requisite power and authority to execute and deliver this Agreement, to perform its obligations hereunder, and to otherwise consummate the transactions contemplated hereby. This Agreement constitutes the valid and binding obligations of HP, enforceable against HP in accordance with its terms.
  - ii. Conduct of HP. The Services (defined in Section IV below) provided by HP under this Agreement shall comply with the Charter and all applicable local, State, and federal laws and regulations.
  - iii. Litigation; Bankruptcy. There is no suit, claim, action or proceeding now pending or, to the best of HPs' knowledge threatened against HP that would have a material adverse effect on HP's ability to perform the Services contemplated by this Agreement. HP further represents that it has not filed for bankruptcy protection and is not currently under receivership or otherwise the subject of a bankruptcy proceeding.
  - iv. Capacity. HP currently provides services to other charter schools within its network and will likely during the Term of this Agreement add additional charter schools to its network and provide various services to those schools as well. Regardless of the number of other schools to which HP shall provide services, HP warrants and represent that it shall at all times during the Term of this Agreement employ and otherwise contract with staff in such numbers as shall be required for HP to effectively deliver to the School the Services required under this Agreement.
  - v. Full Disclosure. No representation or warranty of HP herein and no statement, information, or certificate furnished or to be furnished by HP pursuant hereto or in connection with this Agreement contains any untrue statement of material fact or omits a material fact on which SIHP would reasonably need to rely to perform its obligations under this Agreement.

**b. Representations and Warranties of SIHP.** SIHP represents and warrants as follows:

- i. Organization and Tax Exempt Status; Authority: SIHP is an education corporation with the legal authority to operate charter school in New York State and contract with HP for the Services contemplated in this Agreement. SIHP was granted tax-exempt status under Section 501(c)(3) of the Internal Revenue Code and shall at all times during the Term maintain tax-exempt status under Section 501(c)(3) of the Internal Revenue Code. Should for any reason the terms of this Agreement cause the Internal Revenue Service to notify the School that this Agreement does not conform with the School's tax exemption previously granted, HP and the School shall in good faith work collaboratively to make such modifications as may be reasonably required to assuage the Service's concerns and preserve the School's tax exempt status. The School operated by SIHP is now, and shall at all times throughout the Term remain, a charter school in good standing with the Authorizer.
- ii. Authority. SIHP possesses the requisite power and authority to execute and deliver this Agreement and to perform its obligations hereunder. This Agreement constitutes a valid and binding obligation of SIHP, enforceable against SIHP in accordance with its terms.
- iii. Litigation; Bankruptcy. There is no suit, claim, action or proceeding now pending or, to the best of SIHP's knowledge threatened against SIHP that would have a material adverse effect on SIHP's financials or Charter. SIHP further represents that it has not filed for bankruptcy protection and is not currently under receivership or otherwise the subject of a bankruptcy proceeding.
- iv. Full Disclosure. No representation or warranty of SIHP herein and no statement, information, or certificate furnished or to be furnished by SIHP pursuant hereto or in connection with this Agreement contains any untrue statement of material fact or omits a material fact on which HP would reasonably need to rely to perform its obligations under this Agreement.
- v. Conduct of SIHP. SIHP has materially complied, and at all times during the Term shall materially comply, with all local, State, and federal laws and regulations that are applicable to SIHP, which include, but are not limited to, the Internal Revenue Code, the Family Educational Rights and Privacy Act, New York State Education Law and regulations including the Charter School Act and implementing regulations, the Not-for-Profit Corporation Law, Public Officers Law and General Municipal Law, as well as its By-Laws, its Financial Policies and Procedures, and other such policies and procedures as the Board may adopt (collectively, the "Laws and Regulations"). SIHP has maintained and will maintain adequate records of the activities and decisions of SIHP and the School to ensure and document compliance with all such laws and regulations. SIHP agrees to provide HP

with copies of all such records and to allow HP to, at HP discretion, assist with the preparation and retention of such records to ensure that, among other things, HP may perform all services and duties set forth in this Agreement in compliance with the Laws and Regulations. Except as so delegated to HP herein (unless such delegation is prohibited by applicable law), SIHP shall at all times retain all rights and responsibilities under the Charter.

