

**COLLEGE BOARD'S
COLLEGE READINESS AND SUCCESS CONTRACT #: CB-00022360**

THIS AGREEMENT, including all appendices, exhibits, and schedules attached hereto (the "Agreement"), is made as of this **July 6, 2018** ("Effective Date"), by and between Black Horse Pike Regional School District ("Client") and the College Board (the "College Board").

WHEREAS, the College Board shall make available, and Client may order the following College Board exams, products, and services related to the College Board's College Readiness and Success System.

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants and undertakings contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, hereby agree to the following:

1.0 Services & Deliverables. The College Board shall furnish Client with the exams, products, licenses, services and/or deliverables (collectively, "Deliverables") in accordance with the applicable schedules, which outline the Deliverables hereunder ("Schedule"); and attached hereto and incorporated herein by this reference. If Client has additional orders after the Effective Date of this Agreement, and during the Term (as defined in Section 2.1), the parties agree such Deliverables shall be added by an addendum signed by both parties.

2.0 Term & Termination.

2.1 Term. This Agreement shall be for a term beginning as of July 01, 2018 and, unless sooner terminated as provided herein, will expire on June 30, 2019 ("Initial Term"). Client may renew this Agreement in twelve (12) month increments ("Renewal Term"), upon notice to the College Board of its intent to renew within thirty (30) days prior to the expiration date of this Agreement. During any Renewal Term, this Agreement shall be subject to the College Board's then-current fees and policies at the time of renewal. The Initial Term and each subsequent Renewal Term shall be collectively referred to as the "Term." If, during the Term, Client decides to have the College Board support Client's administration of a digital College Board assessment, the College Board reserves the right to attach an additional schedule specific to such administration, containing operational policies and any additional terms and conditions.

2.2 Termination. If either party breaches any of the provisions of this Agreement (including but not limited to Client's failure to make any payment when due), either party shall have the right to give the other party written notice to cure such breach within thirty (30) days and, if such breach is not cured within a thirty (30) day period, either party shall have the right to terminate this Agreement, without waiver of any other remedy, whether legal or equitable; provided, however, if Client breaches the Representations and Warranties or Ownership of Intellectual Property, or both, then the College Board shall have the right to terminate this Agreement immediately.

2.2.1 Rights After Termination. If any Schedule is terminated for any reason, all rights granted to Client hereunder with respect to the Deliverables under that Schedule shall cease, and Client shall: (a) immediately cease all use of the applicable Deliverables and purge any and all software, content, and materials from Client's computer systems, storage media and files, and all copies thereof, as applicable, and (b) promptly return or destroy, at College Board's direction, content and materials, and all copies thereof, and all other confidential information of College Board then in Client's possession or under Client's control. Upon termination of this Agreement, the College Board shall terminate Client's access to any systems to which Client has access under this Agreement.

2.2.2 Partial Payment Upon Termination. Client will compensate the College Board for all services performed, products furnished, and licenses granted, including any costs associated with the initial deployment of resources in preparation for providing the services under this Agreement, through the effective date of any termination in accordance with invoices issued or to be issued by the College Board.

2.2.3 Availability of Deliverables. In addition to its other rights hereunder, the College Board may cease making certain Deliverables commercially available at any time by providing Client sixty (60) days written notice. In such event, the College Board will cease furnishing such Deliverable(s) under this Agreement and the Agreement shall continue in full force and effect, except for provisions specifically affecting such Deliverable(s). The College Board will refund Client any fees paid for the unused portion of such Deliverable(s).

3.0 Fees and Payment. Client shall pay those fees set forth in each Schedule for the services and deliverables furnished during the 2018-2019 implementation year. Unless otherwise indicated in a Schedule, payment terms are Net 30.

4.0 Taxes. Client agrees to pay any sales, use, value added or other taxes or import duties (other than the College Board's corporate income taxes) based on, or due as a result of, any fees paid to the College Board under this Agreement, unless Client is

exempt from such taxes as the result of Client's corporate or government status and Client has furnished the College Board with a valid tax exemption certificate.

