



BOARD OF DIRECTORS MEETING AGENDA

TUESDAY, JULY 11, 2023 | 5:30 PM

Board members will meet in person at 1421 S. Sheridan Rd. Public comments submitted in accordance to our public comments policy will be read prior to the relevant agenda item.

Posted on: July 10, 2023 at 4:00 PM

Posted by: Keshia Latham, Incoming Board Clerk

PARTICIPANTS

Board Members

Cynthia Jasso (Board Chair)
Dr. Anna Montgomery (Vice Chair)
Ryan Myers (Treasurer)
Ivan Godinez-Reyes
Ben Stewart
John Gawey
Omare Jimmerson
Ana Ponce
Ashley Chaney
Samantha Aponte

THA Executive Leadership Team

Elsie Urueta Pollock (Chief Executive Officer)
Amanda Yuen (Chief Operations Officer)
Kate Freudenheim (Chief Academic Officer)

AGENDA

	Action	Item	Rationale	Lead	Time
1	-	Welcome		Cynthia Jasso, Board Chair	5:30 PM
2	-	Roll Call		Cynthia Jasso, Board Chair	5:31 PM
3	VOTE	Approval of Consent Agenda a) July Meeting Agenda b) June Meeting Minutes c) Routine Staffing Items d) Approval of HS Textbook Subscription Renewals e) Approval of Edmentum Renewal for credit recovery software f) Approval of updated activity fund subaccounts	a) The meeting's board agenda ensures proper meeting conduct by outlining all matters to be considered by the public body. b) The proceedings of a public body shall be kept by a person so designated by such public body in the form of written minutes which shall be an official summary of the proceedings showing clearly those members present and absent, all matters considered by the public	Cynthia Jasso, Board Chair	5:32 PM

			<p>body, and all actions taken by such public body.</p> <p>c) Routine personnel actions implement the various talent strategies and priorities authorized by THA's Board of Directors. All salaries are listed as the prorated total based on start date.</p> <p>f) The board of education, at the beginning of each fiscal year and as needed during each fiscal year, shall approve all school activity fund subaccounts, all subaccount fundraising activities and all purposes for which the monies collected in each subaccount can be expended.</p>		
4	VOTE	Approval to declare an immediate emergency under the Public Competitive Bidding Act resulting from damage to the Sheridan Campus caused by the storms on June 18.	The Public Competitive Bidding Act provides for waiving bidding requirements if an emergency exists. Absent an emergency, there are a number of requirements, including a 21 day notice period that would cause significant further damage and potential loss with a delay to the start of the school year.	Amanda Yuen, COO	5:37 PM
5	VOTE	Review of storm damage and approval of related contracts to repair Sheridan Campus	The storm caused significant damage to the structure and contents of the Sheridan Campus. Along with our insurance company, we are determining the full scope of necessary contracts to repair with the goal of maintaining our 2023-2024 school calendar. THA has a deductible of \$413,174.60 for wind/hail. Additional costs, up to the limits, would be covered by the insurance claim, and THA is working	Amanda Yuen, COO	5:38 PM

			closely with the assigned adjuster. Contracts, upon approval, would be subject to insurance approval and updates prior to execution.		
6	VOTE	Approval of creation of recovery fund	Per the Oklahoma Cost Accounting System, Fund 86 is the Casualty/Flood Insurance Recovery Fund. It is a separate non-self-insured fund established to account for receipts and expenditures for all types of insurance coverage and major reimbursements and reserves for property.	Amanda Yuen, COO	5:43 PM
7	VOTE	Approval of Employee Assistance Program Agreement with BHS, up to \$4700.	THA began purchasing an EAP 2 years ago as a staff benefit. We have determined we need a more comprehensive EAP and have selected BHS to be the provider, based on a review of option. The contract may be increased up to \$4700 to accommodate an 8-session model. Costs will come from the general fund.	Amanda Yuen, COO	5:46 PM
8	VOTE	Approval of DS Bus Lines Price Increase for 2023-2024	DS Bus Lines has identified increased costs with the competitive landscape in Tulsa as well as the evolving needs of the workforce during the pandemic. Because of this, costs for this year have increased, resulting in a need to update the contract for the final year \$472/bus/day with a subsidy of \$175/day paid by local donors. Costs are paid from the general fund.	Amanda Yuen, COO	5:51 PM
9	VOTE	Approval of board appointments	Annually, the board approves specific appointments that are key to THA's operations.	Elsie Urueta Pollock, CEO	5:59 PM
10	VOTE	Approval of updated salary ranges	Based on the state education budget recently approved, THA has	Amanda Yuen, COO	6:02 PM

			evaluated the impact on its budget and updated salary ranges accordingly.		
11	VOTE	Approval of Teach For America Agreements	Teach For America partners with THA to provide corps members to fill teacher positions. Newly, they support TFA alumni with new leader development. THA pays a fee for these services, which come from the general fund.	Elsie Urueta Pollock, CEO	6:07 PM
12	VOTE	Propose executive session to discuss the following items pursuant to O.S. Title 25, Section 307 (B) (1): Discussing the employment matters related to the Chief Executive Officer	Annually, the board reviews CEO performance.	Cynthia Jasso, Board Chair Ivan Godinez-Reyes	6:22 PM
13	VOTE	Approval of CEO Letter of Agreement	Annually, the board reviews CEO performance and creates and approves the letter of agreement.	Cynthia Jasso, Board Chair	6:27 PM
14	VOTE	Approval of New and Modified General Fund and Gift Fund Encumbrances		Amanda Yuen, COO	6:32 PM
16	INFO	Review of 2021-2022 Annual Report		Elsie Urueta Pollock, CEO Madison Curley, Director of External Affairs & Communications	6:35 PM
17	INFO	Review of Board Dashboard		Amanda Yuen, COO	6:45 PM
18	INFO	Committee Reports -Executive -Governance -Finance -Development -Academic Achievement		Committee Chairs	7:03 PM
19	-	New Business		Cynthia Jasso, Board Chair	7:15 PM
20	-	Adjourn		Cynthia Jasso, Board Chair	7:30 PM



BOARD OF DIRECTORS MEETING MINUTES

WEDNESDAY, JUNE 14, 2023 | 5:30 PM

Board members will meet in person at 1421 S. Sheridan Rd. Public comments submitted in accordance to our public comments policy will be read prior to the relevant agenda item.

PARTICIPANTS

Board Members

Cynthia Jasso (Board Chair)
Dr. Anna Montgomery (Vice Chair)
Ryan Myers (Treasurer)
Ivan Godinez-Reyes
Ben Stewart
John Gawey
Omare Jimmerson
Ana Ponce
Ashley Chaney
Samantha Aponte

THA Executive Leadership Team

Elsie Urueta Pollock (Chief Executive Officer)
Amanda Yuen (Chief Operations Officer)
Kate Freudenheim (Chief Academic Officer)

AGENDA

	Action	Item	Minutes
1	-	Welcome	A regular meeting of the Board of Directors of Tulsa Honor Academy was held on Wednesday, June 14, 2023 commencing at 5:42 PM at THA's Sheridan Campus located at 1421 S. Sheridan Rd.
2	-	Roll Call	PRESENT: Cynthia Jasso Ana Ponce Ryan Myers Samantha Aponte Ivan Godinez-Reyes ABSENT: Dr. Anna Montgomery John Gawey Omare Jimmerson Ashley Chaney Ben Stewart
3	VOTE	Approval of Consent Agenda a) June Meeting Agenda b) May Meeting Minutes c) May Financial Report d) Routine Staffing Items	A motion was made by Ivan Godinez-Reyes to approve the consent agenda and the motion was seconded by Ryan Myers. The motion passed.

		e) Approval of Wired Technology Partners technology support agreement f) Approval of Tulsa Public Schools lease agreement g) Approval of Michi Morris psychometrist agreement h) Approval of State Contract for Audit and School Auditor Engagement Letter with Bledsoe, Hewett, & Gullekson i) Approval of Edulastic assessment software j) Approval of GoGuardian Admin Chromebook monitoring software k) Approval of NWEA MAP Assessment l) Approval of PowerSchool Student Information System Subscription	AYE: Cynthia Jasso, Ana Ponce, Ryan Myers, Samantha Aponte, Ivan Godinez-Reyes NAY: ABSTAIN: ABSENT: Dr. Anna Montgomery, John Gawey, Omare Jimmerson, Ashley Chaney, Ben Stewart
4	INFO	Progress on Permanent Facility	No facility update was provided.
5	VOTE	Approval of FY24 budget	A motion was made by Ryan Myers to approve Item 6 and the motion was seconded by Ivan Godinez-Reyes. The motion passed. AYE: Cynthia Jasso, Ana Ponce, Ryan Myers, Samantha Aponte, Ivan Godinez-Reyes NAY: ABSTAIN: ABSENT: Dr. Anna Montgomery, John Gawey, Omare Jimmerson, Ashley Chaney, Ben Stewart
6	VOTE	Approval of up to \$70,000 in wall protection at Sheridan Campus from capital campaign funds	A motion was made by Ivan Godinez-Reyes to approve Item 6 and the motion was seconded by Ana Ponce. The motion passed. AYE: Cynthia Jasso, Ana Ponce, Ryan Myers, Samantha Aponte, Ivan Godinez-Reyes NAY: ABSTAIN: ABSENT: Dr. Anna Montgomery, John Gawey, Omare Jimmerson, Ashley Chaney, Ben Stewart
7	VOTE	Approval of OSSBA membership and purchase of policy services	A motion was made by Cynthia Jasso to approve Item 7 and the motion was seconded by Ivan Godinez-Reyes. The motion passed. AYE: Cynthia Jasso, Ana Ponce, Ryan Myers, Samantha Aponte, Ivan Godinez-Reyes

			<p>NAY:</p> <p>ABSTAIN:</p> <p>ABSENT: Dr. Anna Montgomery, John Gawey, Omare Jimmerson, Ashley Chaney, Ben Stewart</p>
8	VOTE	Approval of new activity fund subaccount for scholarships	<p>A motion was made by Ana Ponce to approve Item 8 and the motion was seconded by Ivan Godinez-Reyes.</p> <p>The motion passed.</p> <p>AYE: Cynthia Jasso, Ana Ponce, Ryan Myers, Samantha Aponte, Ivan Godinez-Reyes</p> <p>NAY:</p> <p>ABSTAIN:</p> <p>ABSENT: Dr. Anna Montgomery, John Gawey, Omare Jimmerson, Ashley Chaney, Ben Stewart</p>
9	VOTE	Approval of updated maternity leave policy	<p>A motion was made by Ana Ponce to approve Item 9 and the motion was seconded by Ivan Godinez-Reyes.</p> <p>The motion passed.</p> <p>AYE: Cynthia Jasso, Ana Ponce, Ryan Myers, Samantha Aponte, Ivan Godinez-Reyes</p> <p>NAY:</p> <p>ABSTAIN:</p> <p>ABSENT: Dr. Anna Montgomery, John Gawey, Omare Jimmerson, Ashley Chaney, Ben Stewart</p>
10	VOTE	Approval of updated open transfer seat numbers for 2023-2024	<p>A motion was made by Ryan Myers to approve Item 10 and the motion was seconded by Samantha Aponte.</p> <p>The motion passed.</p> <p>AYE: Cynthia Jasso, Ana Ponce, Ryan Myers, Samantha Aponte, Ivan Godinez-Reyes</p> <p>NAY:</p> <p>ABSTAIN:</p> <p>ABSENT: Dr. Anna Montgomery, John Gawey, Omare Jimmerson, Ashley Chaney, Ben Stewart</p>
11	VOTE	Approval of New and Modified General Fund and Gift Fund Encumbrances	<p>A motion was made by Ryan Myers to approve Item 11 and the motion was seconded by Ivan Godinez-Reyes.</p> <p>The motion passed.</p> <p>AYE: Cynthia Jasso, Ana Ponce, Ryan Myers, Samantha Aponte, Ivan Godinez-Reyes</p> <p>NAY:</p> <p>ABSTAIN:</p>

			ABSENT: Dr. Anna Montgomery, John Gawey, Omare Jimmerson, Ashley Chaney, Ben Stewart
12	INFO	Review of Activity Fund Report	Elsie Urueta Pollock provided a report on THA's Activity Fund.
13	INFO	Review of External Practices	Elsie Urueta Pollock provided an update about THA's strategic planning process.
14	INFO	CEO Evaluation Process	Cynthia Jasso provided an update about the timeline of the CEO evaluation.
15	INFO	Committee Reports -Executive -Governance -Finance -Development -Academic Achievement	Cynthia Jasso provided an update about the Governance and Executive Committees in conducting the CEO evaluation and identifying new board members. The Development Committee shared about the scholarship funds. The Academic Achievement Committee meets again on 6/16. No Finance Committee update was provided.
16	-	Adjourn	The meeting was adjourned at 7:16 PM.

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Purchase Orders: Please attach a copy of this price quote to your purchase order and submit Your Purchase Order To:

MPS 16365 James Madison Highway Gordonsville, VA 22942
 Email: highschool@mps virginia.com / Toll Free: (540) 672-7744

Quote Number	00094661	Prepared By	Cassidy Krogulski
Created Date	6/8/2023	Phone	(646) 629-6563
		Email	ckrogulski@bfpwpub.com
Contact Name	Kimberly Siftar	Ship To	Tulsa Honor Academy HS
Bill To	Tulsa Honor Academy HS 1421 South Sheridan Road T Tulsa, Oklahoma 74112 United States		1421 South Sheridan Road T Tulsa, Oklahoma 74112 United States

Itemized Products

ISBN	EAN	Product	Edition	Author	Sales Price	Quantity	Total Price
1319358381	9781319358389	LaunchPad for Presidential Election Update American Government: Stories of a Nation (One-Use Online)	1	Scott Abernathy; Karen Waples	USD 77.66	15.00	USD 1,164.90

Itemized Product Total: USD 1,164.90

Total Available for Purchase USD 0.00

Shipping Information

Schools are typically tax exempt however if your school is **NOT** tax exempt, please note that your local tax rate will apply to this quote.

Shipping Location No Shipping

Shipping Fees: USD 0.00
Special Shipping Fees: USD 0.00
Total Shipping Fees: USD 0.00

Grand Totals

Itemized Products + Shipping Fees: USD 1,164.90

Instructor Resources

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Print Only Adopters: Instructor resources can be unlocked by visiting www.bfpwpub.com/AdopterTRM

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NOTE: If you plan to place an order and will require a signed data agreement, please send to your rep as soon as possible. Agreement reviews take an average of 1-3 weeks to review.

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MPS 16365 James Madison Highway Gordonsville, VA 22942
 Email: highschool@mps virginia.com / Toll Free: (540) 672-7744

Quote Number	00094239	Prepared By	Cassidy Krogulski
Created Date	6/1/2023	Phone	(646) 629-6563
		Email	ckrogulski@bfpwpub.com
Contact Name	Kimberly Siftar	Ship To	Tulsa Honor Academy HS
Bill To	Tulsa Honor Academy HS 1421 South Sheridan Road T Tulsa, Oklahoma 74112 United States		1421 South Sheridan Road T Tulsa, Oklahoma 74112 United States

Itemized Products

ISBN	EAN	Product	Edition	Author	Sales Price	Quantity	Total Price
1319362605	9781319362607	LaunchPad for Updated Myers' Psychology for the AP® Course (One-Use Online)	3	David G. Myers; C. Nathan DeWall	USD 95.11	90.00	USD 8,559.90

Itemized Product Total: USD 8,559.90

Free Product: Please include in your PO:

ISBN	EAN	Free Product	Edition	Author	Net Price	Quantity	Your Price
1319362575	9781319362577	Teacher's Edition with Online Teacher Resources for Updated Myers' Psychology for the AP® Course	3	David G. Myers; C. Nathan DeWall	USD 490.00	3	\$0.00
1319362583	9781319362584	ExamView Assessment Suite for Updated Myers' Psychology for the AP® Course	3	David G. Myers; C. Nathan DeWall	USD 490.00	3	\$0.00
1319362591	9781319362591	Teacher's Resource Flash Drive for Updated Myers' Psychology for the AP® Course	3	David G. Myers; C. Nathan DeWall	USD 490.00	3	\$0.00

Total Available for Purchase USD 0.00

Shipping Information

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Shipping Location No Shipping

Shipping Fees: USD 0.00
Special Shipping Fees: USD 0.00
Total Shipping Fees: USD 0.00

Grand Totals

Itemized Products + Shipping Fees: USD 8,559.90

Instructor Resources

Digital Adopters: Instructor resources will be available within your product; no action needed

Print Only Adopters: Instructor resources can be unlocked by visiting www.bfwpub.com/AdopterTRM

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NOTE: If you plan to place an order and will require a signed data agreement, please send to your rep as soon as possible. Agreement reviews take an average of 1-3 weeks to review.



Date: 07/05/2023
Order Number: Q-537514
Revision: 1
Order Form Expiration Date: 07/31/2023

ORDER FORM

Orders Under \$25,000.00 may pay by Credit Card:
Call 214.294.9901 or e-mail creditcardprocessing@edmentum.com

Customer and Billing Address

Customer No.: 475542
Customer Name: Tulsa Honor Academy
Billing Address: 209 S Lakewood Ave
Tulsa, OK 74112

Products and Services

Tulsa Honor Academy

Products	Qty	License Start Date	License End Date	License Term (Months)
Courseware: HS Comprehensive Library - Program License	245	08/01/2023	07/31/2024	12
Unlimited access to live professional development in Edmentum Learning Communities	1	08/01/2023	07/31/2024	12

Tulsa Honor Academy Subtotal: \$8,092.65

Total US Funds: \$8,092.65

** Unless otherwise specified in this Order Form, the Start Date for your license(s) will be one of the following: (a) the day immediately following the expiration date of the prior license term or (b) the date in which we have accepted your order and have issued log-in credentials for your software license.

*** Services purchased are valid for an annual term. Any service offering that is not used during the applicable term will expire and cannot be carried over or used in subsequent periods.

Taxes

Prices shown above do not include any state and local taxes that may apply. Any such taxes are the responsibility of the Customer and will appear on the final invoice. If the contracting entity is exempt from sales tax, please send the applicable tax exemption certificate to orders@edmentum.com or attach the certificate to this order form in the Signature section.

Invoicing and Payment Terms

Payment Due Date	Amount
7/15/2023	USD 8,092.65
Total	USD 8,092.65

Edmentum | P.O. Box 776725 | Chicago, IL 60677-6725 | www.edmentum.com





Date: 07/05/2023
Order Number: Q-537514
Revision: 1
Order Form Expiration Date: 07/31/2023

ORDER FORM

Orders Under \$25,000.00 may pay by Credit Card:
Call 214.294.9901 or e-mail creditcardprocessing@edmentum.com

Terms and Conditions

For the purposes of this Order Form, "you" and "your" refer to Customer, and "we", "us" and "our" refer to Edmentum Inc. and affiliates. This Order Form and any documents it incorporates (including the Standard Purchase and License Terms located at <http://www.edmentum.com/standardterms> and the documents it references) form the entire agreement between you and us ("Agreement"). You acknowledge that any terms and conditions in your purchase order or any other documents you provide that enhance our obligations or restrictions or contradict the Agreement do not have force and effect.

Purchase Order

You acknowledge that this Agreement is non-cancellable and you will submit a purchase order for the full amount of this Order Form. Your order will not be scheduled for delivery until you have submitted a purchase order referencing and conforming to this Order Form.

Acceptance

This offer will expire on the Order Form Expiration Date noted above unless we earlier withdraw or extend the offer in writing.

I represent that I have read the terms and conditions included in this Agreement, that I am authorized to accept this offer and the Agreement's terms and conditions on behalf of the customer identified above and that I do accept this offer on behalf of the customer who agrees to adhere to the Agreement's terms and conditions. To the extent that either parties process does not require that I execute this Order Form, I accept, acknowledge and agree to the terms and conditions identified in and referenced in this Agreement as signified by my receipt, use or access of the products and/or services identified.

Invoice Contact Information – Please Provide Your Finance Dept Contact Information

First Name:

Last Name:

Email Address:

Customer Signature

Name (Printed or Typed)

Title

Date

Edmentum | P.O. Box 776725 | Chicago, IL 60677-6725 | www.edmentum.com





THA ACTIVITY FUND SUBACCOUNTS

The board of education, at the beginning of each fiscal year and as needed during each fiscal year, shall approve all school activity fund subaccounts, all subaccount fundraising activities and all purposes for which the monies collected in each subaccount can be expended.

NETWORK-WIDE SUBACCOUNTS	REVENUE	PURPOSE/USES
General fund refund	<ul style="list-style-type: none"> Uniform payments Meal payments Scholar fees (such as Chromebook repair, book replacement, vandalism fees) 	<ul style="list-style-type: none"> Reimburse general fund for appropriate costs
Staff fund	<ul style="list-style-type: none"> Other income collected for use by school personnel and other school related adult functions. 	<ul style="list-style-type: none"> Personal items for employees (such as cards, flowers); meals; supplies for staff or other adult events
Scholarship Fund	<ul style="list-style-type: none"> Donations or grants 	<ul style="list-style-type: none"> Scholarship payments directly to Tulsa Honor Academy alumni or their post-secondary institutions Gift cards of \$500 or less for gap funding related to post-secondary needs
THA HS SUBACCOUNTS		
THA HS	<ul style="list-style-type: none"> Admissions to athletic contests, school or class plays, carnivals, parties, dances and promenades; Sale of student activity 	<ul style="list-style-type: none"> Supplies and services for extracurricular activities, including clubs, dances, prom, etc. Transportation for



TULSA HONOR ACADEMY
... ACADEMICS - CHARACTER - EXCELLENCE ...

	<p>tickets</p> <ul style="list-style-type: none">● Concession sales● Dues, fees and donations to student clubs or other organizations, provided that membership in such clubs or organizations shall not be mandatory	<p>practice, games, and extracurricular trips</p> <ul style="list-style-type: none">● Uniforms for extracurricular sports
Student Council	<ul style="list-style-type: none">● Admissions to athletic contests, school or class plays, carnivals, parties, dances and promenades;● Sale of student activity tickets● Concession sales● Dues, fees and donations to student clubs or other organizations, provided that membership in such clubs or organizations shall not be mandatory	<ul style="list-style-type: none">● Supplies and services for student council activities
THA MS SUBACCOUNTS	REVENUE	PURPOSE/USE
THA MS	<ul style="list-style-type: none">● Admissions to athletic contests, school or class plays, carnivals, parties, dances and promenades;● Sale of student activity tickets● Concession sales● Dues, fees and donations to student clubs or other organizations, provided that membership in such clubs or organizations shall not be mandatory	<ul style="list-style-type: none">● Supplies (including uniforms) and services for extracurricular activities, including sports, clubs, dances, 8th grade promotion, 8th grade lock-in, etc.● Transportation for practice, games, and extracurricular trips● Uniforms for extracurricular sports● Field trip expenses● Referee payment and fees for competitions



THA FLORES MS SUBACCOUNTS		
Clubs Fund	<ul style="list-style-type: none">• Dues, fees and donations to student clubs or other organizations (provided that membership in such clubs or organizations shall not be mandatory)• yearbook sales• club-based fundraisers and donations	<ul style="list-style-type: none">• Provide snacks, transportation, field trip fees, and materials for after-school clubs
Student Council	<ul style="list-style-type: none">• Dance admissions• event admissions (talent show, movie night, family events, etc.)• concession sales at such events• contest fees	<ul style="list-style-type: none">• Provide snacks, fees, and materials for events such as dances, movie nights, talent show, etc.• 8th grade promotion + lock in• School dances
Athletics Fund	<ul style="list-style-type: none">• Admissions to athletic contests and events• concessions at athletic contests, fees (membership is not mandatory)• donations• fundraisers	<ul style="list-style-type: none">• Provide uniforms for beginning athletic program at FMS (girls and boys' soccer, girls and boys' basketball, coed spirit squad, track + field)• Pay referee and any tournament fees needed for games• Provide transportation for scholars to and from games and areas needed for practice

ADDITIONS AND DELETIONS: The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

DRAFT AIA® Document A104® – 2017

Standard Abbreviated Form of Agreement Between Owner and Contractor

AGREEMENT made as of the « » day of « » in the year « »
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status, address and other information)

« »
« »
« »
« »

and the Contractor:
(Name, legal status, address and other information)

« »
« »
« »
« »

for the following Project:
(Name, location and detailed description)

« »
« »
« »

The Architect:
(Name, legal status, address and other information)

« »
« »
« »
« »

The Owner and Contractor agree as follows.

