

This **DATA PRIVACY ADDENDUM** (this “Data Privacy Addendum”) is entered into by and between **PARTNER SCHOOL** (as defined in the related Program Agreement) and **SUMMIT PUBLIC SCHOOLS** (“Summit”), a California nonprofit public benefit corporation, having an office at 780 Broadway Street, Redwood City, California, on the Effective Date (each of Summit and Partner School, a “Party” and together the “Parties”). The Parties agree to the terms as stated herein.

## **1. PURPOSE AND SCOPE**

- 1.1 Purpose of Data Privacy Addendum.** The purpose of this Data Privacy Addendum is to describe the duties and responsibilities to protect Student Data transmitted to Summit from the Partner School and its Users pursuant to the Agreement, including compliance with all applicable federal and state privacy statutes. This Data Privacy Addendum, together with the Summit Learning Platform Terms of Service (“Terms of Service”) and the Summit Learning Program Agreement (“Program Agreement”) is the “Agreement.”
- 1.2 Nature of Services Provided.** Pursuant to and as fully described in the Program Agreement, Summit has agreed to provide the Summit Learning Program (the “Program”) and the Summit Learning Platform (“Platform”) and any other products and services that the Program may provide now or in the future (collectively, the “Services”).
- 1.3 Student Data to Be Provided.** In order to provide the Services, Partner School and its Users shall provide the categories of Student Data described in the Schedule of Data, attached hereto as Exhibit A.
- 1.4 Data Privacy Addendum Definitions.** Capitalized terms used herein and not otherwise defined in the Program Agreement or Terms of Service shall have the meanings set forth in Exhibit B hereto.

## **2. DATA OWNERSHIP AND AUTHORIZED ACCESS**

- 2.1 Student Data Property of Partner School.** All Student Data or any other Pupil Records transmitted to Summit pursuant to the Program Agreement is and will continue to be the property of and under the control of the Partner School, or the party who provided such Student Data or Pupil Records (such as the student or parent). The Parties hereto agree that as between them, all rights, including all intellectual property rights in and to Student Data or any other Pupil Records contemplated per the Agreement shall remain the exclusive property of the Partner School or the party who provided such Student Data or Pupil Records (such as the student or parent). For the purposes of FERPA, to the extent Personally Identifiable Information from Education Records are transmitted to Summit from Partner School, Summit shall be considered a School Official, under the control and direction of the Partner Schools as it pertains to the use of Education Records notwithstanding the above.
- 2.2 Parent Access.** As set forth in applicable law, Partner School shall establish reasonable procedures by which a parent, legal guardian, or eligible student may review Personally Identifiable Information contained in the related student’s Pupil Records and correct

erroneous information, consistent with the functionality of Services. Summit shall respond in a reasonably timely manner to the Partner School's request for Personally Identifiable Information contained in a student's Pupil Records held by Summit to view or correct as necessary. In the event that a parent/legal guardian of a student or other individual contacts Summit to review any of the Pupil Records or Student Data accessed pursuant to the Services, Summit shall refer the parent or individual to the Partner School. In such event, Partner School shall follow the necessary and proper procedures regarding the requested information.

- 2.3 Third Party Request.** Should a Third Party, excluding a Service Provider, including law enforcement and government entities, contact Summit with a request for Student Data held by Summit pursuant to the Services, Summit shall redirect the Third Party to request the Student Data directly from the Partner School. Summit shall notify the Partner School in advance of a compelled disclosure to a Third Party unless legally prohibited.
- 2.4 No Unauthorized Use.** Summit shall not use Personally Identifiable Information from Student Data or in a Pupil Record for any purpose other than as explicitly specified in the Agreement.
- 2.5 Service Providers.** Summit shall enter into written agreements with all Service Providers performing functions pursuant to the Agreement, whereby the Service Providers agree to protect Student Data in a manner consistent with the terms of this Data Privacy Addendum.

### **3. DUTIES OF PARTNER SCHOOL**

- 3.1 Provide Data In Compliance With FERPA.** Partner School shall provide Student Data for the purposes of the Agreement in compliance with any applicable state or federal laws and regulations (including FERPA) pertaining to data privacy and security applicable to Partner School. If Partner School provides Education Records to Summit, Partner School represents, warrants and covenants to Summit, as applicable, that Partner School has:
  - (i) complied with all applicable provisions of FERPA relating to disclosures to school officials with a legitimate educational interest, including, without limitation, informing parents in their annual notification of FERPA rights that the Partner School defines "school official" to include service providers and defines "legitimate educational interest" to include services such as the type provided by Summit; or
  - (ii) obtained all necessary parental or eligible student written consent to share the Student Data with Summit, in each case, solely to enable Summit's operation of the Service.

Partner School represents, warrants, and covenants to Summit that it shall not provide information to Summit from any student or parent/legal guardian that has opted out of the disclosure of Directory Information. Summit depends on Partner School to ensure that the

Partner School is complying with the FERPA provisions regarding the disclosure of any student information that will be shared with Summit.

- 3.2 **Reasonable Precautions.** Partner School shall take reasonable precautions to secure usernames, passwords, and any other means of gaining access to the Services and hosted data in accordance with the Agreement and applicable law.
- 3.3 **Unauthorized Access Notification.** Partner School shall notify Summit immediately of any known or suspected unauthorized use or access of the Platform or Student Data. Partner School will assist Summit in any efforts by Summit to investigate and respond to any unauthorized use or access.
- 3.4 **Partner School Representative.** The Principal Contact Person designated in the Program Agreement shall serve as the representative of the Partner School for the coordination and fulfillment of the duties of this Data Privacy Addendum.

#### 4. DUTIES OF SUMMIT

- 4.1 **Privacy Compliance.** Summit shall comply with all applicable state laws of the jurisdiction in which Partner School is located and federal laws and regulations pertaining to data privacy and security, applicable to Summit in providing the Services to Partner School.
- 4.2 **Authorized Use.** The Student Data shared pursuant to the Agreement, including persistent unique identifiers, shall be used for no purpose other than the Services and for the uses set forth in the Agreement and/or as otherwise legally permissible. The foregoing limitation does not apply to any De-Identified Data.
- 4.3 **Employee Obligation.** Summit shall require all employees and agents who have access to Student Data to comply with all applicable laws with respect to the Student Data shared under the Service Agreement. Summit agrees to require and maintain an appropriate confidentiality agreement from each employee with access to Student Data pursuant to the Service Agreement.
- 4.4 **No Disclosure.** Summit shall not disclose any Student Data obtained under the Agreement in a manner that directly identifies an individual student to any other entity except as authorized by the Agreement. Summit will not Sell Student Data. Additionally, Summit will not trade or transfer Student Data to any third parties, except with the prior written consent of the Partner School. The prohibition on disclosing, trading, or transferring Student Data does not apply to the access to or disclosure of Student Data to (a) Partner School, (b) to authorized Licensed Users, including parents or legal guardians, (c) as permitted by law or (d) to Service Providers, in connection with operating or improving the Service. The list of Summit's current Service Providers can be accessed through the Privacy Policy (which may be updated from time to time).
- 4.5 **De-Identified Data.** De-Identified Data may be used for any lawful purpose including, but not limited to, operating and improving the Service. Summit's use of such De-Identified Data shall survive termination of this Data Privacy Addendum or any

request by Partner School to return or destroy Student Data. Summit agrees not to attempt or have any third party attempt to re-identify De-Identified Data.

**4.6 Disposition of Student Data.** Summit shall, at Partner School's request, dispose of or delete all Personally Identifiable Information contained in Student Data within a reasonable time period following a written request. If a written request is received from a Partner School, Summit shall transfer said Personally Identifiable Information contained in Student Data to Partner School or Partner School's designee within sixty (60) days of the date of such written request by Partner School, or as required by law, and according to a schedule and procedure as Summit and the Partner School may reasonably agree. If no written request is received, Summit shall dispose of or delete all Personally Identifiable Information contained in Student Data at the earliest of (a) when it is no longer needed for the purpose for which it was obtained or (b) as required by applicable law. Disposition shall include (1) the shredding of any hard copies of any Personally Identifiable Information contained in Student Data; (2) erasing any Personally Identifiable Information contained in Student Data; or (3) otherwise modifying the Personally Identifiable Information contained in Student Data to make it unreadable or indecipherable or De-Identified. Summit shall provide written notification to the Partner School when the Personally Identifiable Information contained in the Student Data has been disposed. The duty to dispose of Student Data shall not extend to data that has been De-Identified.

**4.7 Advertising Prohibition.** Summit shall not use Personally Identifiable Information contained in Student Data to (a) serve Behaviorally Targeted Advertising to students or families/guardians; or (b) develop a profile of a student for any commercial purpose other than providing the Services to Partner School or as set forth in the Service Agreement. Summit shall not use or disclose Personally Identifiable Information contained in Student Data for Third-Party Advertising.

## 5. DATA PROVISIONS

**5.1 Data Security.** Summit agrees to employ administrative, physical, and technical safeguards designed to protect Student Data from unauthorized access, disclosure, and use or acquisition by an unauthorized person, including when transmitting and storing such information. The general security duties of Summit are set forth below. Additional detail regarding Summit's security programs and measures are listed in Exhibit C hereto. These measures shall include, but are not limited to:

**a. Passwords and Employee Access.** Summit shall use commercially reasonable precautions to secure usernames, passwords, and any other means of gaining access to the Services or to Student Data, at a level suggested by Article 4.3 of NIST 800-63-3. Summit shall only provide access to Student Data to employees, contractors or Service Providers that are performing the Services. Summit shall conduct criminal background checks of employees prior to providing access to Student Data and prohibit access to Student Data by any person with criminal or other relevant unsatisfactory information that presents an unreasonable risk to Partner School or its Users.

**b. Destruction of Student Data.** Summit shall destroy or delete all Personally Identifiable Information contained in Student Data obtained under the Agreement as set forth in Section 4.6 hereof.

**c. Security Protocols.** Both Parties agree to maintain security protocols that meet industry best practices in the transfer or transmission of any Student Data as described in Exhibit C, including ensuring that Student Data may only be viewed or accessed by individuals or entities legally allowed to do so. The foregoing does not limit the ability of Summit to allow any necessary Service Providers to view or access data as set forth in Section 4.4 hereof. Summit shall maintain all Student Data obtained or generated pursuant to the Agreement in a secure computing environment and shall not copy, reproduce, or transmit data obtained pursuant to the Agreement, except as necessary to fulfill the purpose of data requests by Partner School or as otherwise set forth in the Agreement.

**d. Employee Training.** Summit shall provide periodic security training to those of its employees who operate or have access to the Platform.

**e. Security Technology.** When the Service is accessed using a supported web browser, Summit will ensure that Secure Socket Layer (“SSL”), or equivalent technology that protects information, using both server authentication and data encryption is used to help ensure that Student Data is transmitted in a safe and secure manner. Summit shall host data pursuant to the Agreement in an environment using a firewall that is periodically updated according to industry standards.

**f. Security Coordinator.** Summit shall provide the name and contact information of Summit’s security coordinator for the Student Data received pursuant to the Agreement that Partner School may contact if there are any security questions or concerns (“Security Coordinator”). Summit’s Security Coordinator shall be as set forth in Exhibit C.

**g. Service Provider Bound.** Summit shall enter into written agreements whereby Service Providers agree to secure and protect Student Data in a manner consistent with the terms of this Section 5. Summit shall periodically conduct or review compliance monitoring and assessments of Service Providers to determine their compliance with this Section 5.

## **5.2 Data Breach.**

a. In the event that Summit becomes aware of any actual or reasonably suspected unauthorized disclosure of or access to Student Data (a “Security Incident”), Summit shall provide notice to the Partner School as required by the applicable state law (each, a “Security Incident Notification”).

b. Unless otherwise required by the applicable law, the Security Incident Notification shall be written in plain language, shall be titled “Notice of Data Breach,” and shall present the information described herein under the following headings: “What Happened,” “What Information Was Involved,” “What We Are Doing,” “What You Can Do,” and “For More Information.” Additional information may be provided as a supplement to the notice.

- c. The Security Incident Notification described above in Section 5.2(a) shall include such information required by the applicable state law and the following information:
- (i) The name and contact information of the reporting Partner School subject to this section.
  - (ii) A list of the types of Personally Identifiable Information that were or are reasonably believed to have been the subject of the Security Incident.
  - (iii) If the information is known at the time the Security Incident Notification is provided, then either (1) the date of the Security Incident, (2) the estimated date of the Security Incident, or (3) the date range within which the Security Incident occurred. The Security Incident Notification shall also include the date of the notice.
  - (iv) Whether, to the knowledge of Summit at the time notice is provided, the notification was delayed as a result of a law enforcement investigation or request.
  - (v) A general description of the Security Incident, if that information is possible to determine at the time the notice is provided.
- d. At Summit's discretion, the Security Incident Notification may also include any of the following:
- (i) Information about what Summit has done to protect individuals whose Personally Identifiable Information has been breached by the Security Incident.
  - (ii) Advice on steps that the person whose Personally Identifiable Information has been breached may take to protect himself or herself.
- e. To the extent required by the applicable state law, Summit shall notify the affected parent, legal guardian or eligible pupil of the Security Incident, which shall include the information listed in subsections (c) and (d), above.

## 6. MISCELLANEOUS

- 6.1 Term.** Except as otherwise stated herein, Summit shall be bound by this Data Privacy Addendum for the duration of the Program Agreement or as required by law.
- 6.3 Termination.** In the event that either Party seeks to terminate this Data Privacy Addendum, they may do so by terminating the Program Agreement as set forth therein.
- 6.4 Effect of Termination Survival.** If the Agreement is terminated, Summit shall dispose of all of Partner School's Personally Identifiable Information contained in Student Data pursuant to Section 4.6.
- 6.5 Priority of Agreements.** This Data Privacy Addendum shall govern the treatment of Student Data. With respect to the treatment of Student Data, in the event there is conflict between the terms of this Data Privacy Addendum and the Program Agreement, the Terms of Service, or any other agreement between the Partner School and Summit, the

terms of this Data Privacy Addendum shall apply and take precedence. Except as described in this paragraph, all other provisions of the Program Agreement shall remain in effect.

- 6.6 Notice.** All notices or other communication required or permitted to be given hereunder must be sent to Partner School or Summit, as applicable, as provided in the Program Agreement.

**EXHIBIT A**

**SCHEDULE OF DATA**

<b>Category of Data</b>	<b>Elements</b>	<b>“X” Indicates Category is Used by Summit Learning</b>
Application Technology Meta Data	IP Addresses of users, Use of cookies etc.	X
	Other application technology meta data-Please specify:	
Application Use Statistics	Meta data on user interaction with application	X
Assessment	Standardized test data (NWEA MAP, SBAC, AP, IB, etc.)	X
	Observation data	X
	Other assessment data-Please specify:	
Attendance	Student school (daily) attendance data	X
	Student class attendance data	X
	Other attendance: - Suspensions/expulsions	X
Communications	Online communications that are captured (emails, blog entries)	
Conduct	Conduct or behavioral data	
Demographics	Date of Birth	X
	Place of Birth	
	Gender	X
	Ethnicity or race	X
	Language information (native, preferred or primary language spoken by student)	X
	Other demographic information-Please specify: - Socioeconomic status	X
Enrollment	Student school enrollment	X
	Student grade level	X
	Homeroom	X
	Guidance counselor	X
	Specific curriculum programs	X
	Year of graduation	X
Parent/Guardian Contact Information	Address	
	Email	X
	Phone	X
Parent/Guardian ID	Parent ID number (created to link parents to students)	X
Parent/Guardian Name	First and/or Last	X
Schedule	Student scheduled courses	X
	Teacher names	X
Special Indicator	English language learner information	X
	Low income status	X
	Medical alerts	



	Student disability information	X
	Specialized education services (IEP or 504)	X
	Living situations (homeless/foster care)	
	Other indicator information-Please specify:	
Student Contact Information	Address	
	Email	X
	Phone	
Student Identifiers	Local (School district) ID number	X
	State ID number	X
	Vendor/App assigned student ID number	X
	Student app username	
	Student app passwords	
Student Name	First and/or Last	X
Student In App Performance	Program/application performance (reading program-student reads below grade level)	X
Student Program Membership	Academic or extracurricular activities a student may belong to or participate in	X
Student Survey Responses	Anonymous student responses to surveys or questionnaires	X
Student work	Student generated content: writing, pictures etc.	X
	Other student work data -Please specify:	
Student Outcome Information	Student outcome information (grade level promotion and matriculation, AP and IB test information, college admission test scores, college eligibility and acceptance, and employment)	X
Transcript	Student course grades	X
	Student course data	X
	Student course grades/performance scores	X
	Other transcript data -Please specify:	
Transportation	Student bus assignment	
	Student pick up and/or drop off location	
	Student bus card ID number	
	Other transportation data -Please specify:	
Other	Please list each additional data element used, stored or collected by your application: <ul style="list-style-type: none"> <li>- teacher feedback on coursework</li> <li>- teacher curricula and notes and feedback to or about students</li> <li>- Teacher and parent answers to surveys about the Services or curricula; and feedback, suggestions, questions, and ideas submitted to Summit from parents/legal guardians, teachers or school administrators or officials</li> <li>- mentor observations</li> </ul>	X

## **EXHIBIT B**

### **DEFINITIONS**

***“Agreement”*** means, collectively, the Terms of Service and the Program Agreement.

***“Behaviorally-Targeted Advertising”*** means presenting an advertisement to a User where the selection of the advertisement is based on Student Data or Pupil Generated Content or inferred over time from the usage of Summit’s website, online service or mobile application by such student or the retention of such student’s online activities or requests over time and across non-affiliate website for the purpose of targeting subsequent advertising.

