

**MEMORANDUM OF UNDERSTANDING
BETWEEN
HARMONY PUBLIC SCHOOLS AND [PRE-K SITE OPERATOR NAME]**

This Memorandum of Understanding ("MOU") is entered into by and between Harmony Public Schools ("Harmony"), a Texas open-enrollment charter holder and public charter school system, and [Pre-K Site Operator Name] ("Pre-K Site Operator Operator"), collectively referred to hereinafter as "the Parties." The purpose of this MOU is to set forth the objectives, understandings, and agreements of the Parties.

RECITALS

WHEREAS, the Parties desire to execute this memorandum of understanding for the purpose of expanding opportunities for early childhood education and to prepare students for elementary education and beyond; and

WHEREAS, Harmony operates Texas open-enrollment charter schools authorized to service Pre-Kindergarten grade levels and is subject to all applicable federal and state laws and accountability standards; and

WHEREAS, Pre-K Site Operator Operator is an entity capable of providing Pre-K3 educational services in compliance with applicable laws and regulations, and is duly licensed by the State of Texas as a licensed child care provider and operator.

NOW THEREFORE, for and in consideration of the mutual promises set forth herein and other good and valuable consideration, the Parties agree as follows:

I. RESPONSIBILITIES OF THE PRE-K SITE OPERATOR

1.1 GENERAL. The Pre-K Site Operator must:

1.1.1 Establish and maintain Pre-K3 facilities in order to provide full-day, high-quality early education to eligible students in Pre-K3 where such students are enrolled as students of Harmony and assigned to the Pre-K Site Operator;

1.1.2 Ensure the Pre-K Site Operator meets or exceeds all local ordinance, code, permitting or other local law requirements for use as a public school facility for students in grades Pre-K3;

1.1.3 Comply with any and all Criminal History Record and Department of Family and Protective Services ("DFPS") Minimum Standards for Child Care Centers requirements pursuant to Texas Education Code Section 29.171 concerning Eligible Private Providers;

1.1.4 Comply with all background check requirements under Texas Education Code Chapters 21, 22 and 22A, and reporting obligations under Chapter 22A as amended. The Pre-K Site Operator must indemnify, defend and hold harmless

Harmony against any claims arising from the Pre-K Site Operator's employees or contractors, failure by the Pre-K Site Operator with respect to background check obligations, or any claims arising under Texas Civ. Prac. & Rem. Code chapter 118;

1.1.5 Pre-K Operator shall indemnify, defend and hold Harmony harmless for any claims or causes of action or damages arising from or relating to Pre-K Operator's failure to comply with Sections 1.1.2, 1.1.3 and 1.1.4, or as otherwise described herein.

1.1.6 Develop and implement a facilities security and safety plan that satisfies or exceeds any minimum requirements imposed by the Texas Education Code and the Texas Administrative Code, Texas School Safety Center and DFPS Minimum Standards for Child Care Centers;

1.1.7 Pre-K Operator shall employ appropriately certified and high-quality Pre-K teachers and assume full responsibility for hiring, managing, supervising, evaluating, credentialing, training, professional development (required by TEA or DFPS), and compensating all personnel who are employed or contracted by Pre-K Operator;

1.1.8 Maintain all educational record and provide all curriculum (as approved by Harmony), instruction and services to operate the Pre-Kindergarten program in an high performing and highly effective manner for students;

1.1.9 Provide student health services to all PreK3 students based on Harmony policy and procedure;

1.1.10 Permit the Harmony nurse to delegate tasks to unlicensed staff in accordance with the Texas Nurse Practice Act;

1.1.11 Verify, record and maintain all immunization records within the first thirty (30) days of the student's enrollment and otherwise comply with HPS immunization policy;

1.1.12 Permit an HPS certified screener to conduct vision and hearing screenings in accordance with state guidelines, including adhering to the deadline for submitting to the state as determined by Harmony;

1.1.13 Adhere to the medication administration policies as set forth by Harmony;

1.1.14 Adopt and implement exclusion and return criteria due to illness conforming with Harmony policy and procedure and public health guidance;