5.0 Representations and Warranties.

5.1 Authority. Client represents and warrants that it is empowered under applicable state laws to enter into and perform this Agreement and it has caused this Agreement to be duly authorized, executed, and delivered.

5.2 College Board Services Warranty. The College Board represents and warrants that it shall perform its obligations under this Agreement in a professional, workmanlike manner.

5.3 College Board Disclaimer of Implied Warranties. EXCEPT AS PROVIDED ABOVE, THE COLLEGE BOARD MAKES NO WARRANTIES WHATSOEVER AND PROVIDES THE SERVICES AND DELIVERABLES, AS APPLICABLE, ON AN "AS IS" AND "AS AVAILABLE" BASIS. THE COLLEGE BOARD HEREBY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS. THE COLLEGE BOARD DOES NOT WARRANT THE OPERATION OF THE DELIVERABLES TO BE UNINTERRUPTED OR ERROR-FREE OR THAT ALL DEFICIENCIES OR ERRORS ARE CAPABLE OF BEING CORRECTED. FURTHERMORE, THE COLLEGE BOARD DOES NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE USE OF THE DELIVERABLES OR THE RESULTS OBTAINED THEREFROM OR THAT THE DELIVERABLES WILL SATISFY CLIENT'S REQUIREMENTS.

6.0 Limitation of Liability. TO THE EXTENT PERMITTED BY LAW, AND NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, THE TOTAL LIABILITY, IN THE AGGREGATE, OF THE COLLEGE BOARD AND ITS OFFICERS, TRUSTEES, PARTNERS, EMPLOYEES, AGENTS AND THE COLLEGE BOARD'S SUBCONTRACTORS AND CONSULTANTS, AND ANY OF THEM, TO CLIENT AND ANYONE CLAIMING BY, THROUGH OR UNDER CLIENT, FOR ANY AND ALL CLAIMS, LOSSES, COSTS, OR DAMAGES WHATSOEVER ARISING OUT OF, RESULTING FROM OR IN ANY WAY RELATED TO THIS AGREEMENT OR THE WORK PERFORMED BY THE COLLEGE BOARD PURSUANT TO THIS AGREEMENT FROM ANY CAUSE OR CAUSES, INCLUDED BUT NOT LIMITED TO THE NEGLIGENCE, PROFESSIONAL ERRORS OR OMISSIONS, STRICT LIABILITY OR BREACH OF CONTRACT OR WARRANTY EXPRESS OR IMPLIED OF THE COLLEGE BOARD OR THE COLLEGE BOARD'S OFFICERS, TRUSTEES, PARTNERS, EMPLOYEES, AGENTS, SUBCONTRACTORS OR CONSULTANTS OR ANY OF THEM, SHALL NOT EXCEED THE ACTUAL AMOUNT PAID TO THE COLLEGE BOARD UNDER THIS AGREEMENT FOR THE SPECIFIC DELIVERABLE SUBJECT TO THE DAMAGES CLAIM.

IN NO EVENT SHALL EITHER PARTY, THEIR AFFILIATES OR THEIR SUBCONTRACTORS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES (INCLUDING, BUT NOT LIMITED TO, ANY DAMAGES FOR LOSS OF PROFITS OR SAVINGS, LOSS OF USE, BUSINESS INTERRUPTION OR THE LIKE), EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

7.0 Indemnification. To the extent permitted by law and notwithstanding any other provision of this Agreement, Client agrees to indemnify, hold harmless, and defend the College Board from and against any and all liabilities, demands, claims, fines, penalties, damages, forfeitures, and suits, together with reasonable attorneys' and witnesses' fees and other costs and expenses of defense and settlement, which the College Board may incur, become responsible for or pay out as a result of death or bodily injury or threat thereof to any person, destruction of or damage to any property, contamination of or adverse effect on natural resources or the environment, any violation of local state or federal laws, regulations, or orders, or any other damages claimed by third parties (collectively, "Damages") provided, however, that Client shall not be obligated to indemnify the College Board to the extent such Damages are caused directly by the negligence or willful misconduct of the College Board.