***“De-Identified Data”*** is information that has all direct and indirect personal identifiers removed such that the data cannot reasonably be used to identify or contact a student. This includes, but is not limited to, persistent unique identifiers, name, ID numbers, date of birth, and school ID.

***“Directory Information”*** shall have the meaning therefor under FERPA cited as 20 U.S.C. 1232g(a)(5)(A).

***“Education Records”*** shall have the meaning therefor under FERPA cited as 20 U.S.C. 1232g(a)(4).

***“Indirect Identifiers”*** means any information that, either alone or in aggregate, would allow a reasonable person to be able to identify a student to a reasonable certainty. When anonymous or non-personal information is directly or indirectly linked with personal information, this anonymous or non-personal information is also treated as personal information. Persistent identifier that are not anonymized, de-identified or aggregated are personal information.

***“Licensed User”*** means a teacher, employee, official, agent of a Partner School or the parent or legal guardian of a Student User.

***“Personally Identifiable Information”*** or ***“PII”*** means data that can be used to identify or contact a particular individual, such as the individual’s name, email address or billing information, or other data which can be reasonably linked to that data or to that individual’s specific computer or device. PII includes, without limitation, at least the following: first and last name, home address, telephone number, email address, discipline records, test results, special education data, juvenile dependency records grades, evaluations, criminal records, medical records, health records, social security number, biometric information, disabilities socioeconomic information, food purchases, political affiliations, religious information, text messages, documents, student identifiers, search activity, photos, voice recordings, videos

***“Pupil Generated Content”*** means materials or content created by a pupil during and for the purpose of education including, but not limited to, essays, research reports, portfolios, creative writing, music or other audio files, photographs, videos, and account information that enables ongoing ownership of pupil content.

***“Pupil Records”*** means both of the following: (1) any information that directly relates to a pupil that is maintained by Partner School and (2) any information acquired directly from the pupil through the

use of instructional software or applications assigned to the pupil by a teacher or other employee of the Partner School.

**“School Official”** means, for the purposes of this Data Privacy Addendum and pursuant to CFR 99.31 (B), a contractor that: (1) performs an institutional service or function for which the agency or institution would otherwise use employees; (2) is under the direct control of the agency or institution with respect to the use and maintenance of Education Records; and (3) is subject to CFR 99.33(a) governing the use and re-disclosure of Personally Identifiable Information from Education Records.

**“Self”** consistent with the Student Online Privacy Protection Act (SOPIPA) and the Student Privacy Pledge, does not include or apply to the purchase, merger or other type of acquisition of a company by another entity, provided that the company or successor entity continues to treat the personal information in a manner consistent with the Education Privacy Principles with respect to the previously acquired personal information.

**“Service Provider”**, means, for the purposes of the Data Privacy Addendum, a party other than Partner School or Summit or Users, who Summit uses for data collection, analytics, storage, or other service to operate and/or improve the Platform, and who has access to PII.

**“Student Data”** means any data, whether gathered by Summit or provided by Partner School or its users, students, or students’ parents/guardians, that is directly related to a Partner School student including, but not limited to, information in the student’s Educational Record or email, first and last name, home address, telephone number, email address, or other information allowing online contact, discipline records, videos, test results, special education data, juvenile dependency records, grades, evaluations, criminal records, medical records, health records, social security numbers, biometric information, disabilities, socioeconomic information, food purchases, political affiliations, religious information, text messages, documents, student identifies, search activity, photos, voice recordings or geolocation information. Student Data shall constitute Pupil Records for the purposes of this Data Privacy Addendum. Student Data as specified in Exhibit A is confirmed to be collected or processed by Summit pursuant to the Services. Student Data shall not constitute that information that has been anonymized or De-Identified, or anonymous usage data regarding a student’s use of the Services.

**“Student User”** means a student enrolled at the Partner School with an account on the Platform.

**“Summit Learning Website”** means the website for the Program presently located at [www.summitlearning.org](http://www.summitlearning.org), which URL is subject to change from time to time.

**“Terms of Service”** means the Summit Learning Platform Terms of Service between each Licensed User of the Platform and Summit and the authorized representative of each Partner School and Summit, located on the Summit Learning Website.

**“Third Party”** means, for purposes of this Data Privacy Addendum, any person other than Summit, Partner School, a User, or a Service Provider.

**“Third-Party Advertising”** means direct advertising of third-parties and their products or services on our Service (e.g., such as when an advertiser would bid to place an advertisement directly on a platform). Summit does not allow third parties to advertise directly on its Service in user logged in areas of the Service, nor does Summit sell advertising space in logged in areas on the Platform. Summit also

does not use third-party ad servers (such as Google AdWords or AdSense) in user logged in areas of the Platform.

*“Users”* means, collectively, Student Users and Licensed Users.

## EXHIBIT C

### DATA SECURITY REQUIREMENTS

#### Definitions

**Event** is any observable occurrence in a system or network

**Site Event (SEV)** is an event impacting platform functionality and/or availability requiring remediation and/or investigation.

**Sensitive Data** is defined to include:

- Personally Identifiable Information contained in Student Data as previously defined in Exhibit B
- Personally Identifiable Information (as defined in Exhibit B) of teachers, parents, administrative staff or site admin of the Service
- Any login credentials, passwords, user authentication tokens or security devices used for Platform or infrastructure access

**Security Coordinator - Bryant Wong**

**Security Incident** - An incident where Summit becomes aware of any actual or reasonably suspected unauthorized disclosure of or access to Sensitive Data.

**On-Call** means the Summit personnel tasked with monitoring system alerts and responding to incidents. Summit will use reasonable efforts to have an engineer on-call at any given moment.

**Platform** is as defined in this Data Privacy Addendum.

**System Alert** means an automated notification triggered by specified Platform system conditions.

#### Security

**Security Controls:** Summit shall be responsible for the implementation and maintenance of controls that align with the Center for Internet Security Critical Security Controls as well as other industry best practices for education technology security. This includes appropriate administrative, physical, and technical safeguards to protect Sensitive Data from unauthorized access, disclosure, and use. Specifically, Summit shall:

- Implement effective identification and authentication methods using multi-factor authentication (MFA) with strong password complexity and a mobile security application based on two-factor authentication (2FA).
- Employ strong encryption technologies to securely transmit and store all sensitive data. These procedures will include; data-in-transit secured with encrypted transportation protocols (HTTPS, SSL/TLS). When at rest sensitive data will be encrypted using one of the strongest block ciphers available, 256-bit Advanced Encryption Standard (AES-256) to protect sensitive data.
- Create a highly effective data backup and recovery capability that ensures a timely and accurate restoration of all Sensitive Data. The capability will minimize the amount of Sensitive Data loss

in the event of some form of catastrophic failure. For further protection, those backups will be encrypted and are stored in a different region.

- Adopt and maintain a secure software development lifecycle (Secure SDLC) with industry recognized security practices to establish secure application(s), network, and infrastructure architectures. The Secure SDLC will also incorporate security assurance activities such as penetration testing, code reviews and architecture analysis as essential functions of the development effort.

**Security Incident and Event Monitoring:**

- Maintain platform availability through event monitoring and response procedures for all Site Events, automated Site Event notifications, handling and reporting by an On-Call personnel.
- Guard against Security Incidents and maintain incident response policies, plans and procedures focused on timely and effective incident response. These procedures shall be made to Partner School upon request.
- Employ industry leading intrusion detection measures focused on monitoring and identifying deviations in normal network, user, and platform behaviors. Employ trained incident handling professionals with experience in Security Incident and Event Monitoring (SIEM), Configuration Auditing and Threat Intelligence.

**Security Governance:**

- Develop and conduct security risk assessments focused on the identification and remediation of risks collected through a well defined assessment process.
- Employ oversight and accountability procedures for risk management and remediation



## Bard High School Early College DC Draft Operating MOA

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**Memorandum of Agreement**  
**Between**  
**District of Columbia Public Schools**  
**And**  
**Bard College**  
**Regarding the Operations of the**  
**DCPS Early College High School Program**

This Memorandum of Agreement (“MOA”) sets forth the responsibilities and expectations of the District of Columbia Public Schools (“DC Public Schools” or “DCPS”) and Bard College (“Bard” or “the College” or “the school”) in support of the DCPS Early College High School Program (the “Program” or “Bard DC”). The Program serves students from diverse backgrounds and provides them with the opportunity to earn up to 60 transferrable college credits from Bard and a Bard College Associate’s in Arts Degree, alongside a High School Diploma from DCPS, setting students on the path for success in college, career, and life. DC Public Schools and Bard are individually referred to herein as a “Party” and collectively as the “Parties.”

**WHEREAS**, as part of DCPS’ work to reach the goals in its strategic plan, a Capital Commitment, DC Public Schools plans to work together with Bard to open an academically rigorous early college high school program in Ward 7 or Ward 8 of the District of Columbia; and

**WHEREAS**, the Parties believe in the power of dual high school and college enrollment programs to provide participating students with an advantage towards achieving success on their chosen paths; and

**WHEREAS**, the Parties intend for the Program to be an accredited additional location of the College located at an existing DCPS school site, in which enrolled students will be able to take courses that count towards both a DCPS high school diploma and a Bard College Associate’s in Arts degree; and

**WHEREAS**, the College is experienced offering its Associate’s in Arts course of study to high school age students at early college high schools established by other public school systems in partnership with the College; and

**WHEREAS**, DCPS has the authority to operate “dual enrollment” programs pursuant to 5-A District of Columbia Municipal Regulations (“DCMR”) § 2400 *et seq.*, where such programs involve high school students taking approved college courses on a college campus for high school credit; and

**WHEREAS**, DCPS has the authority to locate the dual enrollment program at a current DCPS school site as part of a DCPS educational program; and

**WHEREAS**, this MOA is intended to codify the terms of the relationship between the Parties in support of Program during the term of this MOA.



**NOW, THEREFORE**, in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**I. Overview**

This MOA pertains to an agreement between DC Public Schools and Bard for the operation of the Program during the term of this MOA. Bard will be responsible for managing and operating all aspects of the academic program and student experience at the Program according to the terms and conditions of this MOA and all applicable laws and regulations, including the District of Columbia Municipal Regulations (DCMR). Unless otherwise specified below or approved by DCPS and shared publicly, Bard DC shall comply with all DCPS policies. The Chancellor of DCPS (“the Chancellor”) has the ultimate responsibility for the performance of students, for schools, and for employees within DCPS.

**II. Academics; College Degree; Student Supports**

*a. Courses, Graduation Requirements*

1. Bard DC will provide a four-year early college high school program that fulfills District of Columbia graduation requirements for the high school diploma and the requirements of the Bard Associate’s in Arts degree. Students who meet the standard District of Columbia graduation requirements but do not earn an associate’s degree will be eligible for a standard DCPS diploma. Bard DC will offer at least the courses needed to complete the standard DCPS diploma and to complete the Associate’s in Arts Degree. Bard DC will submit its fall course list and any new course proposals to DCPS by February 1<sup>st</sup> of the school year prior to that in which they will be offered and the spring course list and any new course proposals to DCPS by August 1 of the school year which they will be offered. DCPS acknowledges that, following submission of this list, course offerings are subject to change based on academic and institutional needs and opportunities at Bard DC and Bard, pending DCPS final approval of all courses. Eligibility for dual credit will be determined on a course by course basis by DCPS.

Notwithstanding the above, in order for a course to be eligible for dual credit in the following school year, the course syllabi must be submitted by February 1. DCPS cannot guarantee that courses submitted after February 1st will be reviewed to determine dual credit eligibility for the following school year. The terms and condition regarding credit transfer, grade reporting, dual credit courses and course eligibility and dual enrollment are addressed in the Dual Enrollment Agreement between Bard and DCPS attached as Exhibit A to this MOA.

2. The graduation requirements are as specified in 5-A DCMR § 2203.3 and including, but not limited to:
- (a) A total of twenty-four (24) Carnegie Units in corresponding subjects and required volunteer community service hours shall have been satisfactorily completed for graduation.
  - (b) The following Carnegie Units in the following subjects shall be required:

<b>COURSES</b>	<b>UNIT(S)</b>
English	4.0
Mathematics; must include Algebra 1, Geometry, and Algebra II at a minimum	4.0
Science; must include three (3) lab sciences	4.0





Social Studies; must include World History 1 and 2, United States History; United States Government, and District of Columbia History	4.0
World Language	2.0
Art	0.5
Music	0.5
Physical Education/Health	1.5
Electives	3.5
Total	24.0

3. All traditional high school courses must meet seat hour requirements of 60 hours for a .5 credit and 120 hours for 1 credit. If Bard intends to offer traditional courses through a competency-based approach, it must apply to DCPS and be approved for a credit flexibility waiver. College courses being offered as dual enrollment are exempt from seat hour requirements, in accordance with the DCMR. Bard will ensure that all courses offered for dual credit are approved by DCPS, and follow applicable dual enrollment policies and the Dual Enrollment Agreement between Bard and DCPS attached as Exhibit A to this MOA. Bard will also ensure that the sequence of courses offered allows students to reasonably transfer in and out of Bard DC, if the need arises, without compromising their trajectory toward fulfilling the high school graduation requirements.

b. *College Degree*

1. Bard will award its Associate’s in Arts degree to each Program student who satisfactorily completes the requirement for such degree as established by Bard and the College’s accrediting body, and as determined by Bard. Bard will maintain approval for the Program from the DC Higher Education Licensure Commission (“HELIC”) and maintain accreditation for the Program from the Middle States Commission on Higher Education. Bard may ask for DCPS’s involvement in maintaining such approvals, such as participation in HELIC site visits and hearings, and such involvement will be provided to the greatest extent possible.

2. The requirements to receive the Bard College Associate’s in Arts degree include that students must maintain a 2.0 GPA average in the college courses, earn no fewer than 60 college credits, and fulfill the requisite course requirements. Of the 60 college credits required for the A.A. degree, 45 must be earned in the sequences of classes described below. The remaining credits can be earned in classes chosen from the elective courses offered by the Science, Mathematics, Languages, Literature, Social Science, and Arts departments.

3. The distribution requirements for the Bard College Associate’s in Arts degree are as follows, subject to modification at the discretion of the College:

- All four semesters of the Seminar Sequence at 3 credits each (12 credits);
- Two semesters of laboratory college science at 4 credits each (8 credits);
- Two semesters of college mathematics at 3 credits each (6 credits);
- Two semesters of college foreign language at 4 credits each (8 credits);
- Two semesters of literature and/or history/social science at 3 credits each (6 credits)
- One semester of music, theater, dance, and/or visual art (3 credits in total);



- Two semesters of Research Workshop, College Experience, or similar course at 1 credit each (2 credits).

4. With approval from the Bard DC Principal (“the Principal”) and Bard and in accordance with the Dual Enrollment Partnership Agreement attached as Exhibit A to this MOA, students will have the ability to transfer up to 6 credits from other approved institutions of higher education towards the Associate’s in Arts degree. This policy does not apply to the Seminar Sequence offered at Bard.

5. Bard reserves the right to determine whether students are eligible to earn the Associate’s in Arts degree, in accordance with Bard’s published and shared policies, including Bard’s Early College Code of Conduct, and with all federal and local laws and regulations. Certain severe academic and behavioral infractions that violate Bard’s Early College Code of Conduct may result in students’ loss of eligibility for the Associate’s in Arts degree. In certain cases, there will be options for restoration of the degree eligibility. The Bard Early College Code of Conduct will be clearly articulated in the Bard DC Student Handbook, which will be made available to Bard DC students and families on the school’s website and prior to the commencement of the academic year. Bard’s determination regarding eligibility for the Associate’s in Arts degree will not impact a student’s eligibility for a DCPS high school diploma, although failure to complete dual credit courses required for both the degrees will impact students’ ability to earn the high school diploma.

c. *Curriculum*

Bard has developed a robust four-year curriculum for Bard High School Early Colleges. Bard will select the Program’s curriculum for both high school and college level courses, consistent with DC and federal and state laws and regulations and subject to the approval of the Chancellor. The Program curriculum will meet the District of Columbia’s requirements for a high school diploma and be consistent with the District of Columbia’s high school state standards. The curriculum shall include a two-year pre-college sequence in 9th and 10th grades and a college curriculum in place of 11th and 12th grades.

d. *Grading, Promotion*

1. Bard DC is required to adhere to all requirements related to secondary grading listed in the DCMR. Unless otherwise approved, Bard DC high school credit courses not also offered for college credit will follow the DCPS Grading Policy. Term marks at DCPS are typically calculated based on three grading categories to reflect the diverse nature of student work: 10 % Student Participation, 50% Student Practice & Application, and 40% Assessment. Bard DC may develop a different term mark calculation approach for high school credit courses, subject to DCPS approval. If the Program elects to do so for high school courses, Bard DC must publish this information and make it available to students and families. College courses being offered through the Program are exempt from DCPS Grading Policy, but shall be offered and graded in accordance with the DCMR and the Dual Enrollment Agreement between Bard and DCPS attached as Exhibit A to this MOA.