1.1.15 Require Pre-K Site Operator staff to maintain current cardiopulmonary resuscitation/automated external defibrillator and first aid certification in accordance with Harmony policy);

1.1.16 Adopt and implement a protocol requiring, in the event of a medical emergency, Pre-K Site Operator staff to: (a) call 911 immediately when warranted; (b) notify parents/guardians as soon as possible by the childcare facility; (c) make

emergency action plans readily accessible; and (d) provide routine general care within the guidelines set forth under Senate Bill 12;

1.1.17 Adopt documentation requirements for health services conforming with current Harmony policy and procedure;

1.1.18 Provide, count, and claim all meals and snacks served while a student is at the Pre-K Site Operator in accordance with Child and Adult Care Food Program (“CACFP”) regulations, including ensuring that half-day students receive no fewer than two (2) meals (breakfast and lunch) and one morning snack per day and that full-day students must receive no fewer than two (2) meals (breakfast and lunch) and both a morning and an afternoon snack each school day;

1.1.19 Provide students free meals and snacks regardless of the Pre-K Site Operator's approved CACFP agreement;

1.1.20 Pay for the cost of meals and snacks provided to Harmony students if the Pre-K Site Operator operates under a CACFP pricing program;

1.1.21 Obtain a complete Student Eligibility Application with Harmony Public Schools from each household either through School Café or via a paper copy submitted to the Pre-K Site Operator or the designated Harmony campus;

1.1.22 Serve each student a reimbursable meal that will be counted and claimed by Harmony for the Pre-K Site Operator;

1.1.23 Accommodate special dietary needs in accordance with CACFP regulations;

1.1.24 Provide Harmony with information regarding meal accommodation requests received by the PreK Site to ensure that meals consumed at the Pre-K Site Operator meet the student’s dietary needs;

1.1.25 Reimburse Harmony for services rendered by Harmony Day Care program such as teacher, technology, student software, and other program services; and

1.1.26 Maintain all educational records applicable to Harmony Public Schools and relating to all students participating and enrolled in the Pre-K3 program; communicate with Harmony regarding the status of each student served in a Pre-K Site Operator who is enrolled with Harmony; provide all necessary curriculum and assume all other responsibilities normally associated with the administration and provision of education services.

1.2 **STUDENT ELIGIBILITY.**

1.2.1 **Eligibility defined.** In order to attend a Pre-K Site Operator, a student must: (1) be eligible for admission to and enrollment with Harmony; (2) be enrolled with Harmony; and (3) be eligible for state-funded prekindergarten education classes under Texas Education Code, Section 29.153 (“Eligible Student”). Harmony retains exclusive authority to make final determinations regarding student eligibility for enrollment and funding purposes.

1.2.2 Non-eligible students. Non-eligible Students are defined as students whose circumstances do not satisfy any one of the requirements set out above for Eligible Students, and whose parents or guardians apply for their child to attend a Pre-K Site Operator. Such students may only enroll, if there is space available after serving all Eligible Students, and upon paying the TEA approved Tuition to Harmony. Such Non-eligible students shall not generate state funding for Harmony and Pre-K Site Operator Operator shall ensure it does not report or code students erroneously and shall be responsible for collecting tuition and payment of same to Harmony.

1.2.3 Duty of Harmony to Non-eligible Students. Unless otherwise required by law, Harmony shall have no responsibility for enrolling or providing prekindergarten services to a Non-eligible Student, unless there is space available, the parents pay the required tuition, and Harmony accepts the student for enrollment.

1.2.4 Verification of Student Eligibility. The Pre-K Site Operator Operator shall be solely responsible for:

- 1.2.4.1 Collecting, verifying, and maintaining all documentation necessary to establish eligibility;
- 1.2.4.2 Ensuring such documentation complies with TEA audit requirements;
- 1.2.4.3 Maintaining documentation in an audit-ready condition at all times;
- 1.2.4.4 Providing documentation to Harmony within two (2) business days upon request.

