

## DISTRICT EDUCATIONAL PROFESSIONAL SERVICES AGREEMENT

This educational professional services agreement (this “Agreement”) is dated June 11, 2013 and is entered into between TEACH FOR AMERICA, INC. (“Teach For America”), a Connecticut non-profit and CLEVELAND METROPOLITAN SCHOOL DISTRICT, a political subdivision of the state of Ohio (“School District”)(each individually “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 closing the achievement gap by serving as effective classroom teachers specifically equipped to enhance student achievement in under-resourced school systems. Cleveland Metropolitan School District seeks to recruit new teachers who are trained to lead students to academic achievement and to equip such teachers with ongoing professional development and support to further develop and sustain their professional practice.

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

### I. TEACHER CANDIDATE RECRUITMENT, SELECTION AND HIRING

#### School District Responsibilities:

##### A. Hiring Commitment.

- i. Teach For America will use its reasonable efforts to provide the number of teacher candidates for employment with School District (“Teachers”) set forth in **Appendix A** (the “Agreed Number”), attached and hereby incorporated hereto, but Teach For America cannot and does not guarantee its ability to provide the full Agreed Number of Teachers to School District and the failure of Teach For America to provide the full Agreed Number of Teachers for any academic year shall not constitute a breach of this Agreement for any purpose whatsoever.
- ii. Whether or not Teach For America is able to provide the full Agreed Number, School District shall consider for hire each Teacher provided by Teach For America who meets the district eligibility requirements.

- iii. Any Teach For America Teacher hired by the School District shall be hired as the classroom teacher of record and not for substitute, auxiliary, resource or teacher's aide positions.
- iv. Teach For America Teachers will be hired by School District for vacancies across the full range of grades and subject matters and not restricted or limited to so-called "critical" or "shortage" subjects or grade level vacancies.
- v. School District and Teach For America shall collaborate in good faith to identify individual schools within School District appropriate for Teachers. In order to be considered an appropriate school (a "Partner School") for placement of a Teacher, (i) the school's student population must be considered high poverty relative to the student population elsewhere in the district or that sixty percent or more of the school's student population receives free or reduced lunch and (ii) the school must have sufficient vacancies to enable the hiring/placement of at least two Teachers in the same academic year. To the extent reasonably practicable, School District will employ two or more Teachers per individual Partner School.

B. Hiring Process.

- i. School District and Teach For America will collaborate in good faith to facilitate the efficient hiring of individual Teachers through a centralized hiring day held in May by Teach For America and in accordance with the School District's established District hiring practices as needed.
- ii. School District shall use its reasonable efforts to hire Teachers in a timely manner throughout the spring and summer of the applicable academic school year, *provided that* School District shall employ Teachers no later than fourteen (14) days before the first day of the academic school year. School District agrees that where possible, Teach For America shall be informed of individual Teacher's grade and subject level assignments prior to the start of their Pre-Service Training (as described below).
- iii. Subject to its obligations under pre-existing collective bargaining agreements, contracts, or applicable law, School District will offer alternative employment to any Teacher who is not employed by the first day of the academic school year. "Alternative employment" includes, but is not limited to substitute teaching positions, "pool" teaching positions, classroom aides or other temporary category of

employment available within School to individuals with teaching credentials. The purpose of an alternative employment placement is to enable the individual Teacher to obtain a salary until such time as School District can secure permanent employment as a full-time classroom teacher of record.

Teach For America Responsibilities:

- C. Candidate Recruitment and Selection. Teach For America will recruit, select for participation in the Teach For America program, and present to the School District for employment Teachers from a broad range of academic majors and career fields. Teach For America will use reasonable efforts to recruit Teachers from diverse backgrounds. In connection with the foregoing, Teach For America will not knowingly engage in any unlawful acts of discrimination in its recruiting or selection of candidates.
- D. Pre-Service Training. Prior to entering the classroom, all Teachers will undergo pre-service training at Teach For America Institutes, which are designed and delivered by Teach For America in order to prepare Teachers for this work.
- E. Highly Qualified Status. Teach For America will provide the described pre-service training to Teachers presented to School District for the purpose of ensuring that such Teachers meet the “highly qualified” teacher requirements set forth in the federal No Child Left Behind Act of 2001 and applicable state regulations (together, the “Requirements”). For purposes of this Section E, only those Requirements in effect at the time that the Teacher is offered employment by School District will be applicable.

II. TEACHER PLACEMENT AND PROFESSIONAL DEVELOPMENT  
COMMITMENTS

School District Responsibilities

- A. Employment Status.