8.0 Ownership of Intellectual Property. Client agrees and acknowledges that all intellectual property provided under or pertaining to the Agreement, including, but not limited to, any College Board publications, College Board website(s), CD-ROMs, videos, examinations, and all items contained therein, including all copies thereof, all data and score reports and any parts thereof, all copyrights, trademarks, trade secrets, patents, and other similar proprietary rights are the sole and exclusive property of the College Board. Nothing in this Agreement should be interpreted to indicate that the College Board is passing its proprietary rights in and to the College Board Intellectual Property to the Client except as specifically provided under a particular Schedule.

9.0 Miscellaneous.

9.1 Cooperation. Client shall cooperate fully with College Board, its agents, consultants, and subcontractors and provide all assistance as reasonably necessary for the College Board to furnish the Deliverables as applicable, including but not limited to: (a) fulfilling its obligations under the applicable Schedule and (b) other assistance reasonably required by College Board to fulfill its obligations under this Agreement.

9.2 Force Majeure. No party will be responsible to the other, and such shall not be grounds to terminate this Agreement, for disruptions in usage of the Deliverables caused by acts of God, acts of terrorism, government action, curtailment of transportation facilities, Client's failure to cooperate as described in Section 9.1 (Cooperation), labor strikes, governmental authority, or all other events beyond the reasonable control of the party claiming rights under this Section (a "Force Majeure Event"); provided that the College Board shall have a duty to reasonably mitigate, or cause to be mitigated, any such disruptions (or parts thereof). The College Board's obligation to furnish the Deliverables shall be suspended (or reduced, as applicable) during the period and to the extent that provision of the Deliverables is disrupted by the Force Majeure Event, without such suspension or disruption constituting a material breach of its obligations under this Agreement.

9.3 Governing Law and Choice of Forum. This Agreement shall be construed in accordance with the terms and conditions set forth in this Agreement and the law of the State of New York without regard to choice or conflict of laws principles that would cause the application of any other laws. Any dispute or controversy arising out of or relating to this Agreement or otherwise shall be determined by a court of competent jurisdiction in New York County, New York State (or the Federal Court otherwise having territorial jurisdiction over such County and subject matter jurisdiction over the dispute), and not elsewhere, subject only to the authority of the Court in question to order changes of venue; provided, however, that prior to the instigation of any such action (other than an action for equitable relief) a meeting shall be held at a mutually agreed upon location, attended by individuals with decision-making authority to attempt in good faith to negotiate a resolution of the dispute. If within forty-five (45) days after such meeting the parties have not succeeded in resolving the dispute, either party may proceed at law, or in equity, in a court of competent jurisdiction.

9.4 Notices. All notices or other communications hereunder shall be deemed to have been duly given and made if in writing and if served by personal delivery upon the party for whom it is intended on the day so delivered, if delivered by registered or certified mail, return receipt requested, or by courier service on the date of its receipt by the intended party (as indicated by the records of such of the U.S. Postal Service or the courier service), or if sent by e-mail, or if not a business day, the next succeeding business day, provided that the email sender retains confirmation of a "read-receipt" which acknowledges recipient's opening of such email, or if not available, promptly confirms by telephone confirmation thereof, to the person at the address set forth below, or such other address as may be designated in writing hereafter, in the same manner, by such person:

To College Board:
K-12 Contract Management

With a copy to
Legal Department

To Client:
Frank Rizzo
Business Administrator & Board
Secretary

The College Board

The College Board

Black Horse Pike Regional School
District

250 Vesey Street
New York, NY 10281
Tel: (212) 713-8000
Contractsmanagement@collegeboard.org

250 Vesey Street
New York, NY 10281
Tel: (212) 713-8000
Legalnotice@collegeboard.org

580 Erial Road
Blackwood, NJ 08012-4550
Tel: (856) 227-4106
frizzo@bhprsd.org

9.5 Publicity. Each party agrees to promptly inform the other party of all media inquiries prior to responding thereto and to permit the other party to review and approve prior to release any press releases regarding the products, services, and deliverables provided for under this Agreement.