Failure to maintain proper documentation shall constitute a material breach of this MOU.

1.2.5 Financial Responsibility for Ineligible Students. The Pre-K Site Operator Operator acknowledges that Harmony relies on eligibility determinations for funding purposes. Accordingly, the Pre-K Site Operator Operator shall be solely responsible for:

- 1.2.5.1 Any financial loss resulting from improper eligibility determinations;
- 1.2.5.2 Any repayment of funds required by TEA due to ineligible students;
- 1.2.5.3 Any audit findings related to eligibility documentation.

1.3 LIABILITY AND SPECIFIC OBLIGATIONS. The Pre-K Site Operator and Harmony acknowledge the following specific obligations.

1.3.1 For General Complaints.

- A. Pre-K Site Operator is responsible for hearing, deciding, or responding to all concerns and formal and informal complaints and grievances from parents, guardians, or other person standing in loco parentis (such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child's welfare) to a student attending a Pre-K Site Operator. 20 USC 6318; 7801(38) Harmony is not responsible for hearing, deciding, or responding to such complaints, concerns, or grievances, unless required by Federal, State law or local policy or elsewhere in this MOU.
- B. The Pre-K Site Operator must establish its own policies regarding hearing, deciding, or responding to the complaints, concerns, or grievances covered by this Subsection 1.3.1.

1.3.2 For Challenges to Determinations of Student Eligibility. Harmony is responsible for hearing, deciding, or responding to complaints, or grievances from parents or guardians related the Harmony's determination of student eligibility or ineligibility to enroll in a Pre-K Site Operator as defined by Section 1.2 above.

1.3.3 For Educational Services. Services provided by the Pre-K Site Operator under this MOU will be performed in a manner consistent with that degree of care and skill ordinarily exercised by public schools providing educational services to prekindergarten students in the same locality under similar circumstances.

1.3.4 For Operation of the Pre-K Site Operators. The Pre-K Site Operator agrees to indemnify, defend, and hold Harmony, its board of directors, officers, agents and employees harmless against any and all claims, disputes, investigations, lawsuits, judgments, or other proceeding, costs and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, that may arise out of or be occasioned by an individual, including students, at any of the Pre-K Site Operators. The Pre-K Site Operator Operator must name Harmony as additional named insured on its insurance policies by endorsement or rider with waiver of subrogation

1.3.5 Step-In Rights. Harmony reserves the unilateral right to assume temporary operational control of any Pre-K Site Operator if Harmony determines that:

- A. Student health or safety is at risk;
- B. The Pre-K Site Operator Operator is not in compliance with applicable law
- C. There is a risk to funding, reporting accuracy, or program continuity.

The Pre-K Site Operator Operator shall fully cooperate and provide

immediate access to facilities, staff, and records.