2. Students will be promoted to the next grade level based on the promotion criteria explained in DC Official Code § 38-781.02, 5-E DCMR § 2201 and the DCPS Promotion Policy. Students may not elect to be retained in order to enroll in Bard.

3. In the event that a student fails multiple core academic courses (2 or more credits required for graduation) over the course of a school year and does not demonstrate academic improvement, despite

interventions agreed upon by Bard and DCPS (e.g. counseling meetings, tutoring, parent conferences) and therefore becomes at risk of becoming ineligible for the Bard matriculation (at the end of 10<sup>th</sup> grade) or the Associate's in Arts degree and the high school diploma, the Principal may request a transfer of the student from the Program solely on academic grounds. Except as expressly agreed to by DCPS, the Principal may only submit an academic transfer request for a student if the Principal notified the student and family prior to December 1 of the school year preceding the commencement of the requested transfer that the student is at risk of receiving an academic transfer and of the DCPS school options that are available to them for the following school year and the process by which to access those options. For the sake of clarity, the Parties agree that if a student is required to leave the Program, the student will not be required to do so until the end of the school year.

Academic transfer requests will be evaluated through DCPS Central Office and will only be granted if there is sufficient documentation of the agreed upon interventions and that the interventions were implemented for a sufficient period of time prior to the requested transfer. Students may not be transferred for other reasons such as behavior or attendance unless otherwise permitted under law, regulations, and/or DCPS policy. DCPS has ultimate decision authority regarding transfers, in accordance with this MOA. Bard nonetheless retains its authority over eligibility for the College's Associate's in Arts Degree as provided in paragraph b.5. above.

e. *Credit Transfer*

Grades and credits for courses that are determined eligible for dual credit will be reported on both the student's Bard and official DCPS transcripts. During the course of this MOA, Bard will maintain existing articulation agreements and/or credit transfer pathways with other institutions of higher education.

f. *Academic Supports*

1. Bard DC, through its Principal, faculty and staff, and with support from Bard will offer a robust student support services program to include academic and socio-emotional support, such as counseling, guidance, tutoring, office hours with professors, and skill building curricula, to promote success among a diverse group of learners. In addition, Bard DC with support from Bard will develop partnerships with youth-serving organizations to expand resources and support services available to students as much as possible.

2. Bard DC with support from Bard will offer a set of tiered interventions for students who struggle academically, including tailored academic supports as described above as well as credit recovery options approved by DCPS, such as opportunities to retake courses, summer school classes through DCPS for high school credit, summer courses through Bard (funding permitting), and hybrid scheduling with approval of the Principal to allow students to complete high school requirements while moving into some college classes.

Furthermore, Bard DC with support from Bard will conduct outreach to and communicate regularly with families of students who are struggling academically to make them aware of academic issues and engage them in the support process and will follow all laws and regulations regarding notifications of academic progress and risk of failure.

g. *Assessments & Progress Monitoring*



1. The Program's students will participate in statewide assessments, such as the Partnership for Assessment of Readiness for College and Careers (PARCC), Multi-State Alternate Assessment (MSAA), DC Science Assessment, and DC Science Alternate Assessment consistent with the participation of other DC Public Schools students and as outlined in the DCPS Summative Assessment Policy. The Program's students will participate in the PSAT and SAT consistent with the participation of other DC Public Schools students.

2. The Program's students and staff will participate in the annual Panorama Survey consistent with the participation of other DC Public Schools students. The Program will also administer the Panorama Survey to parents according to the instructions provided by the DCPS Office of Data Systems & Strategy.

3. Beyond the assessments mentioned above and all others required by law or regulation, the Program will have the flexibility to determine and administer student assessments and evaluations and determine student grades, in accordance with District of Columbia laws and regulations and Federal laws and regulations. Interim and formative assessments at the course level will be determined by the individual instructors and will vary by subject area. In addition to the accountability metrics identified below, Bard will track student data and related trends, including assessments, GPA, and high school and college credit completion. In addition to the standard, quarterly, report card and IEP progress reports for students with disabilities, faculty will also write narrative comments each semester to give students and their families a more comprehensive picture of students' academic progress. Bard students will also receive personalized Guides to Graduation, College and Career (distributed from central office) bi-annually and Bard faculty will be prepared to support students to use their Guides as a planning tool. Bard will share data with DCPS on a regular basis as requested, with a timeframe reasonable to both parties.

h. *Special Education and English Learners*

1. The Program is fully committed to serving students with disabilities and English Learners who meet the admissions criteria. The Program shall provide services and accommodations to students with disabilities in accordance with the Individuals with Disabilities Education Act (IDEA), the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, and other applicable laws and regulations concerning the education of students with disabilities. Bard DC, in coordination with the DCPS special education team, will appoint an LEA Representative Designee to ensure compliance with IDEA and develop an inclusive learning environment for students with Individualized Education Programs. Such Designee will be a DCPS employee.

2. The Program shall provide services to English Learners in accordance with the federal Elementary and Secondary Education Act and other applicable laws and regulations concerning the education of English Learners. The Program will adhere to the DC Language Access Act when conducting grade review meetings and engaging in any meetings with students and parents who are entitled to interpretation and translation services.

i. *School Culture, SEL, Discipline*

1. Bard is committed to developing a safe, inclusive, and supportive school community at Bard DC and will direct resources available pursuant to Sections VII and XVI to support students' socio-emotional learning, including through a robust student support team, to include counselors and mental health



professionals, and advisory and other curricular programming at Bard DC aimed at developing students' socio-emotional and academic skills to support them as they navigate the early college program.

2. The Program shall comply with all federal and District laws, regulations, and requirements and all DCPS student discipline policies and practices governing suspension and expulsion of students. The Program shall comply timely with all reporting requirements and requests for discipline data, including data on suspensions and expulsions.

j. *Attendance*

1. Bard DC aims to maintain a high attendance rate through its engaging academic program and welcoming, supportive school environment. The Program will comply with DCPS' attendance policies, procedures, and reporting and tracking requirements and shall at all times comply with federal and DC laws and regulations regarding attendance.

2. The goal of the Parties is to implement a proactive, preventive model to promote high attendance for all Bard DC students. Universal efforts may include attendance awareness campaigns, providing motivational incentives for consistent attendance, and addressing community-wide issues that affect DCPS families (e.g. transportation, illness, safety). Bard DC will conduct outreach to chronically absent students and their families, including through phone, email, and home visits as needed to identify a plan to increase attendance. Bard DC's Student Support Team will address all Tier 2 and 3 attendance issues through individualized student action plans and in accordance with DC law and regulations.

k. *Student Supports*

1. The Program shall ensure that mental health services are voluntary and confidential. Prior to receiving services, all students receiving services shall be required to sign a document indicating informed, written consent for any and all mental health services provided. All information gathered by Bard about such students shall be redisclosed only with the parent's/guardian's (or adult student's) informed, written consent (except where law provides otherwise). The Parties agree that any medical data generated during the provision of services under this MOA will be maintained as confidential, and will not be released to any third parties, except as required by law or with the written consent of the student's custodial parent or guardian (or the adult student).

2. The Program shall share with DCPS as requested all data generated as a result of services covered under this MOA, including all student specific data the Program is authorized to share for those students participating in the services.

3. Crisis services can be provided in accordance with DC law and regulations without parental consent for a brief period of time as needed.

l. *School Schedule & Calendar*

1. Bard DC is required to operate on the DCPS school calendar. Any deviations from the DCPS school calendar must be approved by the Chancellor in advance of the school year.

2. The Principal has the ability to determine the schedule for Bard DC faculty, including planning and lunch time, consistent with all applicable collective bargaining agreements and District of Columbia laws



and regulations, and shall address with specificity activities required for an early-college program not addressed by the customary tour of duty for high school faculty not participating in such a program.

m. *Other*

A. *Summer Experience*

Bard DC will offer students a non-mandatory but strongly encouraged summer experience prior to school opening, which will include orientation and skill-building activities. The Summer Experience will be staffed by Bard DC staff and faculty, in accordance with applicable collective bargaining agreements.

B. *Extracurricular Activities; Field Trips*

1. Bard DC will offer students extracurricular activities based on student interest, to include student clubs, sports, and activities. Students will be surveyed about their extracurricular interests at the beginning of each school year, and activities will be largely student-led, with advisory support from faculty and staff. In addition, Bard DC will work to develop partnerships with youth-serving organizations to expand extra-curricular opportunities available to students. In adherence to DCPS policy, Bard DC will allow students to play for another high school sports team if that school offers a sport that Bard DC does not.

2. Bard DC will comply with DCPS's Field Trip policy. Bard DC will obtain fully executed versions of any required field trip permission and waiver forms prior to any Program field trips.

**III. Admissions, Enrollment**

a. *Enrollment*

1. The Program will phase in over four school years. In year four, after fully phasing in the Program, it is anticipated that the school will serve approximately 500 students. During the phase-in years, the October count day enrollment targets are:

- Year 1: 2019-2020 165 students
- Year 2: 2020-2021 330 students
- Year 3: 2021-2022: 419 students

2. In the event that the school is under-enrolled, the Program will be expected to fill open seats with eligible students from the waitlist. Eligible students are those who have completed the Bard admissions process described in Section III.b.2. and have been deemed eligible for admission by Bard DC. Over the course of this MOA, DCPS and Bard may implement jointly agreed upon enrollment preferences or goals for at-risk students or other student populations. As specified below, the annual budget allocation amount will be determined by and fluctuate in accordance with student enrollment.

3. All students must meet the requirements of District of Columbia residency laws and of MySchoolDC, the District of Columbia school lottery system ("MSDC"), and Bard shall ensure that all students enrolled in the Program meet these requirements. The Program shall participate in and support participation in the enrollment training and audits conducted by DCPS and the Office of the State Superintendent of Education ("OSSE").



4. Bard and Bard DC will undertake all reasonable actions consistent with this MOA to minimize the withdrawal or non-reenrollment of students with disabilities and English learners.

b. *Admissions*

1. The Program will serve DC residents in grades 9 – 12. The primary entry point will be 9th grade with the bulk of available seats offered at this grade. Applications will be accepted for all available grades, with limited seats available in grades 10th, 11th and 12th. During the phase in years, SY 2019-20 and SY 2020-21, Bard will enroll a small 11<sup>th</sup> grade cohort, with a larger number of seats in 11th grade than will be typically available.

2. Subject to changes in DCPS’s selective school admissions policy, Bard DC will utilize the following admissions process:

Item	Grade of Entry			
	9 <sup>th</sup>	10 <sup>th</sup>	11 <sup>th</sup>	12 <sup>th</sup>
In-person Essay	Yes	Yes	Yes	Yes
Interview	Yes	Yes	Yes	Yes
Recommendation Letters	2 recommendation letters:  1 math,  1 of applicant’s choice	2 recommendation letters:  1 math,  1 of applicant’s choice	2 recommendation letters:  1 math,  1 of applicant’s choice	2 recommendation letters:  1 math,  1 of applicant’s choice
Academic Context and Commitment	Bard and Bard DC will not review a student’s academic record, including PARCC scores and transcript, or IEPs during the admissions process.  Bard DC may review a student’s academic record only after the student is matched to the Program.	<ul style="list-style-type: none"> <li>● Transcript Review;</li> <li>● Recommended 2.0 GPA;</li> <li>● Eligible for promotion to 10<sup>th</sup> grade</li> </ul>	<ul style="list-style-type: none"> <li>● Transcript Review</li> <li>● Recommended 3.0 GPA;</li> <li>● PARCC Scores Review</li> <li>● Recommended: Met or exceeded a 4 on PARCC</li> </ul>	<ul style="list-style-type: none"> <li>● Transcript Review</li> <li>● Recommended 3.0 GPA;</li> <li>● PARCC Scores Review</li> <li>● Recommended: Met or exceeded a 4 on PARCC</li> </ul>



3. For all grades, if a recommendation is not submitted, the application should still be reviewed and considered. A lack of recommendation letters alone will not be used to deem a student ineligible.

4. The Program may not inquire about, discriminate against, or in any way discourage applications or admissions from students based on any category identified in the DC Human Rights Act, including students with disabilities and English Learners. The Program's admissions team, under the direction of the Principal, will determine each student's eligibility for admissions. Admissions decisions should reflect the agreed upon criteria and process, publicly posted by MSDC and DCPS. Any change to the process or criteria must be approved by DCPS and Bard.

5. As a selective citywide program, students must apply through the MSDC lottery to seek admission to the Program. The Program's admission process will adhere to the MSDC timelines. Non-District of Columbia residents are not eligible to apply to the Program. Only eligible students will be matched through the lottery. If there are more eligible students than there are seats, these students will be placed on a waitlist. Students who apply after the lottery and are deemed eligible will be admitted or placed on a waitlist, depending on seat availability. No student may be admitted to the Program without Bard's approval.

6. In the Program, students begin college preparatory training in the beginning of 9th grade. As a result of the academic demands of college level courses, after the school is fully phased in, it is likely that only a limited number of new students will be able to successfully enroll in the program after the beginning of 11<sup>th</sup> grade.

#### **IV. Governance & Accountability**

##### *a. Governance*

1. The Chancellor has the ultimate responsibility for the performance of students, for schools, and for employees within DCPS. Bard will be responsible for managing and operating all aspects of the academic program and student experience at the Program according to the terms and conditions of this MOA and shall assure the school's compliance with this MOA and all applicable laws and regulations.

2. Bard will provide oversight and support for Bard DC through the Bard Early Colleges Network Team. The Bard Early Colleges Network Team provides support and oversight of the academic program, including curriculum, hiring, and academic policies, and support for the leadership team in the form of professional training and access to a robust inter-campus community. The Network Team also provides finance and operations support, including human resources and budgetary support and oversight, fundraising, partnership development and management, policy engagement, support around new or institution-wide initiatives, and data support. The Bard Early Colleges Network Team will work directly and regularly with Bard DC and reports to senior leadership of Bard.

3. In accordance with the Chancellor's ultimate authority, the Chancellor's official designee will oversee, monitor, and evaluate the school's performance, operation, and compliance with this MOA and with all laws, regulations, and applicable policies. Bard and all employees shall cooperate with DCPS and its employees in connection to DCPS' monitoring and evaluation of the school, including providing timely





access to all staff, materials, records, documents, trainings, and other information DCPS determines it needs to implement this MOA.

*b. Performance Accountability*

1. DCPS will annually evaluate Bard DC’s performance in accordance with the metrics, goals, and floors set out below. There will be two tiers of floors and goals. The Program’s performance on Tier One metrics may result in DCPS taking action in accordance with the provisions below. DCPS will track the Program’s performance on Tier Two metrics, in accordance with the provisions below.

2. The Program will be a public high school in the District of Columbia and will be subject to the accountability provisions and requirements in District and federal law, and of OSSE. The school performance measures do not restrict Bard from conducting its own evaluations of the school and courses, consistent with federal and DC laws and regulations.