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User Notes:

(1802532144)

TABLE OF ARTICLES

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9	CONTRACTOR
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EXHIBIT A DETERMINATION OF THE COST OF THE WORK

ARTICLE 1 THE WORK OF THIS CONTRACT

The Contractor shall execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 2.1 The date of commencement of the Work shall be:

(Check one of the following boxes.)

[☐] The date of this Agreement.

[« »] A date set forth in a notice to proceed issued by the Owner.

[« »] Established as follows:
(Insert a date or a means to determine the date of commencement of the Work.)

« »

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.

§ 2.2 The Contract Time shall be measured from the date of commencement.

§ 2.3 Substantial Completion

§ 2.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:

(Check the appropriate box and complete the necessary information.)

[« »] Not later than « » (« ») calendar days from the date of commencement of the Work.

[« »] By the following date: « »

§ 2.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates:

Portion of Work

Substantial Completion Date

§ 2.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 2.3, liquidated damages, if any, shall be assessed as set forth in Section 3.5.

ARTICLE 3 CONTRACT SUM

§ 3.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be one of the following:

(Check the appropriate box.)

[« »] Stipulated Sum, in accordance with Section 3.2 below

[« »] Cost of the Work plus the Contractor's Fee, in accordance with Section 3.3 below

[« »] Cost of the Work plus the Contractor's Fee with a Guaranteed Maximum Price, in accordance with Section 3.4 below

(Based on the selection above, complete Section 3.2, 3.3 or 3.4 below.)

§ 3.2 The Stipulated Sum shall be « » (\$ « »), subject to additions and deductions as provided in the Contract Documents.

§ 3.2.1 The Stipulated Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

(State the numbers or other identification of accepted alternates. If the bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)

« »

§ 3.2.2 Unit prices, if any:

(Identify the item and state the unit price and the quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)

§ 3.2.3 Allowances, if any, included in the stipulated sum:

(Identify each allowance.)

Item	Price

§ 3.3 Cost of the Work Plus Contractor's Fee

§ 3.3.1 The Cost of the Work is as defined in Exhibit A, Determination of the Cost of the Work.

§ 3.3.2 The Contractor's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee and the method of adjustment to the Fee for changes in the Work.)

« »

§ 3.4 Cost of the Work Plus Contractor's Fee With a Guaranteed Maximum Price

§ 3.4.1 The Cost of the Work is as defined in Exhibit A, Determination of the Cost of the Work.

§ 3.4.2 The Contractor's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee and the method of adjustment to the Fee for changes in the Work.)

« »

§ 3.4.3 Guaranteed Maximum Price

§ 3.4.3.1 The sum of the Cost of the Work and the Contractor's Fee is guaranteed by the Contractor not to exceed « » (\$ « »), subject to additions and deductions by changes in the Work as provided in the Contract Documents. This maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner.

(Insert specific provisions if the Contractor is to participate in any savings.)

« »

§ 3.4.3.2 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

(State the numbers or other identification of accepted alternates. If the bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)

« »

§ 3.4.3.3 Unit Prices, if any:

(Identify the item and state the unit price and the quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)

§ 3.4.3.4 Allowances, if any, included in the Guaranteed Maximum Price:
(Identify each allowance.)

Item	Price

§ 3.4.3.5 Assumptions, if any, on which the Guaranteed Maximum Price is based:

« »

§ 3.4.3.6 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

§ 3.4.3.7 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions contained in Section 3.4.3.5. The Owner shall promptly furnish such revised Contract Documents to the Contractor. The Contractor shall notify the Owner and Architect of any inconsistencies between the agreed-upon assumptions contained in Section 3.4.3.5 and the revised Contract Documents.

§ 3.5 Liquidated damages, if any:
(Insert terms and conditions for liquidated damages, if any.)

« »

ARTICLE 4 PAYMENT

§ 4.1 Progress Payments

§ 4.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 4.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

« »

§ 4.1.3 Provided that an Application for Payment is received by the Architect not later than the « » day of a month, the Owner shall make payment of the certified amount to the Contractor not later than the « » day of the « » month. If an Application for Payment is received by the Architect after the date fixed above, payment shall be made by the Owner not later than « » (« ») days after the Architect receives the Application for Payment.
(Federal, state or local laws may require payment within a certain period of time.)

§ 4.1.4 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold retainage from the payment otherwise due as follows:
(Insert a percentage or amount to be withheld as retainage from each Application for Payment and any terms for reduction of retainage during the course of the Work. The amount of retainage may be limited by governing law.)

« »

§ 4.1.5 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.
(Insert rate of interest agreed upon, if any.)

« » % « »

§ 4.2 Final Payment

§ 4.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 18.2, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Contractor has submitted a final accounting for the Cost of the Work, where payment is on the basis of the Cost of the Work with or without a Guaranteed Maximum Price; and
- .3 a final Certificate for Payment has been issued by the Architect in accordance with Section 15.7.1.

§ 4.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

« »

ARTICLE 5 DISPUTE RESOLUTION

§ 5.1 Binding Dispute Resolution

For any claim subject to, but not resolved by, mediation pursuant to Section 21.5, the method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

[« »] Arbitration pursuant to Section 21.6 of this Agreement

[« »] Litigation in a court of competent jurisdiction

[« »] Other (Specify)

« »

If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, claims will be resolved in a court of competent jurisdiction.

ARTICLE 6 ENUMERATION OF CONTRACT DOCUMENTS

§ 6.1 The Contract Documents are defined in Article 7 and, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.

§ 6.1.1 The Agreement is this executed AIA Document A104™–2017, Standard Abbreviated Form of Agreement Between Owner and Contractor.

§ 6.1.2 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:

(Insert the date of the E203–2013 incorporated into this Agreement.)

« »

§ 6.1.3 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages

§ 6.1.4 The Specifications:

(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

« »

Section	Title	Date	Pages
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§ 6.1.5 The Drawings:

(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

« »

Number	Title	Date
--------	-------	------

§ 6.1.6 The Addenda, if any:

Number	Date	Pages
--------	------	-------

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are enumerated in this Article 6.

§ 6.1.7 Additional documents, if any, forming part of the Contract Documents:

.1 Other Exhibits:

(Check all boxes that apply.)

☐ Exhibit A, Determination of the Cost of the Work.

☐ AIA Document E204™–2017, Sustainable Projects Exhibit, dated as indicated below:
(Insert the date of the E204-2017 incorporated into this Agreement.)

« »

☐ The Sustainability Plan:

Title	Date	Pages
-------	------	-------

☐ Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
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.2 Other documents, if any, listed below:

(List here any additional documents that are intended to form part of the Contract Documents.)

« »

ARTICLE 7 GENERAL PROVISIONS

§ 7.1 The Contract Documents

The Contract Documents are enumerated in Article 6 and consist of this Agreement (including, if applicable, Supplementary and other Conditions of the Contract), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change

Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 7.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Owner and the Contractor.

§ 7.3 The Work

The term “Work” means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor’s obligations. The Work may constitute the whole or a part of the Project.

§ 7.4 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect’s consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 7.5 Ownership and use of Drawings, Specifications and Other Instruments of Service

§ 7.5.1 The Architect and the Architect’s consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect’s or Architect’s consultants’ reserved rights.

§ 7.5.2 The Contractor, Subcontractors, Sub-subcontractors and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to the protocols established pursuant to Sections 7.6 and 7.7, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect’s consultants.

§ 7.6 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 7.7 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party’s sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

§ 7.8 Severability

The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid

or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 7.9 Notice

§ 7.9.1 Except as otherwise provided in Section 7.9.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

(If other than in accordance with AIA Document E203–2013, insert requirements for delivering Notice in electronic format such as name, title and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

« »

§ 7.9.2 Notice of Claims shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

§ 7.10 Relationship of the Parties

Where the Contract is based on the Cost of the Work plus the Contractor's Fee, with or without a Guaranteed Maximum Price, the Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

ARTICLE 8 OWNER

§ 8.1 Information and Services Required of the Owner

§ 8.1.1 Prior to commencement of the Work, at the written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 8.1.1, the Contract Time shall be extended appropriately.

§ 8.1.2 The Owner shall furnish all necessary surveys and a legal description of the site.

§ 8.1.3 The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 8.1.4 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 9.6.1, the Owner shall secure and pay for other necessary approvals, easements, assessments, and charges required for the construction, use, or occupancy of permanent structures or for permanent changes in existing facilities.

§ 8.2 Owner's Right to Stop the Work

If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents, or repeatedly fails to carry out the Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order is eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

§ 8.3 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents, and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to any other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 15.4.3, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including the Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 21.

ARTICLE 9 CONTRACTOR

§ 9.1 Review of Contract Documents and Field Conditions by Contractor

§ 9.1.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

§ 9.1.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 8.1.2, shall take field measurements of any existing conditions related to that portion of the Work and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies, or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents.

§ 9.1.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 9.2 Supervision and Construction Procedures

§ 9.2.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters.

§ 9.2.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of the Contractor or any of its Subcontractors.

§ 9.3 Labor and Materials

§ 9.3.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 9.3.2 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

§ 9.3.3 The Contractor may make a substitution only with the consent of the Owner, after evaluation by the Architect and in accordance with a Modification.

§ 9.4 Warranty

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation or normal wear and tear under normal usage. All other warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 15.6.3.

§ 9.5 Taxes

The Contractor shall pay sales, consumer, use, and other similar taxes that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 9.6 Permits, Fees, Notices, and Compliance with Laws

§ 9.6.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 9.6.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work. If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 9.7 Allowances

The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. The Owner shall select materials and equipment under allowances with reasonable promptness. Allowance amounts shall include the costs to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts. Contractor's costs for unloading and handling at the site, labor, installation, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowance.

§ 9.8 Contractor's Construction Schedules

§ 9.8.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

§ 9.8.2 The Contractor shall perform the Work in general accordance with the most recent schedule submitted to the Owner and Architect.

§ 9.9 Submittals

§ 9.9.1 The Contractor shall review for compliance with the Contract Documents and submit to the Architect Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents in coordination with the Contractor's construction schedule and in such sequence as to allow the Architect reasonable time for review. By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them; (2) determined and verified materials, field measurements, and field construction criteria related thereto, or will do so; and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. The Work shall be in accordance with approved submittals.

§ 9.9.2 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents.

§ 9.9.3 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents or unless the Contractor needs to provide such services in order to carry out the Contractor's own responsibilities. If professional design services or certifications by a design professional are specifically required, the Owner and the Architect will specify the performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional. If no criteria are specified, the design shall comply with applicable codes and ordinances. Each Party shall be entitled to rely upon the information provided by the other Party. The Architect will review and approve or take other appropriate action on submittals for the limited purpose of checking for conformance with information provided and the design concept expressed in the Contract Documents. The Architect's review of Shop Drawings, Product Data, Samples, and similar submittals shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. In performing such review, the Architect will approve, or take other appropriate action upon, the Contractor's Shop Drawings, Product Data, Samples, and similar submittals.

§ 9.10 Use of Site

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 9.11 Cutting and Patching

The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly.

§ 9.12 Cleaning Up

The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus material from and about the Project.

§ 9.13 Access to Work

The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located.

§ 9.14 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

§ 9.15 Indemnification

§ 9.15.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 9.15.1.

§ 9.15.2 In claims against any person or entity indemnified under this Section 9.15 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be

liable, the indemnification obligation under Section 9.15.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE 10 ARCHITECT

§ 10.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction, until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.

§ 10.2 Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and Architect. Consent shall not be unreasonably withheld.

§ 10.3 The Architect will visit the site at intervals appropriate to the stage of the construction to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 10.4 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 10.5 Based on the Architect's evaluations of the Work and of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 10.6 The Architect has authority to reject Work that does not conform to the Contract Documents and to require inspection or testing of the Work.

§ 10.7 The Architect will review and approve or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 10.8 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect will make initial decisions on all claims, disputes, and other matters in question between the Owner and Contractor but will not be liable for results of any interpretations or decisions rendered in good faith.

§ 10.9 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

ARTICLE 11 SUBCONTRACTORS

§ 11.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site.

§ 11.2 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the Subcontractors or suppliers proposed for each of the principal

portions of the Work. The Contractor shall not contract with any Subcontractor or supplier to whom the Owner or Architect has made reasonable written objection within ten days after receipt of the Contractor's list of Subcontractors and suppliers. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 11.3 Contracts between the Contractor and Subcontractors shall (1) require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by the Contract Documents, assumes toward the Owner and Architect, and (2) allow the Subcontractor the benefit of all rights, remedies and redress against the Contractor that the Contractor, by these Contract Documents, has against the Owner.

ARTICLE 12 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 12.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

§ 12.2 The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's activities with theirs as required by the Contract Documents.

§ 12.3 The Owner shall be reimbursed by the Contractor for costs incurred by the Owner which are payable to a Separate Contractor because of delays, improperly timed activities, or defective construction of the Contractor. The Owner shall be responsible to the Contractor for costs incurred by the Contractor because of delays, improperly timed activities, damage to the Work, or defective construction of a Separate Contractor.

ARTICLE 13 CHANGES IN THE WORK

§ 13.1 By appropriate Modification, changes in the Work may be accomplished after execution of the Contract. The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, with the Contract Sum and Contract Time being adjusted accordingly. Such changes in the Work shall be authorized by written Change Order signed by the Owner, Contractor, and Architect, or by written Construction Change Directive signed by the Owner and Architect. Upon issuance of the Change Order or Construction Change Directive, the Contractor shall proceed promptly with such changes in the Work, unless otherwise provided in the Change Order or Construction Change Directive.

§ 13.2 Adjustments in the Contract Sum and Contract Time resulting from a change in the Work shall be determined by mutual agreement of the parties or, in the case of a Construction Change Directive signed only by the Owner and Architect, by the Contractor's cost of labor, material, equipment, and reasonable overhead and profit, unless the parties agree on another method for determining the cost or credit. Pending final determination of the total cost of a Construction Change Directive, the Contractor may request payment for Work completed pursuant to the Construction Change Directive. The Architect will make an interim determination of the amount of payment due for purposes of certifying the Contractor's monthly Application for Payment. When the Owner and Contractor agree on adjustments to the Contract Sum and Contract Time arising from a Construction Change Directive, the Architect will prepare a Change Order.

§ 13.3 The Architect will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work.

§ 13.4 If concealed or unknown physical conditions are encountered at the site that differ materially from those indicated in the Contract Documents or from those conditions ordinarily found to exist, the Contract Sum and Contract Time shall be equitably adjusted as mutually agreed between the Owner and Contractor; provided that the Contractor provides notice to the Owner and Architect promptly and before conditions are disturbed.

ARTICLE 14 TIME

§ 14.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing this Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 14.2 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 14.3 The term “day” as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 14.4 The date of Substantial Completion is the date certified by the Architect in accordance with Section 15.6.3.

§ 14.5 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) changes ordered in the Work; (2) by labor disputes, fire, unusual delay in deliveries, abnormal adverse weather conditions not reasonably anticipatable, unavoidable casualties, or any causes beyond the Contractor’s control; or (3) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine, subject to the provisions of Article 21.

ARTICLE 15 PAYMENTS AND COMPLETION

§ 15.1 Schedule of Values

§ 15.1.1 Where the Contract is based on a Stipulated Sum or the Cost of the Work with a Guaranteed Maximum Price pursuant to Section 3.2 or 3.4, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Stipulated Sum or Guaranteed Maximum Price to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy required by the Architect. This schedule of values shall be used as a basis for reviewing the Contractor’s Applications for Payment.

§ 15.1.2 The allocation of the Stipulated Sum or Guaranteed Maximum Price under this Section 15.1 shall not constitute a separate stipulated sum or guaranteed maximum price for each individual line item in the schedule of values.

§ 15.2 Control Estimate

§ 15.2.1 Where the Contract Sum is the Cost of the Work, plus the Contractor’s Fee without a Guaranteed Maximum Price pursuant to Section 3.3, the Contractor shall prepare and submit to the Owner a Control Estimate within 14 days of executing this Agreement. The Control Estimate shall include the estimated Cost of the Work plus the Contractor’s Fee.

§ 15.2.2 The Control Estimate shall include:

- .1 the documents enumerated in Article 6, including all Modifications thereto;
- .2 a list of the assumptions made by the Contractor in the preparation of the Control Estimate to supplement the information provided by the Owner and contained in the Contract Documents;
- .3 a statement of the estimated Cost of the Work organized by trade categories or systems and the Contractor’s Fee;
- .4 a project schedule upon which the Control Estimate is based, indicating proposed Subcontractors, activity sequences and durations, milestone dates for receipt and approval of pertinent information, schedule of shop drawings and samples, procurement and delivery of materials or equipment the Owner’s occupancy requirements, and the date of Substantial Completion; and
- .5 a list of any contingency amounts included in the Control Estimate for further development of design and construction.

§ 15.2.3 When the Control Estimate is acceptable to the Owner and Architect, the Owner shall acknowledge it in writing. The Owner's acceptance of the Control Estimate does not imply that the Control Estimate constitutes a Guaranteed Maximum Price.

§ 15.2.4 The Contractor shall develop and implement a detailed system of cost control that will provide the Owner and Architect with timely information as to the anticipated total Cost of the Work. The cost control system shall compare the Control Estimate with the actual cost for activities in progress and estimates for uncompleted tasks and proposed changes. This information shall be reported to the Owner, in writing, no later than the Contractor's first Application for Payment and shall be revised and submitted with each Application for Payment.

§ 15.2.5 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions contained in the Control Estimate. The Owner shall promptly furnish such revised Contract Documents to the Contractor. The Contractor shall notify the Owner and Architect of any inconsistencies between the Control Estimate and the revised Contract Documents.

§ 15.3 Applications for Payment

§ 15.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 15.1, for completed portions of the Work. The application shall be notarized, if required; be supported by all data substantiating the Contractor's right to payment that the Owner or Architect require; shall reflect retainage if provided for in the Contract Documents; and include any revised cost control information required by Section 15.2.4. Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 15.3.2 With each Application for Payment where the Contract Sum is based upon the Cost of the Work, or the Cost of the Work with a Guaranteed Maximum Price, the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed progress payments already received by the Contractor plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Contractor's Fee.

§ 15.3.3 Payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment stored, and protected from damage, off the site at a location agreed upon in writing.

§ 15.3.4 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or other encumbrances adverse to the Owner's interests.

§ 15.4 Certificates for Payment

§ 15.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner of the Architect's reasons for withholding certification in whole or in part as provided in Section 15.4.3.

§ 15.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluations of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1)

made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 15.4.3 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 15.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 15.4.1. If the Contractor and the Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 9.2.2, because of

- .1 defective Work not remedied;
- .2 third-party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 15.4.4 When either party disputes the Architect's decision regarding a Certificate for Payment under Section 15.4.3, in whole or in part, that party may submit a Claim in accordance with Article 21.

§ 15.5 Progress Payments

§ 15.5.1 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to sub-subcontractors in a similar manner.

§ 15.5.2 Neither the Owner nor Architect shall have an obligation to pay or see to the payment of money to a Subcontractor or supplier except as may otherwise be required by law.

§ 15.5.3 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 15.5.4 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 15.6 Substantial Completion

§ 15.6.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 15.6.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 15.6.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. When the Architect determines that the Work or designated portion thereof is substantially complete, the Architect will issue a Certificate of Substantial Completion which shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 15.6.4 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 15.7 Final Completion and Final Payment

§ 15.7.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions stated in Section 15.7.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 15.7.2 Final payment shall not become due until the Contractor has delivered to the Owner a complete release of all liens arising out of this Contract or receipts in full covering all labor, materials and equipment for which a lien could be filed, or a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including costs and reasonable attorneys' fees.

§ 15.7.3 The making of final payment shall constitute a waiver of claims by the Owner except those arising from

- .1 liens, claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties required by the Contract Documents; or
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.

§ 15.7.4 Acceptance of final payment by the Contractor, a Subcontractor or supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of the final Application for Payment.

ARTICLE 16 PROTECTION OF PERSONS AND PROPERTY

§ 16.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and

- 3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation, or replacement in the course of construction.

The Contractor shall comply with, and give notices required by, applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons and property and their protection from damage, injury, or loss. The Contractor shall promptly remedy damage and loss to property caused in whole or in part by the Contractor, a Subcontractor, a sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 16.1.2 and 16.1.3. The Contractor may make a claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 9.15.

§ 16.2 Hazardous Materials and Substances

§ 16.2.1 The Contractor is responsible for compliance with the requirements of the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents, and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

§ 16.2.2 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area, if in fact, the material or substance presents the risk of bodily injury or death as described in Section 16.2.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

§ 16.2.3 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

ARTICLE 17 INSURANCE AND BONDS

§ 17.1 Contractor's Insurance

§ 17.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in this Section 17.1 or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the insurance required by this Agreement from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 18.4, unless a different duration is stated below:

« »

§ 17.1.2 Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than « » (\$ « ») each occurrence, « » (\$ « ») general aggregate, and « » (\$ « ») aggregate for products-completed operations hazard, providing coverage for claims including

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal and advertising injury;

- .3 damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
- .4 bodily injury or property damage arising out of completed operations; and
- .5 the Contractor's indemnity obligations under Section 9.15.

§ 17.1.3 Automobile Liability covering vehicles owned by the Contractor and non-owned vehicles used by the Contractor, with policy limits of not less than « » (\$ « ») per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance, and use of those motor vehicles along with any other statutorily required automobile coverage.

§ 17.1.4 The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as those required under Section 17.1.2 and 17.1.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 17.1.5 Workers' Compensation at statutory limits.

§ 17.1.6 Employers' Liability with policy limits not less than « » (\$ « ») each accident, « » (\$ « ») each employee, and « » (\$ « ») policy limit.

§ 17.1.7 If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than « » (\$ « ») per claim and « » (\$ « ») in the aggregate.

§ 17.1.8 If the Work involves the transport, dissemination, use, or release of pollutants, the Contractor shall procure Pollution Liability insurance, with policy limits of not less than « » (\$ « ») per claim and « » (\$ « ») in the aggregate.