### **3. DELEGATION AND RESPONSIBILITY**

- a. General.** SIHP hereby authorizes HP to undertake on its behalf the functions specified in this Agreement with regard to the business, administrative and academic services of SIHP, it being understood that, at all times, HP shall remain accountable and subject to the oversight of the Board (and the Authorizer and other State authorities, if applicable) and the Board shall retain the ultimate rights and duties of oversight of SIHP and the School pursuant to the Charter and applicable law, including, but not limited to, retention of independent fiduciary oversight and authority over SIHP's budget. The Board further authorizes HP to take such reasonable actions that may not be expressly set forth in this Agreement, but which shall be implied as necessary in HPs' judgment to properly and efficiently provide services to SIHP and the School, provided such actions are consistent with the Charter, applicable laws, and the annual SIHP budget approved by the Board. Furthermore, SIHP hereby designates employees of HP, to the extent permitted by law, as agents of SIHP having a legitimate educational interest such that they are entitled to access education records under 20 U.S.C. § 1232g, the Family Educational Rights and Privacy Act ("FERPA"). HP, its officers, and employees shall perform its duties in a manner consistent with the obligations of SIHP under FERPA.
- b. Right to Subcontract.** HP may subcontract any function or service it is obligated to provide hereunder, provided that subcontracts entered into on behalf of the School obligate the subcontractor to maintain confidentiality of education records in accordance with FERPA, no such subcontract shall relieve or discharge HP from any obligation or liability under this Agreement except as set forth in the Charter Agreement or as approved by the Board, and in no event shall HP subcontract more than half of the functions or services it has undertaken to provide.

### **4. DUTIES AND OBLIGATIONS**

- a. Duties and Obligations of Hebrew Public.** Throughout the Term of this Agreement, HP shall provide certain educational and operational services (the "Services") in consultation with and in communication with the Board and the Head of School and School Leadership Team as applicable:
  - i. Education and Instruction-Related Services**

1. Provide curriculum and instruction support relating to English Language Arts; Mathematics; Social Studies; Science; Israel Studies; and Hebrew Studies.
2. Advise SIHP regarding the acquisition of instructional and curricular materials, educational technology, and supplies.
3. Provide SIHP with access to, and support in the use of, a School or web-based student information system (in addition to ATS).
4. Provide support in the analysis of student performance data.
5. Advise SIHP in programmatic areas including but not limited to: special education services; services for English Language Learners; student behavior and classroom management; discipline code and code of conduct; supplemental educational services; school culture; interim and formative student assessments; differentiation of instruction and of program.

ii. Business Operations

1. Advise SIHP regarding facilities financing.
2. Oversee facilities build-outs, landlord relations, and facilities management.
3. Review vendor contracts and provide support in vendor relationship management.
4. Support SIHP's Operations Director in operational areas such as school meals, school safety, purchasing, technology and telecommunications, including providing support working with 3<sup>rd</sup> party vendors/service providers.

iii. Human Resources and Employment-Related Services

1. Support the recruitment and screening of all school-based staff.
2. Advise and support SIHP in the creation of career pathways for instructional staff, performance-based compensation, benefits, and related human capital issues.
3. Advise SIHP about performance assessment and staff evaluation functions.
4. Conduct along with the Board the annual evaluation of the Head of School.
5. Advise and support the creation of staff position descriptions.

iv. Budgeting and Financial Services

1. On SIHP's behalf and in coordination with the most senior School-based finance staff member (if applicable), serve as liaison to Charter School Business Management ("CSBM") and related financial service vendors (e.g., auditors), and oversee with the Board Treasurer and Finance Committee the work of such vendors (and School-based employees, if applicable) in preparing financial reports, financial statements, annual audits, financial controls and policies.
2. Provide oversight of annual budgeting processes.
3. Supervise the procurement of insurance.
4. Along with CSBM, supervise bank reconciliations.
5. Advise the Board regarding the approval of expenses and provide oversight of purchasing in accordance with the School's Financial Policies and Procedures, as may be amended from time to time.

v. Student Recruitment

1. Advise and support SIHP regarding student recruitment plans, marketing materials, and recruitment-related community outreach, including planning and preparing for the annual lottery and ensuring a diverse student enrollment reflective of the communities served by SIHP.

vi. Governance & Leadership

1. Provide ongoing supervision, mentoring, and support to the Head of School.
2. Provide ongoing mentoring and support to the Head of School and the School Leadership Team.
3. Assist with Board member recruitment and development.
4. Facilitate annual Board evaluation process.
5. Support the work of Board committees.
6. Provide logistical support, including the recording of minutes and maintenance of records, for Board meetings.
7. Work with the Board and School Leadership Team to coordinate and prepare all communication with the Authorizer and other public entities, including amendments, renewals, annual inspections, authorizer visits, and authorizer data requests.