- i. Every Teacher employed by School District as described in this Agreement shall be a full-time employee of School District with all of the rights, responsibilities and legal protections attendant to that status and not an employee of Teach For America. For the avoidance of doubt, in the event School District is an “at-will” employer nothing in this Agreement shall be construed to grant additional employment rights to individual Teachers.
- ii. Nothing in this Agreement shall be construed to permit Teach For America to interfere in the employment relationship between School District and an employed Teacher.
- iii. Nothing in this Agreement shall be construed to permit Teach For America to function as the representative of any Teacher absent the express agreement among the parties and the Teacher that Teach For America may operate in such capacity in a particular circumstance.
- iv. Nothing in this Agreement shall be construed to imply that an employer-employee relationship exists between Teach For America and any individual Teacher.
- v. Nothing in this Agreement shall be construed to make Teach For America a party to any employment agreement between the School District and the Teacher.
- vi. Nothing in this Agreement shall be construed to imply that any Teacher employed by the School District as described in this Agreement is an agent of Teach For America or has any right or authority to create or assume any obligation of any kind, express or implied, on behalf of Teach For America or bind Teach For America in any respect whatsoever.
- vii. Subject to its obligations under either pre-existing labor agreements, applicable municipal and state laws and regulations, and/or its policies and procedures, School District acknowledges that there is an expectation that Teacher(s) shall be employed for two years, provided that the Teacher remains an employee in good standing.
- viii. Notwithstanding the foregoing, School District may continue to employ individual Teacher(s) beyond the two-year commitment by mutual agreement between School District and such Teacher(s).

B. Compensation of Teachers. School District shall provide to every Teacher employed by School District pursuant to this Agreement the same salary and benefits (including, as

applicable, health, dental, vision and retirement) as are provided to other teachers employed by School District who are similarly situated from the standpoint of certification status, seniority and any other factors routinely used by School District in making such decisions. Notwithstanding the above, Teach For America acknowledges it exercises no control of the salary and benefits offered to Teachers per this Agreement.

- C. Reductions in Force. Subject to its obligations under pre-existing labor agreements and applicable municipal and state laws and regulations, School District shall use reasonable efforts not to terminate any employed Teacher from his/her teaching position in the event of a reduction in force (RIF), layoffs, “leveling” or other elimination or consolidation of teaching positions within School District. School District 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. For the avoidance of doubt, this obligation is limited and controlled by any obligations that the School District has under any pre-existing collective bargaining agreements and applicable municipal and state laws and regulations.

#### Teach For America Responsibilities

- A. Professional Development and On-Line Data Storage Services.
- 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 (the “Professional Development and Data Storage Services”). 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. In addition, Teach For America shall facilitate Teacher access to an assortment of resources including sample lesson plans, assessments, grade tracking systems, and content area/grade level instructional materials. 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 proprietary software and servers.

- ii. To facilitate provision of the Professional Development and Data Storage Services, School District 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"), School District 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. Without limiting the foregoing, Teach For America agrees that it shall not maintain, use, disclose, or allow access to Student Records except as permitted by this Agreement or as otherwise authorized by the School District or by law, and will use Student Records disclosed by the School District only for the purposes for which such disclosure was made.
- iv. School District acknowledges that 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 School District the names of such parties and a brief description of such parties' legitimate educational interest in receiving such information.
- v. Pursuant to 34 CFR § 99.7(a)(3)(iii), School District shall include, in its annual notification of rights under FERPA, criteria that qualify Teach For America, in its capacity as a provider of professional development and data storage services, as a school official with a legitimate educational interest.

B. Credentialing Services.

- i. Teach For America shall facilitate the enrollment of individual Teachers in an alternative certification/licensure program that will enable the individual Teacher to obtain appropriate credentials to be a classroom teacher of record.
- ii. Individual Teachers are responsible for completing all credential requirements, including required coursework through an alternative licensure program.
- iii. Teach For America shall not be responsible for, and shall not be in breach of any provision of this Agreement, in the event of any failure by an individual Teacher to fulfill his/her obligations to maintain his/her teaching credentials.

III. GENERAL PROVISIONS

A. Fees-for-Service.

- i. School District shall pay Teach For America an annual fee for each Teacher employed under this Agreement to defray expenses Teach For America incurred in recruiting, selecting, providing pre-service training and continuing professional development services to the Teachers employed by School District under this agreement. School District agrees that all payments for fees shall be in the form of check delivered to Teach For America or wire transfer to an account designated by Teach For America in writing.
- ii. With respect to each Teacher whose employment by School District is to commence in the 2013-2014 academic year, School District shall pay Teach For America an annual amount of \$4000 for the first academic year in which such Teacher is employed by School District and \$5000 for the second academic year in which such Teacher is employed by the School District, up to two years [from the date such employment is to commence].

- B. Non-refund. Teach For America shall have no obligation to refund to School District any amount paid by School District in respect of any Teacher for any reason whatsoever. For the avoidance of doubt, School District will be invoiced fees for each of the individual Teacher(s) initially employed by the School District.