§ 17.1.9 Coverage under Sections 17.1.7 and 17.1.8 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than « » (\$ « ») per claim and « » (\$ « ») in the aggregate.

§ 17.1.10 The Contractor shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Section 17.1 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the period required by Section 17.1.1. The certificates will show the Owner as an additional insured on the Contractor's Commercial General Liability and excess or umbrella liability policy.

§ 17.1.11 The Contractor shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Contractor.

§ 17.1.12 To the fullest extent permitted by law, the Contractor shall cause the commercial liability coverage required by this Section 17.1 to include (1) the Owner, the Architect, and the Architect's Consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's Consultants, CG 20 32 07 04.

§ 17.1.13 Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by this Section 17.1, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 17.1.14 Other Insurance Provided by the Contractor

(List below any other insurance coverage to be provided by the Contractor and any applicable limits.)

Coverage

Limits

§ 17.2 Owner's Insurance

§ 17.2.1 Owner's Liability Insurance

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

§ 17.2.2 Property Insurance

§ 17.2.2.1 The Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed or materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section 17.2.2.2, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

§ 17.2.2.2 Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section 17.2.2.1 or, if necessary, replace the insurance policy required under Section 17.2.2.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 18.4.

§ 17.2.2.3 If the insurance required by this Section 17.2.2 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions.

§ 17.2.2.4 If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 18.4, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.

§ 17.2.2.5 Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Section 17.2.2 and, upon the Contractor's request, provide a copy of the property insurance policy or policies required by this Section 17.2.2. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.

§ 17.2.2.6 Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any insurance required by this Section 17.2.2, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have

been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

§ 17.2.2.7 Waiver of Subrogation

§ 17.2.2.7.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by this Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this Section 17.2.2.7 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

§ 17.2.2.7.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 17.2.2.7.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

§ 17.2.2.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements, written where legally required for validity, the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

§ 17.2.3 Other Insurance Provided by the Owner

(List below any other insurance coverage to be provided by the Owner and any applicable limits.)

Coverage	Limits
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§ 17.3 Performance Bond and Payment Bond

§ 17.3.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in the Contract Documents on the date of execution of the Contract.

§ 17.3.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

ARTICLE 18 CORRECTION OF WORK

§ 18.1 The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed, or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense, unless compensable under Section A.1.7.3 in Exhibit A, Determination of the Cost of the Work.

§ 18.2 In addition to the Contractor's obligations under Section 9.4, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 15.6.3, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty.

§ 18.3 If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Section 8.3.

§ 18.4 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 18.5 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Article 18.

ARTICLE 19 MISCELLANEOUS PROVISIONS

§ 19.1 Assignment of Contract

Neither party to the Contract shall assign the Contract without written consent of the other, except that the Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 19.2 Governing Law

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 21.6.

§ 19.3 Tests and Inspections

Tests, inspections, and approvals of portions of the Work required by the Contract Documents or by applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 19.4 The Owner's representative:

(Name, address, email address and other information)

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§ 19.5 The Contractor's representative:

(Name, address, email address and other information)

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§ 19.6 Neither the Owner's nor the Contractor's representative shall be changed without ten days' prior notice to the other party.

ARTICLE 20 TERMINATION OF THE CONTRACT

§ 20.1 Termination by the Contractor

If the Architect fails to certify payment as provided in Section 15.4.1 for a period of 30 days through no fault of the Contractor, or if the Owner fails to make payment as provided in Section 4.1.3 for a period of 30 days, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

§ 20.2 Termination by the Owner for Cause

§ 20.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 20.2.2 When any of the reasons described in Section 20.2.1 exists, the Owner, upon certification by the Architect that sufficient cause exists to justify such action, may, without prejudice to any other remedy the Owner may have and after giving the Contractor seven days' notice, terminate the Contract and take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever reasonable method the Owner may deem expedient. Upon request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 20.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 20.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 20.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Architect, upon application, and this obligation for payment shall survive termination of the Contract.

§ 20.3 Termination by the Owner for Convenience

The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. The Owner shall pay the Contractor for Work executed; and costs incurred by reason of such termination, including costs attributable to termination of Subcontracts; and a termination fee, if any, as follows:

(Insert the amount of or method for determining the fee payable to the Contractor by the Owner following a termination for the Owner's convenience, if any.)

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ARTICLE 21 CLAIMS AND DISPUTES

§ 21.1 Claims, disputes, and other matters in question arising out of or relating to this Contract, including those alleging an error or omission by the Architect but excluding those arising under Section 16.2, shall be referred

initially to the Architect for decision. Such matters, except those waived as provided for in Section 21.11 and Sections 15.7.3 and 15.7.4, shall, after initial decision by the Architect or 30 days after submission of the matter to the Architect, be subject to mediation as a condition precedent to binding dispute resolution.

§ 21.2 Notice of Claims

§ 21.2.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 18.2, shall be initiated by notice to the Architect within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 21.2.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 18.2, shall be initiated by notice to the other party.

§ 21.3 Time Limits on Claims

The Owner and Contractor shall commence all claims and causes of action against the other and arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in this Agreement whether in contract, tort, breach of warranty, or otherwise, within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 21.3.

§ 21.4 If a claim, dispute or other matter in question relates to or is the subject of a mechanic's lien, the party asserting such matter may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 21.5 The parties shall endeavor to resolve their disputes by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with their Construction Industry Mediation Procedures in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 21.6 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association, in accordance with the Construction Industry Arbitration Rules in effect on the date of this Agreement. Demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 21.7 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 21.8 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, any party to an arbitration may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of a Claim not described in the written Consent.

§ 21.9 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 21.10 Continuing Contract Performance

Pending final resolution of a Claim, except as otherwise agreed in writing, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 21.11 Waiver of Claims for Consequential Damages

The Contractor and Owner waive claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 20. Nothing contained in this Section 21.11 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

This Agreement entered into as of the day and year first written above.

OWNER (Signature)

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(Printed name and title)

CONTRACTOR (Signature)

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(Printed name and title)

ADDITIONS AND DELETIONS: The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

DRAFT AIA® Document A104® – 2017

Exhibit A

Determination of the Cost of the Work

for the following PROJECT:

(Name, location and brief description)

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THE OWNER:

(Name, legal status, address and other information)

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THE CONTRACTOR:

(Name, legal status, address and other information)

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THE ARCHITECT:

(Name, legal status, address and other information)

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ARTICLE A.1 COSTS TO BE REIMBURSED

§ A.1.1 Cost of the Work

§ A.1.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Contractor in the proper performance of the Work. The Cost of the Work shall include only the items set forth in this Article A.1.

§ A.1.1.2 Where, pursuant to the Contract Documents, any cost is subject to the Owner's prior approval, the Contractor shall obtain such approval in writing prior to incurring the cost.

§ A.1.2 Labor Costs

§ A.1.2.1 Wages or salaries of construction workers directly employed by the Contractor to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

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User Notes:

(1785812558)

§ **A.1.2.2** Wages or salaries of the Contractor's supervisory and administrative personnel when stationed at the site and performing Work, with the Owner's prior approval.

§ **A.1.2.2.1** Wages or salaries of the Contractor's supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work, and limited to the personnel and activities listed below:

(Identify the personnel, the type of activity, and, if applicable, any agreed percentage of time to be devoted to the Work.)

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§ **A.1.2.3** Wages or salaries of the Contractor's supervisory or administrative personnel engaged at factories, workshops or while traveling, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ **A.1.2.4** Costs paid or incurred by the Contractor, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits, and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations, and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Section A.1.2.

§ **A.1.2.5** If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification.

§ **A.1.3 Subcontract Costs**

Payments made by the Contractor to Subcontractors in accordance with the requirements of their subcontracts and this Agreement.

§ **A.1.4 Costs of Materials and Equipment Incorporated in the Completed Construction**

§ **A.1.4.1** Costs, including transportation and storage at the site, of materials and equipment incorporated or to be incorporated in the completed construction.

§ **A.1.4.2** Costs of materials described in the preceding Section A.1.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Contractor. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ **A.1.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items**

§ **A.1.5.1** Costs of transportation, storage, installation, dismantling, maintenance, and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Contractor at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment, and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Contractor shall mean fair market value.

§ **A.1.5.2** Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Contractor at the site, and costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities of equipment owned by the Contractor, or a related party as defined in Section A.1.8.1, shall be subject to the Owner's prior approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item.

§ **A.1.5.3** Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ **A.1.5.4** Costs of the Contractor's site office, including general office equipment and supplies.

§ A.1.6 Miscellaneous Costs

§ A.1.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract.

§ A.1.6.1.1 Costs of self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

§ A.1.6.1.2 Costs of insurance through a captive insurer owned or controlled by the Contractor, with the Owner's prior approval.

§ A.1.6.2 Sales, use, or similar taxes, imposed by a governmental authority that are related to the Work and for which the Contractor is liable.

§ A.1.6.3 Fees and assessments for the building permit and for other permits, licenses, and inspections for which the Contractor is required by the Contract Documents to pay.

§ A.1.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Article 18 of the Agreement or by other provisions of the Contract Documents, and which do not fall within the scope of Section A.1.7.3.

§ A.1.6.5 Royalties and license fees paid for the use of a particular design, process, or product required by the Contract Documents.

§ A.1.6.5.1 The cost of defending suits or claims for infringement of patent rights arising from requirements of the Contract Documents, payments made in accordance with legal judgments against the Contractor resulting from such suits or claims, and payments of settlements made with the Owner's consent, unless the Contractor has reason to believe that the required design, process, or product was an infringement of a copyright or a patent, and the Contractor failed to promptly furnish such information to the Architect as required by Section 9.14 of this Agreement. The costs of legal defenses, judgments, and settlements, shall not be included in the Cost of the Work used to calculate the Contractor's Fee or subject to the Guaranteed Maximum Price.

§ A.1.6.6 Costs for communications services, electronic equipment, and software directly related to the Work and located at the site, with the Owner's prior approval.

§ A.1.6.7 Costs of document reproductions and delivery charges.

§ A.1.6.8 Deposits lost for causes other than the Contractor's negligence or failure to fulfill a specific responsibility in the Contract Documents.

§ A.1.6.9 Legal, mediation, and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Contractor, reasonably incurred by the Contractor after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

§ A.1.6.10 Expenses incurred in accordance with the Contractor's standard written personnel policy for relocation and temporary living allowances of the Contractor's personnel required for the Work, with the Owner's prior approval.

§ A.1.6.11 That portion of the reasonable expenses of the Contractor's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

§ A.1.7 Other Costs and Emergencies

§ A.1.7.1 Other costs incurred in the performance of the Work with the Owner's prior approval.

§ A.1.7.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property.

§ A.1.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Contractor, Subcontractors, or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence of, or failure to fulfill a specific responsibility by, the Contractor, and only to the extent that the cost of repair or correction is not recovered by the Contractor from insurance, sureties, Subcontractors, suppliers, or others.

§ A.1.8 Related Party Transactions

§ A.1.8.1 For purposes of this Section A.1.8, the term “related party” shall mean (1) a parent, subsidiary, affiliate, or other entity having common ownership of, or sharing common management with the Contractor; (2) any entity in which any stockholder in, or management employee of, the Contractor holds any equity interest in excess of ten percent in the aggregate; (3) any entity which has the right to control the business or affairs of the Contractor; or (4) any person, or any member of the immediate family of any person, who has the right to control the business or affairs of the Contractor.

§ A.1.8.2 If any of the costs to be reimbursed arise from a transaction between the Contractor and a related party, the Contractor shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Contractor shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Article A.4. If the Owner fails to authorize the transaction in writing, the Contractor shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article A.4.

ARTICLE A.2 COSTS NOT TO BE REIMBURSED

§ A.2.1 The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Contractor's personnel stationed at the Contractor's principal office or offices other than the site office, except as specifically provided in Section A.1.2.2;
- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Contractor or paid to any Subcontractor or vendor, unless the Owner has provided written approval before such costs are incurred;
- .3 Expenses of the Contractor's principal office and offices other than the site office;
- .4 Overhead and general expenses, except as may be expressly included in Article A.1;
- .5 The Contractor's capital expenses, including interest on the Contractor's capital employed for the Work;
- .6 Except as provided in Section A.1.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Contractor, Subcontractors and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- .7 Any cost not specifically and expressly described in Article A.1; and
- .8 Where a Guaranteed Maximum Price is part of this Agreement, costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded.

ARTICLE A.3 DISCOUNTS, REBATES AND REFUNDS

§ A.3.1 Cash discounts obtained on payments made by the Contractor shall accrue to the Owner if (1) before making the payment, the Contractor included the amount to be paid, less such discount, in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Contractor with which to make payments; otherwise, cash discounts shall accrue to the Contractor. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Contractor shall make provisions so that they can be obtained.

§ A.3.2 Amounts that accrue to the Owner in accordance with Section A.3.1 shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE A.4 SUBCONTRACTS AND OTHER AGREEMENTS

§ A.4.1 Those portions of the Work that the Contractor does not customarily perform with the Contractor's own personnel shall be performed under subcontracts or other appropriate agreements with the Contractor. The Owner may designate specific persons from whom, or entities from which, the Contractor shall obtain bids. The Contractor

shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Contractor shall deliver such bids to the Architect and Owner with an indication as to which bids the Contractor intends to accept. The Owner then has the right to review the Contractor's list of proposed subcontractors and suppliers and, in consultation with the Architect, object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Contractor of its responsibility to perform the Work in accordance with the Contract Documents. The Contractor shall not be required to contract with anyone to whom the Contractor has reasonable objection.

§ A.4.2 When the Contractor has provided a Guaranteed Maximum Price, and a specific subcontractor or supplier (1) is recommended to the Owner by the Contractor; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Contractor may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Contractor and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ A.4.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the Owner's prior written approval. If a subcontract is awarded on the basis of cost-plus a fee, the Contractor shall provide in the subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Contractor in Article A.5.

ARTICLE A.5 ACCOUNTING RECORDS

§ A.5.1 The Contractor shall keep full and detailed records and accounts related to the Cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Contractor's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Contractor shall preserve these records, for a period of three years after final payment, or for such longer period as may be required by law.

§ A.5.2 When the Contractor believes that all the Work required by the Agreement has been fully performed, the Contractor shall deliver to the Owner's auditors a final accounting of the Cost of the Work.

§ A.5.3 The Owner's auditors will review and report in writing on the Contractor's final accounting within 30 days after delivery of the final accounting to the Architect by the Contractor. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Contractor's final accounting, and provided the other conditions of Section 4.2.1 of the Agreement have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Contractor, or notify the Contractor and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 15.4.3 of the Agreement. The Architect is not responsible for verifying the accuracy of the Contractor's final accounting.

§ A.5.4 If the Owner's auditors' report concludes that the Cost of the Work as substantiated by the Contractor's final accounting is less than claimed by the Contractor, the Contractor shall be entitled to request mediation of the dispute without a further decision of the Architect. A request for mediation shall be made by the Contractor within 30 days after the Contractor's receipt of a copy of the Architect's final Certificate for Payment. If the Contractor fails to request mediation within this 30-day period, the substantiated amount reported by the Owner's auditors shall become binding on the Contractor. Pending a final resolution of the disputed amount, the Owner shall pay the Contractor the amount, if any, determined by the Owner's auditors to be due the Contractor.

§ A.5.5 If, subsequent to final payment and at the Owner's request, the Contractor incurs costs in connection with the correction of defective or non-conforming work as described in Article A.1, Costs to be Reimbursed, and not

excluded by Article A.2, Costs Not to be Reimbursed, the Owner shall reimburse the Contractor such costs and the Contractor's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price, if any. If the Contractor has participated in savings, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Contractor.

FOR
BID

SERVICE AGREEMENT

This Agreement is made and entered into as of **AUGUST 1, 2023** (the “Effective Date”) by and between Janus Associates, Inc. d.b.a. BHS (hereafter known as “BHS”) and **Tulsa Honor Academy** (hereafter known as “**Customer**”) and outlines the terms under which BHS shall provide an Assistance Program and workplace services to **Customer**. A participant is defined as all employees, dependents and household members (hereafter known as “**Participants**”).

1. Program Services

BHS shall provide the following Assistance Program and related workplace services to **Customer Participants**:

- 1) **Service Access and Consultation:** **Participants** have 24-hour access to clinicians via a toll-free number. **Participants** are able to utilize this service on an as needed basis for program questions, problem assessment and referrals to benefits and community resources. The clinician will perform a telephonic holistic needs assessment, screen for emergencies, provide crisis support as appropriate and determine which services would best address the needs of the **Participant**. **Participants** can also access services via the MyBHS portal, the BHS mobile app and via text messaging.
- 2) **Care Coordination Services:** BHS shall assign a Care Coordinator to each **Participant** request. The Care Coordinator will serve as an advocate for the **Participant** and will provide support and follow-up to ensure the **Participant** is connected to the right resources and is making progress. The Care Coordinator will also collect and review **Participant** satisfaction and outcomes.
- 3) **Assistance Program Assessment, Referral and Short-Term Problem-Solving:** BHS shall provide up to three (3) Assistance Program assessment, referral, and problem-solving sessions, or the number of sessions allowed by state law, per unique problem episode per year to **Participants**. These sessions will take place face to face, telephonically or virtually. The initial 1–2 sessions are typically used for assessment. If the problem can be resolved within a total of three (3) sessions, the **Participant** will use the remaining Assistance Program sessions for short-term problem solving. If the Assistance Program assessment determines that the **Participant** requires and is ready to commit to medical care or specialized treatment, the **Participant** will receive referrals to community resources or health insurance for clinically appropriate services. These referrals provided are not recommendations or endorsed by BHS. They are merely referrals and the final decision to engage in services with any referral is at the sole discretion and responsibility of the **Participant**. The **Participant** or the **Participant's** insurance is responsible for payment of services received beyond the scope of the Assistance Program.
- 4) **Performance Consultation Services:** **Customer's** supervisors, managers and/or Human Resources personnel may contact BHS via a dedicated toll-free number on an unlimited basis to receive telephonic consultation regarding personal supervisory skills coaching, i.e., constructive confrontation, problem identification and action steps to take regarding problematic staff or consultation around workplace situations.
- 5) **Compliance Monitoring and Reporting for Formal and Mandatory Referrals:** **Customer's** supervisors, managers and/or Human Resources personnel may refer employees exhibiting performance related issues potentially resulting from personal or work-related problems. A BHS Performance Consultant will provide ongoing follow-up and monitor the employee's compliance to clinical recommendations pending a signed release of authorization from the employee.
- 6) **Work-life Services:** Any referrals provided through the following work-life services are not recommendations or endorsed by BHS. They are merely referrals and the final decision to engage in services with any referral is at the sole discretion and responsibility of the **Participant**. The **Participant** is responsible for payment of any work-life services received beyond the Assistance Program.

- a) **Childcare Resources/Referrals:** BHS shall provide **Participants** with screened resources for a range of childcare needs within three (3) business days. This service is available to **Participants** per unique problem episode, per year. Childcare resources include, but are not limited to: day care, emergency care, nurseries, preschools, nanny/au pair, summer camps, adoption and before/after school programs.
 - b) **Eldercare Resources/Referrals:** BHS shall provide **Participants** with screened resources for a range of eldercare needs within three (3) business days. This service is available to **Participants** per unique problem episode, per year. Eldercare resources include, but are not limited to: in-home care, geriatric specialists, rehabilitation services, screening clinics, and home-based services.
 - c) **Legal Consultation Services:** BHS provides telephone access to attorneys. Up to a 30-minute telephonic or face to face legal consultation are available to **Participants** per unique problem episode, per year. If the **Participant** needs to retain an attorney a referral will be provided to them, in addition to a 25% discount on any further services. Referrals are made to local, pre-screened and credentialed attorneys.
 - d) **Financial Consultation Services:** BHS provides telephone access to financial counselors within one (1) business day. An unlimited number of telephonic financial consultations are available to **Participant**, per unique problem episode, per year. Referrals made to local, pre-screened and appropriately credentialed financial counselors for additional assistance are also provided.
- 7) **Program Management:** BHS shall assign **Customer** a Program Management team to serve as the primary contact to **Customer**, to oversee the execution of the services outlined herein.
- a) **Employee and Supervisory Program Orientations:** BHS shall provide up to **two (2)** live webinar orientations. The purpose of the orientation is to provide an overview of the program's purpose, communicate the details of the program, including service components and to encourage program participation. A recorded orientation will be provided in the MyBHS **Customer** portal during program implementation and throughout the life of the **Program**. Unused orientations will not be transferred to subsequent contract years. BHS requires a minimum of three (3) weeks' advance notification to ensure staffing for all orientation requests.
 - b) **Assistance Program Reporting:** BHS shall provide comprehensive program reports to **Customer** on a(n) biannual basis. The reporting will include utilization and program activity data. Data will be reported so as to protect the identity of all **Participants**.
- 8) **MyBHS Customer Portal:** BHS shall provide **Participants** with access to an interactive **Customer** portal wherein **Participants** may access live chat, articles, tips, assessments, calculators, forms, webinars and trainings related to a variety of health and well-being topics. The portal is also available in multiple languages through Google Translate. In addition, the portal also includes the following features:
- a) **Locators:** BHS shall provide **Participants** with a resource that allows for searches to be performed based on specific requirements regarding such topics as childcare, eldercare, and pet care, and additional parenting and educational needs.
 - b) **Service Request Forms:** BHS shall provide online forms for **Participants** to initiate a request for work-life and/or mental health services.
- 9) **Mobile App:** The BHS App, available on the Apple App Store and Google Play Store, easily connects **Participants** with the Assistance Program and helpful resources from their smartphones.

Participants can use the one-touch dialing feature 24/7 in the BHS App to call to speak with a BHS Care Coordinator. Additionally, **Participants** can submit a question or request services through the App.

- 10) **Translation Services:** Translation Services for over 240 languages are available 24/7/365 for non-English speaking participants. Care Coordinators will utilize interpreters to translate incoming and outgoing calls. The marketing department will utilize translation services for any trainings, orientations and promotional materials that are needed in a different language. An additional fee may apply depending on the request.
- 11) **Promotional Services:** Promotional materials are designed to promote the **Customer's** program and include the following:
 - a) Welcome Kit – Upon implementation, **Customer** will receive a welcome kit which includes an announcement letter and promotional material, including a virtual wallet card to be distributed to **Participants**.
 - b) Electronic Materials - BHS has a library of articles, tip sheets and educational material appropriate for **Participants** and supervisors. In addition, BHS can provide promotional flyers and posters which can be sent as needed or upon request.
 - c) Monthly Newsletter – BHS will send an electronic monthly newsletter to the **Customer's** point of contact. The newsletter typically includes articles for employees, a topic for supervisors and relevant information pertaining to all aspects of productivity and well-being.
 - d) Printed Materials - BHS has additional printed promotional materials/giveaways that are available on a fee for service basis. Consult with BHS regarding pricing.