8. Provide support for meetings with community based organizations and community stakeholders.
- vii. Marketing & Communications.
    1. Supervise the development of school-based marketing collateral.
    2. Advise SIHP staff and Board members about stakeholder communication best practices.
    3. Assist in interactions and communication with the press and Authorizer.
    4. Advise regarding SIHP's use of social media, including the School's website and Facebook page.
  - viii. Fundraising. Advise the Board and Parent Organization regarding school-based fundraising, and share best practices relating thereto from across the HP network of schools.
  - ix. Research & Evaluation
    1. Disseminate best practices from network schools and create networking opportunities for cross-school professional development and collaboration.
    2. Connect SIHP with mission-aligned organizations to bring in new and emerging practices in areas such as literacy instruction; Israel Studies; education technology; Hebrew language acquisition; and diverse schools.
    3. Assist SIHP in evaluating program effectiveness, both generally and with a focus on distinct subgroups such as students with special needs, English language learners, and students from low-income families.
  - x. Presence of HP employees or contractors at the School.

All employees or contractors of HP who have direct, regular contact with students at an SIHP school shall be subject to fingerprint-based criminal background investigations and checks in compliance with applicable laws.

**b. Duties and Obligations of SIHP shall include but not be limited to**

- i. Approval of School Policies. With recommendations and guidance to be provided by HP and each School's School Leadership Team, the Board shall create and adopt policies for the School, which shall be consistent with the Charter and applicable law.
- ii. Approval of the School Budget. In accordance with the Charter and the requirements of this Agreement, the Board shall work diligently with HP

to approve the annual budget within sixty (60) days of submission of the proposed budget by HP to the Board in accordance with this Agreement.

- iii. Maintenance of Charter. The Board shall do, or cause to be done, all things necessary to ensure that all legal requirements, and all such conditions as may be imposed by the Authorizer, are fully complied with at all times. If the Board shall at any time receive notice from any public authority or other person that SIHP is or may be in violation of its provisional Charter or any applicable law or regulation governing the charter School it operates the Board shall immediately notify HP of the alleged violation and shall thereafter work diligently with HP to investigate such alleged violation, to determine whether such alleged violation in fact exists, to promptly respond to the complaining Party and to correct any violation found to exist.
- iv. Mission and Program Alignment. SIHP shall take all appropriate actions to maintain consistency with the shared mission of operating an exception, diverse public charter school that teaches Modern Hebrew to children of all backgrounds and prepares them to become productive global citizens.
- v. Providing Information and Documentation. SIHP shall furnish HP with documents, including litigation documents, records, and all other information necessary for HP to fully and effectively provide its Services and support and otherwise carry out its duties under this Agreement.
- vi. Receipt and timely review of any complaints or grievances. SIHP shall establish a procedure for the receipt and timely review of complaints or grievances by any parent, community individual or institution.
- vii. Part of Network. SIHP will prominently identify itself in any published materials and in SIHP-controlled social media, including promotional and publicity materials, press releases, and other marketing materials, the SIHP website, and the SIHP Facebook page, as part of the Hebrew Public Network of Schools, or such other descriptive term as is later specified by HP.
- viii. Tax Status. In accordance with the Charter and applicable law, the Board shall take all steps required to obtain and maintain SIHP's status as a tax-exempt organization under federal and State law such that contributions to SIHP are deductible to the donor for federal income tax purposes. In the event of arbitration, the Board and HP shall agree that, notwithstanding any claims for relief each may seek from the other, it will require that any relief granted be consistent with maintaining SIHP's tax-exempt status.
- ix. Leadership Team. The Board will work closely with HP in recruiting and selecting the members of the staff Leadership Team, including the Head of School and all staff Directors. Prior to any decision to hire a candidate for one of these positions, the Board shall ensure that HP has the opportunity

to participate in the hiring process, meet with the top candidates for such positions, and provide the Board with its assessment of any candidate under consideration.

