

AMENDMENT #1 TO THE AGREEMENT
Between
WAKE COUNTY PUBLIC SCHOOL SYSTEM
And
DUKE UNIVERSITY
on behalf of its SCHOOL OF MEDICINE and DUKE CLINICAL RESEARCH INSTITUTE

This Amendment #1 to the Agreement between Wake County Public School System and Duke University on behalf of its School of Medicine and Duke Clinical Research Institute (“**Amendment #1**”) amends and is incorporated into that same certain agreement (“**Agreement**”), fully executed on August 21, 2020, by the aforementioned parties (together, the “**Parties**”).

WHEREAS, the Parties have entered into the Agreement to set forth the terms and conditions for the operation of a COVID-19 scientific analysis board; and

WHEREAS, the Parties now mutually desire to modify the terms of the Agreement.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to the following:

1. The Parties acknowledge and agree that all references throughout the Agreement to “Student Data” shall be followed by the phrase “**Employee Data**”, and shall be understood by the Parties to be included as part of the information provided by WCPSS to Duke for analyses in connection with the research arm of the collaborative effort.
2. The Parties acknowledge and agree that all references throughout the Agreement to a “Data, Confidentiality and Security Agreement for Service Providers Use Agreement” and/or to a “Data Use Agreement” shall be replaced with reference to a “Agreement for Disclosure and Transfer of Confidential Information and Data.”
3. Section 5 (Student Data/Confidentiality of Student Information) shall be renamed as “Student and Employee Data/Confidentiality of Student and Employee Information.”

All terms and conditions of the Agreement not expressly amended by this Amendment #1 remain in full force and effect.

In the event of any dispute, conflict or ambiguity as between the terms of this Amendment #1 and the Agreement to which it is attached, this Amendment #1 shall control.

All capitalized terms and acronyms terms herein shall have the meanings assigned in the Agreement.

IN WITNESS WHEREOF, the Parties intending to be legally bound, have caused their proper and duly authorized officers to execute and deliver this Amendment #1 as of the day and year last signed below.

WAKE COUNTY BOARD OF EDUCATION

DUKE UNIVERSITY

By: _____

By: _____

Keith Sutton, Board Chair

Name: _____

Date: _____

Title: _____

By: _____

Date: _____

Cathy Q. Moore, Superintendent

Date: _____

Type of Contract:

Memorandum of Agreement (MOA)

WAKE COUNTY PUBLIC SCHOOL SYSTEM
Contract Routing Form 1950

Fiscal Year (FY): 2020-2021

Person to Call for Pick up: Melissa Allen Phone: 919-533-7772

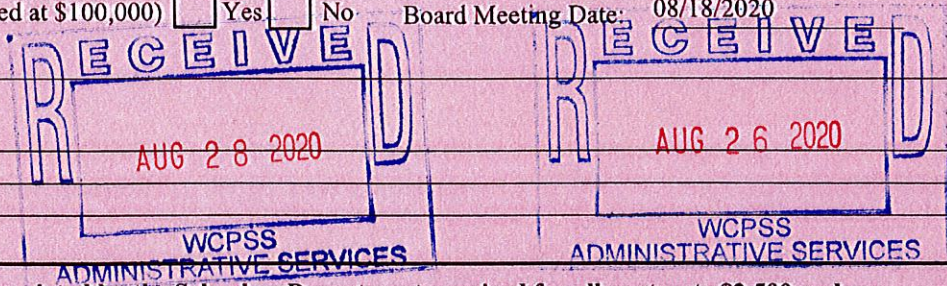
Name of Contract: MOA BETWEEN WCPSS & DUKE UNIVERSITY

If Change Order - (Amount +/-): _____ Total Contract Amount: _____

Board Action: (Required at \$100,000) Yes No Board Meeting Date: 08/18/2020

Budget Code: _____

Items of Special Note: _____



To be completed by the School or Department required for all contracts \$2,500 and up
INITIAL/DATE THIS FORM AFTER YOU HAVE REVIEWED AND APPROVED THE ATTACHED CONTRACT:

	Initial	Date
Administrator (\$2,500 - \$9,999 and All MOAs)	<u>MRA</u>	<u>8/21/20</u>
Fiscal Administrator (\$2,500 and up and all MOAs)	<u>TP</u>	<u>8/24/20</u>
Assistant Superintendent or Area Superintendent (\$10,000 - \$99,999 and all MOAs)	_____	_____
Chief Officer (\$100,000+ and All MOAs)	<u>CSL</u>	<u>8/25/20</u>