9.6 Relationship of the Parties. The relationship of the Client and the College Board is that of independent contractors. Neither party nor their employees are partners, agents, employees, or joint ventures of the other party. Neither party shall have any authority to bind the other party to any obligation by contract or otherwise. The College Board, its employees, and agents shall not be considered employees of the Client while performing these services and will not be entitled to fringe benefits normally accruing to employees of the Client. Client and the College Board recognize and agree that the College Board is an independent contractor.

If the Client is using federal funds to pay for all or a portion of the Services and Deliverables furnished by the College Board under this Agreement, Client acknowledges and agrees that the College Board shall not be categorized as a "subrecipient" receiving a federal award as defined by OMB Circular Subpart A.210(c) of Circular No. A-133. The College Board shall be defined as a "vendor" that provides good and services within normal business operations, provides similar goods or services to other purchasers and operates in a competitive environment. Client acknowledges and agrees that the substance of the relationship with the College Board is that of a vendor not a subrecipient.

9.7 Third-Party Rights. Nothing contained in this Agreement, express or implied, establishes or creates, or is intended or will be construed to establish or create, any right in or remedy of, or any duty or obligation to, any third party.

9.8 Survival. It is agreed that certain obligations of the parties under this Agreement, which, by their nature would continue beyond the termination, cancellation, or expiration of this Agreement, shall survive termination, cancellation, or expiration of this Agreement, including without limitation, payment, ownership of intellectual property, representations and warranties, limitation of liability, confidential and proprietary information, indemnification, term and termination, and Section 9 (Miscellaneous) herein.

9.9 Amendment; Waiver. Any provision of this Agreement may be amended or waived if, and only if, such amendment or waiver is in writing and signed, in the case of an amendment, by the parties, or in the case of a waiver, by the party against whom the waiver is to be effective. No failure or delay by any party in exercising any right, power, or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof or the exercise of any other right, power, or privilege. Except as otherwise provided herein, the rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by law.

9.10 Severability. The provisions of this Agreement shall be deemed severable and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the other provisions hereof. If any provision of this Agreement, or the application thereof to any person or entity or any circumstance, is invalid or unenforceable, (a) a suitable and equitable provision shall be substituted therefor in order to carry out so far as may be valid and enforceable provision and (b) the remainder of this Agreement and the application of such provision to other persons, entities, or circumstances shall not be affected by such invalidity or unenforceability, nor shall such invalidity or unenforceability affect the validity or enforceability of such provision, or the application thereof, in any other jurisdiction.

9.11 Order of Precedence. In the event of conflict between the terms and conditions of any Schedule and the Agreement the terms and conditions of the Schedule shall prevail. The parties acknowledge and agree that each shall construe the terms, covenants, and conditions set forth in this Agreement, including each Schedule hereto, as consistent with one another insofar as possible, so as to give effect to the fullest extent possible to each particular clause. Client shall remit any Client-issued purchasing documents such as a contract or purchase order prior to the scheduled delivery of any Deliverable to ensure prompt payment for services and deliverables received under this Agreement ("Client Purchase Order"). Notwithstanding anything to the contrary, the parties hereby acknowledge and agree that the Client Purchase Order shall be subject to the terms and conditions of this Agreement and this Agreement shall override any terms and conditions included in the Client Purchase Order. Client acknowledges and agrees that the College Board may delay and/or withhold furnishing Deliverables if Client fails to issue the Client Purchase Order for such Deliverable, as applicable, prior to the scheduled delivery date for such Deliverable.

9.12 Headings. Headings contained in this Agreement are for reference purposes only. They shall not affect in any way the meaning or interpretation of this Agreement.