- x. Public Statements. SIHP's Board and staff will not make statements to, or release information to the press or media organizations about its relationship with HP without first consulting with HP.
- xi. Visits. SIHP will provide access to the School for visits led by HP staff and board members. HP will cooperate with SIHP to minimize any impact on the School of such visits.
- xii. Board. SIHP agrees to maintain an active, competent, and accountable Board that adheres to best practices in governance and fiduciary responsibility, and whose members demonstrate commitment to the School's mission.
- xiii. Coordination of Fundraising. SIHP agrees to coordinate its fundraising efforts with HP, to avoid conflicting or duplicating efforts.
- xiv. Engagement of Professional Service Providers. The Board shall directly select, retain, utilize (as needed) and compensate a law firm, accounting firm and auditing firm to provide services required by SIHP as may be required by Law, the Charter and as otherwise needed from time to time.

5. **FEES.** In consideration for the Services provided by HP to SIHP, HP shall be paid a management fee equal to 10% of Gross Revenues (the "Management Fee").

Gross Revenues shall be defined as all such funding provided by the State, federal, and local government (if applicable) to SIHP but shall exclude any private grant funding, competitive government grants or other charitable contribution awarded to SIHP, and shall also exclude any funding whose terms and restrictions prevent it from being used toward calculation of the Management Fee. The Management Fee shall be payable in four (4) quarterly installments, beginning in the first year of the Term with September 1 (and each September 1 thereafter) and thereafter on December 1, March 1 and June 1 of each year during the Term. HP may impose an interest rate of ten percent (10%) per annum on all fees that remain unpaid fifteen (15) days after the aforesaid due dates, unless receipt of revenue by SIHP is delayed for reasons beyond the control of SIHP. In this event, SIHP shall make such payment no later than thirty (30) days after it receives a scheduled disbursement, and HP shall impose an interest rate of ten percent (10%) per annum on all fees that remain unpaid fifteen (15) days after the new due date set forth above.

6. **PROPRIETARY WORKS.** SIHP acknowledges that HP owns and shall own all existing, and hereafter created, copyrights and other intellectual property rights with respect to all works of authorship, inventions and work product including, instructional materials, training materials, curriculum and lesson plans, and any other materials, teaching methodologies, school management methodologies, and all improvements,

modifications, and derivative works thereof that are created, invented or developed by (i) HP, its employees, agents or subcontractors, or (ii) an individual employed or retained by SIHP within the scope of such employment or retention if such work of authorship, invention or work product utilizes ideas or products developed by HP (collectively, the "Proprietary Works"). HP hereby grants SIHP a non-exclusive, non-sublicensable, non-transferable, royalty-free license to use Proprietary Works as necessary or desirable to operate the School during the Term of this Agreement. SIHP shall, upon request, cause all persons who create, invent or develop Proprietary Works, as defined herein, for SIHP to assign to HP in writing their intellectual property rights in such works. Upon HPs' reasonable request, SIHP will provide HP with copies of all Proprietary Works. This Section 6 shall survive termination of this Agreement, however (i) nothing herein shall be deemed to prevent SIHP from accessing curriculum or other materials that HP has published on-line or otherwise made publicly available, subject only to the requirement that such curriculum or other materials be attributed to HP and (ii) HP shall inform SIHP if any of the curriculum or other materials, including updates thereto, are not publicly available or will be withdrawn from public availability during the coming school year.