2. Fee for Service

- 1) **Organizational Development (OD):** BHS can provide OD services to **Customer** on a fee for service basis. OD is the planned process of developing and enhancing the performance of an organization, as well as the performance of its employees, to be more effective in accomplishing its desired goals. BHS OD Consultants conduct thorough organizational assessments and offer strategic plans for intervention which may include one, or a combination of, the following solutions: Team Building, Conflict Resolution, Change Management, Leadership Development, Executive Coaching and Customized Training Solutions. Training topics are updated frequently and availability is subject to change. Video production, audio recording and/or graphic reproduction of any presentations is prohibited. **Customer** shall consult with BHS regarding OD fees.
- 2) **Events:** BHS can provide **Customer** credits to use at its discretion. **Customer** may select events from BHS' Services Catalog based on provider availability. BHS will not be responsible for the supply or proper maintenance of any property supplied by **Customer**, including but not limited to tables, chairs, electronic/audio visual equipment and physical space provided by **Customer**. **Customer** is required to print all **Participant** materials. At **Customer's** request, BHS will print and ship materials to the event location. Printing and shipping expenses will be passed through to **Customer**. BHS requires a minimum of four (4) weeks' advance notification to ensure staffing, except for CISM services. **Customer** must provide 48 hours' notice of cancellation or **Customer** will be charged in full. Should **Customer** cancel or change urgent event services (requested and staffed with less than 3 days notice) **Customer** will be invoiced a \$150/change fee and/or the credit will be deducted from **Customer's** allotment. Unused credits will not be transferred to subsequent Program years. **Customer** shall consult with BHS regarding additional credit fees.
 - a) **Learning and Development Solutions:** Learning and Development Solutions may be delivered on-site or via webinar, when available. In-person, on-site trainings are designed for and limited to 30 or fewer participants and webinar trainings are limited to 95 participants. At **Customer's** request, BHS shall record and post webinars within the

MyBHS Portal. **Customer** shall consult with BHS regarding posting fees. Recordings shall be posted for up to **thirty (30)** days. Videotaping or recording Learning and Development events is strictly prohibited.

- b) **Critical Incident Stress Management (CISM):** BHS is available to provide CISM to **Customer**. CISM is an intervention developed specifically for dealing with traumatic events. The process helps those involved in a critical incident to share their experiences, vent emotions, learn about stress reactions and symptoms and offer referrals for further help if required. BHS is able to provide defusings, debriefings, grief and loss group sessions, individual sessions, management briefings, threat response support and post incident analysis. When more than one clinician is deployed, credits will be deducted per hour, per clinician.
- c) **Coach Chats:** 30-Minute Coach Chat sessions are led by subject matter experts. These are group discussions designed to inform **Participants** and help them both enhance their overall well-being and promote positive behavior change. They are delivered on-site and are designed for 10-15 **Participants**. Coach Chat topics can be accessed in the BHS Service Catalog and scheduling options may include one (1) 30-minute session with time for Q&A or two (2) back-to-back consecutive sessions with the same or similar topic for a total of 1 hour.

3. Term of Agreement

The term of this Agreement shall commence as of the Effective Date and continue for a period of one (1) year, unless terminated earlier in accordance with this Section 3 (the "**Term**"). **Customer** agrees to the Term and to remitting payment throughout the Term per the billing schedule outlined in **Section 4**, Program Cost and Payment for Assistance Program Services. Upon the expiration of the Term, this Agreement will automatically renew in one (1) year increments (each, a "**Renewal**"), unless either party notifies the other party in writing of its desire to terminate the Services no later than ninety (90) days prior to the expiration of the Term. Should **Customer** decide to transition the Program to another vendor in accordance with **Section 6**, Protected Health Information (PHI), BHS agrees to use its best efforts to ensure an effective transition of Services to that vendor. In the event the Program is not renewed upon expiration of the Term, any time spent by BHS on preparation, consultation, Program design, development, staff training, and travel, as well as materials or any other expense related to planning for the following year will be billed at a rate of \$150.00 per staff hour. Materials and travel expenses will be passed through "at cost." Mileage will be reimbursed at the standard IRS rate. Either party may terminate this Agreement based upon a material breach of this Agreement by the other party. The non-breaching party must provide written notice detailing the contract breach and a sixty (60) day period to cure such breach (the "**Cure Period**"). At the end of the Cure Period, if the material breach is not cured, the non-breaching party may terminate this Agreement within thirty (30) days by written notice to the other party. For purposes of this Agreement, a "material breach" shall include, but not be limited to, any breach of **Section 5**, Confidentiality, of this Agreement. Without affecting the time period set forth for an indemnification claim under **Section 8(3)** (Indemnification), BHS reserves the right to destroy any and all records related to this Agreement at any time after the third anniversary of the termination hereof, subject to any longer retention periods required by applicable law for subsets of such records.

4. Program Cost and Payment for Assistance Program Services

BHS shall provide the services specified in **Section 1** to **Customer** for an annual fee of **\$3,700.00** for a maximum of 150 employees for the contract term. **Customer** has 125 employees at the time of Agreement signature. For those **Participants** living in states which place limits on the number of pre-paid Assistance Program sessions allowed, a portion of the per employee per month fee covers up to three (3) sessions during any six-month period. **Customer** understands that BHS may request an updated employee count at any time. BHS will make services available to terminated employees for a period of 18 months or longer if necessary, at no additional cost. BHS reserves the right to negotiate additional rate increases if the annual number of cases exceeds eight (8). Website utilization, emails, general program inquiries, and/or participation in trainings, events, benefit fairs or other program promotional activities are not counted as cases. A case is defined as any eligible **Participant** who contacts BHS and receives one-to-one support,

wherein an action plan is established and a follow-up activity is scheduled. At the end of each contract year, BHS will bill **Customer** at a rate of \$500.00 per case for any opened cases in excess of the expected annual case count. BHS will report the annualized case utilization rate in the Program Summary Report.

Customer shall be invoiced by BHS for Assistance Program services on an annual basis, with term of payment being 30 days. Subsequent contract years after the initial term will be subject to a minimum of a 3% cost-of-living increase. BHS reserves the right to negotiate additional rate increases based on the prior utilization.

Additional fees shall apply should **Customer** request services above and beyond the services outlined in **Section 1** of this Agreement. Pricing shall be approved by **Customer** prior to commencement of work. The following is an illustrative list of services warranting an additional fee and is not conclusive: customization of training materials, travel requested with less than four (4) weeks' advance notice, benefit fair printing and shipping costs if event is requested with less than three (3) weeks' advance notice, additional reports and any changes to onsite events, once scheduled. Administrative fees may apply should **Customer** request multiple invoices or additional billing services. A monthly fee equal to 1.5% of the outstanding balance shall be levied upon all delinquent accounts. BHS reserves the right to suspend or discontinue service delivery in the event payment is delinquent in excess of 90 days. In the event BHS pursues collection of **Customer's** account, **Customer** agrees to be responsible for all costs incurred by BHS including attorneys' fees and expenses. Payments should be remitted to: BHS, The Marbury Building, 6225 Smith Avenue, Suite 203, Baltimore, MD 21209.

5. Confidentiality

- 1) **Confidential Information:** **Customer** and BHS may, under this Agreement, furnish the other with information concerning itself and its respective business plans or strategies, operational systems or techniques, methods and procedures, marketing and development plans or intentions, names of actual and potential customers, rates, fees, pricing or pricing policies, material regarding data collection, demonstrations, models, samples, reports, forecasts, current or historical data, computer programs or documentation, and other technical, financial, or business data, and information about operations, properties and concerning other matters relating to its business, which information may be non-public, confidential or proprietary in nature. All such information furnished by **Customer** or BHS and all summaries, copies, notes or other documents containing such information or portions, summaries or extracts therefrom, during the course of the Agreement are referred to in this Agreement as the "Information."
- 2) **Obligation:** The Information will be used solely for the purpose of fulfilling the duties and completing the obligations contained in this Agreement, will be kept confidential by **Customer** or BHS, as applicable, and its representatives, and will only be disclosed to the representatives who require such Information for the purpose of fulfilling the duties and completing the obligations contained in this Agreement.
- 3) **Property:** Any service plans, utilization reports or recommendations in connection therewith, generated by BHS in connection with the services are the property of **Customer** and shall remain so in the event the services are terminated. During the term of this Agreement and forever thereafter, all content and materials supplied by BHS to the **Customer** including, but not limited to, implementation materials, reporting, promotional materials, and trainings are the sole intellectual property of BHS. Content and materials may be fairly used and reproduced by the **Customer** during the contract period to promote, educate, and optimize its leaders and constituents. Materials or information provided in conjunction to providing the services outlined in this Agreement or in relation to potential services are proprietary to BHS and shall not be shared with any third party without the written consent of BHS. Any customized content produced specifically for the **Customer** shall be considered the **Customer's** sole intellectual property.
- 4) **Non-Solicitation:** Throughout the Term (and any Renewal, as applicable) and for a period of two (2) years thereafter (the "Non-Solicit Period"), **Customer** agrees and covenants not to directly or

indirectly solicit, hire, recruit, attempt to hire or recruit or induce the termination of employment of any BHS employee or subcontractor.

6. Protected Health Information (PHI)

Each party acknowledges and agrees that they may receive PHI, as defined in 45 C.F.R. § 160.103, in connection with the performance of this Agreement. Therefore, the parties are required to enter into a Business Associate Agreement relating to the privacy of such PHI. The parties acknowledge and agree that they will enter into a mutually acceptable Business Associate Agreement prior to receipt and/or disclosure of any such PHI. All HIPAA compliant releases of information must be signed as necessary. BHS provides a secure, HIPAA compliant site to which eligibility files should be uploaded. BHS is not responsible for files submitted via alternate, unsecure means. All PHI (including individual clinical and wellness coaching records) will be maintained by BHS, in confidence, as dictated by Applicable Law (as defined below). **Customer** may request a transition of records upon written notice to BHS. **Customer** shall consult with BHS regarding fees.

7. Confidentiality of Program Information and Client Records

BHS shall observe all applicable legal requirements regarding confidentiality of clinical records and related information received from or on behalf of **Customer**, including the applicable requirements of regulations at 45 C.F.R Parts 160, 162 and 164 for the Administrative Simplification provisions of Title II, Subtitle F of HIPAA (i.e., the HIPAA Privacy, Security, Electronic Transactions, Breach Notification, and Enforcement Rules), as amended, and all other applicable state and federal laws relating to the privacy and security of individually identifiable health information (collectively, "Applicable Law"). The parties agree that PHI may be created, received, used or disclosed to administer the Program in connection with the services and therefore will enter into a Business Associate Agreement in accordance with **Section 6** (Protected Health Information) above.

8. Limitation of Liability, Disclaimer of Warranties, Indemnification

- 1) **Limitation of Liability:** Neither party will be liable for indirect, incidental, special, consequential, punitive, exemplary or multiple damages (other than by statute), including without limitation, any damages resulting from business interruption, loss of use, loss of business, loss of revenue, loss of profits, or loss of data, arising in connection with this Agreement or either party's performance hereunder or of any other obligations relating to this Agreement, even if the other party has been advised of the likelihood of those damages. The aggregate liability of either party to the other (and any entity claiming by or through a party) arising directly or indirectly out of this Agreement shall not exceed an amount equal to the greater of: (i) the total fees due and payable to BHS during the 12 months of the Term (or Renewal, as applicable) preceding the loss as set forth in **Section 4** (Program Cost and Payment for Assistance Program Services, annualized to 12 months for any period of less than 12 months) or (ii) the amount of insurance proceeds available with respect to the claim at issue. This limitation of liability shall apply regardless of the causes of action under which those damages are sought.
- 2) **Disclaimer of Warranties:** BHS expressly disclaims any warranty that the services will be uninterrupted or error free. BHS makes no warranty as to the results obtained from use of the services. The services are distributed on an "as is, as available" basis, and BHS makes no warranties of any kind, either express or implied (other than those stated above), including implied warranties of merchantability or fitness for a particular purpose, and any implied warranties arising from trade usage, course of dealing or course of performance.
- 3) **Indemnification:** During the term of this Agreement and for one year thereafter (except where by statute a longer period is mandated), each party ("Indemnifying Party") agrees to indemnify, defend and hold harmless the other party and the officers, directors, employees and agents of the other party ("Indemnified Party") against any and all third-party liabilities, losses, damages, claims or causes of action and expenses associated with, caused or asserted to have been caused directly or indirectly by the acts or omissions by such Indemnifying Party's officers, directors, employees and agents.

- 4) **Assignment:** Except as provided in this **Section (4)**, this Agreement may not be assigned or otherwise transferred, nor may any right or obligation hereunder be assigned or transferred, by either party, without the express written consent of the other party; provided, however, that either party may, without such consent, assign the agreement and its rights and obligations hereunder to its Affiliate or to a purchaser of all or substantially all of the assets of such party. Any purported assignment in violation of this section shall be void and of no effect. Any permitted assignee shall assume all assigned obligations of its assignor under the Agreement. For purposes of this Agreement, "Affiliate" means any entity that controls or is controlled by such party, or is under common control with such party. For purposes of this definition, an entity shall be deemed to control another entity if it owns or controls, directly or indirectly, at least fifty percent (50%) of the voting equity of another entity (or other comparable interest for an entity other than a corporation). Notwithstanding the foregoing, nothing in this **Section (4)** shall prevent BHS from utilizing subcontractors in connection with the provision of the services to **Customer** as it deems necessary in its sole discretion.
- 5) **Force Majeure:** Neither party shall be liable for delay in performance or failure to perform its obligations under this Agreement in whole or in part due to causes reasonably beyond the control of such party, including without limitation, labor dispute, strike, labor shortage, war or act of war, insurrection, riot or civil commotion, sabotage, terrorism or act of public enemy, accident, fire, flood or other act of God, act of any governmental authority, judicial action, short or reduced supply of fuel or raw materials, power or Internet failure, disruption or interruption, or technical failure where such party has exercised ordinary care in the prevention thereof, whether or not similar to the matters herein enumerated, and any such delay or failure shall not be considered a breach of this Agreement.

9. Compliance with Applicable Law

BHS acknowledges and agrees that the services provided by BHS pursuant to this Agreement are being provided in accordance with Applicable Law (as defined in **Section 7**, Confidentiality of Program Information and Client Records). Notwithstanding the foregoing, **Customer** is solely responsible for determining the extent to which federal and state law affect its group health plans, including, as applicable, the services provided with respect to those plans by BHS pursuant to this Agreement, and for complying with applicable legal requirements with respect to its group health plans, including, but not limited to, the following:

- 1) **Health Insurance Portability and Accountability Act of 1996 (HIPAA):** **Customer** agrees that, except to the extent otherwise provided under the terms of a Business Associate Agreement between the Parties, it is solely responsible for ensuring that its health plans comply with all applicable regulations under HIPAA.
- 2) **Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA):** BHS recommends **Customer** carefully consider whether any plan through which the services described in this Agreement are provided is subject to COBRA. **Customer** is responsible for determining if the services are part of a plan sponsored by **Customer** that is subject to COBRA and is solely responsible for compliance with COBRA, if applicable.
- 3) **Americans with Disabilities Act of 1990 (ADA):** **Customer** agrees it is solely responsible for ensuring that **Customer** and its benefit plans comply with the applicable requirements of the ADA, as amended by the ADA Amendments Act of 2008, including any ADA restrictions on requiring employees to answer disability-related inquiries or to submit to medical examinations, to the extent that those requirements are determined by **Customer** to be applicable. BHS is not responsible for determining if or how such ADA requirements may apply to any group health plan sponsored by **Customer** or to any services BHS may provide on behalf of a group health plan of **Customer** under this Agreement.
- 4) **Healthcare Reform:** **Customer** agrees it is solely responsible for ensuring that its group health plans comply with any applicable requirements of the federal healthcare reform law (the Patient Protection and Affordable Care Act of 2010, as amended by the Healthcare and Education

Reconciliation Act of 2010, together with any applicable regulations issued pursuant to those Acts) and for determining if its group health plans are grandfathered health plans for purposes of those requirements. **Customer** is solely responsible for determining what, if any, effect the services provided under this Agreement may have on the grandfathered status of its group health plans. BHS is not responsible for ensuring that any group health plan qualifies or continues to qualify as a grandfathered health plan.

10. Duties and Services of BHS and Customer

BHS agrees to deliver services as outlined in **Section 1: Program Services**. **Customer** agrees to provide practical assistance to BHS in obtaining all information, access, promotional opportunities, rights and materials as reasonably requested by BHS and as may otherwise be necessary or desirable to assist BHS in performing its obligations under this Agreement. Notwithstanding the foregoing, BHS shall be under no obligation to incur any material expense in connection with this Agreement other than as set forth in **Section 1 and 2** (Fee for Service) of this Agreement.

11. Additional Terms of This Agreement

- 1) The laws of the State of Maryland shall govern any dispute arising out of this Agreement. The parties expressly waive any right to a trial by jury for any disputes arising out of this Agreement and/or the termination thereof, regardless of whether or not such disputes specifically arise under this Agreement.
- 2) The waiver by either party of a breach of any provision of this Agreement will not operate or be construed as a waiver of any subsequent breach by either party.
- 3) All agreements and covenants contained herein are severable. In the event that any of them, or any part or parts of any of them, shall be held to be invalid by any court of competent jurisdiction with regard thereto, this Agreement shall be interpreted as if such invalid covenants or agreements, or parts thereof, were revised and limited to make such portion of this Agreement valid and enforceable. Furthermore, if any provision of this Agreement shall be held invalid, such invalidity shall not affect the other provisions hereof, and to that extent, the provisions of this Agreement are intended to be and shall be severable.
- 4) All notices, demands and other communications provided for by this Agreement shall be made in writing either: (1) by actual delivery of the document into the hands of the party entitled thereto; (2) by mailing the document in the United States mail to the last known address of the party entitled thereto, certified mail, return receipt requested; or (3) by electronic communication. Notices, demands or other communications delivered personally shall be deemed communicated upon actual receipt; mailed notices shall be deemed communicated three (3) days after the post-marked date of mailing to the below addresses; notices delivered by electronic communication shall be deemed communicated on the date sent.

By signing this Agreement in the space provided below, Janus Associates, Inc. d.b.a. BHS and **Customer** agree to abide by all of its provisions.

Dawn Motovidlak
President & CEO

Date

Customer Authorized Agent

Date

Printed Name

Title



BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement is entered into between the employee health plans of Tulsa Honor Academy (“Covered Entity”) and Janus Associates Inc., dba BHS (“Business Associate”), effective, except as otherwise provided in this Agreement, on the 1st day of August 2023.

The parties wish to enter into this Agreement to enable Covered Entity to meet applicable requirements of regulations issued under the administrative simplification provisions of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), and this Agreement shall be interpreted accordingly. This Agreement also is intended to satisfy certain requirements of the Health Information Technology for Economic and Clinical Health Act (the “HITECH Act”), included in the American Recovery and Reinvestment Act of 2009 (“ARRA”) and those requirements are hereby incorporated into this Agreement by this reference and by other specific references within this Agreement, when and as they become applicable to either Covered Entity or Business Associate and this Agreement shall be interpreted accordingly.

The parties agree that, in performing certain services, including, if applicable, providing health care services directly to individuals through an employee assistance program or a wellness program under contract with Tulsa Honor Academy, BHS may be acting as a health care provider rather than as a business associate of Covered Entity. When acting as a health care provider, BHS is directly subject to the HIPAA Privacy Rule and the Security Standards. Protected health information that BHS receives, maintains or transmits as a health care provider is protected by the HIPAA Privacy Rule and the Security Standards and, if applicable, also by confidentiality agreements between BHS and individuals and is not governed by this Agreement.

ARTICLE 1 DEFINITIONS

The following terms, for purposes of this Agreement, have the meanings indicated, unless the context clearly requires otherwise:

- 1.1 **Business Associate** means Janus Associates Inc., dba BHS.
- 1.2 **Breach** has the same meaning as the term “breach” under 45 CFR §164.402.
- 1.3 **Covered Entity** means the employee health plans sponsored by Tulsa Honor Academy.
- 1.4 **Designated Record Set** is defined at §164.501 of the Privacy Regulations and, for purposes of this Agreement means a set of records (including paper and electronic records) maintained by or for Covered Entity that include Protected Health Information and that are either (1) enrollment, claims processing or medical management records or (2) any other records used by Covered Entity to make decisions about Individuals. For purposes of this Agreement, Designated Record Set does not include protected health information maintained by BHS as a health care provider.

1.5 **Individual** has the same meaning as the term “individual” in 45 CFR §160.103 and includes a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).

1.6 **Privacy Rule** means the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E.

1.7 **Protected Health Information** or “PHI” means information that qualifies as protected health information under 45 CFR Section 160.103 with respect to Covered Entity and does not include protected health information that BHS receives, maintains or discloses in its capacity as a health care provider covered entity.

1.8 **Required by Law** has the meaning set forth in 45 CFR §164.103.

1.9 **Secretary** means the Secretary of the Department of Health and Human Services or his or her designee.

1.10 **Security Standards** means the federal regulations issued as Health Insurance Reform: Security Standards and codified at 45 CFR parts 160, 162 and 164.

1.11 **Security Incident** means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system, but only to the extent that the incident involves electronic PHI.

1.12 **Unsecured Protected Health Information** has the same meaning as that term has under 45 CFR §164.402 but limited to information that is accessed, maintained, retained, modified, recorded, stored, destroyed or otherwise held, used or disclosed by Business Associate on behalf of Covered Entity.

1.13 Terms used, but not otherwise defined, in this Agreement have the same meaning as those terms have in 45 CFR §§160.103, 164.103, 164.304 and 164.501 or in §13400 of ARRA.

ARTICLE 2

OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

2.1 Business Associate agrees that it will not use or further disclose PHI other than as permitted or required by this Agreement or as Required by Law.

2.2 Business Associate agrees to use appropriate safeguards to prevent use or disclosure of PHI other than as provided for by this Agreement.

2.3 Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.

2.4 Business Associate agrees to report to Covered Entity any use or disclosure of PHI not provided for by this Agreement, of which it becomes aware.

2.5 Business Associate agrees to ensure that any agent, including a subcontractor, that creates, receives, maintains or transmits PHI on behalf of Business Associate, agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to that information by entering into an agreement with the subcontractor or other agent that satisfies the requirements of 45 CFR §164.504(e)(5). To the extent that a subcontractor or other agent of Business Associate creates, receives, maintains or transmits electronic PHI on behalf of Business Associate, Business Associate will ensure that the subcontractor or agent agrees to comply with the applicable requirements of the Security Standards by entering into an agreement that complies with 45 CFR §164.314.

2.6 If Business Associate has PHI in a Designated Record Set, Business Associate agrees to provide access, at the request of Covered Entity or an Individual, and in the time and manner designated by Covered Entity, to that PHI, to Covered Entity or, as directed by Covered Entity, to an Individual, in order to meet the requirements under 45 CFR §164.524.

2.7 To the extent reasonably necessary for Covered Entity to comply with 45 CFR §164.524(c)(2), if Business Associate maintains PHI in an electronic format for any Individual, Business Associate agrees to provide, at the request of an Individual, and in the time and manner designated by the Individual, a copy of such information in the electronic format designated by the Individual to that Individual or, if clearly, conspicuously and specifically directed by the Individual to transmit an electronic copy of that information directly to an entity or person designated by the Individual. If electronic information described in the preceding sentence is not readily producible in the form and format requested by the Individual, it will be provided in a readable electronic form and format as agreed to by Business Associate and the individual, or, if no agreement is reached in a hard copy format. Any fee charged by Business Associate to the Individual for providing such information (or a summary or explanation of such information) cannot exceed the amount described in 45 CFR §164.524(c)(4). Except as otherwise expressly provided in this Section 2.7, any information provided pursuant to this Section will comply with the requirements of 45 CFR §164.524 as they apply to Covered Entity. If a request described in this Section 2.7 is made by the Individual to Covered Entity instead of Business Associate, Business Associate agrees to work with Covered Entity to allow Covered Entity to respond to the request in accordance with §164.524.