Tier One

	<b>Business Rules</b>	<b>SY2022-2023 Goal</b>	<b>SY2021-2022 Goal</b>	<b>SY2019-2020; SY2020- 2021 Goal</b>	<b>Floor</b>
STAR Rating	OSSE Rules	5	4	3	3, when applicable
PARCC 9th grade	OSSE Rules, excluding alternative schools	Meet or exceed selective high school average	Meet or exceed selective high school average	Meet or exceed selective high school average	Exceed DCPS high school average
PARCC 10th grade	OSSE Rules, excluding alternative schools	Meet or exceed DCPS selective high school average	Meet or exceed DCPS selective high school average	Meet or exceed DCPS selective high school average	Exceed DCPS high school average
PSAT (Fall Junior)	OSSE Rules, excluding alternative schools	Meet or exceed DCPS selective high school average	Meet or exceed DCPS selective high school average	Meet or exceed DCPS selective high school average	Exceed DCPS high school average
SAT (Fall Senior)	OSSE Rules, excluding alternative schools	Meet or exceed DCPS selective high school average of % college ready	Meet or exceed DCPS selective high school average of % college ready	Meet or exceed DCPS selective high school average of % college ready	Exceed DCPS high school average of % college ready
HS Growth	OSSE Rules, excluding	Meet or exceed DCPS selective	Meet or exceed DCPS selective	Meet or exceed DCPS selective	Exceed DCPS high school average



	alternative schools	high school average	high school average	high school average	
Graduation Rate	OSSE Rules, excluding alternative schools	100%	95%	90% (SY 2020-21)	80% in SY2020-21, 85% starting in 2023
Retention/ Re-enrollment	OSSE Rules, excluding alternative schools	95%	90%	85%	80%
College Credit Attainment	DCPS and Bard agreed upon rules	30 credits: 90%	30 credits: 90%	30 credits: 85%	30 credits: 80% in 2021 and 85% in 2023 and 2024
Associate's in Arts Degree Attainment (Year 1 fall matriculation to completion)	DCPS and Bard agreed upon rules	AA: 65-75%	AA: 65%	NA	AA: 50% starting in SY 2023
Promotion	DCPS Policy	100%	100%	100%	90%
College Acceptance	DCPS and Bard agreed upon rules	100%	100%	85%	80% in 2021, 85% starting in 2023
College Enrollment of graduates (within 6 months, using National Student Clearinghouse data)	DCPS and Bard agreed upon rules	85%	75%	NA	67%
College Persistence of graduates (freshmen to	DCPS and Bard agreed upon rules	85%	n/a	n/a	65%, when applicable



sophomore year, using National Student Clearinghouse data)					
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Tier Two

	Business Rules	Spring 2024 Goal	Spring 2023 Goal	Spring 2021 Goal	Floor
Attendance	OSSE Rules	95%	95%	93%	88%
Discipline: % students suspended at least once		0%	0%	3%	4%
% students reporting, they feel “loved” on the annual panorama survey	DCPS Policy	65%	60%	55%	45%
% students reporting, they feel “challenged” on the annual panorama survey	DCPS Policy	75%	70%	65%	60%

*c. Annual Report*

Bard will provide to DCPS an annual report that includes a summary and assessment, including strengths and areas for growth, of the school’s academic year, including performance and programming, the operations of the school, the school culture, and Bard’s and Bard DC’s compliance with applicable laws, regulations, and policies. The annual report will evaluate progress towards meeting the Goals outlined above and include strategies, approaches, or other applicable information regarding Bard’s plan to meet the Goals in the next school year. The annual report will be provided to DCPS by September 1 for the prior school year.



*d. Compliance & Notification*

Bard DC and Bard shall cooperate fully in all reviews, investigations, audits, performance determinations, compliance monitoring, and corrective actions, conducted, initiated, or required by, at a minimum, DCPS, OSSE, or other District of Columbia or federal agencies.

Each Party shall promptly report to the other Party any material breach of this MOA or applicable laws or regulations or any incident, condition, or other thing that may jeopardize the Program's ability to continue in operation. Bard shall promptly notify DCPS of any material changes to Bard's senior staff of the Bard Early Colleges Network Team and Bard DC-based staff no later than five (5) days following such changes taking effect.

*e. Corrective Action*

1. DCPS shall have the authority to require a corrective action plan that includes additional terms, conditions, actions, or requirements for the school and/or Bard

- i. If the school fails to meet the floor on Tier One performance measure(s) for more than one consecutive year or fails to meet the floor on two Tier One performance measures in one year, or
- ii. In response to uncorrected instances of non-compliance by the Program with laws, regulations, applicable policies, and this MOA or in response to any material operational concerns at Bard DC.

2. DCPS shall give Bard the opportunity to provide its own evaluation of the Program's performance and to recommend a related action plan for any observed deficiency. DCPS shall consider that evaluation and recommendations when making decisions regarding the Program's performance.

*f. Improvement Plan*

DCPS shall have the authority to require Bard to submit an improvement plan if the Program fails to meet the floor on one Tier Two performance measure for more than one consecutive year or fails to meet the floor on two Tier Two performance measures in one year.

*g. Termination*

1. DCPS shall have the right to terminate this MOA at any time for cause if

- i. Bard DC commits any material breach of this MOA, or violation of an applicable law, regulation or policy that hinders the successful operation of the Program or risks the health or safety of any student;
- ii. Following implementation of a corrective action plan, Bard DC fails to exceed the floor on the Tier One performance measure in question on the timeframe reflected in the corrective action plan; or



- iii. The funding arrangement between Bard and the DC Public Education Fund (“DCPEF”) is terminated or reduced in any material respect and the College and DCPS fail to reach agreement on mutually agreeable replacement funding arrangements.

Before terminating for cause under this section, DCPS must first provide written notice to Bard and Bard DC describing DCPS’ cause for terminating the MOA and offer Bard not less than thirty (30) days to cure the violation or submit an approved plan for doing so within an appropriate time frame. If the matter is not resolved or appropriately responded to by the end of the specified period, then any previously delivered termination notice becomes effective without further notice.

2. DCPS shall have the right to terminate this MOA in whole or in part without cause by providing written notice to Bard and Bard DC if, in DCPS’ sole discretion, such termination is in the best interest of DCPS or the District. Such written notice must be provided to Bard at least 90 days prior to the termination taking effect.

3. Bard shall have the right to terminate this MOA for cause if

- i. DCPS commits any material breach of this MOA;
- ii. There is a material decline in the funding for DCPS by the DC Council;
- iii. DCPS fails to fund or disburse any material amount budgeted by DCPS, in accordance with practice for all DCPS schools, for Bard DC for any year of the term of this MOA; or
- iv. The funding arrangement between Bard and DCPEF is terminated, reduced, or delayed in any material respect and Bard and DCPS fail to reach agreement on mutually agreeable replacement funding arrangements.

Before terminating for cause, Bard must first provide written notice to DCPS describing Bard’s cause for terminating the MOA and offer DCPS not less than thirty (30) days to either cure the violation or submit an approved plan for doing so within an appropriate time frame. If the matter is not resolved or appropriately responded to by the end of the specified time period, then any previously delivered termination notice becomes effective at the end of the then current school year.

4. Bard shall have the right to terminate this MOA in whole or in part by providing written notice to DCPS if DCPS implements a policy under its authority, whether or not required by a change in law or regulation, that results in a material and substantial change in the Program. Such written notice must be provided to DCPS by November 15 in order to go into effect for the following school year. Any notice provided after November 15 will go in to effect after the next school year.

5. Bard shall have the right to terminate this MOA in whole or in part by providing written notice to DCPS if Bard becomes financially insolvent or undergoes a material or substantial change to its structure or academic program that limits or removes its ability to offer the Program. Such written notice must be provided to DCPS no later than 15 days from the time of the change going into effect in order to go into effect for the following school year.



6. Following any termination, both parties will cease using the other party's names in connection with the Program and the College shall cease to have any further obligation to DCPS or its students in connection with the Program, except as required by law and accreditation and as otherwise agreed to in this MOA or at the time, including the agreement in this MOA that students will retain any Bard college credits earned during the course of the program prior to termination.

**V. Staff**

*a. Principal*

1. The Principal selection process will be conducted in accordance with applicable laws and regulations. Bard will identify a pool of possible principals that Bard has determined to be qualified in academic background and experience to serve as a head of the Program. DCPS will review all qualified candidates identified by Bard. Bard may provide input regarding and may make recommendations to DC Public Schools regarding each candidate. DC Public Schools may include a community panel or other input processes as part of the principal selection process, in accordance with applicable regulations.

2. The Chancellor has ultimate authority over the selection of the Principal, although the Principal must be selected from the pool of candidates reviewed by Bard and determined to be qualified. The Chancellor will give as much consideration to Bard's input and recommendations as allowable under applicable laws and regulations. The Principal will be an employee of DC Public Schools.

3. DCPS shall evaluate the Principal and will include informal input from Bard. The Program will use DC Public School's designated performance evaluation systems.

*b. Faculty and Other Staff Hiring*

1. The Principal shall recruit and select all administrative, instructional, and non-instructional staff, in accordance with federal and DC laws and regulations and all collective bargaining agreements. Instructional staff will have the qualifications necessary to teach at a branch campus of Bard in terms of their academic background and experience, as determined by Bard. All college level courses and most high school courses shall be taught by college-credentialed teachers, typically with a Ph.D. or other terminal degrees, experience in teaching at the college level, and who are active in their fields.

2. The Principal shall hire administrative, instructional and non-instructional staff as employees of DC Public Schools to fulfill all the roles, positions, and obligations required by DC and federal laws and regulations and all collective bargaining agreements. The Program will abide by the terms of all collective bargaining agreements, including limitations on the length of tours of duty. Bard acknowledges that the collective bargaining agreement at the time of this MOA limits the tour of duty to 7.5 hours a day, including planning and lunch time.

*c. Bard Support and Services*

Bard DC with support from Bard shall provide support and services-to the Program's students as part of the school's academic, career, and school programing.

*d. Compensation, Benefits, and Employee Rights*



DC Public Schools employees are in certified collective bargaining unit(s) with other school-based employees in similar job classifications and requiring similar qualifications. Employees in union positions are entitled to the negotiated salaries, benefits, and working conditions in the relevant collective bargaining agreement for their job classification and such qualifications. All hiring of DCPS employees will be in accordance with DC laws and regulations and DCPS Policies.

e. *Evaluation*

The Program will use DC Public Schools' designated performance evaluation systems.

f. *Credential, Licensure*

1. All DC Public Schools employees at the Program shall meet all necessary and applicable licenses and certifications required by federal and District of Columbia law either at the time of hiring or at a specified later date consistent with such laws.
2. DC Public Schools will work with Bard and OSSE on licensure and certification requirements to support the Program as needed.

g. *Background Checks & Fingerprinting*

All the Program staff, including DC Public School employees and school-based Bard employees and all volunteers shall receive a criminal background check and traffic record check, including fingerprinting and a tuberculosis screening. Any Program staff who have not submitted to any required criminal background check and/or traffic records check shall be restricted from serving in the Program. All school-based staff must submit to pre-employment drug testing, in compliance with DC law and DC Public Schools Policy and are subject to subsequent drug testing pursuant to DCPS' Mandatory Drug and Alcohol Testing Policy.

h. *Staff Training & Professional Development*

1. All staff including DCPS and Bard employees with a presence in the school or a direct role in supporting or managing the school shall be trained on all federal and DC laws and regulations and all applicable DCPS policies, including laws, regulations, and policies for which an employee has a specific role or responsibility. Bard shall ensure all staff supporting Bard DC are appropriately trained. Bard shall demonstrate to DCPS, upon request, compliance with this provision.
2. The Program's school leaders will participate in DCPS onboarding, including New Principal Orientation and New Assistant Principal Orientation. The school leaders have the option of participating in other professional development opportunities such as the New Principal Professional Learning, Summer Leadership Institute, Leadership Academy and AP development cohorts. Teachers new to DCPS must attend New Educator Orientation. Bard staff will be invited to professional development opportunities through the DCPS College and Career Team.
3. Bard DC staff will be otherwise exempt from participating in DCPS professional development activities. Bard DC will offer pre- and in-service professional development to Bard DC faculty and staff. All professional development will be provided in accordance with collective bargaining agreements and where required by such agreements, staff will be compensated with administrative premium. All in-

service professional development will take place in accordance with the DCPS calendar. Trainings will be provided by in-house facilitators from the Bard network or by trainers selected by Bard from external organizations with expertise in the specific topic.

4. Professional development days will take place during the year on the same days as DCPS professional development, as specified in the DCPS school year calendar. Professional development will build upon topics covered in pre-service training and others aimed at supporting effective instruction. The professional development days organized by Bard may include site visits to other Bard Early College campuses and opportunities for exchanges among faculty at different campuses. Professional development topics will be determined by the school leadership, with support from the Bard Early Colleges Network Team, prior to the start of each school year. Bard will submit the list of professional development topics to DCPS prior the start of each academic year. DCPS shall have the opportunity to review all training materials and will make available to Bard all DCPS trainings and materials upon request.

## **VI. Grievances**

All grievances, including grievances filed by or on behalf of staff, students, or families at Bard must be administered according to the DCPS Grievance Policy and Procedure (Chancellor's Directive #325), or any subsequent version of this policy, and all applicable grievance provisions in the DCMR. Complaints of sex-based discrimination or sexual misconduct against students must be administered according to a forthcoming policy and any subsequent versions of that policy. Students may also bring grievances to the HELC if such grievances fall under HELC's jurisdiction.

## **VII. Funding, Anti-Deficiency Considerations, Tuition**

### *a. School Funding*

Each year, DCPS will provide funding for Bard DC in accordance with its process or formula for funding other, similar DCPS high schools. The Bard DC annual funding amount is dependent upon enrollment and funding levels for DCPS. DCPS understands Bard has an early college model that includes components such as class sizes, teacher to student ratios, and administrative structures; the budget allocation will be determined in a manner satisfactory to both parties, contingent on the provision of funds by the annual city budget. The funding commitments in this MOA are not legally binding on DCPS and they in no way obligate DCPS to expend any future funds. All obligations intended for the Program are contingent on the availability of appropriated funds. During the term of this MOA, Bard and DCPS will engage in discussions regarding financial support for the program beyond the term of this MOA. DCPS recognizes that there is a cost to Bard of operating the dual degree program at Bard DC ("the Bard reimbursement amount") and that the Bard reimbursement amount (currently \$200,000 annually and necessary for the College to sustain its role in the School) is being borne by private philanthropy during the term of this MOA. Subject to the availability of appropriated funds and compliance with applicable District of Columbia procurement laws, DCPS intends to enter into an agreement with Bard to address the Bard reimbursement amount starting in SY 2022-23.

The Principal, hired by the Chancellor, shall have autonomy over the use of the school's budget allocation, in accordance with all federal and DC laws and regulations, including hiring and procurement laws and regulations, and all collective bargaining agreements. Bard DC will follow DCPS's procurement process for non-personal funding.



DCPS acknowledges that Bard may conduct fundraising activities to supplement resources at the school, provided, however that all fundraising activities must be conducted in compliance with local law and regulations, and Bard acknowledges that any goods or services provided by Bard under this MOA must be donated to DCPS through the donation review process administered by the District of Columbia Office of Partnerships and Grant Services.

*b. Anti-Deficiency Considerations*

DCPS' duty to fulfill financial obligations of any kind pursuant to any and all provisions of this MOA, or any subsequent agreement entered into pursuant to this MOA, are and shall remain subject to the provisions of (i) the federal Anti-Deficiency Act, 31 U.S.C. §§ 1341, 1342, 1349-1351; (ii) the District of Columbia Anti-Deficiency Act, D.C. Official Code §§ 47-355.01 – 355.08; (iii) D.C. Official Code § 47-105 (2001); and (iv) D.C. Official Code § 1-204.46 (2006 Supp.), as the foregoing statutes may be amended from time to time, regardless of whether a particular obligation has been expressly so conditioned. Pursuant to the Anti-Deficiency Acts, nothing in this MOA shall create an obligation on DCPS in anticipation of an appropriation by Congress for such purpose, and DCPS' legal liability for any obligations under this MOA shall not arise or obtain in advance of the lawful availability of appropriated funds for the applicable fiscal year as approved by Congress.

*c. Tuition*

In accordance with 5-A DCMR § 2401.3, participating DCPS students and families shall not be held responsible for the cost of tuition and fees for Program courses.

**VIII. Data, Reporting**

1. Students at the Program shall be considered students at DC Public Schools for the purposes of 34 CFR § 99.31(a)(1), and DC Public School's employees and Bard employees shall have access to education records of prospective, current and former students of the Program and personally identifiable information relating to such students, to the extent that those employees have legitimate educational interests in such records and information, subject to the following conditions:

- Access to education records and personally identifiable information in such records shall be in accordance with all applicable DC Public Schools policies and procedures;
- Both Parties will access, use, restrict, safeguard, and dispose of all confidential information, including education records, related to this MOA in accordance with the Family Educational Rights and Privacy Act ("FERPA") and all other applicable local and federal privacy statutes, regulations, and policies at all times.

2. The Program's use and maintenance of education records shall be subject to monitoring and supervision by DC Public Schools.

3. The Program agrees to use all DCPS or OSSE-required student information systems for the collection of student and staff data and to facilitate the transfer of required student data elements to DCPS Central Office and to OSSE. Relevant staff must participate in trainings required by DC Public Schools for use of the applicable student information systems.



4. Bard will use DCPS's approved system of record for managing college exploration and applications, scholarship awards, and all post-secondary planning. DCPS will provide Bard leadership with a monthly report on progress towards college application/enrollment milestones.