- 7. USE OF NAME.** HP hereby grants SIHP a non-exclusive, non-sublicensable, non-transferable, royalty-free license to use the names and trademarks HP and any logos provided to SIHP by HP (the "Trademarks") in connection with the operation of the School and for the benefit of the School and all promotional activities in connection therewith, subject to the following conditions: SIHP agrees that it will (i) not use or register any domain name containing "HP", (ii) use only any website, social, wireless, mobile or other media network or application provided by HP for SIHP or the School' use; (iii) not set up its own official site, page or venue in any social media or user-generated content media (including Facebook, Twitter and YouTube) without prior written consent of HP; (iv) use the Trademarks in compliance with all reasonable notices and guidelines provided by HP; and (v) use the Trademarks in a dignified manner in accordance with reputable trademark practices. SIHP shall acquire no rights in the Trademarks, and all goodwill of the Trademarks shall inure to the benefit of and remain with HP. HP shall have pre-approval rights for each form and manner of public display of the Trademarks. SIHP agrees to use the Trademarks only in connection with high-quality educational services reflecting favorably on the reputation and goodwill of HP and, at HP request, to provide HP with representative samples of materials used by SIHP bearing the Trademarks. If HP objects to any such materials for not properly using the Trademarks or for not being of sufficient quality, SIHP will promptly make all appropriate corrections. Should this Agreement be terminated or not renewed for any reason, SIHP shall, as soon as practicable but not later than the end of the school year in which this Agreement may be terminated or not renewed, petition the Authorizer to revise its Charter to remove any reference to HP and diligently follow such petition through to its completion. Upon the effectiveness of such revision and removal, SIHP will cease all further use of the Trademarks, return all materials promptly to HP and cease to refer to itself as a school managed or otherwise affiliated with HP (provided no continued affiliation is otherwise agreed-upon). This Section 7 shall survive the termination of this Agreement.

## 8. INDEMNIFICATION

- a. **Indemnification.** SIHP and HP do hereby agree that each Party shall be solely responsible for each Party's own acts and omissions as well as the acts and omissions of each Party's own board of directors or trustees, partners, officers, employees, agents, and representatives. Each Party to this Agreement (acting as indemnitor) does hereby indemnify and hold harmless the other, and its respective board of directors or trustees, partners, officers, employees, agents, representatives, and attorneys, from and against any and all claims, actions, damages, expenses, losses or awards, including any suits or claims seeking non-monetary or injunctive relief, which arise out of (i) the negligence of the indemnitor (ii) any action taken or not taken by the indemnitor or (iii) any noncompliance or breach by the indemnitor of any of the terms, conditions, warranties, representations, or undertakings contained in or made pursuant to this Agreement ("Claim"). Such indemnification may be achieved by the purchase of general liability and property insurance policies, in accordance with Paragraph 9 or by such other means as the Parties may mutually agree.
- b. **Notice and Defense.** The Party to be indemnified (Indemnitee) shall give the Party from whom indemnification is sought (Indemnitor) prompt written notice of any Claim for which indemnification is sought. Failure to give notice shall not affect the Indemnitor's duty or obligations under this except to the extent the Indemnitor is prejudiced thereby. The Indemnitor may undertake the defense of any third Party claim by representatives chosen by it. If the Indemnitor undertakes the defense of a Claim, then the Indemnitor shall be deemed to accept that it has an indemnification obligation under this Paragraph 8 with respect to such Claim. The Indemnitee shall make available to the Indemnitor or its representatives all records and other materials required by them and in the possession or under the control of the Indemnitee, for the use of the Indemnitor and its representatives in defending any such Claim, and shall in other respects give reasonable cooperation in such defense. If there is a reasonable probability that a Claim may materially and adversely affect the Indemnitee other than as a result of money damages or other money payments, (i) the Indemnitee shall have the right to defend, compromise or settle such Claim and (ii) the Indemnitor shall not, without the written consent of the Indemnitee, settle or compromise any Claim which does not include as an unconditional term thereof the giving by the claimant to the Indemnitee of a release from all liability in respect of such Claim.

## 9. INSURANCE

- a. **Insurance Coverage.** At all times during the Term of this Agreement, SIHP shall at a minimum maintain at its sole cost and expense in full force and effect the insurance coverage set forth in the Charter Application. SIHP shall also maintain such workers compensation and disability

insurance as required by State law and School Leaders/Errors and Omissions insurance. HP shall maintain at its sole cost and expense such insurance as it shall reasonably deem necessary under this Agreement, including, at a minimum, general liability insurance of \$1 million per occurrence/\$2 million aggregate, an umbrella policy, directors and officers liability insurance, employment practices insurance, automobile insurance and workers compensation and disability insurance as required by State law. Each Party shall name the other as an additional insured on its commercial general liability, automobile liability and crime insurance policies and SIHP shall name HP as an additional insured on its Employment Practices Liability insurance policy and School Leaders/Errors and Omissions insurance policy