To be completed by the Administrative Services required for all contracts \$2,500 and up

	Initial	Date
Risk Management (Insurance Review)	<u>SCB</u>	<u>8/26/20</u>
Finance Officer *	<u>Ma</u>	<u>8/26/20</u>
Chief Operating Officer (Required at \$100,000 +)	<u>DU</u>	<u>8/28/2020</u>
School Board Attorney (As required by the Chief Officer or Superintendent)	_____	_____

Comments:

* "This instrument has been preaudited in the manner required by the School Budget and Fiscal Control Act." G.S. 115C-441(a).

FIN 24079

**AGREEMENT
BETWEEN WAKE COUNTY PUBLIC SCHOOL SYSTEM
AND DUKE UNIVERSITY on behalf of its SCHOOL OF MEDICINE and DUKE CLINICAL
RESEARCH INSTITUTE**

WHEREAS, in the midst of the COVID-19 pandemic, great uncertainty exists regarding the appropriate metrics to determine the safest course of action for reopening schools; and

WHEREAS, the Duke University School of Medicine and Duke Clinical Research Institute (hereinafter "Duke") have experience in operating scientific boards to provide standardized data to hospitals and other non-profit organizations to enable those entities to make informed operating decisions based on national, state, and local epidemiology research; and

WHEREAS, Duke has identified physicians and researchers willing to serve on a COVID-19 scientific analysis board for the Board of Education to the Wake County Public Schools System (hereinafter "WCPSS"); and

WHEREAS, the COVID-19 scientific analysis board will summarize and educate on COVID-19 research and provide WCPSS with standardized COVID-19 data to enable WCPSS to make informed decisions regarding school reopening plans; and

WHEREAS, WCPSS desires the assistance of a COVID-19 scientific analysis board;

NOW THEREFORE, in consideration of the mutual promises set forth in this Agreement, the parties do hereby mutually agree as follows:

1. Responsibilities of Duke

- a) Appoint a multi-disciplinary group of seven (7) individuals to serve as the COVID-19 Scientific Analysis Board ("SAB") for WCPSS to complete the following objectives:
 - a. Assemble, synthesize, and summarize COVID-19 data from a variety of sources, including scientific articles, infection rates by county, communications from government leaders and agencies, and the WCPSS Student Data described in Data, Confidentiality and Security Agreement for Service Providers with WCPSS, to be entered into prior to the collection or sharing of any student information,
 - b. Present summaries of relevant research and federal, state, local, and WCPSS data to members of the WCPSS Board of Education;
 - c. Provide standardized COVID-19 related data to WCPSS to inform WCPSS' re-opening approaches (remote, in-person learning, hybrid); and
 - d. Provide feedback on WCPSS re-opening plans based on standardized data.

- b) Appoint a SAB Liaison to organize weekly meetings, maintain meeting minutes, and draft timelines for mutually approved SAB projects.
- c) Appoint a SAB Data Manager to work with WCPSS staff to collect the WCPSS Student Data described in Data, Confidentiality and Security Agreement for Service Providers Use Agreement with WCPSS.
- d) All standardized data and educational services provided by Duke via the SAB shall at all times be analyzed. At no time will Duke direct the institutional functions of WCPSS, and WCPSS remains solely responsible for all WCPSS official functions and decision-making.

2. Responsibilities of WCPSS

- a) Appoint a designated WCPSS staff member to work in collaboration with the SAB Data Manager to timely provide the WCPSS Student Data described in Data, Confidentiality and Security Agreement for Service Providers Use Agreement with WCPSS.
- b) Timely provide WCPSS' proposed options for reopening and operating plans to the SAB in advance of Board of Education meetings.
- c) Continue to perform all WCPSS institutional responsibilities, including decision-making for the WCPSS district.

3. Term. The term of this MOA shall be from the date of the last signature below until August 1, 2021 unless sooner terminated as provided herein. This MOA may be renewed for a subsequent one year term upon the mutual written agreement of the parties.

4. Termination. Either party may terminate this MOA at any time upon twenty (20) calendar days' notice in writing to the other party prior to the date of termination.