1.3.6 For True, Accurate and Timely Reporting. Pre-K Site Operator understands, acknowledges, and accepts that TEA imposes deadlines on Harmony for the provision of Public Education Information Management System (“PEIMS”) reports, enrollment and attendance data, and other information required to be reported regarding each student enrolled at Harmony and attending a Pre-K Site Operator (“Required Data”). Pre-K Site Operator understands that TEA may withhold future funding or require repayment of funding from Harmony if inaccurate, false, or untimely information is submitted as part of the Required Data. Because Harmony remains responsible for the submission of all Required Data related to its students, including students enrolled at and attending a Pre-K Site Operator, the Pre-K Site Operator must submit timely and accurate data to Harmony. Attendance must be collected daily in accordance with the TEA’s Student Attendance Accounting Handbook and HPS attendance policies and procedures. To mitigate the risk of noncompliance and an adverse financial consequence, the Pre-K Site Operator agrees to provide a staff member of record to maintain student enrollment and attendance records and to submit student enrollment and attendance data to Harmony in accordance with Harmony policy and procedure. Accordingly, the Pre-K Site Operator will make available the teacher of record or site director for training provided by HPS, for the submission of student enrollment and attendance data at the time of the designated official attendance time, and for the collection and retention of all absence documentation based on Harmony policy and procedure. Should any TEA audit, investigation, or other review be commenced and involve any data reported to Harmony by the Pre-K Site Operator, the Pre-K Site Operator agrees, upon request of Harmony, to fully assist Harmony in responding to any TEA audit or inquiry and implementing any corrective action required by TEA. As set forth in Sec. 2.2 of the MOU, if TEA conducts an audit, investigation, or other review of the Required Data provided by the Pre-K Site Operator and determines that Harmony was overpaid due to the submission of erroneous data by the Pre-K Site Operator and records an adjustment to Harmony’s Payment Ledger to account for this determination or as part of the settle-up process (the “Audit Adjustment”), the Pre-K Site Operator shall accept and agree to a corresponding decrease to the current Program Tuition Amount received by the Pre-K Site Operator from Harmony under Sec. 2.2 of the MOU for the amount of the Audit Adjustment. Alternatively, the Pre-K Site Operator may refund the Audit Adjustment amount to Harmony. Harmony will provide the Pre-K Site Operator with TEA’s final audit, investigative, or other report, notice of audit adjustment (if provided), Payment Ledger, and other supporting documentation to support the corresponding decrease to the current Program Tuition Amount.

1.3.7 Complaints, Due Process Hearings, and Appeals Regarding Special Education and Related Services.

- A. **Party of Interest:** Subject to the provisions within this MOU concerning obligations of the Pre-K Site Operator, Harmony acknowledges that it must always be a proper party of interest in any filing of any due process hearing involving students served by the Pre-K Site Operator that are enrolled with Harmony.
- B. **Defense/Cooperation Obligations:** Under all circumstances, the Pre-K Site Operator shall have the right to select its own defense counsel and be responsible for its own legal fees and costs associated with providing its own defense, should any be necessary pursuant to the provisions of Paragraph A of this Section. The Pre-K Site Operator's responsibility for its own legal fees includes those fees accrued through the course of any appeal arising from a request for due process hearing. Harmony shall have the ability to retain its own counsel in the defense of such a hearing and subsequent appeal. The Parties shall cooperate fully with each other in the defense of such a due process hearing, to the extent their claims and defenses align.
- C. **Consultation Prior to Settlement:** The Pre-K Site Operator and Harmony must consult one another prior to the settlement of any due process hearing filed pursuant to or involving the conditions or circumstances described in this Section 1.3.6 or Section 1.7.4 of this MOU.
- D. **Claims Asserting Failure to Implement Individualized Education Program ("IEP") or Challenging the Appropriateness of the Student's Placement at a Pre-K Site Operator:** In the event the parent or guardian of a student attending the Pre-K Site Operator requests a special education due process hearing or in any way asserts claims alleging any failure to implement that student's IEP or otherwise challenges the appropriateness of the student's placement at the Pre-K Site Operator:
 - a. Harmony shall be responsible for providing its defense to the due process hearing, including those fees and costs accrued through the course of any litigation or appeal arising from such claims.
 - b. Harmony shall be responsible for fulfilling any relief ordered by a special education hearing officer, or other court of competent jurisdiction, for a final finding that a student's IEP was not fully implemented or that the student's placement at the Pre-K Site Operator is inappropriate.
 - c. In the event that a court of competent jurisdiction awards

reasonable attorney's fees to a parent or guardian who is a prevailing party, under 20 U.S.C. 1415(i)(3), as a result of a final finding that the student's IEP was not fully implemented, or their placement at the Pre-K Site Operator was inappropriate, Harmony shall be responsible for satisfying any such award.