5. The Program agrees that the student and staff records collected in DCPS systems will be transmitted to OSSE consistent with other DC Public Schools student records for all required OSSE data collections including but not limited to daily data collections, discipline collection, faculty and staff data collection, health profile, National Student Clearinghouse records, assessments, and special education records. DCPS will include Bard DC graduates in the annual submission to the National Student Clearinghouse. Bard DC will be included in all public reporting about college enrollment, persistence and completion.

6. The Program agrees to maintain a student cumulative file consistent with other schools in DC Public Schools containing enrollment, residency, and student academic records on-site, and consistent with laws and regulations.

7. Bard may use student achievement data to conduct its own evaluations of the school and/or work with external organizations to study the impact of the Program on student success. All research agreements or data sharing with all external organizations or parties regarding Bard DC must be reviewed and approved by DCPS prior to execution and must be conducted in compliance with laws and regulations including FERPA.

#### **IX. Operations**

1. DCPS is responsible for providing a facility for Bard DC that is appropriate for an early college high school program. DCPS and the Department of General Services ("DGS") are responsible for cleaning, maintaining, and ensuring all aspects of the space are in good operating condition and in compliance with all applicable legal requirements. In the event of a co-location, such facilities shall be physically distinct from any co-located school in a manner reasonably acceptable to DCPS and Bard. In addition, such facilities will include at a minimum appropriate classroom, laboratory, faculty office, library, performance, and cafeteria spaces, based on viable options within DCPS. DCPS shall notify Bard of any renovation or capital improvement planning and will make reasonable efforts to incorporate Bard's recommendations in to the updated specification for the space.

2. Bard DC will occupy and use the building in accordance with DCPS facility and operations policies and practices and with laws and regulations, including health and safety laws and regulations. The facility will be available for external use consistent with other DCPS buildings. External use of the building will be coordinated through DCPS and DGS and pursuant to all applicable DCPS policies.

3. Bard DC will receive security staff and supports in a manner similar to other high schools. Bard DC will comply with all DCPS security policies and practices. Bard DC will use DCPS's incident reporting and tracking system or any similar relevant system. Bard DC will have food services on site. The food services will comply with all federal and local nutrition requirements. Bard and Bard DC staff will work with DCPS on requirements or needs related to the provision of food at the school, including maintenance and submission of any required data.

4. Bard DC will develop a school safety plan and conduct all required safety drills.



**X. Communications and Engagement**

1. DCPS and Bard will collaborate on communications and engagement to support the success of Bard DC. DCPS shall provide communications and engagement support to Bard DC in a manner consistent with how DCPS provides support for other DCPS schools. DCPS employees shall engage in communications, media, press, and family, community, and intergovernmental engagement, in a manner consistent with other DCPS schools. DCPS shall provide personnel to support media services at Bard DC in a manner consistent with how DCPS provides personnel to support such services in other DCPS schools. Such personnel shall reasonably cooperate with the school in providing such services to support the Program's media communications. The Program will obtain fully executed versions of any required media consent forms for the use of student images and recordings in the Program prior to the start of the Program.

Bard personnel, acting on behalf of the College, will collaborate with DCPS on communications and community engagement that pertains to the District of Columbia. Bard and DCPS will outline the objectives and processes for collaboration in a Communications and Engagement Plan contained in a separate Letter of Intent between the Parties. Bard personnel will collaborate with DCPS regarding development of an annual plan and protocol for advocacy on behalf of Bard DC before the DC Council, State Board of Education or other local political entities and officials, which shall be incorporated into the above-referenced Communications and Engagement Plan. In some instances, Bard advocacy on behalf of Bard DC will require prior engagement with DCPS, as reflected in the Communications and Engagement Plan.

2. Bard shall not use the logo for DCPS, the District of Columbia government, or any other District of Columbia government agency in any way including, but not limited to, in any statement, promotional materials (including on Bard's website), or other published materials unless authorized by DCPS for Bard DC purposes. In addition, Bard shall not use the name of DCPS, the District of Columbia government, or any other District of Columbia agency in any statement, promotional materials (including on Bard's website) or in any published materials in a manner which states or implies support for or an endorsement of Bard by DCPS, unless authorized by DCPS for Bard DC purposes.

3. DCPS shall not use the logo for Bard, the Bard Early Colleges, or any other Bard entity in any way including, but not limited to, in any statement, promotional materials (including on the DCPS website), or other published materials unless with the consent of Bard.

4. Bard DC will have a Local School Advisory Team (LSAT), consistent with the expectations for DCPS schools, and the Principal will strongly consider LSAT advice on topics including, but not limited to, budget, school priorities and initiatives, and school goals.

5. A DCPS engagement team will support Bard DC in developing a family and community engagement approach, based on minimum expectations for DCPS schools and best practices. The minimum engagement expectations include bi-weekly newsletters, monthly Principal Chats, monthly LSAT Meetings, thrice annual school community meetings on school data/progress.

6. Bard may develop an advisory board apart from the LSAT to advise the school leadership around the campus and the student experience, but an LSAT group and the expectations for its membership and activities is required. Bard will adhere to the current LSAT guidance found on the DCPS website (<https://dcps.dc.gov/page/local-school-advisory-teams-lsat>) as it pertains to membership, code of



conduct, purpose, etc. Bard will consult DCPS on membership and activities of this advisory board. Any such board will not have governance authority over the school and its determinations and actions shall not supersede the role of the LSAT nor any of the terms described in this MOA.

#### **XI. Laws and Regulations**

1. Bard shall operate in compliance with all applicable laws, rules and regulations, including all federal and DC laws and regulations, related to the Program and its obligations under this MOA whether now in force or hereafter enacted or promulgated. In addition, Bard shall at all times maintain any District of Columbia or federal license, registration or certification or accreditation it is legally required to obtain to provide the services referenced in this MOA, and provide a copy of such documentation to DCPS upon request. Bard shall ensure that at no time during the term of this MOA it owes the District of Columbia Government more than \$100 in outstanding fines, penalties, past due taxes or interest.

2. Bard shall comply with all federal and DC laws and regulations prohibiting discrimination, including but not limited to the District of Columbia Human Rights Act, Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, and Section 504 of the Rehabilitation Act of 1973, and will not discriminate on the basis of race, religion, color, national origin or ancestry, sex, gender identity, sexual orientation, age, marital status, disability, immigration status, or any other designation set forth in any of the above statutes. This applies to all educational programs, extra-curricular activities, and personnel.

#### **XII. Liability**

Bard DC, the Principal, the faculty, and all other personnel employed by DCPS at Bard DC will be treated as any other high school and its employees in the DCPS portfolio notwithstanding that Bard DC is an accredited additional location of Bard and Bard is the academic partner for Bard DC subject to DCPS policies and pursuant to this MOA; provided, however, that to the extent set forth below, Bard shall be responsible for Bard employees on Bard's payroll ("Bard Personnel") providing services to the Program pursuant to this MOA.

Bard shall be solely liable for all property damage and bodily injury claims that are finally determined in any applicable proceeding for such claim (other than any proceeding administered by DCPS) to be solely arising from, or solely related to Bard and/or any Bard Personnel providing services to the Program pursuant to this MOA and, promptly following any such determination, Bard shall reimburse DCPS for any damages, costs or expenses incurred by DCPS under this MOA or otherwise in connection with any such claim, whether incurred before or after such determination. In no event will Bard or any Bard Personnel be liable to DCPS for any indirect, incidental, special or consequential damages arising out of or related to the Program or this MOA, whether in an action in contract, tort, strict liability or negligence, or other actions.

#### **XIII. Insurance**

- a. GENERAL REQUIREMENTS. Bard at its sole expense shall procure and maintain, during the entire period of performance under this MOA, the types of insurance specified below. Bard shall have its insurance broker or insurance company submit a Certificate of Insurance to the Contracting Officer for this MOA (the "CO") giving evidence of the required coverage prior to commencing performance under this MOA. In no event shall any work be performed until the



required Certificates of Insurance signed by an authorized representative of the insurer(s) have been provided to, and accepted by, the CO. All insurance shall be written with financially responsible companies authorized to do business in the District of Columbia or in the jurisdiction where the work is to be performed and have an A.M. Best Company rating of A- / VII or higher. Bard shall require all of its subcontractors to carry the same insurance required herein.

All required policies shall contain a waiver of subrogation provision in favor of the Government of the District of Columbia.

The Government of the District of Columbia shall be included in all policies required hereunder to be maintained by Bard and its subcontractors (except for workers' compensation and professional liability insurance) as an additional insureds for claims against The Government of the District of Columbia relating to this MOA, with the understanding that any affirmative obligation imposed upon Bard or its subcontractors (including without limitation the liability to pay premiums) shall be the sole obligation of Bard or its subcontractors, and not the additional insured. The additional insured status under Bard's and its subcontractors' Commercial General Liability insurance policies shall be effected using the ISO Additional Insured Endorsement form CG 20 10 11 85 (or CG 20 10 07 04 and CG 20 37 07 04) or such other endorsement or combination of endorsements providing coverage at least as broad and approved by the CO in writing. All of Bard's and its subcontractors' liability policies (except for workers' compensation and professional liability insurance) shall be endorsed using ISO form CG 20 01 04 13 or its equivalent so as to indicate that such policies provide primary coverage (without any right of contribution by any other insurance, reinsurance or self-insurance, including any deductible or retention, maintained by an Additional Insured) for all claims against the additional insured arising out of the performance of this MOA by Bard or its subcontractors, or anyone for whom Bard or its subcontractors may be liable. These policies shall include a separation of insureds clause applicable to the additional insured.

If Bard and/or its subcontractors maintain broader coverage and/or higher limits than the minimums shown below, the District of Columbia requires and shall be entitled to the broader coverage and/or the higher limits maintained by Bard and subcontractors.

1. Commercial General Liability Insurance ("CGL") - Bard shall provide evidence satisfactory to the CO with respect to the services performed that it carries a CGL policy, written on an occurrence (not claims-made) basis, on Insurance Services Office, Inc. ("ISO") form CG 00 01 04 13 (or another occurrence-based form with coverage at least as broad and approved by the CO in writing), covering liability for all ongoing and completed operations of Bard, including ongoing and completed operations under all subcontracts, and covering claims for bodily injury, including without limitation sickness, disease or death of any persons, injury to or destruction of property, including loss of use resulting therefrom, personal and advertising injury, and including coverage for liability arising out of an Insured Contract (including the tort liability of another assumed in a contract) and acts of terrorism (whether caused by a foreign or domestic source). Such coverage shall have limits of liability of not less than \$1,000,000 each occurrence, a \$2,000,000 general aggregate (including a per location or per project aggregate limit endorsement, if applicable) limit, a \$1,000,000 personal and advertising injury limit, and a \$2,000,000 products-completed operations aggregate limit.



2. Automobile Liability Insurance - Bard shall provide evidence satisfactory to the CO of commercial (business) automobile liability insurance written on ISO form CA 00 01 10 13 (or another form with coverage at least as broad and approved by the CO in writing) including coverage for all owned, hired, borrowed and non-owned vehicles and equipment used by Bard, with minimum per accident limits equal to the greater of (i) the limits set forth in Bard's commercial automobile liability policy or (ii) \$1,000,000 per occurrence combined single limit for bodily injury and property damage.
3. Workers' Compensation Insurance - Bard shall provide evidence satisfactory to the CO of Workers' Compensation insurance in accordance with the statutory mandates of the District of Columbia or the jurisdiction in which the MOA is performed.

Employer's Liability Insurance - Bard shall provide evidence satisfactory to the CO of employer's liability insurance as follows: \$500,000 per accident for injury; \$500,000 per employee for disease; and \$500,000 for policy disease limit.

All insurance required by this paragraph 3 shall include a waiver of subrogation endorsement for the benefit of Government of the District of Columbia.

4. Cyber Liability Insurance - Bard shall provide evidence satisfactory to the CO of Cyber Liability Insurance, with limits not less than \$5,000,000 per occurrence or claim, \$5,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Bard in this MOA and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations. This insurance requirement will be considered met if the general liability insurance includes an affirmative cyber endorsement for the required amounts and coverages.
5. Professional Liability Insurance (Errors & Omissions) - Bard shall provide Professional Liability Insurance (Errors and Omissions) to cover liability resulting from any error or omission in the performance of professional services under this MOA. The policy shall provide limits of \$5,000,000 per claim or per occurrence for each wrongful act and \$5,000,000 annual aggregate. Bard warrants that any applicable retroactive date precedes the date Bard first performed any professional services for the Government of the District of Columbia and that continuous coverage will be maintained or an extended reporting period will be exercised for a period of at least ten years after the completion of the professional services.
6. Sexual/Physical Abuse & Molestation - Bard shall provide evidence satisfactory to the CO with respect to the services performed that it carries \$1,000,000 per occurrence limits; \$2,000,000 aggregate of affirmative abuse and molestation liability coverage. This insurance requirement will be considered met if the general liability insurance includes an affirmative sexual abuse and molestation endorsement for the required amounts. So called



“silent” coverage under a commercial general liability or professional liability policy will not be acceptable.

7. Commercial Umbrella or Excess Liability - Bard shall provide evidence satisfactory to the CO of commercial umbrella or excess liability insurance with minimum limits equal to the greater of (i) the limits set forth in Bard’s umbrella or excess liability policy or (ii) \$20,000,000 per occurrence and \$20,000,000 in the annual aggregate, following the form and in excess of Commercial General, Automobile and Employer’s Liability Insurance. Commercial General, Automobile and Employer’s Liability coverages must be scheduled under the umbrella and/or excess policy. Sexual/Physical Abuse & Molestation is sub-limited at \$10,000,000 under the Umbrella form. The insurance required under this paragraph shall be written in a form that annually reinstates all required limits. Coverage shall be primary to any insurance, self-insurance or reinsurance maintained by the District and the “other insurance” provision must be amended in accordance with this requirement and principles of vertical exhaustion.

b. PRIMARY AND NONCONTRIBUTORY INSURANCE

The insurance required herein shall be primary to and will not seek contribution from any other insurance, reinsurance or self-insurance including any deductible or retention, maintained by the Government of the District of Columbia.

- c. DURATION. Bard shall carry all required insurance until all work under this MOA is accepted by the District of Columbia and shall carry listed coverages for ten years for construction projects following final acceptance of the work performed under this MOA and two years for non-construction related contracts.

- d. LIABILITY. These are the required minimum insurance requirements established by the District of Columbia. **HOWEVER, THE REQUIRED MINIMUM INSURANCE REQUIREMENTS PROVIDED ABOVE WILL NOT IN ANY WAY LIMIT BARD’S LIABILITY UNDER THIS MOA.**

- e. BARD’S PROPERTY. Bard and subcontractors are solely responsible for any loss or damage to their personal property, including but not limited to tools and equipment, scaffolding and temporary structures, rented machinery, or owned and leased equipment. A waiver of subrogation shall apply in favor of the District of Columbia.

- f. Measure of Payment. The District of Columbia shall not make any separate measure or payment for the cost of insurance and bonds. Bard shall include all of the costs of insurance and bonds in its cost of services.

- g. NOTIFICATION. Bard shall ensure that all policies provide that the CO shall be given thirty (30) days prior written notice in the event of coverage and / or limit changes or if the policy is canceled prior to the expiration date shown on the certificate. Bard shall provide the CO with ten (10) days prior written notice in the event of non-payment of premium. Bard will also provide the CO with an updated Certificate of Insurance should its insurance coverages renew during the MOA.

- h. CERTIFICATES OF INSURANCE. Bard shall submit certificates of insurance giving evidence of the required coverage as specified in this section prior to commencing work. Certificates of



insurance must reference the corresponding MOA name. Evidence of insurance shall be submitted to:

**The Government of the District of Columbia**

**And mailed to the attention of the CO:**

**Conchita Hudson-Hall**

**Deputy Chief, Compliance & Policy**

**District of Columbia Public Schools**

**1200 First Street, NE**

**Washington, DC 20002**

**Email:**

**Phone: 202.719.6539**

The CO may request and Bard shall promptly deliver updated certificates of insurance, endorsements indicating the required coverages, and/or certified copies of the insurance policies. If the insurance initially obtained by Bard expires prior to completion of the MOA, renewal certificates of insurance and additional insured and other endorsements shall be furnished to the CO prior to the date of expiration of all such initial insurance. For all coverage required to be maintained after completion, an additional certificate of insurance evidencing such coverage shall be submitted to the CO on an annual basis as the coverage is renewed (or replaced).

- i. **DISCLOSURE OF INFORMATION.** Bard agrees that the District of Columbia may disclose the name and contact information of its insurers to any third party which presents a claim against the District of Columbia for any damages or claims resulting from or arising out of work performed by Bard, its agents, employees, servants or subcontractors in the performance of this MOA.
- j. **CARRIER RATINGS.** All Bard's and its subcontractors' insurance required in connection with this MOA shall be written by insurance companies with an A.M. Best Insurance Guide rating of at least A- VII (or the equivalent by any other rating agency) and licensed in the District of Columbia.