5. Student Data/ Confidentiality of Student Information.

- a) Duke agrees to enter into a Data, Confidentiality and Security Agreement for Service Providers Use Agreement with WCPSS and further agrees to comply with the provisions of the Family Educational Rights and Privacy Act ("FERPA) and all other applicable laws and regulations in all respects regarding Duke's access to and use of WCPSS Student Data.
- b) Duke shall not forward to any person or entity any WCPSS Student Data or personally identifiable information derived from WCPSS Student Data (including, but not limited to, the student's identity) without the written consent of WCPSS.
- c) Upon termination of the Data Use Agreement, Duke shall return to WCPSS all Student Data or personally identifiable information obtained by Duke while providing services under this MOA. Nothing in this MOA gives Duke any right to continuing access of WCPSS Student Data or personally identifiable information.

- d) Duke shall develop, implement, maintain, and use appropriate administrative, technical, and physical security measures to preserve the confidentiality, integrity, and availability of all electronically maintained or transmitted WCPSS Student Data. Such measures shall include processes for transmission and storage of such data
- e) In no event will Duke use any of the Student Data for its own commercial marketing or advertising purposes, or for the commercial marketing or advertising purposes of any third-party.
- f) In the event of any unauthorized use or disclosure, Duke shall immediately report the incident to WCPSS and shall provide such other information related to the unauthorized use or disclosure that may be reasonably requested by WCPSS.
- g) Duke may use de-identified, aggregated Student Data for research purposes only as specifically authorized and consented to in advance in writing by WCPSS. Any such de-identified data will have all direct and indirect personal identifiers removed, including, but not limited to, name, ID numbers, date of birth, demographic information, location information, and school ID. Duke agrees not to attempt to re-identify any de-identified data and not to transfer de-identified data to any other party without WCPSS's express written consent.
- h) Duke will not release any research or publications pertaining to WCPSS's Student Data without WCPSS's advance written consent, which will not be unreasonably denied.

6. **Insurance.** Duke agrees to maintain Cyber Liability coverage with Wake County Board of Education named as the certificate holder – for evidence only. Certificates of such insurance shall be furnished by Duke to the School System and shall contain an endorsement or similar policy language to provide the School System at least 10 days' written notice of any intent to cancel or terminate by either Duke or the insuring company. Failure to furnish insurance certificates or maintain such insurance shall be a default under this Agreement and shall be grounds for immediate termination of this Agreement.
7. **Applicable Board of Education Policies.** Duke acknowledges that the Wake County Board of Education has adopted policies governing conduct on Board property and SAB members agree to abide by any and all relevant WCPSS policies.
8. **Relationship of Parties.** The parties agree that nothing herein shall be construed as creating a partnership or joint venture; nor shall any employee of Duke be construed as an employee, agent, or principal of WCPSS.
9. **Notices.** All notices, reports, records, or other communications which are required or permitted to be given to the parties under the terms of this Agreement shall be sufficient in

all respects if given in writing and delivered in person, by confirmed facsimile transmission, by overnight courier, or by registered or certified mail, postage prepaid, return receipt requested, to the receiving party at the following address:

If to DUKE:

Name Donna Parker

Title Project Leader

Address 300 W. Morgan Street, Suite 800

Telephone 919.668.8282

Email donna.l.parker@duke.edu

If to SCHOOL SYSTEM:

Name: Brad McMillen

Title: Data Research and Accountability Department

Address: 110 Corning Road, Cary, NC

Telephone: 919-533-7136

Email: bmcmillen@wcpss.net

- 10. Responsibility.** Duke shall be responsible for all claims, actions, demands, costs, damages, losses, and/or expenses of any kind whatsoever proximately resulting from a material breach of the Data Use Agreement or any unauthorized use or disclosure of the WCPSS Student Data by Duke or its subcontractors.

WCPSS shall to the extent permitted by law be responsible for all third party claims, actions, demands, costs, damages, losses, and/or expenses of any kind whatsoever proximately related to the operating decisions of WCPSS during the COVID-19 pandemic.

- 11. Waiver of Warranties.** DUKE EXPRESSLY WAIVES AND DISCLAIMS ANY AND ALL WARRANTIES OF ANY NATURE, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, RELATING TO ANY DATA PROVIDED TO WCPSS AND IS NOT RESPONSIBLE OR LIABLE FOR ANY ACT OR FAILURE TO ACT WITH RESPECT TO THE DATA EXCEPT WITH RESPECT TO DUKE'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

- 12. Agreement.** This Agreement constitutes and expresses the entire agreement and understanding between the parties concerning its subject matter. This Agreement supersedes all prior and contemporaneous discussions, promises, representations, agreements and understandings relative to the subject matter of this Agreement. This Agreement may be amended only by written amendments duly executed by and between the parties.