9.13 Integration, Execution and Delivery. The Agreement includes the Schedules attached hereto and constitutes the entire agreement between the College Board and Client and supersedes all prior written or oral understandings, bids, offers, negotiations, or communications of every kind concerning the subject matter of this Agreement, including any Client Purchase Order. No course of dealing between parties and no usage of trade shall be relevant to supplement any term used in the Agreement. Acceptance or acquiescence in a course of performance rendered under the Agreement shall not be relevant to determine the meaning of the Agreement and no waiver by a party of any right under the Agreement shall prejudice that party's exercise of that right in the future. This Agreement may be executed through signatures to any number of counterparts, each of which shall be deemed an original, which together will constitute one Agreement. Delivery of an executed counterpart of this Agreement by electronic transmission, including through DocuSign, shall be equally as effective as delivery of an original executed counterpart of this Agreement. Any party delivering an executed counterpart of this Agreement by electronic transmission also shall deliver an original executed counterpart of this Agreement (except if the parties are using DocuSign), but the failure to deliver an original executed counterpart shall not affect the validity, enforceability, and binding effect of this Agreement. The foregoing execution and delivery shall apply to this Agreement.

Black Horse Pike Regional School District**THE COLLEGE BOARD**_____
Signature_____
Signature_____
Name_____
Name_____
Title_____
Title_____
Date_____
Date

Schedule 1 to Agreement SAT® Program

1. Services Overview.

Client is providing funding for certain students to take the SAT with Essay or the SAT (without Essay) on a regularly scheduled SAT Test Date. The College Board will deliver the SAT administration (“Program”) as outlined in this Schedule.

In the event a fully executed contract is not in place 120 days prior to the first Test Date, in order to help ensure timely implementation of the Program, the College Board reserves the right to change the method of program registration to paper bulk registration and execute registration in accordance with the instructions located here:

<https://collegereadiness.collegeboard.org/pdf/sat-bulk-transmittal-form.pdf>

1.1. Program Registration

To participate in the Program, students must register by the Regular Registration Deadlines (“Regular Deadline”) defined in section 1.2 of this Schedule. Program registration will be completed online by each student, and all students must have an email account to complete registration. The College Board will provide registration materials in the form of online vouchers and instructions for students to register. Registration materials will be mailed no later than 42 days before the first Regular Registration Deadline.

The College Board agrees to make every effort to assign students to seats in test centers within the school or district, as applicable, provided registrations are received by the Regular Registration Deadline.

1.1.1. Late Registration

Students who register after the Regular Registration Deadline will be considered as participating in the Program; however, they might not receive their first- or second-choice test center assignments. Notwithstanding the foregoing, registrations received after the Regular Registration Deadline will be subject to the payment by Client of late fees of twenty-nine dollars (\$29.00) per student, payable as specified in section 1.6. Fees and Payment.

Registrations received after the applicable Late Registration Deadline (“Late Deadline”) will be automatically deferred to the next available test administration. Students who wish to make changes to those registrations will be charged accordingly.

1.2. 2018-2019 SAT Registration Deadlines

SAT Test Date	Regular Registration Deadline	Late Registration Deadline (mailed registrations)	Late Registration Deadline (online or by phone)
8/25/2018	7/27/2018	8/7/2018	8/15/2018
10/6/2018	9/7/2018	9/18/2018	9/26/2018
11/3/2018	10/5/2018	10/16/2018	10/24/2018
12/1/2018	11/2/2018	11/13/2018	11/20/2018
3/9/2019	2/8/2019	2/19/2019	2/27/2019
5/4/2019	4/5/2019	4/16/2019	4/24/2019
6/1/2019	5/3/2019	5/14/2019	5/22/2019

1.3. Providing Accommodations to Students with Disabilities

Accommodations for Students with disabilities will be granted and administered according to the College Board’s standard eligibility and administration procedures. Students must apply for accommodations under the College Board’s Services for Students with Disabilities (SSD) program and must follow the SSD program’s published procedures, which can be found at <https://www.collegeboard.org/students-with-disabilities>. Only College Board-

approved accommodations are permitted. Any provided accommodations not previously and explicitly approved by the College Board's SSD program will result in scores that are not valid, and that cannot be reported to colleges, scholarship programs and other designated score recipients.