**XIV. Assumption of Risk, Indemnification and Waiver**

Bard hereby agrees that all of its property and activities of any kind or nature whatsoever in, upon, or about the designated space it utilizes on DCPS property at any time during the term of this MOA, or any renewal or extension hereof, shall be in, upon or about such property at the sole risk and hazard of Bard. Moreover, subject to the provisions of this MOA above under "Liability," Bard hereby agrees to indemnify and save harmless the District of Columbia Government, its agencies (including DCPS), elected/appointed officials, employees, agents and volunteers ("Protected Entities"), against and from all penalties, claims, actions, damages, liabilities, injuries, losses and costs (including reasonable attorneys' fees) of every nature that have been finally determined in any applicable proceeding related to a claim for such amounts (other than any proceeding administered by DCPS) to be solely arising from, or solely related to (i) Bard's (including Bard Personnel's) use and occupancy of DCPS property in connection with this MOA or (ii) Bard's (including Bard Personnel's) acts or omissions in conducting Program activities, in each case ((i) and (ii)) with the exception of any such





penalties, claims, actions, damages, liabilities, injuries, losses and costs solely resulting from DCPS' gross negligence or willful misconduct. It is expressly understood that the Protected Entities shall not be liable to Bard for any accident, injury, loss, or damage while Bard Personnel are in, upon, or about, or entering or leaving DCPS property at any time during the term of this MOA or any renewal or extension hereof, with the exception of any accident, injury, loss, or damage solely resulting from DCPS' gross negligence or willful misconduct, and all non-exempted claims are hereby released to the Protected Entities, who may plead this release in bar thereof, in any and every suit, demand and claim for same. Bard's covenants, obligations, and liabilities under this section shall survive the expiration or earlier termination of this MOA.

**XV. Notices and Contact Persons**

Any inquires under this MOA shall be directed to the Parties listed below. Any notices required under this MOA shall be in writing, sent by a recognized form of communication and by any recognized delivery method agreed to by the Parties.

TO DCPS:

Melissa Kim, Deputy Chancellor, Social, Emotional, & Academic Development  
District of Columbia Public Schools  
1200 First Street NE, 12<sup>th</sup> Floor  
Washington, DC 20002  
Phone: (202) 442-5885  
Fax: (202) 442-5026

To Bard:

Stephen Tremaine  
c/o Office of Institutional Support  
Bard College  
30 Campus Road  
Annandale, NY 12504

These individuals are responsible for the management and coordination of the requirements for each Party under this MOA. Copies of correspondence related to modification, extension or termination of this MOA, any legal matters concerning this MOA or any other transactions stemming from this MOA shall be furnished to these individuals with additional copies to:

Counsel for DCPS:  
Office of the General Counsel  
District of Columbia Public Schools  
1200 First Street NE, 10<sup>th</sup> Floor  
Washington, DC 20002  
Tel: (202) 442-5000  
Fax: (202) 442-5098



Counsel for Bard:

Ben Iselin

McGuireWoods LLP,

1251 6th Avenue, 20th Floor

New York, NY 10020

#### **XVI. MOA Funding**

1. Certain goods and services provided by Bard under this initial planning MOA may be funded by DCPEF if and to the extent mutually agreed in separate written agreement between Bard and DCPEF.

Notwithstanding any other provision of this MOA, no specific funding commitment by or on behalf of DCPS or DCPEF shall be associated with the formation of any of the obligations under this MOA or any future MOA between Bard and DCPS, and nothing in this MOA shall be deemed to obligate DCPS or DCPEF to pay any amounts under this or any future MOAs. Bard acknowledges that funding to carry out certain goods and services provided under this MOA may be furnished by DCPEF. The Parties acknowledge and agree that DCPS shall be under no obligation to provide funding to or to pay for any of the goods and services provided under this MOA or any other goods or services related to planning, management and operation of the Program, except for as agreed upon in section VII.a. The Parties acknowledge and agree that DCPEF is not a party to this MOA and shall have no responsibility or liability hereunder. Bard and DCPEF may enter into a separate agreement to govern the terms of their relationship pertaining to Bard DC.

2. To the extent any goods and services provided under this MOA have not been paid for separately by DCPEF, Bard acknowledges that DCPS considers such goods and services valuable to its authorized duties and responsibilities as a District of Columbia government agency. As such, in accordance with D.C. Official Code § 1-329.01 and the District of Columbia Mayor's Memorandum #2015-001 (July 21, 2015), any such goods and services provided by Bard under this MOA must be donated to DCPS through the donation review process administered by the District of Columbia Office of Partnerships and Grant Services.

#### **XVII. Status of the Parties and Program Participants**

Nothing in this MOA shall be deemed to constitute a partnership or joint venture between the Parties or constitute any Party to be the agent of the other Party for any purpose. No Party shall have any authority to act for or bind the other Party in any way, or to represent that it has such authority. Personnel from one Party participating in the Program are and shall remain employees or agents of that Party, and shall not be deemed or considered employees or agents of the other Party.

#### **XVIII. Term**

This MOA will have a 3-year term unless terminated in accordance with Section IV.g. At the end of the three year period, the intent of the Parties is to incorporate the terms of this MOA, with the exception of the provisions pertaining to DCPEF in Sections XVI (MOA Funding) and Section IV.g. (Termination), into a subsequent MOA, in whole or in part, upon agreement of both Parties. The Parties intend to commence discussions regarding such subsequent MOA no later than one year prior to termination of this MOA.

**XIX. Confidentiality**

1. For the purpose of this MOA, Confidential Information shall mean any and all information, which is supplied or disclosed, directly or indirectly, in writing or in any other means, by each Party to the other including, but not limited to any documents, drawings, sketches, designs, materials, samples, prototypes, data, know-how, and which at the time of its disclosure or supply is identified as confidential. Oral information shall be recorded in writing by the Party disclosing it within fifteen (15) days after disclosure, and the resulting document shall specifically state the date of disclosure and designate the information as confidential.

2. For the purpose of this MOA the “Recipient” shall mean the Party receiving the Confidential Information disclosed by the other Party. Each Party intends to disclose Confidential Information to the other Party in support of Program activities for the planning period (hereinafter referred to as the “Purpose”). Nothing in this MOA shall be regarded as compelling a Party to disclose any Confidential Information.

3. The Recipient shall:

- undertake to keep the Confidential Information confidential and not to disclose it nor to permit the disclosure of it to any third party, except in accordance with this MOA, and not to make it available to the public or accessible in any way, except with the prior written consent of the Party disclosing it; and
- undertake to use the Confidential Information solely for the Purpose of this MOA and not to make any other use, whether commercial or non-commercial, without the prior written consent of the Party disclosing it.

4. The confidentiality obligations specified in this section shall not apply in the following cases:

- the Confidential Information was known to the Recipient prior to the time of its receipt pursuant to this MOA otherwise than as a result of the Recipient’s breach of any legal obligation; or
- the Confidential Information is in the public domain at the time of disclosure by the Party to the Recipient or thereafter enters the public domain without any breach of the terms of this MOA;
- the Confidential Information becomes known to the Recipient through disclosure by sources, other than the Party disclosing it, having the legal right to disclose such Confidential Information; or
- the Recipient proves the Confidential Information has been developed independently by its employees, who had no access to any of the Confidential Information disclosed by the Party disclosing it to the Recipient.

5. The Recipient shall limit and control any copies and reproductions of the Confidential Information. The Recipient shall return all records or copies of the Confidential Information at the request of the other Party and at the latest on termination of this MOA. This shall not apply to Confidential Information or copies thereof which must be stored by the Recipient according to mandatory law, provided that such Confidential Information or copies thereof shall be subject to an indefinite confidentiality obligation.

6. The Recipient undertakes to disclose the Confidential Information only to its employees who reasonably need to receive the Confidential Information for the Purpose of this MOA.



7. All Confidential Information shall remain the exclusive property of each Party as well as all patent, copyright, trade secret, trade mark and other intellectual property rights therein. The Parties agree that this MOA and the disclosure of the Confidential Information do not grant or imply any license, interest or right to the Recipient in respect to any intellectual property right of the other Party.

**XX. MISCELLANEOUS**

a. *Modifications*

This MOA may only be amended or modified by a written instrument signed by both Parties.

b. *Severability*

If any provision of this MOA is determined to be invalid or unenforceable, the remaining provisions shall remain in force and unaffected to the fullest extent permitted by law and regulation.

c. *Entire Agreement*

This MOA, including any applicable exhibits, contains the entire understanding of the Parties with respect to matters contained herein, and supersedes any and all other agreements between the Parties relating to the matters contained herein. No oral or written statements not specifically incorporated or referenced herein shall be of any force or effect.

d. *Survival*

The obligations of the Parties under Sections VIII, XII, XIII, XIV, XVII, XIX, and XX, as well as all other sections that are either commonly understood to survive the expiration or earlier termination of an agreement or that specify they survive the expiration or earlier termination of this MOA, shall survive the expiration or earlier termination of this MOA.

e. *Other Relationships or Obligations*

This MOA shall not affect any pre-existing or independent relationships or obligations between the Parties.

f. *Non-Assignable Agreement*

This MOA cannot be assigned by Bard.

g. *Headings; Counterparts*

The headings in this MOA are for purposes of reference only and shall not limit or define the meaning of any provision hereof. This MOA may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same document.

h. *Applicable Law*



DISTRICT OF COLUMBIA  
PUBLIC SCHOOLS

This MOA and all matters pertaining to this MOA shall be governed by the laws of the District of Columbia, including all applicable statutes, regulations, directives, and procedures of the District of Columbia and DCPS.

i. *Authority of the Parties*

By executing this MOA, each Party represents to the other that it is authorized to enter into this MOA and that the person executing this MOA on its behalf is duly authorized to do so.

IN WITNESS WHEREOF, the Parties have caused this MOA to be executed by their duly authorized signatories below.

*Leon Botstein*

*8/7/19*

---

Leon Botstein, President  
Bard College

Date

---

Dr. Lewis D. Ferebee, Chancellor  
District of Columbia Public Schools

Date

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**MEMORANDUM OF AGREEMENT**  
**BETWEEN**  
**DISTRICT OF COLUMBIA PUBLIC SCHOOLS**  
**AND**  
**THE CATHOLIC UNIVERSITY OF AMERICA**  
**FOR THE GRADUATE & UNDERGRADUATE EDUCATION STUDENT INTERN PROGRAM**

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This Memorandum of Agreement ("MOA") sets forth the responsibilities and expectations of the District of Columbia Public Schools ("DCPS") and the Catholic University of America ("University") in support of the Education Student Intern Program (the "Program"). The Program provides cooperative arrangements and extern placements for selected student interns enrolled in the University ("Participating Students"). DCPS and University are individually referred to herein as a "Party" and collectively as the "Parties."

**RECITALS**

WHEREAS, the University is an educational institution providing a master's degree program in Education; and

WHEREAS, field experience is a required and integral part of that University master's degree program; and

WHEREAS, DCPS, through its various schools, possesses the facilities, professional expertise, and student population to collaborate with University to provide field experiences to Participating Students; and

WHEREAS, the Parties share a strong belief in the value of quality student internships, pride in their past collaboration, and a commitment to seeing cooperative arrangements continue and flourish in the future; and

WHEREAS, the Parties believe in the value of student internships which expose students to the opportunity to acquire professional experience in an urban school setting prior to earning a degree in the student's major; and

WHEREAS, this MOA is intended to codify the terms of the relationship between the Parties in support of this student internship program, and in order to ensure the continued development of this high-quality educational program for DCPS students.

**NOW, THEREFORE**, in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree to the following complete, legally binding terms and conditions:

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## AGREEMENT

### I. TERM AND OPTION YEARS

This MOA shall be effective as of the last date of signing by the signatories ("Effective Date") and, unless terminated in writing by either Party prior to its expiration, terminate five (5) years from the Effective Date (the "Term"). The Parties may renew this MOA for up to five (5) additional one (1) year terms, or any fraction thereof, by written agreement signed by both Parties prior to expiration of the Term or any subsequent term agreed to pursuant to this provision.

### II. RESPONSIBILITIES

A. DCPS agrees to assume the following duties and responsibilities in support of the Program:

1. Assign Participating Students to appropriate DCPS facilities with staff capable of providing appropriate experiences and supervision, and that hold any required state and/or national certifications and licenses.
2. Designate a DCPS Program liaison to meet as needed with University to plan, evaluate, and modify the Program and field experiences, and to assist / cooperate in the collection of data to assist University in evaluating its program and potential success of its students.
3. Treat Participating Students as professionals, provide them with clear expectations that they will follow all the rules and regulations established by DCPS, and ensure they are aware of such rules and regulations.
4. Provide University with information about criminal and other dangerous conditions existing within the neighborhood of any DCPS facility where a Participating Student has been placed promptly upon its own notification of same.
5. Remove a Participating Student from placement for violating DCPS rules and regulations established or for any action DCPS views as detrimental to its operations. Although the Parties agree that any decision to remove a Participating Student from the Program shall be made by DCPS in its sole discretion, DCPS will use its best efforts to consult with University before final action is taken.

B. University agrees to assume the following duties and responsibilities in support of the Program:

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1. Administer, in consultation with DCPS, its student education program including, but not limited to, curriculum development, grading, requirements for matriculation, credits, scheduling, and field experience hours.
  2. Designate its own faculty qualified by training and experience to collaborate with DCPS to supervise Participating Students' participation in the Program. Such supervision shall primarily involve meeting with students outside of field experience hours. Should University supervisors wish to observe Participating Students at DCPS locations, all visits must be scheduled with the school in advance and must not interrupt the provision of education services to DCPS students.
  3. Inform all Participating Students and University faculty involved in this Program of their responsibilities under this MOA, including their obligation to abide by DCPS rules and regulations.
  4. Designate a University Program liaison to meet as needed with DCPS to plan, evaluate, and modify the Program and field experiences, and to assist / cooperate in the collection of data to assist University in evaluating its program and potential success of its students.
  5. Be responsible, in cooperation with DCPS staff to which the Participating Student is assigned, for the final evaluation of each student's completion of his / her Program experience.
  6. Notify DCPS of any changes in faculty, curriculum, and policy that will materially affect the Program.
- C. DCPS and University agree to collaborate and jointly assume the following operational duties and responsibilities in support of the Program:
1. University will submit resumes of potential Participating Students to the DCPS point of contact referenced in Section XVII of this MOA. Fall and summer student resumes are due no later than April 1<sup>st</sup> and spring student resumes no later than November 1<sup>st</sup>.
  2. DCPS will interview potential Participating Students to determine acceptance, skill level and an appropriate intern placement and supervisor.
  3. Parties will assist Participating Students with completion of the DCPS Volunteer application and submission of any required supporting documentation prior to beginning their placement at their assigned DCPS school.



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4. Parties will assist Participating Students with completion of the required DCPS clearance process which includes a Tuberculosis screening, fingerprinting, and a background check, prior to beginning their placement at their assigned DCPS school.
  5. At least one month prior to the start of the experience, Parties must mutually agree on the following details of the student Program experience:
    - a. Beginning date;
    - b. Length of experience;
    - c. Number of accepted Participating Students;
    - d. Specific locations for each Participating Student;
    - e. Specific learning objectives and performance expectations for each Participating Student;
    - f. Specific allocation of responsibilities for the DCPS and University staff participating in the administration of the Program; and
    - g. Deadlines and format for Participating Student progress reports and evaluation forms.
  6. University and DCPS will jointly plan the Program field experience for each student and shall jointly evaluate the students. Exchange of the information will be maintained by on-site visits when practical and by email, letter or telephone in other instances. DCPS reserves the right to terminate any Participating Student when it is in the best interest of DCPS to do so but will consult with University supervisor in advance.
  7. University and DCPS will instruct their respective faculty and staff, as well as all Participating Students, to maintain confidentiality of information as required by law and by policies and procedures of University and DCPS.
  8. University and DCPS will comply with all the rules and regulations and other policies applicable to this MOA

### III. BACKGROUND CHECKS

- A. University shall ensure all of its employees, contractors, volunteers and other personnel providing services under this MOA ("University Personnel") submit to all background checks required by DCPS, which may include, but is not limited to, a tuberculosis screening and a criminal background check pursuant to the Criminal Background Checks for the Protection of Children Act of 2004 (D.C. Code § 4-1501.01, *et seq.* (2011)) and any rules promulgated thereunder, including D.C. Mun. Regs. Subt. 6-B, § 412, *et seq.* (2011). University shall also ensure that all University Personnel who have not submitted to any DCPS-

~~required background check are restricted from serving in positions affording~~  
such individuals unsupervised direct access to DCPS students participating in the Program and that such persons at all times avoid unsupervised direct contact with such students.