2.8 If Business Associate has PHI in a Designated Record Set, Business Associate agrees to make any amendment to such information that Covered Entity directs or agrees to pursuant to 45 CFR §164.526 at the request of Covered Entity or an Individual, and in the time and manner reasonably designated by Covered Entity.

2.9 Business Associate agrees to make internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity available to the Covered Entity, or at the request of the Covered Entity to the Secretary, in a time and manner designated by the Covered Entity or the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.

2.10 Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an

Individual for an accounting of disclosures of PHI in accordance with 45 CFR §164.528. In addition, effective beginning on the date the requirements of regulations issued pursuant to §13405(c) of ARRA become applicable to Covered Entity, if Business Associate maintains information in an electronic format, to the extent necessary for Covered Entity to comply with ARRA §13405(c) and applicable regulations, Business Associate agrees to document access to and disclosures of PHI in electronic form, including applicable disclosures for payment, treatment or health care operation purposes and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI or, if applicable, an access report in accordance with 45 CFR §164.528, as modified in accordance with ARRA §13405(c) and applicable regulations.

Business Associate agrees to provide to Covered Entity or an Individual, in a reasonable time and manner designated by Covered Entity, information collected in accordance with this Section 2.10, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR §164.528.

2.11 In conducting any electronic transaction that is subject to the Electronic Transaction Regulations on behalf of Covered Entity, Business Associate agrees to comply with all requirements of the Electronic Transaction Regulations that would apply to Covered Entity if Covered Entity were conducting the transaction itself.

2.12 To the extent that Business Associate creates, receives, maintains or transmits electronic PHI on behalf of Covered Entity, Business Associate agrees to maintain administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of all electronic PHI and to otherwise comply with applicable requirements of the Security Standards.

2.13 To the extent that Business Associate creates, receives, maintains or transmits electronic PHI on behalf of Covered Entity, Business Associate agrees to report to Covered Entity any Security Incident of which it becomes aware.

2.14 To the extent that Business Associate accesses, maintains, retains, modifies, records, stores, destroys, or otherwise holds, uses or discloses Unsecured PHI on behalf of Covered Entity, Business Associate agrees to notify Covered Entity of any Breach of such information. Such notification will comply with 45 CFR §164.410 including, to the extent possible, identifying each individual whose Unsecured PHI has been, or is reasonably believed by Business Associate to have been, accessed, acquired or disclosed during the Breach. In addition, the notice described in the preceding sentence will include all information that is reasonably available to Business Associate that Covered Entity would reasonably be expected to need to fulfill its legal obligations with respect to the Breach. If additional information described in the preceding sentence becomes available after the original notice is provided to Covered Entity, Business Associate agrees to promptly provide the additional information to Covered Entity as it becomes available.

Business Associate agrees to provide notice of the Breach without unreasonable delay and in no case later than 60 calendar days after Business Associate discovers the Breach. For purposes of the preceding sentence, Business Associate will be treated as discovering the Breach on

the first day on which the Breach is known (or should reasonably have been known) to Business Associate (including any employee, officer or other agent of Business Associate other than the person committing the Breach). Whether a Breach has occurred will be determined in accordance with applicable regulations or other authoritative guidance issued pursuant to the HITECH Act. A delay in notification of a Breach that qualifies as a “law enforcement delay” under 45 CFR §164.412 or other applicable guidance will not be treated as a violation of this Agreement.

2.15 To the extent that Business Associate agrees, under the terms of this Agreement or a general services agreement or otherwise, to carry out any obligation that the Covered Entity may have under the Privacy Rule at 45 CFR part 164, subpart E, Business Associate agrees to comply with the requirements of subpart E that would apply to Covered Entity in performing that obligation.

2.16 Business Associate agrees to make uses and disclosures and requests for Protected Health Information consistent with Covered Entity’s minimum necessary policies and procedures.

ARTICLE 3

PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

3.1 Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity, as specified in the general services agreement between Business Associate and Covered Entity (or Tulsa Honor Academy), provided that such use or disclosure would not violate the Privacy Rule or the Security Standards if done by Covered Entity.

3.2 Except as otherwise limited in this Agreement, Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

3.3 Except as otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration of the Business Associate, provided that disclosures are Required by Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

3.4 Except as otherwise limited in this Agreement, Business Associate may use PHI to provide Data Aggregation services to Covered Entity as permitted by 45 CFR §164.504(e)(2)(i)(B).

3.5 Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR §164.502(j)(1).

ARTICLE 4

OBLIGATIONS OF COVERED ENTITY

4.1 Covered Entity shall notify Business Associate of any limitation in its notice of privacy practices that Covered Entity produces in accordance with 45 CFR §164.520, to the extent that limitation may affect Business Associate's permitted or required uses and disclosures.

4.2 Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose PHI, if those changes affect Business Associate's permitted or required uses and disclosures.

4.3 Covered Entity shall notify Business Associate of any restriction on the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR §164.522.

ARTICLE 5

PERMISSIBLE REQUESTS BY COVERED ENTITY

5.1 Except as permitted under Sections 3.2, 3.3 or 3.4 of this Agreement, Covered Entity shall not request that Business Associate use or disclose PHI in any manner that would not be permitted under the Privacy Rule, the Security Standards or the HITECH Act if done by Covered Entity, unless such use or disclosure is otherwise permitted under the Privacy Rule, the Security Standards or the HITECH Act if done by the Business Associate on behalf of Covered Entity and is consistent with the requirements of the general services agreement between Covered Entity and Business Associate.

ARTICLE 6

TERM AND TERMINATION

6.1 **Term.** This Agreement will terminate when all of the PHI provided by Covered Entity to Business Associate, or created, maintained or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, when protections are extended to such information, in accordance with the termination provisions of this Article 6.

6.2 **Termination for Cause.** If Covered Entity becomes aware of a material breach of this Agreement by Business Associate, Covered Entity shall (1) provide an opportunity for the Business Associate to cure the breach or end the violation and terminate this Agreement (and any applicable portion of a general services agreement between the parties) if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity, or (2) immediately terminate this Agreement (and any applicable portion of a general services agreement that covers the services that Business Associate performs for Covered Entity) if Business Associate has breached a material term of this Agreement and cure is not possible.

6.3 Effect of Termination.

(a) Except as provided in paragraph (b) of this Section, upon termination of this Agreement for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision applies to PHI that is in the possession of subcontractors or agents of Business Associate. Except as provided in paragraph (b) of this Section, Business Associate shall retain no copies of the PHI.

(b) If Business Associate determines that returning or destroying PHI is infeasible, Business Associate shall notify Covered Entity of the conditions that make return or destruction infeasible and Business Associate will extend the protections of this Agreement to such

PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

ARTICLE 7 MISCELLANEOUS

7.1 Regulatory and Statutory References. A reference in this Agreement to a regulation or a statute means that regulation or statute as in effect and as amended at the time of reference and as interpreted pursuant to any applicable guidance provided by the Secretary or other responsible regulatory authority and any applicable case law.

7.2 Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity and Business Associate to comply with the requirements of the Administrative Simplification provisions of HIPAA and the HITECH Act, and of the regulations issued pursuant to those laws. The Parties may agree to amend this Agreement from time to time in any other respect as they deem appropriate. This Agreement shall not be amended except by written instrument executed by Covered Entity and Business Associate.

7.3 Survival. The respective rights and obligations of Business Associate under Section 6.3 of this Agreement shall survive the termination of this Agreement.

7.4 Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with applicable requirements of the HIPAA Administrative Simplification regulations and with the applicable requirements of the HITECH Act. Also, nothing in this Agreement shall be construed to require Business Associate to violate its obligations to comply with any requirements of the Privacy Rule or the Security Standards that apply directly to Business Associate.

7.5 Effective Date. Notwithstanding any other provision of this Agreement, Business Associate shall not be required to comply with any obligation imposed on it by this Agreement that is intended to provide for a Covered Entity's compliance with a requirement of the Administrative Simplification Regulations or the HITECH Act or regulations or other guidance issued pursuant to the HITECH Act until the date on which Covered Entity is first required to comply with that requirement.

7.6 Entire Agreement. This Agreement sets forth the entire understanding of the Parties with respect to its subject matter and supersedes all prior agreements, arrangements and communications, whether oral or written, pertaining to the subject matter of this Agreement.

[signature page following]

The parties have caused this Agreement to be executed by their authorized representatives.

Employee Health Plans of Tulsa Honor Academy
by _____, **Plan Administrator**

By: _____

Print Name: _____

Print Title: _____

Date: _____

Janus Associates Inc., dba BHS

By: _____

Michal Moffitt, MSW

Contract and Compliance Manager

Date: _____



BOARD APPOINTMENTS

POSITION	NAME
Superintendent	Elsie Urueta Pollock
Encumbrance Clerk	Debbie Watts
Treasurer	Jay Jenkins (contract)
Activity Fund Custodian	Kim Young (THA MS) Hannah Bland (THA FMS) Kimberly Siftar (THA HS)
Minutes Clerk	Keshia Latham
Board Clerk	Keshia Latham
Federal Programs Coordinator	Debbie Watts
Child Nutrition Director	Emilee Joshi

CHARTER EDUCATIONAL PROFESSIONAL SERVICES AGREEMENT
BETWEEN
TEACH FOR AMERICA, INC AND
TULSA HONOR ACADEMY

This educational professional services agreement (“Agreement”) is dated 2023 and is between Teach For America, Inc. (“Teach For America”), a Connecticut non-profit with regional office located at 3441 E. Archer St., Tulsa, OK 74115 and Tulsa Honor Academy (“Charter School”) located at 1421 S. Sheridan Rd., Tulsa, OK 74112 (each, a “Party” and collectively “the Parties”).

RECITALS

WHEREAS, Teach For America is a national leader in recruiting, selecting, training and providing ongoing professional development to individuals committed to closing the achievement gap by serving as effective classroom teachers specifically equipped to enhance student achievement in under-resourced school systems.

WHEREAS, Charter School seeks to recruit new teachers who are trained to lead students to academic achievement and to equip said teachers with ongoing professional development and support to further develop and sustain their professional practice.

NOW THEREFORE, Charter School and Teach For America agree to be bound by the terms and conditions of this Agreement:

AGREEMENT

I. TEACHER CANDIDATE RECRUITMENT, SELECTION AND HIRING

Charter School Responsibilities:

- A. Charter School agrees to hire the following numbers of Teachers from the Teach For America program (the “Agreed Number”):

- (i.) _____ Teachers for academic school years 2024-2025 and
 - (ii.) _____ Teachers for academic school years 2023-2024
 - (iii.) In the event that Teach For America supplies the Charter School with any Teachers above the Agreed Number, Charter School agrees to pay the fee for each additional Teacher.
- B. Charter School and Teach For America will collaborate to facilitate the hiring of individual Teachers, in accordance with Charter School's established hiring practices.
- C. Charter School agrees that Teach For America Teachers will not provide any religious instruction; Charter School attests that it is not a for-profit school.

Teach For America Responsibilities:

- D. Candidate Recruitment and Selection. Teach For America agrees to provide Charter School with the Agreed Number of Teachers, as defined in paragraph A above. While Teach For America will use reasonable efforts to supply the Agreed Number of Teachers, Teach For America does not guarantee its ability to do so.
- E. Teacher Sourcing. Teach For America warrants that it will recruit, select, and present to the Charter School for hire teacher candidates who meet applicable federal, state and/or local educational standards and requirements for teacher licensure (herein referred to as "Teachers") and who hold (or in the process of obtaining) appropriate certification. For the purposes of this Section, only those requirements in effect at the time that the Teacher is offered employment by Charter will be applicable.

II. TEACHER PLACEMENT AND PROFESSIONAL DEVELOPMENT

Charter School Responsibilities:

A. Charter School acknowledges that there is an expectation that it will employ Teachers hired under this Agreement for a minimum of two (2) years, provided that the Teacher remains an employee in good standing within Charter School's sole discretion. Charter School may also continue to employ individual Teachers beyond the two year commitment by mutual agreement between Charter School and such Teacher.

- (i.) Charter School agrees that Teachers hired under this Agreement will function as full-time classroom teachers and will not serve as aides, assistants, or in another adjunct capacity.
- (ii.) Charter School will provide Teachers the same salary and benefits as it provides for other similarly-situated teachers employed by Charter School. This obligation extends to providing Teachers returning for their second year of service with at least the same seniority rights and salary as are provided to other full-time alternatively certified second-year teachers. Notwithstanding the above, Teach For America acknowledges it exercises no control of the salary and benefits offered to Teachers by Charter School per this Agreement.
- (iii.) During the term of this Agreement, and to the fullest extent permitted by applicable law and regulation, Charter School will maintain employment practices liability insurance in amounts sufficient to protect its interests.
- (iv.) To the fullest extent permitted by law, Charter School agrees to share Teacher performance data in a timely manner so that Teach For America may provide on targeted professional development. Both Parties acknowledge that sharing this data does not create a joint employment relationship between the Parties.
- (v.) Subject to any obligations under pre-existing labor agreements and applicable municipal and state laws and regulations, Charter School shall use reasonable efforts not to terminate any employed Teacher from their teaching position in the event of a reduction in force (RIF), layoffs, "leveling" or other elimination

or consolidation of teaching positions within Charter School. Charter School shall treat any Teacher employed in connection with this Agreement whose teaching position is eliminated at least as favorably as other teachers with the same job classification, certification status, and/or seniority rights.

- (vi.) Nothing in this Agreement shall be construed to grant additional employment rights to individual Teachers.
- (vii.) Nothing in this Agreement shall be construed to make Teach For America party to any Teacher employment agreement or permit Teach For America to interfere in the employment relationship between Charter School and an employed Teacher.
- (viii.) Nothing in this Agreement shall be construed to imply that an employer-employee relationship exists between Teach For America and any individual Teacher.

B. Compliance with Anti-Harassment and Non-Discrimination Regulations. Teach For America believes all Teachers should be able to work in a safe, inclusive and equitable environment free from all forms of unlawful discrimination based on a characteristic or a protected status. To that end, Charter School will provide a copy of their internal harassment policies and/or procedures prior to signing this Agreement. Charter School acknowledges that not consistently enforcing their policies and procedures constitutes a breach of this Agreement, and that such judgment is at the sole discretion of Teach For America .

C. Prohibited Activities and AmeriCorps Service Requirements. Charter School acknowledges that Teachers serving at district schools may be serving as members of AmeriCorps, and as such, are subject to the rules and requirements of AmeriCorps and the Serve America Act and are required to refrain from engaging, directly or indirectly in certain activities while teaching, accumulating service hours towards an education award or otherwise engaging in activities supported by the AmeriCorps program (45 CFR § 2520.65). These restrictions pertain to when Teachers are enrolled in the AmeriCorps program and are on the clock at their school, including teaching time, passing and planning periods and professional development sessions. A full list of prohibited

activities can be found in attached **Attachment A** but in general, Teachers may not (1) attempt to influence legislation or (2) participate in or endorse political events or activities.

- a. Charter School will not require Teachers to engage in any Prohibited Activities and shall post a list of Prohibited Activities in all locations where Teachers serve, when possible.
- b. Charter School acknowledges they may be asked to complete AmeriCorps Service Verification forms for Teachers.
- c. For the avoidance of doubt, Teachers may exercise their rights as private citizens and may participate in the activities listed above on their initiative, on non-AmeriCorps time, and using non- CNCS funds.

Teach For America Responsibilities

- D. Services. Prior to entering the classroom, all Teacher candidates will undergo pre-service training designed and delivered by Teach For America and/or a qualified educator preparation program. During the course of the academic year, Teach For America will provide professional development services and activities for Teachers. These services may include periodic classroom observations by regional program staff, videotaping of instruction with review of instructional technique, co-investigative discussions to facilitate Teacher capacity for self-reflection and evaluation of instructional practice using student achievement data, and content area/grade-level workshops facilitated by veteran teachers. If professional development services must be provided virtually, at Teach For America's discretion, Teach For America shall provide equivalent services to the extent possible.
- E. Resources. Teach For America will facilitate teacher access to an assortment of resources including sample lesson plans, assessments, grade tracking systems, and content

area/grade level instructional materials. Professional development services will be available to all Teachers during their first two years in the classroom.

F. Data Access

- (i.) During the course of the academic year, Teach For America shall provide on behalf of School District various professional development services and activities for participating Teachers as well as on-line data storage services to facilitate such professional development services (the “Professional Development and Data Storage Services”). In addition, these professional development services will be available to all Teachers during their first two years in the classroom. To facilitate provision of these professional development services, Teach For America may provide on-line data storage services, including transfer and storage of identifiable student information on Teach For America’s software and servers.
- (ii.) To facilitate provision of the Professional Development and Data Storage Services, Charter School may disclose to Teach For America student-related records and personally identifiable information contained in such records (collectively, “Student Records”). Pursuant to its obligations under the Family Educational Rights and Privacy Act, 20 USC §1232g, and its implementing regulations, 34 CFR pt. 99, as each may be amended from time to time (“FERPA”), Charter School hereby acknowledges that, in the course of providing the Professional Development and Data Storage Services, Teach For America is a school official with legitimate educational interests in the Student Records disclosed to Teach For America, pursuant to 34 CFR §99.31(a)(1).
- (iii.) Teach For America agrees to use, maintain, and redisclose Student Records only in accordance with the requirements of FERPA, as permitted by this Agreement and/or otherwise authorized by the Charter School and in compliance with the student data privacy requirements contained in the Data Sharing Agreement, a form of which is attached and incorporated hereto as, **Attachment B** to this

Agreement, or by law, and only for the purposes for which the disclosure was made.

- (iv.) Teach For America may re-disclose Student Records to third parties pursuant to Teach For America's provision of the Professional Development and Data Storage Services, as provided in 34 C.F.R. § 99.33(b), provided that Teach For America shall, in advance, provide to Charter School the names of such parties and a brief description of such parties' legitimate educational interest in receiving such information .

G. Certification. Teach For America will ensure that Teachers are enrolled in an alternative certification/licensure program that enables Teachers to obtain appropriate credentials to be a classroom teacher of record, according to the requirements of the Every Student Succeeds Act and applicable state regulations in existence at the time of signature of this Agreement.

H. Credentialing. Individual Teachers are responsible for completing all credential requirements. Teach For America is not responsible, and shall not be in breach of any provision of this Agreement, in the event of any failure by an individual Teacher to fulfill obligations to maintain their teaching credentials [or obtain necessary waiver(s) to remain a classroom teacher of record].

III. GENERAL PROVISIONS

A. Fees-for-Service. In recognition of the costs incurred by Teach For America for the recruitment, selection, training, and professional development support of Teachers, Charter School agrees to pay Teach For America an annual fee of \$4,000 for each year that each Teacher is employed with Charter School under this Agreement.

B. Invoice and Payment. Teach For America will invoice Charter School for all amounts due under this Agreement and payment will be made no later than October 1st of each

calendar year. A failure to provide an invoice does not constitute a breach on behalf of Teach For America nor does negate the Charter School's responsibility to pay.

C. Non-Refund Policy. Teach For America has no obligation to refund to Charter School any amount paid by Charter School regarding any Teacher for any reason whatsoever.

D. Term. The term of this Agreement will cover all Teachers' employment begins with the Charter School during the 2023-2024 academic year. This Agreement will expire on the last day of the 2023-2024 academic year.

E. Termination. This Agreement may be terminated as follows:

- (i.) at any time by mutual written agreement of the Parties;
- (ii.) by either party, upon thirty (30) days prior written notice to the other Party, provided that the terminating Party provides notice no later than 120 days prior to the end of the current academic year; or
- (iii.) by either Party upon written notice to other Party in the event of a material breach of this Agreement that is incapable of being cured or, if capable of being cured, is not cured within thirty (30) days following receipt by the breaching party of written notice of such breach from the non-breaching Party.

In the event of termination, Teach For America will be entitled to all outstanding amounts due up to the date of termination.

F. Survivability and Effect of Termination. Except as otherwise specifically provided, if this Agreement expires or is terminated by either party, it shall become void. In the event of the expiration or termination of this Agreement, Sections IIA, IIB and IIC (Charter School Responsibilities) shall survive and will remain in effect until such time as there are no Agreed Number of Teachers in their second year of employment with the Charter School. In addition, Sections IIIF (Survivability and Effect of Termination), IIIG (No Warranty), and IIIH (Mutual Indemnification) and III.I (Limitation of Liability) shall survive the expiration or termination of this Agreement indefinitely.

G. No Warranty. Charter School hereby agrees and acknowledges that Teach For America does not make and has not made any representation and warranty (express or implied) as to the fitness of any Teacher presented or provided by Teach For America and Charter School shall indemnify and hold harmless the TFA Indemnities (as defined below in the Section related to Mutual Indemnification) from and against any Losses (also defined below in the same Section below) resulting from any claim related to the services provided by Teach For America, including, but not limited to, claims that any Teacher presented or provided by Teach For America was unfit for the position for which he or she was hired by Charter School.

H. Mutual Indemnification

- (i.) To the extent permitted by applicable state laws and regulations, each Party will indemnify and hold harmless the other Party and its officers, directors, employees and agents (the "Indemnitees") from and against any and all losses, liabilities, claims, damages, costs and expenses (including reasonable attorneys' fees) ("Losses") to which such Indemnitee may become a breach of this Agreement by the indemnifying party, (including without limitation the designation of Teachers), except to the extent such Losses result from the willful misconduct or gross negligence of such Indemnitee.

I. Limitation of Liability.

- (i.) Neither Party nor any of its officers, directors, employees or agents shall be liable to the other Party in connection with the matters to which this Agreement relates, except for a loss resulting from willful misconduct or gross negligence on the part of such Party; provided that in no event shall any such liability be in excess of the aggregate amount of the value of this Agreement.

- (ii.) To the extent permitted by applicable state laws and regulations, neither Party shall have any liability to the other Party for Losses asserted after 6 months of the expiration or termination of this Agreement, whichever is earliest.

J. Employment Status. Teach For America and Charter School agree that none of the Teachers assigned to Charter School under this Agreement is an agent or employee of Teach For America, and no such Teacher has any right or authority to create or assume any obligation, express or implied, on behalf of Teach For America or to bind Teach For America in any respect whatsoever.

K. Surveys. Charter School acknowledges that Teach For America may survey individual constituents, teachers, etc. at the school site regarding its programming and professional development of Teachers in the classroom

L. Amendment/Modification/Extension. No amendment or modification of this Agreement, and no waiver hereunder, will be valid or binding unless set forth in writing and signed by each Party.

M. Counterparts. This Agreement may be executed in any number of counterparts (including by electronic transmission).

N. Governing Law. This Agreement and all matters relating hereto shall be governed by, construed and interpreted in accordance with the laws of the State of Oklahoma.