- b. HP shall require that its subcontractors, if any, shall maintain commercially standard insurance policies (including but not limited to general liability, automotive, directors and officers, workers compensation and disability insurance) and that such subcontractors name HP and SIHP as additional insureds (except on workers compensation and disability policies, which is not permitted by law).
- c. SIHP shall require that its contractors, if any, shall name HP and SIHP as additional insureds under their respective commercial general liability and automobile liability insurance policies for personal injury and property damage.
- d. The insurance policies maintained by each Party and their subcontractors pursuant to this Agreement shall be endorsed to state that coverage shall not be suspended, voided, cancelled, or reduced, in coverage or limits, except after thirty (30) days prior written notice to HP and SIHP and should be further endorsed to include coverage for child molestation or other abuse and coverage for the defense of suits or claims seeking non-monetary or injunctive relief. The Parties shall furnish one another certified copies of the insurance policies or Certificates of Insurance that demonstrate compliance with this Agreement. Each Party shall comply with any information or reporting requirements required by the other Party's insurer(s), to the extent reasonably practicable.

**10. PERFORMANCE EVALUATION.** The Board shall at regular intervals throughout the Term evaluate HP' performance under the terms of this Agreement to ensure that HP is providing the Services and complying with its duties as set forth herein. In addition to routine, regular feedback and evaluation in day-to-day interactions and at Board meetings, the Board and HP each shall on an annual basis complete a formal written evaluation of HP's performance and the Parties' working relationship, using as a guide the form set forth in Exhibit A attached hereto and incorporated by reference herein (the "Annual Assessment"). Upon completion of the Annual Assessment, the Board and HP personnel shall meet to discuss the review and what changes to HPs' performance, if any, are required to ensure that HP is meeting its responsibilities under the Law, the Charter and the terms of this Agreement, as well review areas where the Parties may

more effectively communicate and collaborate to strengthen their relationship and in turn the performance of the School. Aside from the Annual Assessment and for the avoidance of doubt, failure of HP to perform its duties under this Agreement may subject HP to the termination procedures set forth in Section II below.

## II. TERMINATION

a. Termination by SIHP. SIHP may terminate this Agreement prior to the end of the Term for any of the reasons set forth in subparagraphs (i), (ii) or (iii) below:

- i. If HP materially breaches any of the material terms and conditions of this Agreement including its obligations under 2(a)(ii), provided that HP shall have thirty (30) days to remedy such breach after receipt of written notice of such breach, unless such breach is incapable of being reasonably cured within thirty (30) days in which case this Agreement may be terminated if HP fails to initiate and continue a cure for such breach within thirty (30) days after receipt of such written notice; or
- ii. Notwithstanding anything contained in subsection II(a)(i) to the contrary, HP materially breaches any of the material terms and conditions of this Agreement and such breach arises from HPs' gross negligence or reckless or willful misconduct; or
- iii. If there occurs an enactment, repeal, promulgation or withdrawal of any federal, State, or local law, regulation, or court or administrative decision or order which, after exhausting all possible appeals, results in a final judgment or finding that this Agreement or the operation of SIHP in conformity with this Agreement, would violate SIHP's responsibilities, duties or obligations under the State or federal constitutions, statutes, laws, rules or regulations.

b. Termination by HP. HP may terminate the Agreement prior to the end of the Term for any of the reasons set forth in subparagraphs (i), (ii), (iii), (iv) or (v) below:

- i. If SIHP fails to pay when due any monetary obligation of SIHP as required by the provisions of this Agreement, and such obligation remains unpaid for a period of thirty (30) days after receiving written notice of the delinquent payment from HP;
- ii. if SIHP materially breaches any of the material nonmonetary terms and conditions of this Agreement, including its obligations under 2(b)(v) of this Agreement, provided that SIHP shall have thirty (30) days to remedy such breach after receipt of written notice of such breach, unless such breach is incapable of being reasonably cured within thirty (30) days in which case this Agreement may be terminated if SIHP fails to initiate and continue a cure for such breach within thirty (30) days after receipt of such notice;