1.4. Sunday Test Takers

Registrants who, for religious reasons, wish to test on Sunday must specify 01000 as the first choice test center code in order to be assigned to a Sunday test center, or select a valid Sunday test center code. The second test center choice should be left blank. For each student who requires Sunday testing, the Client must provide a letter from a clergy member that clearly identifies the student and that supports the student's request. The assigned test center will be displayed on the student's admission ticket document.

1.5. Designating Participating Schools

The Client will accurately complete a list of Participating Schools in a format provided in Attachment A to this document, to designate those schools participating in the Program. College Board reserves the right to cancel the administration of the Program at any school if a completed list of Participating Schools is not returned by the deadlines established in Attachment A or is returned without complete and accurate information.

1.6. Fees and Payment

The Client agrees to pay to the College Board the SAT registration fee of sixty-four dollars and fifty cents (\$64.50) for SAT with Essay or forty-seven dollars and fifty cents (\$47.50) for SAT (without essay) for each student who participates in the Program, plus any applicable late fees. There are no fee waivers granted for students participating in the Program.

1.6.1. Payment.

Client will be invoiced monthly, beginning with the first submission of student registrations.

- 1.7. Ownership of the SAT Examination.** The Client agrees and acknowledges that the SAT examination, and all items (questions) contained therein, including all copies thereof, all examination materials and all data, including but not limited to student scores derived from the exam, collected under this Agreement is at all times exclusively owned by the College Board, who is the exclusive owner of all rights therein, in and to the SAT examination including, without limitations, all copyrights, trademarks, trade secrets, patents and other similar proprietary rights, and all renewals and extensions thereof. Nothing in this Agreement should be interpreted to indicate that the College Board is passing its proprietary rights in and to the SAT examination to the Client or that its normal security procedures will be altered in any way. SAT is a registered trademark of the College Board.

The College Board hereby grants the Client a limited, nonexclusive, nontransferable, non-assignable right to use the SAT score reports and individual student data for internal purposes only. The Client may not use or distribute the score reports externally or to third parties without the express written consent of the College Board.

- 1.8. Use of SAT Scores.** Client is encouraged to understand and validate any uses of SAT test scores. The College Board encourages Client to fully explore and validate all uses of SAT test scores before implementing any policies and procedures associated with the SAT. The College Board's Guidelines on the Uses of College Board Test Scores and Related Data, at <https://research.collegeboard.org/>, contain additional information on appropriate uses of the SAT and how test score use can be validated.

**Attachment A to Schedule 1 List of Participating Schools
SAT National Bulk**

1. List of Participating Schools

The Client will complete the following List of Participating Schools and email it to AssessmentsProgram@collegeboard.org no later than 120 days, before the first Test Date as defined in Schedule 1.

	SECTION A - SCHOOL CODE To Find your School Code go to: http://sat.collegeboard.com/register/sat-code-search		SECTION B - TESTING COHORT Please complete for ALL Schools		SECTION C – SCHOOL ADDRESS Please complete for Schools that do not have a SCHOOL CODE		
	SCHOOL CODE Please leave blank ONLY if your School does not have a School code	SCHOOL NAME	ESTIMATED NUMBER OF PARTICIPANTS	ESTIMATED NUMBER OF STUDENTS NEEDING SPECIAL ACCOMMODATIONS	ADDRESS	CITY	STATE
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							
11							
12							
13							
14							
15							
16							
17							

Budget Schedule

Product Name	Start Date	End Date	Quantity	Unit Price	Cost	Discount	Total Cost
SAT National Bulk With Essay - 11th Grade	July 1, 2018	June 30, 2019	301	\$64.50	\$19,414.50	\$0.00	\$19,414.50
SAT National Bulk With Essay - 11th Grade	July 1, 2018	June 30, 2019	301	\$64.50	\$19,414.50	\$0.00	\$19,414.50
SAT National Bulk With Essay - 11th Grade	July 1, 2018	June 30, 2019	301	\$64.50	\$19,414.50	\$0.00	\$19,414.50

Subtotal: \$58,243.50
Total Discount: \$0.00
Total Cost: \$58,243.50