- B. University shall ensure that any University Personnel engaging in the transport of DCPS students under this MOA consent and submit to a DCPS-initiated traffic record check, in accordance with 6-B DCMR § 410, 419, and 420. DCPS reserves the right to deny any individual the ability to transport its students under this MOA based on its own review of the individual's traffic record and determination of whether, considering the totality of circumstances, that individual is suitable to provide such services.

#### IV. DCPS FIELD TRIP REQUIREMENTS

University and DCPS agree to work together to obtain fully executed versions of any required field trip permission and waiver forms prior to students being taken on any Program field trips.

#### V. USE AGREEMENTS

University's authorization to access and use any DCPS facility space may be conditioned upon University first applying for and obtaining a Use Agreement if required by the Office of Realty in the Department of General Services ("DGS Realty"). DCPS agrees to provide guidance regarding how to obtain a Use Agreement from DGS Realty, but it makes no guarantee that any required Use Agreement will be issued by DGS Realty.

#### VI. COMPLIANCE WITH APPLICABLE LAW

University shall comply with all applicable laws, rules and regulations whether now in force or hereafter enacted or promulgated. In addition, University shall at all times maintain any District of Columbia or federal license, registration or certification it is legally required to obtain, and provide a copy of such documentation to DCPS upon request.

#### VII. LIABILITY

University shall be solely liable for all property damage and bodily injury claims arising from or related to the services provided by University and University Personnel pursuant to this MOA, with the exception of any such claims arising from the gross negligence or willful misconduct of DCPS employees, officers, agents, and volunteers acting on behalf of DCPS ("DCPS Personnel"). DCPS shall not be liable, whether by way of contribution or otherwise, for any damages incurred by University or University Personnel, or arising

~~from any acts or omissions of University or University Personnel, in connection with the provision of services under this MOA or the Program.~~

#### VIII. DCPS INSURANCE

University acknowledges that DCPS is an agency of the District of Columbia government, which is a self-insured public entity that retains and finances its financial responsibility for workers compensation and employer's liability, public liability, and property exposures under a comprehensive self-insurance program.

#### IX. UNIVERSITY INSURANCE

- A. GENERAL REQUIREMENTS. University at its sole expense shall procure and maintain, during the entire period of performance under this MOA, the types of insurance specified below. University shall have its insurance broker or insurance company submit a Certificate of Insurance to the DCPS point of contact referenced in Section IX.H of this MOA ("CO") giving evidence of the required coverage prior to commencing performance under this MOA. In no event shall any work be performed until the required Certificates of Insurance signed by an authorized representative of the insurer(s) have been provided to, and accepted by, the CO. All insurance shall be written with financially responsible companies authorized to do business in the District of Columbia or in the jurisdiction where the work is to be performed and have an A.M. Best Company rating of A- / VII or higher. University shall require all of its subcontractors to carry the same insurance required herein.

All required policies shall contain a waiver of subrogation provision in favor of the Government of the District of Columbia.

The Government of the District of Columbia shall be included in all policies required hereunder to be maintained by University and its subcontractors (except for workers' compensation and professional liability insurance) as an additional insureds for claims against The Government of the District of Columbia relating to this MOA, with the understanding that the purchase of insurance shall be the sole obligation of University. The additional insured status shall be evidenced on a Certificate of Insurance. Prior to performing any services pursuant to this MOA, and within a reasonable time period upon future request by DCPS, University shall provide DCPS with a statement from its insurer that its policy contains the affirmative coverages and minimums listed below.

If University and/or its subcontractors maintain broader coverage and/or higher limits than the minimums shown below, the District requires and shall be entitled to the broader coverage and/or the higher limits maintained by University and subcontractors.

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1. Commercial General Liability Insurance ("CGL") - University shall provide evidence with respect to the services performed that it carries a CGL policy, written on an occurrence (not claims-made) basis, on a Certificate of Insurance covering liability for all ongoing and completed operations of University, and covering claims for bodily injury, including without limitation sickness, disease or death of any persons, injury to or destruction of property, including loss of use resulting therefrom, personal and advertising injury, and acts of terrorism (whether caused by a foreign or domestic source). Such coverage shall have limits of liability of not less than \$1,000,000 each occurrence, a \$2,000,000 general aggregate limit, and a \$1,000,000 personal and advertising injury limit.
  
  2. Professional Liability Insurance (Errors & Omissions) - University shall provide Professional Liability Insurance (Errors and Omissions) to cover liability resulting from any error or omission in the performance of professional services under this MOA. The policy shall provide limits of \$1,000,000 per claim or per occurrence for each wrongful act and \$2,000,000 annual aggregate. University warrants that any applicable retroactive date precedes the date University first performed any professional services for the Government of the District of Columbia and that continuous coverage will be maintained or an extended reporting period will be exercised for a period of at least ten years after the completion of the professional services.
  
  3. Sexual/Physical Abuse & Molestation - University shall provide evidence with respect to the services performed that it carries \$1,000,000 per occurrence limits; \$2,000,000 aggregate of affirmative abuse and molestation liability coverage. This insurance requirement will be considered met if the general liability insurance includes an affirmative sexual abuse and molestation endorsement for the required amounts. So called "silent" coverage under a commercial general liability or professional liability policy will not be acceptable.
  
  4. Commercial Umbrella or Excess Liability - University shall provide a Certificate of Insurance evidencing commercial umbrella or excess liability insurance with minimum limits of \$5,000,000 per occurrence and \$5,000,000 in the annual aggregate, following the form and in excess of all liability policies. All liability coverages must be scheduled under the umbrella and/or excess policy. The insurance required under this paragraph shall be written in a form that annually reinstates all required limits.

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- B. **DURATION.** University shall carry all required insurance until all services are accepted by the District of Columbia, and shall carry listed coverages for two years following final acceptance of the services performed under this MOA.
- C. **LIABILITY.** These are the required minimum insurance requirements established by the District of Columbia. **HOWEVER, THE REQUIRED MINIMUM INSURANCE REQUIREMENTS PROVIDED ABOVE WILL NOT IN ANY WAY LIMIT UNIVERSITY'S LIABILITY UNDER THIS MOA.**
- D. **UNIVERSITY'S PROPERTY.** University and subcontractors are solely responsible for any loss or damage to their personal property, including but not limited to tools and equipment, scaffolding and temporary structures, rented machinery, or owned and leased equipment. A waiver of subrogation shall apply in favor of the District of Columbia.
- E. **MEASURE OF PAYMENT.** The District shall not make any separate measure or payment for the cost of insurance and bonds.
- F. **NOTIFICATION.** University shall ensure that all policies provide that the CO shall be given thirty (30) days prior written notice in the event of coverage and / or limit changes or if the policy is canceled prior to the expiration date shown on the certificate. University shall provide the CO with ten (10) days prior written notice in the event of non-payment of premium. University will also provide the CO with an updated Certificate of Insurance should its insurance coverages renew during the MOA.
- G. **CERTIFICATES OF INSURANCE.** University shall submit certificates of insurance giving evidence of the required coverage as specified in this section prior to commencing work. Certificates of insurance must reference the corresponding MOA. Evidence of insurance shall be submitted to:

**The Government of the District of Columbia**

**And mailed to the attention of:  
Conchita Hudson-Hall  
Deputy Chief, Office of Risk Management  
District of Columbia Public Schools  
1200 First St, NE, 9<sup>th</sup> Floor  
Washington, DC 20002  
(202) 907-8132  
Conchita.Hudson-Hall@dc.gov**

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The CO may request and University shall promptly deliver updated certificates of insurance, endorsements indicating the required coverages, and/or certified copies of the insurance policies. If the insurance initially obtained by University expires prior to completion of the MOA, renewal certificates of insurance and additional insured and other endorsements shall be furnished to the CO prior to the date of expiration of all such initial insurance. For all coverage required to be maintained after completion, an additional certificate of insurance evidencing such coverage shall be submitted to the CO on an annual basis as the coverage is renewed (or replaced).

- H. DISCLOSURE OF INFORMATION. University agrees that the District may disclose the name and contact information of its insurers to any third party which presents a claim against the District for any damages or claims resulting from or arising out of work performed by University, its agents, employees, servants or subcontractors in the performance of this MOA.
- I. CARRIER RATINGS. All University's and its subcontractors' insurance required in connection with this MOA shall be written by insurance companies with an A.M. Best Insurance Guide rating of at least A- VII (or the equivalent by any other rating agency) and licensed in the in the District.

X. ASSUMPTION OF RISK, INDEMNIFICATION AND WAIVER

University hereby agrees that all of its property and activities of any kind or nature whatsoever in, upon, or about the designated space it utilizes on DCPS property at any time during the Term or any renewal or extension hereof, shall be at the sole risk and hazard of University, with the exception of claims for damages or injury suffered by University or University Personnel while on DCPS property pursuant to this MOA caused by the gross negligence or willful misconduct of DCPS Personnel. Moreover, University hereby agrees to defend, indemnify, and save harmless the District of Columbia government, its agencies (including DCPS), elected/appointed officials, employees, agents, and volunteers, against and from all penalties, claims, actions, damages, injuries, losses, and costs (including reasonable attorneys fees) of every nature resulting from, or in connection with, University and University Personnel's use and occupancy of DCPS property under this MOA, and in conducting activities under this MOA. It is expressly understood that the District of Columbia Government, its agencies (including DCPS), elected/appointed officials, employees, agents, and volunteers shall not be liable to University for any accident, injury, loss, or damage suffered by University while University is on, upon, or about, or entering or leaving DCPS property at any time during the term of this MOA or any renewal or extension hereof, resulting from any cause whatsoever, with the exception of any such accident, injury, loss, or damage suffered by University as a result of the gross negligence or willful misconduct of DCPS Personnel. All claims, with the exception of such claims resulting from the gross negligence or willful misconduct of DCPS Personnel are hereby released to the District of Columbia

~~Government, its agencies (including DCPS), elected/appointed officials, employees, agents, and volunteers, who may plead this release in bar thereof, in any and every suit, demand and claim for same. University's covenants, obligations, and liabilities under this section shall survive the expiration or earlier termination of this MOA.~~

#### XI. FUNDING

No specific capital commitment on behalf of DCPS shall be associated with the formation of or any of the obligations under this MOA. All funding necessary to carry out the Program shall be furnished by University or its sponsors. DCPS shall be under no obligation to provide funding or payment to University.

#### XII. NON-DISCRIMINATION

University shall not discriminate against anyone participating in the Program either directly or indirectly on the basis of gender, race, color, disability, religion, sexual orientation, nationality, age, marital status or any other designation set forth in any applicable law, including, but not limited to, the District of Columbia Human Rights Act, Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, and Section 504 of the Rehabilitation Act of 1973.

#### XIII. ANTI-DEFICIENCY CONSIDERATIONS

DCPS's duty to fulfill financial obligations of any kind pursuant to any and all provisions of this MOA, or any subsequent agreement entered into pursuant to this MOA, are and shall remain subject to the provisions of (i) the federal Anti-Deficiency Act, 31 U.S.C. §§ 1341, 1342, 1349-1351; (ii) the District of Columbia Anti-Deficiency Act, D.C. Official Code §§ 47-355.01-355.08 (2001); (iii) D.C. Official Code § 47-105 (2001); and D.C. Official Code § 1-204.46 (2001); as the foregoing statutes may be amended from time to time, regardless of whether a particular obligation has been expressly so conditioned. Pursuant to the Anti-Deficiency Acts, nothing in this MOA shall create an obligation on DCPS in anticipation of an appropriation by Congress for such purpose, and DCPS's legal liability for any obligations under this MOA shall not arise or obtain in advance of the lawful availability of appropriated funds for the applicable fiscal year as approved by Congress.

#### XIV. CONFIDENTIALITY AND ACCESS TO EDUCATION RECORDS

- A. The Parties will access, use, restrict, safeguard and dispose of all information related to this agreement in accordance with all relevant federal and local statutes, regulations and policies, including but not limited to the Family Educational Rights and Privacy Act ("FERPA") (20 U.S.C. § 1232g; 34 CFR Part 99).

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B. University is required to provide an institutional service or function on behalf of DCPS under this MOA. University's ability to provide such institutional service or function requires DCPS to disclose personally identifiable information ("PII") from education records to University and DCPS has determined University has legitimate educational interests in such disclosure. All PII must be shared and safeguarded in accordance with FERPA. Accordingly, pursuant to 34 CFR § 99.31(a)(1)(i)(B), University acknowledges that (i) it has been outsourced an institutional service or function of DCPS under this MOA; (ii) it is considered a "school official" for purposes of providing such institutional service or function of DCPS under this MOA; (iii) it is under the direct control of DCPS with respect to the use and maintenance of all PII it will have access to under this MOA; and (iv) it is subject to the requirements of 34 CFR § 99.33(a) with respect to the use and disclosure of all PII under this MOA. According to 34 CFR § 99.33(a), University must (1) not disclose any PII it may have access to under this MOA without first obtaining prior written consent from the affected parent (or student if the student has reached the age of 18); and (2) require that all University Personnel receiving PII under this MOA only use such information for purpose of providing an institutional service or function on behalf of DCPS.

C. University shall share with DCPS all Program data, including all student specific data it is authorized to share for those students participating in the Program. University will submit all requests for education records or other DCPS data to the DCPS Office of the Chief of Schools ("OCS") and will follow all procedures established by OCS for such requests.

#### XV. PUBLICITY

University shall not use the logo of DCPS, the District government or any District agency in any way including, but not limited to, in any statement, promotional materials (including on University's website) or other published materials. In addition, University shall not use the name of DCPS, the District government or any District agency in any statement, promotional materials (including on University's website) or in any published materials in a manner which states or implies support for or an endorsement of University by DCPS. Further, University shall at all times obtain prior written approval from the DCPS contact referenced in Section XVII of this MOA before it makes any public statement, disseminates any promotional materials or issues any published materials bearing on the services it provides under this MOA.

#### XVI. TERMINATION

DCPS may immediately terminate this MOA in whole or in part at any time by providing notice to University if, in DCPS' sole discretion, such termination is in the best interest of DCPS or the District. Either Party may terminate this MOA in whole or in part by giving



thirty (30) calendar days advance written notice to the other Party.

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#### XVII. NOTICES AND CONTACT PERSONS

Any inquiries under this MOA shall be directed to the parties listed below. Any notices required under this MOA shall be in writing, sent by a recognized form of communication and by any recognized delivery method to the same parties.

TO DCPS:

Akash Tharani  
Coordinator, Teacher Recruitment and Pipelines  
District of Columbia Public Schools  
1200 First Street NE, 10<sup>th</sup> Floor  
Washington, DC 20002  
[Akash.Tharani@dc.gov](mailto:Akash.Tharani@dc.gov)

TO University:

Liliana Maggioni, Director of Teacher Education  
Room 214 O'Boyle Hall  
The Catholic University of America  
620 Michigan Ave NE  
Washington, DC 20064  
Tel: 202-319-4481  
[maggioni@cua.edu](mailto:maggioni@cua.edu)

These individuals are responsible for the management and coordination of the requirements for their respective agencies under this MOA. Copies of correspondence related to modification, extension or termination of this MOA, any legal matters concerning this MOA or any other transactions stemming from this MOA shall be furnished to these individuals with additional copies to:

Office of the General Counsel  
District of Columbia Public Schools  
1200 First Street NE, 10<sup>th</sup> Floor  
Washington, DC 20002  
Tel: (202) 442-5000  
Fax: (202) 442-5098

Office of the General Counsel  
Room 280 Leahy Hall  
The Catholic University of America  
620 Michigan Ave NE  
Washington, DC 20064  
Tel: 202-319-5142

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## XVIII. CLINICAL EDUCATION PROGRAMS

University recognizes that DCPS does not currently coordinate a clinical education program and that DCPS contracts with service providers to provide clinical services to DCPS students. Accordingly, any clinical opportunities for Participating Students may have to be coordinated with DCPS contractors providing clinical services, and DCPS cannot guarantee such providers will be willing to participate or accommodate the needs of University in providing clinical opportunities to Participating Students.

## XIX. STATUS OF THE PARTIES AND PROGRAM PARTICIPANTS


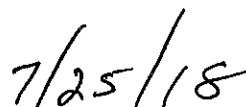
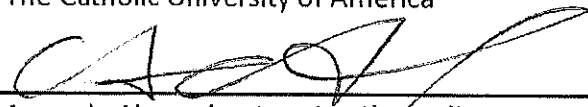
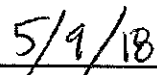
- A. Nothing in this Agreement shall be deemed to constitute a partnership or joint venture between the Parties or constitute any Party to be the agent of the other Party for any purpose. No Party shall have any authority to act for or bind the other Party in any way, or to represent that it has such authority.
- B. Participating Students shall retain the status of students working towards the fulfillment of their degree requirements at University, and are not employees or agents of DCPS.
- C. Participating Student supervisors and other DCPS employees participating in the Program are and shall remain employees of DCPS for all purposes and shall not be deemed or considered employees or agents of the University.