O. Severability. If any term or provision of this Agreement is determined to be illegal, unenforceable or invalid in whole or in part for any reason, such provisions or part thereof shall be stricken from this Agreement, and such provision shall not affect the legality, enforceability or validity of the remainder of this Agreement. Such stricken provision shall be replaced, to the extent possible, with a legal, enforceable and valid provision that is as similar in tenor to the stricken provision as is legally possible.

- P. Notices. Any notices to either Party under this Agreement shall be in writing and delivered by hand or sent by nationally recognized messenger service, or by registered or certified mail, return receipt requested, to the addresses set forth below or to such other address as that Party may hereafter designate by notice.

**CHARTER SCHOOL
CONTACT**

Name: _____
Title: _____
Address: Tulsa Honor Academy
1421 S. Sheridan Rd.
Tulsa, OK 74112
Email: _____

TEACH FOR AMERICA:

Name: Sarah Park
Title: Executive Director
Address: 3441 E. Archer St.
Tulsa, OK 74115
Email: Sarah.park@teachforamerica.org

***With an electronic copy to:**

Name: TFA Legal Affairs
Email: LegalAffairs@teachforamerica.org
**Send only notices related to breach of contract and indemnity.*

- Q. Waiver. A waiver or a breach or default under this Agreement shall not be a waiver of any other subsequent breach or default. The failure or delay in enforcing compliance with any term or condition of this Agreement shall not constitute a waiver unless expressly waived in writing.

- R. Authority. This Agreement supersedes all communications between the parties related to the subject matter of this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, each of Charter School and Teach For America has caused its duly authorized representative to sign this Agreement in the space provided below.

Tulsa Honor Academy

By:

Name:

Title:

Address: 1421 S. Sheridan Rd.

Tulsa, OK 74112

Teach for America

By:

Name: Sarah Park

Title: Executive Director

Address: 3441 E. Archer St.

Tulsa, OK 74115

Teach For America

Contract Owner Attestation:

X This contract required legal changes to the required terms and was reviewed/approved by TFA Legal Affairs in this final form.

 This contract did not require legal changes and was not reviewed by TFA Legal Affairs.

Name: Sarah Park

Title: Executive Director

ATTACHMENT A
AMERICORS PROHIBITED ACTIVITIES

Citation:

45CFR § 2520.65 -

<https://www.ecfr.gov/current/title-45/subtitle-B/chapter-XXV/part-2520/section-2520.65>

While charging time to the AmeriCorps program, accumulating service or training hours, or otherwise performing activities supported by the AmeriCorps program or CNCS, staff and members may not engage in the following activities:

- a. Attempting to influence legislation;
- b. Organizing or engaging in protests, petitions, boycotts, or strikes;
- c. Assisting, promoting, or deterring union organizing;
- d. Impairing existing contracts for services or collective bargaining agreements;
- e. Engaging in partisan political activities, or other activities designed to influence the outcome of an election to any public office;
- f. Participating in, or endorsing, events or activities that are likely to include advocacy for or against political parties, political platforms, political candidates, proposed legislation, or elected officials;
- g. Engaging in religious instruction, conducting worship services, providing instruction as part of a program that includes mandatory religious instruction or worship, constructing or operating facilities devoted to religious instruction or worship, maintaining facilities primarily or inherently devoted to religious instruction or worship, or engaging in any form of religious proselytization;
- h. Providing a direct benefit to—
 - i. A business organized for profit;
 - ii. A labor union;
 - iii. partisan political organization;
 - iv. A nonprofit organization that fails to comply with the restrictions contained in section 501(c)(3) of the Internal Revenue Code of 1986 related to engaging in political activities or substantial amount of lobbying except that nothing in these 9 provisions shall be construed to prevent participants from engaging in advocacy activities undertaken at their own initiative; and
 - v. An organization engaged in the religious activities described in paragraph 3.g. above, unless CNCS assistance is not used to support those religious activities;
- i. Conducting a voter registration drive or using CNCS funds to conduct a voter registration drive;
- j. Providing abortion services or referrals for receipt of such services; and
- k. Such other activities as CNCS may prohibit.

Individuals may exercise their rights as private citizens and may participate in the activities listed above on their initiative, on non-AmeriCorps time, and using non-CNCS funds. Individuals should not wear the AmeriCorps logo while doing so.

ATTACHMENT B
FORM OF DATA SHARING AGREEMENT

Tulsa Honor Academy and Teach For America, Inc. Data Sharing Agreement

This Data Sharing Agreement (“DSA”), effective on the date of execution by the last signing Party (the “Effective Date”), is made and entered into by and between Teach For America, Inc. (“Teach For America,” or “Recipient”), and Tulsa Honor Academy (“Charter School”) (each a “Party” and collectively, the “Parties”).

WHEREAS, on June 14, 2023, Tulsa Honor Academy and Teach For America entered into a Professional Services Agreement (“PSA”) whereby Teach For America agreed to recruit, select, train and provide ongoing professional development to individuals committed to closing the achievement gap by serving as effective classroom teachers specifically equipped to enhance student achievement in under-resourced school systems (“Corps Members”). As such, under 34 CFR 99.31(a) Teach For America has a legitimate educational interest in accessing and using, and (b) Charter School may share with Teach For America, the Charter School Data described herein;

WHEREAS, Teach For America desires to use the Charter School Data to track the growth and achievement of students taught by Teachers supported by Teach For America and to measure the impact of these Teachers within their contexts in order to provide: tailored support and professional development programming for these Teachers, report to funders and board members, and to evaluate and evolve our model for selecting new teachers into the program, and support Charter School in improving teacher development, effectiveness and student outcomes.

WHEREAS, The Parties wish to enter into this DSA, which sets forth the terms under which the Parties will share the Charter School and Teach For America data consistent with appropriate confidentiality obligations and applicable laws;

NOW THEREFORE, The Parties agree as follows:

I. Definitions

- A. “Breach” will mean any actual or reasonably suspected unauthorized access, acquisition, use, disclosure, loss, modification, destruction, or inability to account for Charter School Data.
- B. “Charter School Student Record Data” means and refers to the data described more fully in **Appendix A** that Charter School provides to Teach For America in connection with this DSA.
- A. “Charter School Survey Data” means and refers to data collected through the Cultivate student survey via UChicago Impact’s Survey Administration Tool from students in Corps member classrooms, grades 5-12.

- C. “Charter School Video Data” means and refers data described as videotaping or recording of instruction in in-person or virtual spaces for review of instructional technique, which are manually transferred or uploaded to Teach For America’s software and servers by Corps Members in connection with this DSA.
- D. “Charter School Data” collectively refers to both the Charter School Student Record Data and Video Data.
- E. “FERPA” means and refers to the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, and implementing regulations set forth in 34 CFR Part 99.
- F. “Personal Data” means and refers to any information that identifies or that can reasonably be used to identify a specific individual, including but not limited to any information that meets the definition of “Personally Identifiable Information” set forth in 34 C.F.R. § 99.3
- G. “Privacy and Security Laws” means and refers to (i) all applicable U.S. federal, state, and local laws, rules, regulations, directives and governmental requirements currently in effect and as they become effective relating in any way to privacy, confidentiality, security, or breach notification of Personal Data, including but not limited to FERPA and (ii) all applicable industry standards concerning privacy, data protection, confidentiality or information security.

II. Description of Data Access, Exchange and Use

- A. Charter School will provide the Charter School Student Record Data described in **Appendix A** to Teach For America in a form, format, frequency, and security feature mutually agreed by the Parties and laid forth in Appendix A.
- B. Corps Members will receive a unique link for student survey administration through UChicago Impact’s Survey Administration Tool; link will be shared with students and responses will be kept confidential and stored on secure servers. Only UChicago Impact staff and agents necessary for administration of the survey will have access to student and teacher identifiers during administration as described in **Appendix B**.
- C. Corps Members will transfer or upload Charter School Video Data to Teach For America in a form, format, frequency, and security mutually agreed by the Parties and laid forth in **Appendix C**.
- D. The restricted Charter School Data will be used solely for the purposes agreed upon by the two parties.
- E. Teach For America may request additional data, use of data, or use of 3rd party data tools, surveys and/or systems, in writing, from Charter School at any point. If Charter School agrees to provide such data or to its use, all terms of this agreement apply to the additional data. This includes ongoing data for subsequent

cohort years, in which Teach For America and Charter School have entered into a PSA, after the original DSA is signed.

- F. Access to Teach For America Data will be limited solely to the appropriate Charter School staff designated in writing (after executing **Attachment A**) and the data may not be loaned or otherwise conveyed to anyone other than authorized recipients of the parties.
- G. Teach For America Agrees as follows:
 - i. Provide Charter School with a dataset (after executing **Attachment A**) that will allow for the identification of Teach For America Teachers in the existing district data system ("Teach For America Data"). Teach For America and Charter School agree that both parties will follow appropriate data protection protocols in transferring this data to representatives of Charter School as well as protect any and all personal data.
 - ii. Access to Charter School Teacher Evaluation/Observation Data at the identified individual teacher level will be limited solely to Teach For America regional and national staff (after executing **Attachment C**) and the data may not be loaned or otherwise conveyed to anyone other than authorized recipients of the parties to this agreement.
 - iii. Access to Charter School Student Record Data at the individual student level will be limited solely to appropriate Teach For America national analytics staff designated in writing (after executing **Attachment B**) and the data may not be loaned or otherwise conveyed to anyone other than authorized recipients of the parties to this agreement.
 - iv. Access to Charter School Student Record Data aggregated by class/teacher will be limited solely to Teach For America employees, funders, and board members. Teach For America agrees that the data may not be loaned or otherwise conveyed to anyone other than authorized recipients of the parties to this agreement.
 - v. Access to Charter School Survey Data will be limited solely to Teach For America employees and Corps Members for ongoing coaching and development of current and future Corps Members. Further, no student identifiable information will be reported and all data will be reported in the aggregate or disaggregated by race/ethnicity /gender (with subgroups not less than 5). Teach For America agrees that the Survey Data may not be loaned, used or otherwise conveyed to anyone other than internal staff, current and future Corps Members, using software services to securely house and host this data.
 - vi. Access to Charter School Video Data will be limited solely to Teach For America employees and Corps Members for ongoing coaching and

development of current and future Corps Members. Teach For America agrees that the Video Data may not be loaned, used or otherwise conveyed to anyone other than internal staff, current and future Corps Members, using software services to securely house and host this data.

- vii. Upon execution of **Attachment B**, Teach For America will not share Charter School aggregate student data for student cohorts less than five (5).
- viii. Teach For America will not externally share or publish conclusions from any analyses that identifies the district, without the prior consent of Charter School.
- ix. Teach For America agrees to share any findings from its analyses and/or aggregate reports with Charter School.

III. DUTIES

A. The Charter School will perform the following duties:

- i. Provide data for the purposes of this Agreement in compliance with the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. section 1232g and 34 C.F.R, section 99, and related Oklahoma Education Code provisions.
- ii. Provide Teach For America with information security specifications required to transmit pupil record information electronically in the form, format, frequency, and security features laid out in **Appendix A**.
- iii. Authorizes Teach For America and Corps Members, by the execution of this Agreement, to administer student surveys to students in grades 5-12 in corps member classrooms, in the form, format, frequency and security features laid out in **Appendix B**.

B. Teach For America will perform the following duties:

- iv. Comply with all FERPA and Oklahoma State Department of Education Provisions, including the following:
 - a. Teach For America further agrees not to share data received under this DSA with any other entity not set forth in this Agreement. Teach For America agrees to allow Charter School access to any relevant Teach For America records for purposes of completing authorized audits of the parties.
 - b. Require all employees, contractors and agents of any kind to comply with all applicable provisions of FERPA with respect to the data shared under this agreement. Teach For America agrees to require and maintain an appropriate confidentiality agreement from each employee, contractor or agent with access to data pursuant to this agreement and **Attachment B**.

- c. Maintain all data obtained pursuant to this agreement in a secure computer environment and not copy, reproduce or transmit data obtained pursuant to this agreement except as necessary to fulfill the purpose of the original request. All copies of data of any type, including any modifications or additions to data from any source that contains information regarding students, are subject to the provisions of this agreement in the same manner as the original data. The ability to access or maintain data under this agreement shall not under any circumstances transfer from Teach For America or the entities listed herein, to any other institution or entity.
- d. Not disclose any Charter School Data obtained under this agreement in a manner that could identify an individual student to any other entity in published results of data use authorized by this agreement.
- e. Use data in a manner that does not permit personal identification of parents and students by anyone other than representatives of Teach For America authorized by this Agreement with legitimate educational interests for purposes of this Agreement.
- f. Destroy all personally identifiable Charter School Data obtained under this agreement when it is no longer needed for the purpose for which it was obtained. Nothing in this agreement authorizes Teach For America to maintain personally identifiable data beyond the time period reasonably needed to complete the purpose of the request. After creating and verifying the final merged data set, all personally identifiable data shall be destroyed in compliance with 34 CFR Section 99.31 (a) (6). Teach For America agrees to require all employees, contractors, or agents of any kind to comply with this provision. Consistent with FERPA, Teach For America will retain a de-identified data set to conduct analyses for specific projects that have been approved in advance and in writing by Charter School.
- v. Teach For America shall comply with the Charter School's information security specifications prior to receiving any electronic transfers of pupil record information. Charter School may require Teach For America to provide documentation of compliance prior to any transmittal.
- vi. Teach For America shall designate in writing a single authorized representative able to request data under this agreement. The authorized representative shall be responsible for transmitting all data requests and maintaining a log or other record of all data requested and received

pursuant to this agreement, including confirmation of the completion of any projects and the return or destruction of data as required by this agreement. Charter School or its agents may, upon request, review the records required to be kept under this section. Teach For America's authorized representative must sign and complete the Confidentiality Agreement, (**Attachment B**) which is incorporated by reference.

- vii. If Teach For America experiences a Breach, Teach For America will immediately take steps to mitigate any harm resulting from such Breach and/or as are required under applicable Privacy and Security Laws. Teach For America will report in writing to Charter School without unreasonable delay, but in no event later than forty-eight (48) hours of determining that a Breach of Charter School Data has occurred. Teach For America will cooperate with any reasonable Charter School requests for information regarding such Breach.

IV. GENERAL PROVISIONS

- A. **TERM.** The Term of this Agreement shall begin on the Effective Date, cover all Corps Members hired under the PSA originally dated , 2023, and shall expire on the last day of the 2023-2024 academic year.
- B. **TERMINATION.** This Data Sharing Agreement may be terminated as follows:
 - i. At any time by mutual agreement of the parties;
 - ii. By either party upon thirty (30) days prior written notice to the other Party;
 - iii. By either party upon written notice to the other in the event of a material breach of this Agreement that is not cured within thirty (30) days following the receipt by the breaching party of written notice from the non-breaching party.
- C. **EFFECT OF TERMINATION.** If this Agreement expires or is terminated by either party, it shall become void. The expiration or earlier termination of this specific Agreement shall not serve to terminate the associated PSA.
- D. **GOVERNING LAW** The validity, interpretation and performance of this agreement shall be determined according to the laws of the State of Oklahoma.
- E. **INDEMNIFICATION** Teach For America shall indemnify and hold the Charter School and its Board Members, administrators, employees, agents, attorneys, and contractors (Indemnitees) harmless against all liability, loss, damage and expense (including reasonable attorneys' fees) resulting from or arising out of this agreement or its performance, whether such loss, expense, damage or liability was

proximately caused in whole or in part by the negligent or willful act or omission of Teach For America, including, without limitation, its agents, employees, subcontractors or anyone employed directly or indirectly by it.

- F. **NOTICES** All notices required or permitted by this Agreement shall be in writing and shall be either personally delivered or sent by nationally-recognized overnight courier, facsimile or by registered or certified U.S. mail, postage prepaid, addressed to the individuals as set forth below (except that a party may from time to time give notice changing the address for this purpose). A notice shall be effective on the date personally delivered, on the date delivered by a nationally-recognized overnight courier, on the date set forth on the receipt of a telecopy or facsimile, or upon the earlier of the date set forth on the receipt of registered or certified mail or on the fifth day after mailing.

AGENCY 1:	TEACH FOR AMERICA	AGENCY 2:	TULSA HONOR ACADEMY
Name, Title	SARAH PARK, EXECUTIVE DIRECTOR	Name, Title	
ADDRESS:	3441 E ARCHER ST. TULSA, OK 74115	ADDRESS:	1421 S. SHERIDAN RD. TULSA, OK 74112
TELEPHONE:	(918) 835-3622	TELEPHONE:	918-324-4768
EMAIL:	SARAH.PARK@TEACHFORAMERICA.ORG	EMAIL:	

- G. The points of contact for technical issues regarding the exchange, storage and security of the Charter School Data and related technical issues are:

Teach For America: Rachel Estariz & Nicole West

Tulsa Honor Academy: NAME OF PERSON RESPONSIBLE FOR PROVIDING/ENSURING ACCESS TO DATA

- H. **AMENDMENT, MODIFICATION, EXTENSION.** Any amendment, modification or extension must be in writing and signed by both Parties.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the last day noted below.

AGENCY 1:	TEACH FOR AMERICA	AGENCY 2:	TULSA HONOR ACADEMY
ADDRESS:	3441 E ARCHER ST. TULSA, OK 74115	ADDRESS:	1421 S. SHERIDAN RD. TULSA, OK 74
TELEPHONE:	(918) 835-3622	TELEPHONE:	918-324-4768

EMAIL:	SARAH.PARK@TEACHFORAMERICA.ORG	EMAIL:	
SIGNATORY NAME (PRINT):	SARAH PARK	SIGNATORY NAME (PRINT):	
SIGNATORY TITLE:	EXECUTIVE DIRECTOR	SIGNATORY TITLE:	
SIGNATURE:		SIGNATURE:	
DATE:		DATE:	

APPENDIX A - DATA ELEMENTS, FORM, FORMAT, FREQUENCY, AND SECURITY FEATURES

Data Elements

Charter School will, to the fullest extent possible, include the following data and specified variables in the Charter School Data sets provided to Teach For America (limited only by what is available through the method of access);

- a. The following teacher data and variables are essential to Teach For America's data request:
 - i. district, district code, school, school code
 - ii. Subject name, subject ID, course name, course ID, section ID
 - iii. grade level name, grade level code
- b. The following teacher data and variables are helpful but not essential to Teach For America's data request:
 - i. years employed with partner
 - ii. TFA affiliation (current CM/ alumni)
 - iii. certification/ license level
 - iv. gender
 - v. race
 - vi. ethnicity
 - vii. teacher evaluation rating/ observation data (where available)
 - viii. student/parent survey summary results (where available)
- c. The following student data and variables are essential to Teach For America's data request:
 - i. interim assessment scores (BOY, MY, EOY) (all scores including growth goals/targets, grade level equivalency, mastery, percentile rank, or other scales available)
 - ii. state test scale scores (previous + current) (all scores including scale score, proficiency/ performance level, raw scores, percentile rank, or other scales available)
 - iii. student survey results (all scores including individual question scores, aggregate construct scores, raw scores, any deidentified open ended responses or other scales available)
 - iv. test grade
 - v. test subject
 - vi. test year
 - vii. State StudentID number

- d. The following student data and variables are helpful but not essential to Teach For America's data request:
 - i. race/ ethnicity
 - ii. ELL status
 - iii. special education/ disability status
 - i. low socioeconomic-status (SES)
 - iv. attendance data (e.g. daily absence or tardiness, number of absences/tardies over a specified time period, days attended and missed, average daily attendance);
 - v. behavior/discipline data (e.g. number of detentions, suspensions, office referrals);
- e. The following aggregate data are essential to Teach For America's data request:
 - i. Charter School average scores for all interim assessment tested grades and subjects (all scores including growth goals/targets, grade level equivalency, mastery, percentile rank, or other scales available)
 - ii. Charter School average scores for all state tested grades and subjects (all scores including scale score, proficiency/ performance level, raw scores, percentile rank, or other scales available)tested grades and subjects (all scores including scale score, proficiency/ performance level, raw scores, percentile rank, or other scales available)
 - iii. Charter School average scores for all surveyed grades and subjects (all scores including individual question scores, aggregate construct scores, raw scores, any deidentified open ended responses or other scales available)

Data Security

Teach For America employs a number of strategies to secure data and limit unnecessary access during transfer, storage, and processing. We encrypt data in transfer as well as at rest, when it is being stored in a data repository. For our internal data storage, we change encryption keys on a regular basis to avoid stale credentials and unwanted legacy access. Data is regularly obfuscated for analytics and reporting purposes, and is only presented to stakeholders (e.g., TFA staff, board members, funders, SEAs/LEAs) in aggregate, rolled up at the classroom, instructor, school, or district level. We use best practices for data isolation, including limiting accounts for vendors who push data to our systems and centralized oversight of user accounts for external systems when we need to pull the data ourselves. We use a "least privilege granted" model for access to internal systems, employing multi-factor authentication where feasible, and monitor access across these systems with auditable logs. Additionally, we have blanket data privacy training for all staff that covers key elements of working with PII, sensitive data, and student data in particular.

Teach For America shall also have a written incident response plan, which shall include but is

not limited to, prompt notification to Charter School in the event of a security or privacy incident, as well as procedures for responding to a breach of any of Charter School's Data that is in Teach For America's possession. Teach For America agrees to share its incident response plan upon request.

APPENDIX B: DESCRIPTION OF SYSTEM(S) USED IN THE TRANSFER OF CHARTER SCHOOL SURVEY DATA, FREQUENCY AND SECURITY FEATURES

System Description:

Other Systems Description:

Cultivate Description:

This **Appendix B** shall serve as Teach For America Greater Tulsa's official notification of the use of the UChicago Impact Cultivate for Coaches student survey for professional development and organizational reporting. Cultivate for Coaches is a professional development program designed to support coaches and Corps members in creating learning environments that positively affect what students believe about themselves as learners and the strategies they employ in their classrooms, ultimately improving student academic performance. This program includes student surveys for grades 5-12 administered by UChicago Impact. The survey is crucial because it will provide Corps members with important information on students' perceptions of the classroom learning environments that, in turn, can support their understanding of strengths and areas of growth. Below we've outlined the various ways Teach For America- Greater Tulsa and corps members will utilize Cultivate student survey data, including but not limited to:

- Corps members review student feedback to prioritize areas for growth.
- Coaches utilize data to support individual teacher development, based on evidence from student surveys, and incorporate evidence-based best practices provided by University of Chicago.
- Teach for America reports aggregate data as a key performance indicator for continuous improvement of programmatic supports.

Cultivate Survey Security Features:

UChicago Impact will administer the Cultivate for Coaches Survey to students of TFA Corps members in grades 5-12. The surveys will be administered using UChicago Impact's Survey Administration Tool. Each teacher will receive a unique link for student survey administration.

- Student identification will be kept confidential and stored on secure servers for both outreach and survey administration. Only UChicago Impact staff and agents necessary for administration of the survey will have access to student and teacher identifiers during administration.
- Students will select their birthdate, gender, grade level, school and teacher using a combination of drop-down lists or radio buttons. This data is collected solely for the purposes of reconciling multiple surveys from the same students. Students have the right to omit responses to any question. Once data collection and reporting are complete, student identifying information will be permanently deleted.