- 13. Governing Law.** This Agreement and the rights and obligations of the parties hereto shall be governed by and construed and enforced in accordance with the laws of the State of North Carolina.

14. Counterparts and Execution. This Contract may be executed in any number of counterparts, each of which shall be deemed an original but all of which together will constitute one and the same agreement. The Parties agree that scanned, faxed, and/or electronically transmitted copies of this Contract will have the same validity and force as an original, and that scanned, faxed, or electronic signatures shall be deemed original signatures for purposes of this Contract and given the same legal effect as original signatures.

15. No Third Party Beneficiaries. Nothing in this Agreement shall confer upon any person other than the Parties any rights, remedies, obligations, or liabilities whatsoever.

16. Survival. Sections 7, 8, 9, 11 and 12 survive the termination or expiration of this Agreement.

IN WITNESS WHEREOF, the parties intending to be legally bound, have caused their proper and duly authorized officers to execute and deliver this Agreement as of the day and year last signed below.

WAKE COUNTY BOARD OF EDUCATION

DUKE UNIVERSITY

By: 
Keith Sutton, Board Chair

Date: Aug 29, 2020

By: 
Cathy Q. Moore, Superintendent

Date: Aug 20, 2020


Jennifer McCallister
cn=Jennifer McCallister,
o=Duke University,
ou=Assistant Dean, Office
of Research
Administration,
email=jennifer.mccallister
@duke.edu, ce=US
2020.08.21 13:10:38 -04'00'

By: _____
Name, Title

Date: _____



CERTIFICATE OF LIABILITY INSURANCE

7/1/2021

DATE (MM/DD/YYYY)
8/18/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

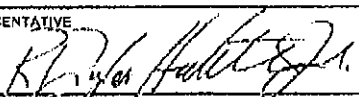
PRODUCER Lockton Companies 3280 Peachtree Road NE, Suite #250 Atlanta GA 30305 (404) 460-3600		CONTACT NAME: PHONE (A/C, No, Ex): FAX (A/C, No): E-MAIL ADDRESS:	
INSURED 1481616 Duke University Health System and Private Diagnostic Clinic, PLLC and Duke University MPL 615 Douglas Street, Suite 700 Durham NC 27705		INSURER(S) AFFORDING COVERAGE INSURER A: Underwriters at Lloyds of London INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:	
		NAIC # 10736	

COVERAGES **CERTIFICATE NUMBER:** 16916971 **REVISION NUMBER:** XXXXXXXX

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD. WVD.	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
	COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:		NOT APPLICABLE			EACH OCCURRENCE \$ XXXXXXXX DAMAGE TO RENTED PREMISES (Ea occurrence) \$ XXXXXXXX MED EXP (Any one person) \$ XXXXXXXX PERSONAL & ADV INJURY \$ XXXXXXXX GENERAL AGGREGATE \$ XXXXXXXX PRODUCTS - COMP/OP AGG \$ XXXXXXXX \$	
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY <input type="checkbox"/> AUTOS ONLY		NOT APPLICABLE			COMBINED SINGLE LIMIT (Ea accident) \$ XXXXXXXX BODILY INJURY (Per person) \$ XXXXXXXX BODILY INJURY (Per accident) \$ XXXXXXXX PROPERTY DAMAGE (Per accident) \$ XXXXXXXX \$	
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$		NOT APPLICABLE			EACH OCCURRENCE \$ XXXXXXXX AGGREGATE \$ XXXXXXXX \$ XXXXXXXX	
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory In NH) If yes, describe under DESCRIPTION OF OPERATIONS below	<input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> N/A	NOT APPLICABLE			PER STATUTE OTH-ER- E.L. EACH ACCIDENT \$ XXXXXXXX E.L. DISEASE - EA EMPLOYEE \$ XXXXXXXX E.L. DISEASE - POLICY LIMIT \$ XXXXXXXX	
A	Cyber	N	N	B0713MEDTE201523	7/1/2020	7/1/2021	Limits: \$5M/\$5M

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101. Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER 16916971 Wake County Public School System 5625 Dillard Drive Cary NC 27518	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
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