## XX. MISCELLANEOUS

- A. Modifications. This MOA may only be amended or modified by a written instrument signed by both Parties.
- B. Severability. If any provision of this MOA is determined to be invalid or unenforceable, the remaining provisions shall remain in force and unaffected to the fullest extent permitted by law and regulation.
- C. Entire Agreement. This MOA, including any applicable exhibits, contains the entire understanding of the Parties with respect to matters contained herein, and supersedes any and all other agreements between the Parties relating to the matters contained herein. No oral or written statements not specifically incorporated or referenced herein shall be of any force or effect.
- D. Survival. The provisions of this MOA that require performance after the expiration or termination of this MOA shall remain in force notwithstanding the expiration or termination of the MOA.

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- E. Other Relationships or Obligations. This MOA shall not affect any pre-existing or independent relationships or obligations between the Parties.
  - F. Non-Assignable Agreement. This MOA cannot be assigned by University.
  - G. Headings; Counterparts. The headings in this MOA are for purposes of reference only and shall not limit or define the meaning of any provision hereof. This MOA may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same document.
  - H. Applicable Law. This MOA and all matters pertaining to this MOA shall be governed by the laws of the District of Columbia, including all applicable statutes, regulations, directives, and procedures of the District of Columbia and DCPS.
  - I. Authority of the Parties. By executing this MOA, each Party represents to the other that it is authorized to enter into this MOA and that the person executing this MOA on its behalf is duly authorized to do so.

IN WITNESS WHEREOF, the Parties have caused this MOA to be executed by their duly authorized signatories below.

 _____ Victor Nakas, Vice Provost for Administration The Catholic University of America	 _____ Date
 _____ Amanda Alexander, Interim Chancellor District of Columbia Public Schools	 _____ Date

18-VFA02392

**SERVICES AGREEMENT  
BETWEEN  
DISTRICT OF COLUMBIA PUBLIC SCHOOLS  
AND  
THE REGENTS OF THE UNIVERSITY OF MICHIGAN  
FOR THE Teacher Effectiveness Predictive Modeling PROJECT**

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This Services Agreement ("**Agreement**") sets forth the responsibilities and expectations of the District of Columbia Public Schools ("**DCPS**") and the Regents of the University of Michigan ("**Michigan**" or "**Organization**") for the provision of services by Michigan to DCPS in support of the **Teacher Effectiveness Predictive Modeling** Project (the "**Project**"), a project designed to enhance the predictiveness of DCPS' teacher selection process. DCPS and Organization are individually referred to herein as a "**Party**" and collectively as the "**Parties**."

**RECITALS**

**WHEREAS**, Organization has substantial experience working on teacher predictive modeling projects; and

**WHEREAS**, the Parties share a strong belief in the value of predictive modeling and a commitment to seeing improvements made to the DCPS model; and

**WHEREAS**, the Parties believe that investing time and resources into measuring the most important aspects of the selection process is vital to enhancing the quality of incoming teachers.

**NOW, THEREFORE**, in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**AGREEMENT**

**I. TERM**

This Agreement shall be effective as of the last date of signing by the signatories (the "Effective Date") and, unless terminated in writing by either Party prior to its expiration, terminate three years after the Effective Date (the "**Term**"). The Parties may renew this Agreement for up to two (2) additional one (1) year terms, or any fraction thereof, by written agreement signed by both Parties prior to expiration of the Term or any subsequent term agreed to pursuant to this provision.

**II. RESPONSIBILITIES**

A. DCPS agrees to assume the following duties and responsibilities in support of the Project:

1. *Provide Organization with Application Data* - Michigan is requesting all of the information that was collected as part of the 2016 - 2019 DCPS teacher selection system, including informative teacher identifiers such as names and SSNs which will be used to link this information to other DCPS data. This includes responses to the initial application questions, essay analysis, Knowledge of Mathematics for Teaching assessment (if taken by the applicant), interview, and practice teacher lesson. For each score (i.e., essay analysis, interview, and practice teacher lesson) Michigan requests a unique, random identifier that allows DCPS to group applicants scored by the same individual. Finally, Michigan requests information on the hiring principal, including variables such as age, race, educational background, prior teaching experience in DCPS and prior experience as a principal in DCPS and in the current school. Michigan would also continue to access all information shared on the 2011 and 2012 selection seasons, per the Agreement executed on 7/25/2012, as well as all information shared on the 2013, 2014, and 2015 selection seasons, per the Agreement executed on 3/3/2015.
2. *Provide Organization with Teacher Outcome Measures* - For the 2016-2017, 2017-2018, and 2018-2019 school years: date hired for all new-to-DCPS teachers, hiring pipeline for all new-to-DCPS teachers (e.g., TeachDC, Principal Referral, Teach For America, DC Teaching Fellows, Internal DCPS Educator/ Excessed Teacher), school, grade and subject taught, teacher absences (separately by date and type- e.g., sick leave, unexcused absence, personal day, etc.); IMPACT evaluation (both the overall score as well as all individual components of the score), original or "raw" teacher value-added and supervisor evaluations. This data will include informative teacher identifiers such as names and SSNs that will allow one to link this data to the application data described above. Michigan would also continue to access all information shared on the 2011 and 2012 selection seasons, per the Agreement executed on 7/25/2012, as well as data from 2013-2016, per the Agreement executed on 3/3/2015.
  - a. *Notes on Data Sources*-In the 2011 selection season, DCPS stored what we are calling "Application Data" primarily in the KeySurvey (WorldAPP) system. Additional error analysis data were stored in Google documents maintained by the recruitment and selection team. Different "TeacherOutcome

Measures" are stored in several different systems. Michigan is requesting data from Quickbase applications (IMPACT, ePSI), from PeopleSoft, from the data system that tracks teacher absences, and from the final value-added spreadsheets that Mathematica prepares for the IMPACT team. In later selection seasons, starting in 2012, selection data will be retrieved from TSHO (Talent, Strategy, Onboarding, Hiring tool), the Salesforce applicant database for DCPS.

B. Organization agrees to assume the following duties and responsibilities in support of the Project:

1. Collect and analyze data related to measures that predict teacher effectiveness and share findings with DCPS in order to inform decision making with regard to teacher selection model and to pilot an initiative that focuses on profiling difference in candidate performance to impact hiring decisions. Specifically, this will involve gathering information on aspects of DCPS' current teacher selection process, including behavioral interview scores, mini lesson scores (when applicable), application data and audition scores. Next, these scores will be combined with IMPACT data to determine which aspects of the teacher selection process hold the highest predictiveness with respect to teacher performance. Organization recognizes that all materials produced by it for DCPS pursuant to the Project shall be considered the property of DCPS.
2. Notify DCPS in the event of a breach of any measures to keep confidential the data received pursuant to this Agreement. Michigan will also make all reasonable efforts to cure any such breach and to prevent further breaches, and to inform DCPS of such efforts. Nothing in this Agreement shall be construed to allow Michigan to maintain, use, disclose, or share data received pursuant to this Agreement in a manner prohibited by any federal or District of Columbia laws or regulations.
3. Ensure that all affiliated personnel, contractors and agents participating in the Project, submit to all background checks required by DCPS, including a criminal background check as required by the Criminal Background Checks for the Protection of Children Act of 2004 (D.C. Code § 4-1501.01, et seq. (2009)) and any rules promulgated thereunder. Organization shall also ensure that all affiliated personnel, contractors and volunteers who have not submitted to a DCPS required background check, will be restricted from having unsupervised access to DCPS students while participating in the Project.

4. That for purposes of this Project and for ensuring Organization's compliance with the terms of this Agreement and all applicable local and federal laws, Organization shall appoint Brian Jacob to act as Temporary Custodian of the data received by Michigan pursuant to this Agreement and be the contact person for all matters related to this Agreement. Organization will promptly notify DCPS of the name and contact information for any newly designated Temporary Custodian. The Temporary Custodian shall be responsible for transmitting all data requests and maintaining a log or other record of all data requested and received pursuant to the Agreement, including confirmation of completion of the Project, destruction of DCPS data and certification of that destruction. DCPS or its agents may upon request review the log or other records required to be kept by Organization under this Agreement.
5. To use data shared under the Agreement for no purpose other than the Project described in this Agreement. Nothing in the Agreement shall be construed to authorize Michigan to have access to DCPS data beyond that included in the scope of the Agreement, or to permit access to such data by entities other than the Parties. Michigan further agrees not to share data received under the Agreement with any other entity, except as identified in the Project and permitted by this Agreement and applicable law. Michigan understands that the Agreement does not convey ownership of DCPS data to Michigan.
6. To put procedures in place to safeguard the confidentiality and integrity of personal data, to place limitations on its use and to maintain compliance with applicable privacy laws. Michigan shall require all contractors and agents of any kind participating in the Project to comply with the Agreement as provided in relevant Michigan and DCPS policies (DCPS confidentiality policies are attached as Attachment A), and all applicable laws with respect to the data and information shared under the Agreement. Nothing in this section authorizes Michigan to share data and information provided under the Agreement with any individual or entity that has not signed a confidentiality agreement for any purpose.
7. Michigan will not disclose data provided to it under the Agreement in any manner that could identify any individual, school or DCPS to any entity other than DCPS, or authorized employees, contractors, and agents affiliated with Michigan and who are working on the Project. Michigan and persons participating in the Project on behalf of Michigan shall neither disclose nor otherwise release data and reports relating to an individual or school, nor disclose information relating to a group

or category of individuals without ensuring the confidentiality of individuals in that group. Publications and reports of these data and information related to them, including preliminary Project descriptions and draft reports, shall involve only aggregate data and no personally identifiable information or other information that could lead to the identification of any individual or school.

8. To not provide any data obtained under this Agreement to any entity or person ineligible to receive such data.
9. Upon termination of the Agreement or the Project, to return all data files and hard copy records transferred pursuant to the Agreement to DCPS and purge any copies of such data from all computer systems housing such data. Michigan agrees to require all affiliated employees, contractors, or agents of any kind working on the Project to comply with this provision. No entity is authorized to continue using the data obtained under this Agreement upon termination of this Agreement and the Project described herein. Michigan will destroy all data obtained under this Agreement and amendments to it when no longer needed for the Project. Nothing in this Agreement authorizes Michigan to maintain data beyond the time period needed to complete the Project.
10. Although Organization has the right, consistent with scientific standards, to publish, present, or use the study results from the Project, it may only do so if the publication, presentation or use does not permit personal identification of DCPS students (or their parents) or DCPS personnel by individuals. In order to protect the confidentiality of previously identified confidential information disclosed to Michigan, Michigan agrees to provide to DCPS any proposed publications or presentations which are to make public any findings, data, or results of the Project for DCPS's review, comment, and opportunity to request the removal of any materials which permit personal identification of DCPS students (or their parents) or DCPS personnel at least sixty (60) days prior to submission of a manuscript or abstract for publication or the date of the presentation.
11. To provide DCPS with all reports and other documents produced by it in connection with the Project upon request.
12. To provide DCPS with one electronic copy and at least one paper copy of the data files, codebooks and the computer code/instrument used to create data analysis files and perform analyses for the Project under a non-exclusive license for DCPS' s non-commercial internal use. DCPS agrees to keep these files for at least seven years.



### III. COMPLIANCE WITH APPLICABLE LAW

Organization shall comply with all applicable laws, rules and regulations whether now in force or hereafter enacted or promulgated. In addition, Organization shall at all times maintain any District of Columbia or federal license, registration or certification it is legally required to obtain, and provide a copy of such documentation to DCPS upon signing this Agreement. Organization shall ensure that at no time during the term of this Agreement it owes the District of Columbia Government (the "District") more than \$100 in outstanding fines, penalties, past due taxes or interest.

### IV. LIABILITY

To the extent permitted by Michigan law, Organization shall be solely liable for all services provided by Organization and Organization Personnel pursuant to this Agreement, and DCPS shall not be liable, whether by way of contribution or otherwise, for any damages incurred by Organization or Organization Personnel arising from any acts or omissions in connection with the provision of such services or the Project, with the exception of any such damages arising from DCPS' gross negligence or intentional misconduct.

### V. FUNDING AND DONATION

No specific capital commitment on behalf of DCPS shall be associated with the formation of or any of the obligations under this Agreement. All funding necessary to carry out the Project shall be furnished by Organization. DCPS shall be under no obligation to provide funding to Organization. In addition, Organization acknowledges that all services provided under this Agreement are being freely donated to DCPS and the District with no expectation of receiving anything in return by way of a separate donation agreement between the parties and the District that was executed as of 7/29/2012 (the "Donation Agreement").

### VI. NON-DISCRIMINATION

Organization shall not discriminate against anyone participating in the Project either directly or indirectly on the basis of gender, race, color, disability, religion, sexual orientation, nationality, age, marital status or any other designation set for the in the District of Columbia Human Rights Act.

### VII. ANTI-DEFICIENCY CONSIDERATIONS

DCPS's duty to fulfill financial obligations of any kind pursuant to any and all provisions of this Agreement, or any subsequent agreement entered into pursuant to this Agreement, are and shall remain subject to the provisions of (i) the federal Anti-Deficiency Act, 31 U.S.C. §§ 1341, 1342, 1349-1351, (ii) the District of Columbia Anti-Deficiency Act, D.C. Official Code §§ 47-355.01-355.08 (2001); (iii) D.C. Official Code § 47-105 (2001), and D.C. Official Code § 1-204.46 (2006 Supp.), as the foregoing statutes may be amended from time to time, regardless of whether a particular obligation has been

expressly so conditioned. Pursuant to the Anti-Deficiency Acts, nothing in this Agreement shall create an obligation on DCPS in anticipation of an appropriation by Congress for such purpose, and DCPS's legal liability for any obligations under this Agreement shall not arise or obtain in advance of the lawful availability of appropriated funds for the applicable fiscal year as approved by Congress.

#### VIII. CONFIDENTIALITY AND ACCESS TO RECORDS

The Parties will access, use, restrict, safeguard and dispose of all information related to this agreement in accordance with all relevant federal and local statutes, regulations and policies.

Organization shall share with DCPS all Project data, including all employee specific data used in the Project. Organization will submit all requests for DCPS data to the DCPS Office of Talent and Culture ("OTC") and will follow all procedures established by OTC for such requests.

#### IX. PUBLICITY

Organization shall not use the logo of DCPS, the District or any District agency in any statement, promotional materials (including on Organization's website) or in any published materials, and shall not use the name of DCPS, the District or any District agency in any statement, promotional materials (including on Organization's website) or in any published materials in a manner which states or implies support or an endorsement of Organization by DCPS. In addition, Organization shall at all times obtain prior written approval from the DCPS contact referenced in Section XI of this Agreement before it makes any statement, disseminates any promotional materials or issues any published materials bearing on the services it provides under this Agreement except as otherwise provided in Subsection II.B. 10, above. The restrictions on statements and promotional/public materials in the previous sentence do not apply to statements and/or materials that state the existence of the Agreement, the identity of the parties, or the nature and scope of the project.

#### X. TERMINATION

DCPS may immediately terminate this Agreement in whole or in part at any time by providing notice to Organization if, in DCPS' sole discretion, such termination is in the best interest of DCPS or the District. Either Party may terminate this Agreement in whole or in part by giving thirty (30) calendar days advance written notice to the other Party.

#### XI. NOTICES AND CONTACT PERSONS

Any inquiries under this Agreement shall be directed to the parties listed below. Any notices required under this Agreement shall be in writing, sent by a recognized form of communication and by any recognized delivery method to the same parties.

TO DCPS:

Brooke Amos  
Office of Talent and Culture  
District of Columbia Public Schools  
1200 First Street NE, 10<sup>th</sup> Floor  
Washington, DC 20002  
[Brooke.Amos@dc.gov](mailto:Brooke.Amos@dc.gov)

TO Organization:

Attn: Maggie Swift  
Office Research and Sponsored Projects  
University of Michigan  
3003 S. State St., Rm, 1020  
First Floor- Wolverine Tower  
Ann Arbor, MI 48109-1274  
[magnolia@umich.edu](mailto:magnolia@umich.edu)

These individuals are responsible for the management and coordination of the requirements for their respective agencies under this Agreement. Copies of correspondence related to modification, extension or termination of this Agreement, any legal matters concerning this Agreement or any other transactions stemming from this Agreement shall be furnished to these individuals with additional copies to:

General Counsel  
District of Columbia Public Schools  
1200 First Street NE, 10<sup>th</sup> Floor  
Washington, DC 20002  
Tel: (202) 442-5000  
Fax: (202) 442-5098

Brian Jacob  
Walter H. Annenberg Professor of Education Policy  
Weill Hall  
735 S. State St. #5318  
Ann Arbor, MI 48109-3091  
[bajacob@umich.edu](mailto:bajacob@umich.edu)

## XII. MISCELLANEOUS

- A. Modifications. This Agreement may only be amended or modified by a written instrument signed by both Parties.