

**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 analysis. 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. Provider 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 Provider 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 Provider 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: bcmcmillen@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: _____
Cathy Q. Moore, Superintendent

By: _____
Name, Title

Date: _____

Date: _____