- Students will also have the option of selecting their race/ethnicity in order for teachers to understand how student perceptions vary by race/ethnicity.
- To receive student data, CMs must have at least 50% of students (based on student count provided by TFA) complete the survey and have at least 10 valid respondents per item to receive full report data. Partial survey responses will also be accepted.
- Only aggregate data (for classrooms with at least 10 students) will be reported to teachers on a password-protected basis
- TFA will have access to aggregate student data without any identifiable information through a password-protected system.
- UChicago Impact has the right to keep all non-identifiable student scores for national benchmarking purposes but cannot report on any aggregate results without explicit permission from TFA.
- UChicago Impact employs a number of industry standard practices to secure data and prevent unauthorized access. Data is encrypted both while in transit during the survey process, and while at rest when stored in the data repository. Encryption keys are changed on a regular basis to avoid stale credentials and unwanted legacy access. Data is regularly obfuscated for analytics and reporting purposes and is aggregated by being rolled up at the classroom, instructor, school or district level. The server management team enforces data isolation and oversight of all user accounts accessing data, including continuous monitoring of access across our systems using centralized, auditable logs.

APPENDIX C DESCRIPTION OF SYSTEM(S) USED IN THE TRANSFER OF CHARTER SCHOOL VIDEO DATA, FREQUENCY AND SECURITY FEATURES

System Description:

Other Systems Description:

Docebo Description:

The onset of the Covid-19 pandemic fast-forwarded Teach For America's (TFA) work to create a more personalized corps member experience, through a standardized platform and other digital offerings. The charge: leverage technology to help us unblock and enable a digital transformation. After a robust RFQ process Docebo proved to meet all of the identified needs for an enterprise Learning Management System (LMS) including the ability to: track course and assignment completion, track progress through an asynchronous course, respond to discussion prompts simply within an asynchronous course, easily and intuitively navigate assignments (due dates, ability to upload files, daily to-dos), customize and automate data reporting, assigned learning plans for individuals or groups of users, communicate key announcements through the system, and share classroom teaching videos and receive feedback from expert practitioners and coaches.

This **Appendix C** shall serve as Teach For America- Greater Tulsa's official notification of the use of the Docebo platform for corps member teacher coaching and training. While instruction may be in-person, virtual, or follow a hybrid model this school year, we believe it is important that we innovate and remain agile in our approach to the coaching and training we provide corps members. Below we've outlined the various ways Teach For America- Greater Tulsa and corps members will utilize the Docebo platform, including but not limited to:

- Uploading and reviewing classroom recordings and other content in order to engage in discourse and feedback on teaching practices.
- Foster strong dialogue and collaboration with other corps members and Teach For America staff as they share resources, ideas, and feedback.
- Streamline coaching conversations centered on individual teacher development, rooted in evidence from their classrooms, and use evidence-based practices modeled by other teachers.

As part of our use of Docebo, Teach For America corps members will be uploading their classroom recordings. Although these recordings are focused and framed around the teacher, there may be times they include student images. Teach For America will obtain parental consent waivers for any videos which include student images.

Frequency of Video Data Upload: As requested by Teach for America

Docebo Security Features:

Although corps members will upload classroom recording videos, these videos are not sharable outside of the platform and only the corps member who uploaded the video and Teach For America coaches have rights to download it. Our partnership with Docebo meets rigorous data

security and privacy standards as a closed and private platform and Docebo has affirmed their compliance with laws and regulations concerning the privacy, security and notification of breaches.

OKLAHOMA EDUCATOR FELLOWS PROFESSIONAL SERVICES AGREEMENT

This educational professional services agreement (“Agreement”) is dated , 2023 between Teach For America, Inc. (“Teach For America”), a Connecticut non-profit headquartered at 25 Broadway, 12th fl, New York, New York with local offices at 3441 E. Archer St. Tulsa, OK 74115 and Tulsa Honor Academy (“Partner School” or “School Partner”) (each, a “Party” and collectively “the Parties”).

Teach For America is a national leader in recruiting, selecting, training, and providing ongoing professional development to individuals committed to educational equity by going beyond traditional expectations to advance the academic and personal growth of their students and help to strengthen their schools.

The Teach For America Oklahoma Region is building several Educator Fellowships (the “Fellowships”) that seek to recruit, train, and retain Teach For America’s alumni (“Fellows”) to Oklahoma. Teach For America Oklahoma will provide ongoing professional development and support to accelerate the pace of change towards educational equity.

Accordingly, School Partner and Teach For America agree as follows:

I. EDUCATOR CANDIDATE RECRUITMENT, SELECTION, AND HIRING

1. Teach For America Responsibilities:

A. Educator Sourcing

- a. Teach For America will recruit, select, and present the School Partner for hire certain teacher candidates as described in this agreement (hereinafter referred to as “Accelerate Fellows”).
- b. Teach For America will recruit, select, and present the School Partner for hire certain aspiring school leader candidates as described in this agreement (hereinafter referred to as “Launch Fellows”).

- ##### B. Candidate Recruitment and Selection.
- Teach For America agrees to use reasonable efforts to identify Accelerate and Launch Fellows for the School Partner. While Teach For America will use reasonable efforts to supply educators, Teach For America does not guarantee its’ ability to successfully identify eligible TFA Fellows for each open position.

2. School Partner Responsibilities:

- A. Partner School agrees to consider for hire Accelerate Fellows and Launch Fellows identified by Teach For America who meet the Partner School’s eligibility requirements for the academic school year 2023-2024.
- B. Partner School will ensure that any TFA Fellows hired by Partner School under this Agreement will function as full time employees in the position. Partner School may hire TFA Fellows for one of the following positions: Classroom teachers, school leaders (including but not limited to principals, head of school), assistant principals, instructional coaches, or school support staff.
- C. Compliance with Anti-Harassment and Non-Discrimination Regulations. Teach For America believes all Fellows should be able to work in an atmosphere free from all forms of unlawful discrimination, including sexual harassment and any other form of unlawful harassment based on

a characteristic or status protected by law, and as such, wishes to ensure Fellows are placed in safe, inclusive and equitable environments. To that end, School Partner will provide a copy of their internal harassment policies and/or procedures prior to signing this Agreement. School Partner acknowledges that not consistently enforcing their policies and procedures is grounds for termination of this Agreement, and that such judgment is at the sole discretion of Teach For America. School Partner acknowledges that any such termination will be without further Teach For America liability or obligation.

3. Miscellaneous.

- A. Teach For America acknowledges it exercises no control over the salary and benefits offered to a TFA Fellow by the School Partner per this agreement.
- B. For the avoidance of doubt, in the event School Partner is an at-will employer, nothing in this agreement shall be construed to grant additional employment rights to individual TFA Fellows.
- C. Nothing in this agreement shall be construed to permit Teach For America to interfere in the employment relationship between the School Partner and an employed TFA Fellow.
- D. Nothing in this agreement shall be construed to permit Teach For America to function as the representative of any TFA Fellow absent the express agreement among the parties and the TFA Fellow that Teach For America may operate in such capacity in a particular circumstance.
- E. Nothing in this agreement shall be construed to imply that an employer-employee relationship exists between Teach For America and any individual TFA Fellow.
- F. Nothing in this Agreement shall be construed to make Teach For America a party to any employment agreement between the School Partner and the TFA Fellows.

II. EDUCATOR PROFESSIONAL DEVELOPMENT AND RETENTION

Teach For America Responsibilities:

- A. Services. During the course of the academic year, Teach For America will provide professional development services and activities for Accelerate and Launch Fellows. These services may include group learning experiences led by TFA staff and other educational leaders, school observations, and coaching experiences to support the analysis of the fellows' progress towards their leadership development and student outcomes goals. TFA will analyze progress, and adjust strategies to support fellows to reach their leadership development and student outcomes goals.

School Partner Responsibilities:

- A. Over the course of the school year, Partner School agrees to participate in regular conversations with Teach For America with the goal of collaborating to understand the strengths and opportunities in the Fellowships, and build strategies to retain current Fellows.

III. DATA SHARING

- A. To facilitate provision of these professional development services, Teach For America may provide on-line data storage services, including transfer and storage of de-identifiable student information on Teach For America's proprietary software and servers. Pursuant to its obligations under the Family Educational Rights and Privacy Act, 20 USC §1232g, and its implementing regulations, 34 CFR pt. 99, as each may be amended from time to time ("FERPA"), Partner School hereby acknowledges that, in the course of providing the Professional Development and Data Storage Services, Teach For America has legitimate educational interests in the Student Records disclosed to Teach For America, pursuant to 34 CFR §99.31(a)(1).
- B. Partner School shall provide Teach For America with the following data at the classroom level for each TFA Alumni hired by Partner School: Total # of students, class averages on quarterly school-administered assessments (examples: reading growth at beginning, middle and end of year, student class averages on assessments, end of quarter exams), and average class attendance.

IV. GENERAL PROVISIONS

- A. Fees. Teach For America will be responsible for the bulk of the costs associated with recruiting, training, and retaining Fellows, and the School Partner will contribute the following.
 - 1. \$2,000 annual fee for access to all TFA Fellows and talent matching supports from Teach For America.
 - 2. \$4,000 for each Accelerate Fellow to be invoiced at the conclusion of the 2023-2024 academic year to complete their 2-year commitment in the Fellowship.
 - 3. \$4,000 for each Launch Fellow to be invoiced at the conclusion of the 2023-2024 academic year to complete their 2-year commitment in the Fellowship.
- B. Term. The term of this Agreement shall cover the first year of all Teach For America Fellows whose employment begins with the Partner School during the 2023-2024 academic years. This is an annual Agreement and will expire on June 30, 2024, but may be renewed at the end of the term on the same or substantially similar terms by mutual agreement of the parties.
- C. Teach For America's Discretion Over Work. Teach For America will retain sole and absolute discretion over the manner and means of carrying out Teach For America's activities and responsibilities hereunder and will dictate its time of performance. Teach For America agrees that it is a separate and independent enterprise from the Partner School, that this agreement does not require Teach For America to perform work exclusively for the Partner School and that it has exercised its full opportunity to find other business, and that it will utilize a high level of skill and independence necessary to perform the work.

- D. Confidentiality. Partner School shall hold all non-public information, written or oral, whether or not it is marked as confidential, that is disclosed or made available to Partner School, directly or indirectly, through any means of communication by Teach For America (the "Confidential Information") in confidence in accordance with the terms of this Agreement. Confidential Information shall only be used in accordance with the terms of this Agreement and Partner School shall exercise at least the same degree of care as it uses with its own confidential information, but in no event less than reasonable care. Partner School may disclose Confidential Information to 1) its representatives but only to the extent necessary to carry out the terms of this Agreement and 2) to a third-party only if required to do so, and only to the extent permitted, by law.
- E. Amendment/Modification. No amendment or modification of this Agreement, and no waiver hereunder, will be valid or binding unless set forth in writing and signed by each Party.
- F. Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed an original copy of this Agreement, and all of which, taken together, will be deemed to constitute one and the same agreement.
- G. Governing Law. This Agreement will be governed by, and construed and interpreted in accordance with, the laws of the State of Oklahoma.
- H. Termination. This Agreement may be terminated at any time by mutual written agreement of the parties. In the event of termination, Teach For America will be entitled to all outstanding amounts due up to the date of termination.
- I. Severability. If any term or provision of this Agreement is determined to be illegal, unenforceable or invalid in whole or in part for any reason, that illegal, unenforceable or invalid provisions or part thereof will be stricken from this Agreement, and the provision will not affect the legality, enforceability or validity of the remainder of this Agreement.
- J. Notices. Unless provided otherwise, all notices will be in writing and sent to the addresses set forth below. Notices will be delivered by personal messenger, overnight courier, registered or certified mail or (except in the case of notice of any alleged breach of this Agreement) transmitted through facsimile (provided there is confirmation of receipt of such transmission). The addresses of the Parties are as follows:

Partner School: Tulsa Honor Academy
1421 S. Sheridan Rd.
Tulsa, OK 74112

Teach For America: 3441 E. Archer St.
Tulsa, OK 74115

IN WITNESS WHEREOF, each of Partner School and Teach For America has caused its duly authorized representative to sign this Agreement in the space provided below.

SCHOOL PARTNER

By _____

Name:

Title:

Address: 1421 S. Sheridan Rd. Tulsa, OK 74112

TEACH FOR AMERICA, INC.

By _____

Name: Sarah Park

Title: Executive Director

Teach For America Address: 3441 E. Archer St., Tulsa, OK 74115

ATTACHMENT A

NONDISCLOSURE AGREEMENT

THIS NONDISCLOSURE AGREEMENT dated as of 2023 (this "Agreement"), is entered into by and between Teach For America, Inc. ("Teach For America"), and Tulsa Honor Academy (the "Charter School")

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed as follows:

1. Confidential Information. "Confidential Information" means any personally identifiable information related to Teach For America corps members, corps member applicants, donors, alumni, employees, agents and/or volunteers obtained by or furnished to the Charter School; all findings, analysis, data, reports or other information learned or developed and based thereon, whether in oral, written, graphic, or machine-readable form; and all information marked "confidential." Confidential Information includes, but is not limited to, names, addresses, contact information, school or school attended, school district, grades or other reviews, credits, scores, analysis or evaluations, records, correspondence, activities or associations, financial information, social security numbers or other identifying numbers or codes, date of birth or age; regardless of whether such information was disclosed prior to, concurrent with or subsequent to this Agreement. "Confidential Information" shall not include any information that is: (i) lawfully in the public domain at the time of receipt or which lawfully comes into the public domain thereafter through no act of the Charter School in breach of this Agreement, (ii) disclosed with the prior written approval of Teach For America, and/or (iii) disclosed as required by court order, subpoena, other validly issued administrative or judicial notice or order and/or as a matter of applicable law, provided, however, that in the event disclosure is required of the Charter School under the provision of any law or court order, the Charter School will (a) promptly notify Teach For America of the obligations to make such disclosure sufficiently in advance of the disclosure, if possible, to allow Teach For America to seek a protective order, and (b) disclose such Confidential Information only to the extent allowed under a protective order, if any, or necessary to comply with the law or court order.
2. Use of Confidential Information. The Charter School shall hold in confidence and shall not disclose to any third party any Confidential Information disclosed to it by Teach For America, except as expressly permitted under this Agreement. The Charter School shall use such Confidential Information only in connection with identifying Teach For America corps members and alums within the Charter School database (the "Matching Services") and shall not exploit such Confidential Information for its own benefit or the benefit of another without the prior written consent of Teach For America. The Charter School shall disclose Confidential Information of Teach For America only to its employees who have a need to know such Confidential Information in order to perform the Matching Services and who are legally bound to protect the confidentiality of such Confidential Information. The Charter School shall ensure that all such employees comply with the terms of this Agreement. The Charter School shall neither retain nor incorporate any of the Confidential Information into any database or any medium other than may be required for the Matching Services. Teach For America may audit the Charter School's maintenance of the Confidential Information for security purposes
3. Protection of Confidential Information. The Charter School shall protect the Confidential Information by using the same degree of care, but not less than a reasonable degree of care, to prevent the unauthorized use, dissemination, publication of, or access to, Confidential Information as it uses to protect its own confidential information.
4. Property Rights in Confidential Information. Confidential Information will remain the property of Teach For America notwithstanding disclosure hereunder. Disclosure of Confidential Information hereunder shall not be deemed to constitute a grant, by implication or otherwise, of a right or license to the Charter School of the Confidential Information other than for use in connection with providing the Matching Services.
5. Notice of Breach. In the event the Charter School or its affiliates become aware of any breach or threatened breach by the Charter School or its affiliates of any of the provisions of Sections 2 or 3 hereof, the Charter School shall, within a commercially reasonable time under the circumstance, notify Teach For America of such breach or threatened breach, and shall fully cooperate with Teach For America, at the Charter School's expense, as reasonably requested by Teach For America, to remedy such breach or prevent such threatened breach and to prevent any further breach or threatened breach.

6. Non-Public, Private Information. The Charter School acknowledges that the Confidential Information includes non-public, personal information (“NPPI”) pertaining to residents of various states, the laws and regulations of which impose certain notice requirements if such NPPI has been acquired, accessed or otherwise compromised. Notwithstanding Section 5, the Charter School agrees to notify Teach For America in writing, in accordance with the requirements of Section 13 hereof, within twenty-four (24) hours after the Charter School becomes aware of any actual or suspected occurrence of any such acquisition, access or compromise and shall work with Teach For America to take all measures reasonably necessary, in Teach For America’s sole discretion, to restore the security of such NPPI. Teach For America shall have the exclusive right to provide notice to any person or entity as required by law and regulation (i) if Teach For America reasonably believes that NPPI under the Charter School’s control or accessible by the Charter School was acquired, accessed or otherwise compromised by an unauthorized party and (ii) Teach For America determines that notice must be provided to comply with the applicable law and regulations concerning the person whose NPPI was acquired, accessed or otherwise compromised. The Charter School shall reimburse Teach For America for the reasonable and actual costs of such notice per “incident” (i.e., breach of the security resulting in a reasonable probability that the NPPI of such person was acquired, accessed or otherwise compromised by an unauthorized party) and any additional remediation costs, if: (A) Teach For America’s determination that notice was required under applicable law and regulations was reasonable; (B) any breach was caused by the Charter School’s failure to comply with its obligations under this Agreement; and (C) Teach For America exercises reasonable efforts to minimize the costs of providing the notice. Even if the Charter School reimburses Teach For America for the costs of the notice and remediation with respect to any such incident as provided herein, Teach For America shall be entitled to seek all other remedies against the Charter School hereunder and at law and equity with respect to such incident.
7. Indemnification. The Charter School shall defend, indemnify and hold harmless Teach For America from any and all claims brought by third parties to the extent arising from, or in connection with, any negligent acts or omissions of the Charter School or any other representatives for whom the Charter School is legally responsible for, in connection with the performance of this Agreement.
8. Destruction of Confidential Information. Following a request by Teach For America or upon the termination of this Agreement, the Charter School shall promptly, but in no event more than fifteen (15) days following such request or the termination of this Agreement, destroy all or any part of the Confidential Information, that is within the possession or control of the Charter School, and shall, upon request by Teach For America, provide certification of such destruction.
9. Term. The shall be effective as the date first referenced above and shall expire on the last day of the 2023-2024 academic year.
10. Termination. Teach For America shall have the right at its sole discretion to terminate the Charter School’s access to the Confidential Information upon fifteen (15) days written notice to the Charter School. Teach For America shall have the right at its sole discretion to terminate the Charter School’s access to the Confidential Information immediately upon the Charter School’s breach of any confidentiality obligations herein. No claim for damages will be made or allowed to the Charter School because of said termination. Notwithstanding anything to the contrary, the confidentiality obligations of the Charter School under this Agreement shall survive any termination or expiration of this Agreement.
11. No Reverse Engineering. The Charter School shall not reverse-engineer, decompile, or disassemble any software or other Confidential Information disclosed to it and shall not remove, overprint or deface any notice of copyright, trademark, logo, legend, or other notices of ownership from any originals or copies of the Confidential Information.
12. Disclaimer of Warranties. CONFIDENTIAL INFORMATION IS PROVIDED “AS IS” WITH ALL FAULTS. IN NO EVENT SHALL TEACH FOR AMERICA BE LIABLE FOR THE ACCURACY OR COMPLETENESS OF ANY CONFIDENTIAL INFORMATION.
13. Assignment. This Agreement and the Charter School’s rights, duties and obligations under this Agreement are not transferable or assignable by the Charter School without the express prior written consent of Teach For America. Any attempt to transfer or assign this Agreement or any of the rights, duties or obligations under this Agreement without such consent is void.
14. Notices. Any notice, demand or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed delivered to a party (a) when delivered by hand or courier, or (b) five (5) days after the date of mailing if mailed by United States certified mail, return receipt requested, postage prepaid, in each case to the

address of such party set forth below (or at such other address as the party may from time to time specify by notice delivered in the foregoing manner):

If to Teach For America, to:
Sarah Park
Teach For America
3441 E. Archer St.
Tulsa, OK, 74115

*with an electronic copy to:
LegalAffairs@teachforamerica.org
in cases of breach or indemnity

If to the Tulsa Honor Academy, to:
[AGENCY STAFF NAME]
Tulsa Honor Academy
1421 S. Sheridan Rd.
Tulsa, OK 74112

15. Modification. This Agreement can only be modified by a written agreement duly signed by all the parties hereto.
16. Severability. If any term, provision or covenant of this Agreement shall be held to be invalid or unenforceable for any reason (a) the remaining provisions shall continue to be valid and enforceable and (b) each party directs that such court interpret and apply the remainder of this Agreement in the manner that it determines most closely effectuates the parties' intent in entering into this Agreement, and in doing so particularly take into account the relative importance of the term, provision, covenant or restriction being held invalid, void or unenforceable.
17. Interpretation. All questions concerning the validity, interpretation and performance of this Agreement shall be governed by and decided in accordance with the laws of the State of Oklahoma, without regard to any conflicts of laws and principles thereof. The parties irrevocably agree to submit to the jurisdiction and venue of the appropriate Federal or State courts located in Tulsa County, Oklahoma for the purpose of any suit, action or other proceeding brought in connection with this Agreement, and the parties hereby waive any objection which they may have based on improper venue or forum non conveniens and consent that service of process in any such suit, action or proceeding shall be served according to the applicable court rules and rules of civil procedure for the State of Oklahoma.
18. Entire Agreement/Authority/Bindingness. This Agreement is the complete and exclusive statement of the agreement between the parties as to the subject matter hereof and supersedes all communications between the parties related to the subject matter of this Agreement. Each party represents and warrants to the other that it has full power and authority to enter into and perform this Agreement. This Agreement shall be binding upon the parties hereto and inure to the benefit of the parties hereto, their respective successors and permitted assigns.
19. Waiver. A waiver of a breach or default under this Agreement shall not be a waiver of any other or subsequent breach or default. The failure or delay in enforcing compliance with any term or condition of this Agreement shall not constitute a waiver of such term or condition unless such term or condition is expressly waived in writing.
20. Injunctive Relief. In the event of a breach or threatened breach by the Charter School of any of the provisions of this Agreement, Teach For America, in addition to any other remedies available to it under law, shall be entitled to seek an injunction restraining the Charter School from the performance of acts which constitute or may constitute a breach of this Agreement.
21. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective the day and year first above written.

AGENCY 1:	TEACH FOR AMERICA	AGENCY 2:	TULSA HONOR ACADEMY
ADDRESS:	3441 E. ARCHER ST., TULSA, OK 74115	ADDRESS:	1421 S. SHERIDAN RD. TULSA, OK 74112
TELEPHONE:	(918) 835-3622	TELEPHONE:	(918) 324-4768
EMAIL:	SARAH.PARK@TEACHFORAMERICA.ORG	EMAIL:	
SIGNATORY NAME (PRINT):	SARAH PARK	SIGNATORY NAME (PRINT):	
SIGNATORY TITLE:	EXECUTIVE DIRECTOR	SIGNATORY TITLE:	
SIGNATURE:		SIGNATURE:	
DATE:		DATE:	

ATTACHMENT B

CONFIDENTIALITY AGREEMENT FOR DATA USE

I am working as an authorized representative for Teach For America ("TFA") on a project involving Tulsa Honor Academy ("Charter School") students and teachers affiliated with TFA. I understand that my work on this project involves the use of Charter School data that is confidential under state law, federal law, or both state and federal law.