- C. Invoicing. Teach For America will invoice School District for all amounts due hereunder with respect to any academic year within thirty (30) days of the start of the academic school year, provided that Teach For America's failure to timely do so, will not constitute a waiver of any of Teach For America's rights hereunder or constitute a breach by Teach For America of this Agreement.
- D. Term. The term of this Agreement will cover the 2013 cohort of Teachers for the 2013-2014 and 2014-2015 academic years. This Agreement will expire on March 31, 2015, but all provisions applicable to the 2013 cohort of Teachers will remain in effect through the conclusion of the 2014-2015 academic year and may be renewed at the end of the term on the same or substantial similar terms by mutual agreement of the parties.
- 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 that notice no later than 120 days prior to the end of the current academic year; or
  - iii. by either Party upon written notice to the 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.
- F. Effect of Termination. Except as otherwise specifically provided, if this Agreement expires or is terminated by either party, it shall become void and of no effect without liability of any party (or any of its directors, officers, employees, agents, representatives or advisors) to the other parties; provided that no such expiration or termination shall relieve any party of any liability incurred by such party under this Agreement prior to such termination. In the event that this Agreement expires or is terminated by either party, Sections II.B. and II.C. shall survive and will remain in effect until such time as there are no Teachers in their second year of employment in School District. Sections III.F., III.G., III.H., and III.I. shall survive the expiration or termination of this



Agreement indefinitely. Additionally, Teach For America will be entitled to all outstanding amounts due up to the date of expiration or termination.

- G. No Warranty. School District 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 School District shall indemnify and hold harmless the TFA Indemnities (as defined below in Section III.H) from and against any Losses (also defined below in Section III.H) 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 School District.
  
- H. Limitation of Liability. Neither Teach For America nor any of its officers, directors, employees or agents shall be liable to School District or any individual Partner School of School District for any Loss incurred by School District or such individual Partner School (as defined in I.A.v) 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 Teach For America; provided that in no event shall Teach For America and its officers, directors, employees and agents have any liability to School District or any such individual Partner School in connection with the matters to which this Agreement relates in excess of the aggregate amount of payments made to Teach For America by School District pursuant to this Agreement or in connection with any Loss of which School District is primarily culpable.
  
- I. Surveys. School District acknowledges that Teach For America may survey individual constituents, teachers, etc. at the partner school sites regarding its programming and professional development of Teachers in the classroom.
  
- J. Amendment/Modification. No amendment or modification of this Agreement, and no waiver hereunder, shall be valid or binding unless set forth in writing and signed by each party.

- K. Non-Assignment. Neither this Agreement nor any of the rights, interests or obligations under this Agreement shall be assigned, in whole or in part, by operation of law or otherwise by either party without the prior written consent of the other party, and any such assignment that is not consented to shall be null and void.
- L. Counterparts. This Agreement may be executed in counterparts (including by electronic transmission), each of which shall be deemed an original copy of this Agreement, and which, taken together, shall be deemed to constitute one and the same agreement.
- M. Construction. The headings of Sections contained in this Agreement are for convenience only, and they do not, expressly or by implication, limit, define, extend, or construe the terms or provisions of the Sections of this Agreement. Any reference in this Agreement to gender includes all genders. Further, except where expressly specified to the contrary, the words “include,” “including,” and “such as” in this Agreement should be read to mean “include without limitation.”
- N. Governing Law. This Agreement shall be governed by, and construed and interpreted in accordance with the laws of the State of Ohio.
- 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 illegal, unenforceable or invalid 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. If any provision or part thereof of this Agreement is stricken in accordance with the provisions of this Section III.O., then 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 notice, demand, or other communication required or permitted to be given under this Agreement shall be in writing and shall be delivered to the address of such Party as set forth below:

If to Teach For America:

Tracy-Elizabeth Clay, Esq.  
General Counsel  
300 W. Adams St., Ste. 1000  
Chicago, IL 60606

If to Teach For America, also:

Holly Trifiro  
Executive Director  
3615 Superior Avenue, Suite 3102A  
Cleveland, Ohio 44114

If to School District:

Eric Gordon  
Chief Executive Officer  
1380 East 6<sup>th</sup> Street  
Cleveland, Ohio 44114

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

CLEVELAND METROPOLITAN SCHOOL DISTRICT

By \_\_\_\_\_

Name:

Title:

Date:

TEACH FOR AMERICA, INC.

By \_\_\_\_\_

Holly Trifiro

Executive Director

June 11, 2013

**APPENDIX A**

\*\*If CLEVELAND METROPOLITAN SCHOOL DISTRICT cannot at this time name the specific certification areas, please list TBD for certification and grade level. Then list the range number of teachers (for example 10-15, 15-20, 12-17) that the district intends to hire and the academic years of employment.

Certification (subject) Area	Grade Level	Agreed Number of Teachers	Academic Years of Employment
Example: Math	Example: Elementary	Example: 2	Example: 2013-2014 & 2014 - 2015
Example: Reading	Example: Secondary	Example: a minimum of 5 up to 7	Example: 2013 – 2014 & 2014 - 2015

Fees shall be determined by the actual number of Teachers hired under this Agreement.

- i. Each cohort of Teachers employed pursuant to this clause is in addition to Teachers from prior cohorts employed by the School District and who are returning for their second year of employment.
- ii. If Teach For America provides School District with a number of Teachers that is lower than the Agreed Number, the number of Teacher candidates provided will constitute the Agreed Number for purposes of determining any fees that the School District owes Teach For America.
- iii. In the event that Teach For America supplies the School District with any Teachers above the Agreed Number, School District agrees to pay the agreed upon fees for the additional Teachers.