- iii. Notwithstanding anything contained in subsection 11(b)(ii) to the contrary, SIHP materially breaches any of the material terms and conditions of this Agreement and such breach arises from SIHP's gross negligence or reckless or willful misconduct;
  - iv. If there occurs an enactment, repeal, promulgation or withdrawal of any federal, State, or local law, regulation, or court or administrative decision or order which, after exhausting all possible appeals, has a material adverse effect on HPs' ability to provide Services to SIHP in accordance with its budget or the Charter Agreement; or
  - v. If, as a result of exercise by SIHP of its authority under 3(a) and 4(b)(ix) of this Agreement, there occur irreconcilable differences with respect to the appointment or termination of any member of the staff Leadership Team following good faith efforts by the Parties to agree upon mutually acceptable candidates.
- c. Procedures upon Expiration or Termination. Upon expiration or termination of this Agreement for any reason, the Parties agree to cooperate in good faith and use their best efforts to complete a prompt and orderly separation, it being the intention of both Parties that SIHP shall remain open and operating in its normal course in the event of such expiration or termination of this Agreement, in accordance with the following rights and obligations of the Parties:
- i. SIHP shall have the right to use HPs' Proprietary Works for the benefit of the School, as defined under Section 6 hereof, then currently in use by SIHP (including but not limited to the Trademarks), until the last day of the then current school year;
  - ii. HP shall provide the Board with copies of all student records, financial reports, employee records, and other School data in HP's possession and not currently in the possession of the Board of Trustees;
  - iii. HP shall provide SIHP with reasonable educational and operational transition assistance for a period of sixty (60) days after the termination of this Agreement, provided that SIHP shall pay to HP all fees, expenses and other costs of HP consultants and agents who may, from time to time, upon mutual agreement of the Parties, provide assistance to SIHP or the students of the School; and
  - iv. In the event that this Agreement is terminated or not renewed at a time when HP has loaned funds to SIHP, guaranteed any debt or other financial obligation of SIHP, or provided credit support, whether in the form of a letter of credit or otherwise, to SIHP, notwithstanding any other provision of this Agreement to the contrary, such termination shall be effective and SIHP shall remain liable to HP until the first date on which such loan and such interest has been repaid in full, such guarantee has been released by the beneficiary thereof, or such letter

of credit or other credit support has been released and/or returned to HP, all in accordance with the term therein.

**12. DISPUTE RESOLUTION.** As a condition precedent to any other legal recourse (unless such legal recourse seeks injunctive relief), the Parties shall make good faith efforts to come to resolution. An initial meeting to resolve the dispute shall be conducted by the Parties at a meeting to be held at the office of HP within fourteen (14) working days of a written request, which request shall specify in reasonable detail the nature of the dispute to be resolved at such meeting. The meeting shall be attended by representatives of the Parties and any other person that may be affected in any material respect by the resolution of such disputes. Such representatives shall have authority to settle the dispute and shall attempt in good faith to resolve the dispute. Before filing any action in Court, the Parties shall submit any dispute to the American Arbitration Association (the "AAA"), to be adjudicated in accordance with AAA's expedited procedures. In the event of arbitration, the Parties shall be responsible for their own legal fees and expenses, and the costs and expenses of the arbitrator(s) and any fees charged by the AAA shall be apportioned equally between the Parties.

### **13. MISCELLANEOUS PROVISIONS**

- i. Independent Contractor Status. The Parties to this Agreement intend that the relationship between them created by this Agreement is that of an independent contractor, and not employer-employee. No agent, employee, or servant of HP shall be deemed to be the employee, agent or servant of SIHP except as expressly acknowledged in writing by HP.
- ii. Force Majeure. Neither Party shall be liable if the performance of any part or all of this contract is prevented, delayed, hindered or otherwise made impracticable or impossible by reason of any strike, flood, riot, fire, explosion, war, act of God, sabotage, accident or any other casualty or cause beyond either Party's control, and which cannot be overcome by reasonable diligence and without unusual expense.
- iii. Notices. All communications and notices relating to this Agreement are to be delivered in writing, with confirmation of delivery, to the following address or to such other address as either Party may designate from time to time:

- i. If to SIHP, to:

Staten Island Hebrew Public Charter School  
Attn: Board Chair

With a copy to:

Cohen Schneider & O'Neill LLP  
275 Madison Avenue, Suite 1905  
New York, NY 10016  
Attn: Cliff S. Schneider, Esq.

ii. If to HP to:

Hebrew Public  
555 8<sup>th</sup> Avenue, Suite 1703  
New York, NY 10018  
Attn: Jonathan Rosenberg, Chief Executive Officer

With a copy to:

Perlman & Perlman LLP  
41 Madison Avenue, Suite 4000  
New York, NY 10016  
Attn: Allen Bromberger, Esq.