All personally identifiable information is to be protected in adherence with FERPA guidelines. I will refrain from including personally identifiable information in any form of communication with anyone outside the project or outside Teach For America. This includes emails, instant messaging, faxes, other written correspondence, and any type of oral conversation. When conversing with any Charter School or school employees about any students, staff, schools, or local education agency ("LEA") in the execution of my assigned duties, I will take all precautions to protect the confidentiality of all personally identifiable information.

I understand that I can be removed from this project if it is determined that I either intentionally violated or was willfully negligent on any aspect of the Confidentiality Agreement. Further, my violation of or negligence regarding this Confidentiality Agreement may put in jeopardy the working relationship between TFA and the Charter School. I also understand that my violation of this Confidentiality Agreement could result in my being held liable for damages in a civil lawsuit.

The term of this Agreement is effective as of the date signed, below, and shall expire on the last day of the 2023-2024 academic year.

Charter School shall have the right at its sole discretion to terminate my access to the Confidential Information upon fifteen (15) days written notice to Teach For America. Charter School shall have the right at its sole discretion to terminate my access to the Confidential Information immediately upon my breach of any confidentiality obligations herein. Notwithstanding anything to the contrary, my confidentiality obligations under this Agreement shall survive any termination or expiration of this Agreement.

AGENCY:	TEACH FOR AMERICA
ADDRESS:	<u>3441 E. ARCHER ST., TULSA, OK 74115</u>
TELEPHONE:	(918) 835-3622
EMAIL:	SARAH.PARK@TEACHFORAMERICA.ORG
SIGNATORY NAME (PRINT):	SARAH PARK
SIGNATORY TITLE:	EXECUTIVE DIRECTOR
SIGNATURE:	
DATE:	

COMPLIANCE WITH FERPA. To effect the transfer of data subject to FERPA, authorized representative agrees to:

1. In all respects comply with the provisions of FERPA. For purposes of this agreement, “FERPA” includes any amendments or other relevant provisions of federal law, as well as all requirements of Chapter 99 of Title 34 of the Code of Federal Regulations. Nothing in this agreement may be construed to allow either party to maintain, use, disclose or share student information in a manner not allowed by federal law or regulation.
2. Use the data shared under this agreement for no purpose other than work authorized under Section 99.31(a)(6) of Title 34 of the Code of Federal Regulations. Agent further agrees not to share data received under this MOU with any other entity without the Charter School approval. Agent agrees to allow the Office of the State Auditor, subject to FERPA restrictions, access to data shared under this agreement and any relevant records of Agent for purposes of completing authorized audits of the parties.
3. Maintain all data obtained pursuant to this agreement in a secure computer environment and not copy, reproduce or transmit data obtained pursuant to this agreement except as necessary to fulfill the purpose of the original request. All copies of data of any type, including any modifications or additions to data from any source that contains information regarding individual students, are subject to the provisions of this agreement in the same manner as the original data. The ability to access or maintain data under this agreement shall not under any circumstances transfer from Agent to any other institution or entity.
4. Not to disclose any data obtained under this agreement in a manner that could identify an individual student, except as authorized by FERPA, to any other entity. Agent agrees to abide by the TFA’s reporting policy of deleting all data items that include any group of students less than five (5).
5. Not to provide any data obtained under this agreement to any party ineligible to receive data protected by FERPA or prohibited from receiving data from any entity by virtue of a finding under Section 99.31(6)(iii) of Title 34, Code of Federal Regulations.
6. Destroy all data obtained under this agreement when it is no longer needed for the purpose for which it was obtained. Nothing in this agreement authorizes the Agent to maintain data beyond the time period reasonably needed to complete the purpose of the request. All data no longer needed shall be destroyed or returned to the Charter School in compliance with 34 CFR Section 99.35(b)(2).

PERSONALLY IDENTIFIABLE INFORMATION (PII): Any information about an individual maintained by an agency, including any information that can be used to distinguish or trace an individual's identity such as name, social security number, date or place of birth, mother's maiden name, biometric records, and any other personal information that is linked or linkable to an individual.

ATTACHMENT C
Personally Identifiable Evaluation Results
and Supporting Documentation Data Disclosure Consent Form

I hereby give permission to the Tulsa Honor Academy to release my evaluation results and any documentation related for the 2023 – 2024 school year to Teach for America for the purpose of tracking the growth and achievement of students taught by Teachers supported by Teach For America and to measure the impact of these Teachers within their contexts in order to provide: tailored support and professional development programming for these Teachers, report to funders and board members, and to evaluate and evolve our model for selecting new teachers into the program, and support Charter School in improving teacher development, effectiveness and student outcomes.

I understand that my participation is voluntary. I understand that I will not be penalized in any way for refusing to participate.

I understand that the aforementioned organization will ensure that my evaluation results and any documentation related are confidential and will not be released or shown to any person except authorized members of the research team.

I understand that the aforementioned organization will store my evaluation results and any documentation related in a secure manner that limits access to authorized personnel.

It is my understanding that if my evaluation results and any documentation related are to be used for purposes other than this project, the organization will need to request that I sign a separate consent form.

I agree that I will not sue, or make any kind of claim whatsoever against, Tulsa Honor Academy and any of their directors, officers, employees, agents, and representatives for any costs, expenses, damages, injury or loss, including reasonable attorney's fees, to which they or any of them may be subject as a result, directly or indirectly, of any disclosure or re-disclosure of any of my information, including but not limited to personally identifiable evaluation results and any documentation related provided to the aforementioned organization.

Teaching Certificate #:	
SIGNATORY NAME (PRINT):	
SIGNATORY TITLE:	
SIGNATURE:	
DATE:	

Purchase Order Register

Options: Year: 2023-2024, Fund: General Fund, Date Range: 7/1/2023 - 6/30/2024

PO No	Date	Vendor No	Vendor	Description	Amount
1	07/01/2023	1474	Renaissance Learning, Inc.	Accelerated Reader software	11,775.00
2	07/01/2023	1475	SchoolMint Inc.	software for teacher observation and development	7,757.67
3	07/01/2023	798	OCAS	accounting and consulting services for FY24	21,750.00
4	07/01/2023	1480	Array Education, Inc.	Middle School Reading Curriculum	26,100.00
5	07/01/2023	840	ParentSquare Inc.	Parent communication platform	5,922.00
6	07/01/2023	1228	Ident-A-Kid	Visitor Management System	2,385.00
7	07/01/2023	1481	Edutek Solutions, LLC	Asset Management System and Setup	3,985.00
8	07/01/2023	607	Sundance Office Supply	Blanket - bulk instructional supplies - Flores	9,000.00
9	07/01/2023	816	Amazon Capital Services	Blanket - misc instruct. & office supplies Flores	7,000.00
10	07/01/2023	1337	Talha Yousuf	Behavior Management PowerSchool Plug-in	4,827.60
11	07/01/2023	1384	Liminex, Inc	Formative assessment software for all schools	5,765.00
12	07/01/2023	1402	Bluum of Texas, LLC	GoGuardian Chromebook monitoring software	9,715.00
13	07/01/2023	1384	Liminex, Inc	Formative assessment software for all schools	0.00
14	07/01/2023	1402	Bluum of Texas, LLC	GoGuardian Chromebook monitoring software	0.00
15	07/01/2023	632	Tulsa Public Schools	Lakewood - Lease and grounds keeping of facility	94,168.86
16	07/01/2023	619	EAS Consulting, Inc.	Federal Programs Consulting	1,000.00
17	07/01/2023	604	Townsend Marketing	Scholar Uniforms	145,200.00
18	07/01/2023	699	Wired! Technology Services	24/7 Tech service	89,313.12
19	07/01/2023	633	Bledsoe, Hewett, & Gullekson,	Financial Audit	6,000.00
20	07/01/2023	630	Teach For America	TFA Fees	20,000.00
21	07/01/2023	616	Northwest Evaluation Association	MAP Testing	12,553.20
22	07/01/2023	757	Oklahoma Public Charter Sch. Assoc.	OPSRC Membership Fees	2,500.00
23	07/01/2023	652	Philadelphia Insurance Company	Building Insurance	70,000.00
24	07/01/2023	800	PowerSchool Group LLC	Student Information System	17,700.00
25	07/01/2023	810	Municipal Accounting System, Inc.	Accounting systems license fees	10,235.00
26	07/01/2023	911	Public Service Company of Oklahoma	Electric Services	174,000.00
27	07/01/2023	917	City of Tulsa	Water Bill Utility	35,000.00
28	07/01/2023	924	BlueMark Energy, LLC	Natural Gas Supplier	28,000.00
29	07/01/2023	930	Oklahoma Natural Gas Company	Natural Gas Utility	9,000.00
30	07/01/2023	927	Michi Michelle Morris	Psychometric Testing	60,000.00
31	07/01/2023	1008	8x8, INC.	Office phone service	3,000.00
32	07/01/2023	1024	Cox Business	Internet service for school sites	3,216.00
33	07/01/2023	1115	American Waste Control, Inc.	Trash Service- Weekly pick up	4,428.00
34	07/01/2023	1141	Office Express Janitorial Services	Janitorial Services	164,160.00
35	07/01/2023	1137	Emtec Pest Control	Extermination services	1,320.00
36	07/01/2023	1140	Keystone Food Service	Child Nutrition Services	706,640.00
37	07/01/2023	1234	OSSBA, Inc.	Membership fees	1,500.00

Purchase Order Register

Options: Year: 2023-2024, Fund: General Fund, Date Range: 7/1/2023 - 6/30/2024

PO No	Date	Vendor No	Vendor	Description	Amount
38	07/01/2023	1110	Curriculum Associates	ELL compliance software	10,000.00
39	07/01/2023	1256	DS Bus Lines, Inc.	Scholars transportation services	470,448.00
40	07/01/2023	1311	THA Facilities, LLC	Lease payments for Sheridan building	643,723.00
41	07/01/2023	1318	H&E Landscape LLC	Monthly lawn service	12,000.00
42	07/01/2023	1023	Goose & Gander	headshots and other photo/video services	10,900.00
43	07/01/2023	1118	SUMMIT FIRE AND SECURITY	alarm monitoring	2,654.00
44	07/01/2023	632	Tulsa Public Schools	Lakewood custodial service	78,254.00
45	07/01/2023	800	PowerSchool Group LLC	Naviance software for college readiness program	9,000.00
46	07/01/2023	1119	Winward Academy	ACT prep software for HS juniors	14,000.00
47	07/01/2023	632	Tulsa Public Schools	TPS Authorizer fee, 3%	263,564.00
48	07/01/2023	1039	Frederic Dowart, Lawyers PLLC	Lawyer fees	5,000.00
49	07/01/2023	1335	McAfee & Taft A Professional Corp	Representation in legal matters	5,500.00
50	07/01/2023	1066	EdTech Logistics LLC	e-rate consulting	4,500.00
51	07/01/2023	1408	ACT, Inc.	Fall ACT tests for junior	6,160.00
52	07/01/2023	1408	ACT, Inc.	Fall tests for Freshman and Sophomores	11,780.00
53	07/01/2023	926	Standley Systems	school and network copier lease and usage	96,588.00
54	07/01/2023	1439	PROPIO LS, LLC	Language line services for RCPU	5,000.00
55	07/01/2023	1204	College Board	AP Testing	5,000.00
56	07/01/2023	731	Oklahoma School Assurance Group	Workers Comp Insurance	33,495.00
57	07/01/2023	926	Standley Systems	Copy Machine Supplies - Flores MS	1,500.00
58	07/01/2023	816	Amazon Capital Services	High School - 23-24 Spending	15,000.00
59	07/01/2023	607	Sundance Office Supply	High School - 23-24 Spending	25,000.00
60	07/06/2023	607	Sundance Office Supply	Lakewood MS - office furniture/supplies	5,000.00
61	07/06/2023	1487	Cetera Advisor Networks LLC	annual fee for non-plan assets for 401K	2,800.00
62	07/06/2023	816	Amazon Capital Services	Lakewood MS - School supplies to support scholars	7,000.00
63	07/06/2023	816	Amazon Capital Services	College Readiness Program - office supplies	600.00
64	07/06/2023	816	Amazon Capital Services	Tripod	119.92
65	07/06/2023	607	Sundance Office Supply	Network - Binders for PD	54.40
66	07/06/2023	635	Edmentum	Credit Recovery for Seniors & Summer School 2024	8,092.65
67	07/06/2023	982	Project Lead the Way	Training and Yearly Fee	8,000.00
68	07/10/2023	604	Townsend Marketing	Branded Items for Staff	7,500.00

Non-Payroll Total: **\$3,543,149.42**Payroll Total: **\$0.00**Report Total: **\$3,543,149.42**

New Hires					
Last Name	First Name	Hire Date	Primary Location	Position	Salary
ABBIS	NOREHAN	7/1/2023	THA Middle School	Teacher	\$49,500
Ahmed	Rubena	7/1/2023	THA High School	Discipline Specialist	\$44,000
Alvarado	Perla	7/1/2023	THA Network Office	College Readiness Advisor	\$45,500
Applegate	Rebekah	7/1/2023	THA High School	Teacher	\$45,500
BARNETT	JARED	7/1/2023	THA Middle School	Teacher	\$44,500
Barrett	Kamesha	7/1/2023	THA Middle School	Assistant Principal of Culture	\$62,500
Birt	Andrew	7/1/2023	THA Flores Middle School	Teacher	\$48,500
Bland	Hannah	7/1/2023	THA Flores Middle School	Assistant Principal of Operations	\$65,500
Bledsoe	Vanessa	7/1/2023	THA Middle School	Teacher	\$44,750
Buck	Brittnee	7/1/2023	THA Middle School	Teacher	\$45,500
Card	Ana	7/10/2023	THA Flores Middle School	Teacher Apprentice	\$33,000
Conner	Gloria	7/1/2023	THA Middle School	Teacher	\$44,750
Curley	Madison	7/1/2023	THA Network Office	Director of External Affairs and Communications	\$80,500
Cutshaw	Maris	7/1/2023	THA High School	Teacher	\$44,000
Daily	Nick	7/1/2023	THA High School	College Readiness Teacher	\$44,000
DaVee	Rebecca	7/1/2023	THA High School	Teacher	\$44,000
Davis	Tavian	7/1/2023	THA High School	Teacher	\$44,000
DeLameter	Kelly	7/1/2023	THA Middle School	Teacher	\$44,500
Eppard	Danika	7/1/2023	THA Flores Middle School	Teacher	\$47,750
Fields	Andrea	7/1/2023	THA Network Office	Special Education Manager	\$67,000
Freudenheim	Mark	7/1/2023	THA Flores Middle School	Assistant Principal of Instruction	\$64,250
Freudenheim	Kathryn	7/1/2023	THA Network Office	Chief Academic Officer	\$110,931
Friggel	Rachel	7/1/2023	THA Middle School	Teacher Apprentice	\$37,000
Gaffen	Jeff	7/1/2023	THA High School	Teacher	\$56,750
Gallegos	Silvia	7/1/2023	THA High School	Coverage Associate/Ballet Folklorico Coach	\$32,549
Garcia-Mondragon	Jonathan	7/1/2023	THA Middle School	Teacher	\$51,372
GOFF	AARON	7/1/2023	THA Middle School	Teacher	\$44,000
Good	Cameron	7/1/2023	THA Middle School	Teacher	\$46,250
Grundy	Kathleen	7/1/2023	THA Middle School	Teacher	\$45,500
Gutierrez De Moore	Evelyn	7/1/2023	THA High School	Teacher	\$44,750
Hayes	Megan	7/1/2023	THA Flores Middle School	Teacher	\$44,750
HAYES	NOLA	7/1/2023	THA Flores Middle School	Teacher	\$44,750
Henson	Tyler	7/1/2023	THA High School	Teacher	\$48,500
Hernandez	Vanessa	7/1/2023	THA High School	Operations Coordinator	\$36,750
Hernandez	Kelse	7/1/2023	THA High School	Operations Coordinator	\$37,250
Hughes	Whitley	7/1/2023	THA Flores Middle School	Teacher	\$44,750
Ivy	Cheianne	7/1/2023	THA Middle School	Assistant Principal of Instruction	\$63,375
Johnson	Charlene	7/1/2023	THA Network Office	Alumni Support and College Success Advisor	\$47,750
Jordan	Alana	7/1/2023	THA Network Office	Recruitment, Selection, and Retention Coordinator	\$42,500
Joshi	Emilee	7/1/2023	THA Network Office	Director of Data, Information, and Accountability	\$79,000
Kruithof	Ashia	7/1/2023	THA High School	Teacher	\$53,750
Kruithof	Blake	7/1/2023	THA High School	Assistant Principal of Instruction	\$63,000
LaMonte	George	7/1/2023	THA Flores Middle School	Teacher	\$44,750
LaRonge	Maggie	7/1/2023	THA Flores Middle School	Teacher	\$44,750
Latham	Keshia	7/1/2023	THA Network Office	Executive Assistant	\$45,750
Lenardson	Anna	7/1/2023	THA High School	Teacher	\$54,250
Linam	Kirk	7/1/2023	THA Middle School	Teacher	\$46,250
Luna	Sarah	7/1/2023	THA Middle School	Principal	\$80,000
Mandalapu	Sailaja	7/1/2023	THA High School	Teacher	\$46,000
Markley	Samantha	7/1/2023	THA Network Office	Director of College Readiness and Alumni Success	\$78,500
Mayorga	Itzel	7/1/2023	THA High School	Teacher	\$48,500
McGoldrick	Mikayla	7/1/2023	THA High School	Teacher	\$47,000
McWhirt	Woodrow	7/1/2023	THA Network Office	Discipline Specialist	\$37,531
Mellor	Joseph	7/1/2023	THA High School	Teacher	\$44,000

Mercado	Eddie	7/1/2023	THA Network Office	Operations Coordinator	\$37,500
Modaff	Emily	7/1/2023	THA Flores Middle School	Teacher	\$46,228
MOLINA	ALEX	7/1/2023	THA High School	Teacher	\$44,000
Monrreal	Jennifer	7/1/2023	THA Middle School	Operations Coordinator	\$36,970
Moreno	Jennifer	7/1/2023	THA High School	Operations Coordinator	\$37,750
Morrison	John	7/1/2023	THA High School	Assistant Principal of Culture	\$62,500
Mueller	Hannah	7/1/2023	THA Flores Middle School	Teacher	\$45,500
Mumu	Maisha	7/1/2023	THA Middle School Teacher	Teacher	\$45,000
Odon	Emily	7/1/2023	THA Middle School	Interim Principal	\$80,500
Parker	Christauna	7/1/2023	THA Flores Middle School	Teacher	\$45,500
Pass	Madison	7/1/2023	THA High School	Teacher	\$44,750
Perez	Griselda	7/1/2023	THA High School	Teacher	\$44,750
Perkins	Chisa	7/1/2023	THA Middle School	Discipline Specialist	\$42,750
Prewett	Mitch	7/1/2023	THA Middle School	Assistant Principal of Instruction	\$62,750
Ramos	Steven	7/1/2023	THA Network Office	Director of Scholar Interventions	\$79,000
Randall	CM	7/1/2023	THA Middle School	Teacher	\$45,500
Ray	Amanda	7/1/2023	THA Middle School	Teacher	\$46,250
Reyes De La Mora	Jose	7/1/2023	THA High School	Teacher	\$45,500
Riggs	Cassandra	7/1/2023	THA Middle School	Special Education Teacher	\$59,063
Rocha	Jasmany	7/1/2023	THA High School	Teacher	\$47,278
RODRIGUEZ	MAGDALENA	7/1/2023	THA Flores Middle School	Operations Associate	\$14.58/hr
Roper	Morgan	7/1/2023	THA Flores Middle School	Teacher	\$44,750
Russell	Bynum	7/1/2023	THA Flores Middle School	Teacher	\$44,750
Sanchez	Reina	7/1/2023	THA Flores Middle School	Operations Coordinator	\$37,995
Sartain	Bailey	7/1/2023	THA High School	Teacher	\$44,000
Siftar	Kimberly	7/1/2023	THA High School	Assistant Principal of Operations	\$64,000
Stallings	Aaron	7/1/2023	THA Flores Middle School	Discipline Specialist	\$36,000
Stevenson	Tyler	7/1/2023	THA Middle School	Teacher	\$50,250
Stewart	Bethany	7/1/2023	THA Middle School	Teacher	\$46,250
Swoboda	John	7/1/2023	THA High School	Teacher	\$48,500
Taylor	Tyron	7/1/2023	THA Middle School	Teacher	\$47,278
Thompson	Lori	7/1/2023	THA Flores Middle School	Teacher	\$48,750
Timshull	Rebecca	7/1/2023	THA Middle School	Teacher	\$44,000
Triplett	Katie	7/1/2023	THA High School	Teacher	\$44,750
Vance-Buck	Stefani	7/1/2023	THA Middle School	Assistant Principal of Instruction	\$63,750
Veach	Jason	7/1/2023	THA High School	Principal	\$82,000
Watts	Debbie	7/1/2023	THA Network Office	Senior Operations Coordinator	\$56,000
YOUNG	KIMBERLY	7/1/2023	THA Middle School	Assistant Principal of Operations	\$69,500
Yuen	Amanda	7/1/2023	THA Network Office	Chief Operations Officer	\$115,313
Reyes	Ashly	7/1/2023	THA Middle School	Temporary Operations Coordinator	\$36,068
Gomez	Sendy	7/1/2023	THA Network Office	Temporary Operations Associate	\$11/hr
Resignations/Terminations					
Last Name	First Name	Hire Date	Primary Location	Position	Final Date
Kills Crow	Chad	12/12/22	THA High School	Teacher	6/30/2023
Jackson	David	10/3/22	THA High School	Teacher	6/30/2023
Davis	Gerald	4/5/21	THA Flores Middle School	Assistant Principal of Culture	7/15/2023
Cirbo	Joshua	7/1/21	THA High School	Teacher	6/30/2023
McConnell	Brittni	8/22/22	THA High School	Paraprofessional	6/30/2023
Bonaparte	Kerry	3/21/22	THA High School	Teacher	6/30/2023
Stipends					
Last Name	First Name	Position	Stipend		
Prewett	Jimmy	Leader Summer PD	\$500.00		

Change Order Listing

Options: Fund: General Fund, Year: 2022-2023, ReferenceDate: PO Date, Date Range: 6/12/2023 - 6/30/2023, Include Negative Changes: False

PO No	Date	Vendor No	Vendor	Description	Amount
12	07/14/2022	607	Sundance Office Supply	Supplies for scholar learning.	2,820.57
122	07/28/2022	1019	Prosperity Bank	P-Card Expenses	38.07
217	10/14/2022	1256	DS Bus Lines, Inc.	Sports & AfterSchool Bus	641.55
298	02/08/2023	604	Townsend Marketing	additional uniform orders for scholar needs	67,000.00
327	03/27/2023	1019	Prosperity Bank	Odon's P-Card	191.61
372	06/07/2023	607	Sundance Office Supply	723 Supply Order	5,000.00
377	06/08/2023	1291	Goodway Technologies Corporation	Air Purifier	665.74
Non-Payroll Total:					\$76,357.54
Payroll Total:					\$766,721.58
Report Total:					\$843,079.12