- a. Governing Law. The rights and remedies of either Party under this Agreement shall be cumulative and in addition to any other rights given to either Party by law and the exercise of any rights or remedy shall not impair either Party's right to any other remedy. This Agreement shall be governed by and construed and enforced in accordance with the law of the State of New York (other than the provisions thereof relating to conflicts of law).
- b. Enforceability and Validity of Certain Provisions. If any provisions of this Agreement shall be held, or deemed to be, or shall, in fact, be inoperative or unenforceable as applied in any particular situation, such circumstances shall not have the effect of rendering any other provisions herein contained invalid, inoperative, or unenforceable to any extent whatsoever. The invalidity of any one or more phrases, sentences, clauses, or paragraphs herein contained shall not affect the remaining portions of this Agreement or any part hereof.
- c. Section Headings. The headings in this Agreement are for the convenience of the Parties only, and shall have no effect on the construction or interpretation of this Agreement and are not part of this Agreement.
- d. Conflict with Charter. To the extent there are any conflicts between the terms of the Charter and the terms of this Agreement, the terms of the Charter shall control.
- e. Entire Agreement. This Agreement shall not be changed, modified, or amended nor shall a waiver of its terms or conditions be deemed effective except by writing signed by both Parties. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all other prior agreement, understandings, statements, representations, and

warranties, oral or written, express or implied, between the Parties hereto and their respective affiliates, representatives, and agents in respect of the subject matter hereof.

- f. Waiver. The failure of either Party hereto to insist upon or to enforce its rights shall not constitute a waiver thereof, and nothing shall constitute a waiver of such Party's right to insist upon strict compliance with the provisions hereof. No delay in exercising any right, power, or remedy created hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power, or remedy by any such Party preclude any other or further exercise thereof or the exercise of any other right, power, or remedy. No waiver by any Party hereto of any breach, of or default in, any term or condition of this Agreement shall constitute a waiver of or assent to any succeeding breach of or default in the same or any other term or condition hereof.
- g. Succession. The covenants and agreements contained herein shall be binding upon, and inure to the benefit of, the heirs, legal representatives, successors, and permitted assigns of the respective Parties hereto.
- h. Assignment. This Agreement may not be assigned by either Party without the prior written consent of the other Party. Both Parties acknowledge that an assignment of this Agreement by either Party may constitute a material change to the Charter and may require approval by the Authorizer pursuant to the Charter and the Act.
- i. Form of Execution. This Agreement may be executed by facsimile and in any number of counterparts, each of which shall be an original, but all of which shall together constitute one and the same instrument.
- j. Further Actions. Each Party hereto shall, at all times, cooperate in taking such actions and doing or causing to be done all things necessary, proper, or advisable or reasonably requested by the other Party hereto, to effect the intent and purpose of this Agreement and implement the transactions contemplated hereby.
- k. Survival. The provisions of Sections 6, 7, 8, this Section 12, and any other sections or exhibits to this Agreement that by their nature extend beyond the expiration or termination of this Agreement shall survive any expiration or termination of this Agreement, *provided* that any provision that is stated to extend for a specific period of time shall survive only for such specified period of time.
- l. Confidentiality. SIHP shall treat all of the terms of this Agreement confidentially and shall not disclose the terms hereof to any third Party other than as required by applicable federal and State law and by the Authorizer.

**[signatures on the following page]**

In witness whereof, the Parties have caused this Agreement to be signed and delivered by their duly authorized representatives.

**National Center for Hebrew Language  
Charter School Excellence and Development, Inc.  
d/b/a Hebrew Public**

By: \_\_\_\_\_

Name:

Title:

Date:

**STATEN ISLAND HEBREW PUBLIC  
CHARTER SCHOOL**

By: \_\_\_\_\_

Name:

Title:

Date:

## EXHIBIT A

### ANNUAL ASSESSMENT

Area of Responsibility	Rating 1 (failed to meet); 2 (partially met); 3 (met); 4 (exceeded)	Explanation/Evidence/Examples/Notes
Education & Instruction-Related Services		
Business Operations		
HR and Employment-Related Services		
Budgeting & Financial Services		
Student Recruitment		
Governance & Leadership		

Marketing & Communications		
Fundraising		
Research & Evaluation		