E. Claims Asserting Inappropriateness of the IEP: In the event the parent or guardian of a student attending the Pre-K Site Operator requests a special education due process hearing or in any way asserts claims alleging that the content of that student's IEP is inappropriate:

- a. Harmony shall be responsible for providing its defense to the due process hearing, including those fees and costs accrued through the course of any litigation or appeal arising from such claims.
- b. Harmony shall be responsible for providing any relief ordered by a special education hearing officer, or other court of competent jurisdiction, for a finding that the content of a student's IEP was inappropriate.
- c. In the event that a court of competent jurisdiction awards reasonable attorney's fees to a parent or guardian who is a prevailing party, under 20 U.S.C. 1415(i)(3), solely as a result of a finding that the content of a student's IEP was inappropriate, Harmony shall be responsible for satisfying any such award.

1.3.8 Complaints to the TEA: In the event that a student attending the Pre-K Site Operator is the subject of a complaint to TEA under 34 C.F.R. 300.153 alleging a failure to implement a student's IEP and/or asserting that a student's placement at the Pre-K Site Operator is inappropriate and TEA finds that a student's IEP was not implemented or that a student's placement was not appropriate, Harmony and the Pre-K Site Operator will cooperate in the implementation of any corrective action ordered by TEA.

1.4 REPORTING REQUIREMENTS.

1.4.1 Responsibility. The Pre-K Site Operator must gather, obtain, prepare and maintain all enrollment records, attendance records, progress reports, student records, and accounting and source documentation, in any way related to students attending the Pre-K Site Operator, which are required by the TEA, and/or by other applicable state and federal agencies to be maintained by Harmony. The Pre-K Site Operator will submit this data to Harmony by the process date and will continue to send the necessary data through the due date as required by the PEIMS Data Collection Schedule set by TEA.

1.4.2 Standards. The Pre-K Site Operator must utilize the standardized attendance accounting system described in the Student Attendance Accounting Handbook ("Handbook"), adopted as rule under Texas Administrative Code, Title 19, §129.1025 to promulgate the official attendance accounting regulations for all public schools in Texas, when collecting and maintaining enrollment and attendance documentation for transmission to Harmony. In addition, the Pre-K Site Operator must:

- A. Comply with all attendance rules and regulations set out in the Handbook and Harmony's Attendance System Procedures Manual, including but not limited to providing the reconciliation of student membership to the attendance accounting records at the end of the first and fourth six-week reporting periods. Handbook 2.3.4.
- B. Provide accurate daily attendance data meeting the minimum requirements established in the Handbook for all of Harmony's students attending a Pre-K Site Operator.
- C. Provide electronic copies of all documentation required by the Handbook to document student attendance to Harmony.

1.4.3 Coordination. The Parties shall each designate a point of contact for coordination of procedures to be used to collect and report daily attendance data as well as any other information that must be reported to TEA and/or to other applicable state and federal agencies.

1.4.4 Audit Rights. Harmony shall have the right, upon request as provided below, to audit any enrollment, attendance or PEIMS data and any other data reported by the Pre-K Site Operator to Harmony, including all source documentation, to ensure accuracy and compliance with law, policies and standards. Harmony agrees to provide the Pre-K Site Operator with written notice five (5) business days prior to commencing the audit. Any audit will be conducted during normal business hours. Harmony will provide the Pre-K Site Operator with a report of its findings and recommended or required corrective actions. The Pre-K Site Operator or Harmony may release the report of audit findings to another party as either deems appropriate.

1.5 CURRICULUM. In order to assure seamless integration of Pre-K Site Operator-served students into Harmony-assigned campuses for their continued education, the Pre-K Site Operator must utilize Harmony's prekindergarten curriculum at each site, which conform with the Texas Prekindergarten Guidelines.¹ The Pre-K Site Operator must refrain from implementing any curriculum, lesson plans, textbook, class materials or other educational programing that is prohibited under Texas law. The Pre-K Site Operator must further ensure that its teachers and other staff are trained and comply with these legal standards.

¹ <https://tea.texas.gov/academics/early-childhood-education/educator-resources/texas-prekindergarten-guidelines>

1.6 **FERPA/HIPAA COMPLIANCE AND STUDENT RECORDS.**

1.6.1 Student Records Are Government Records; Access and Retention. In accordance with Texas Education Code § 12.1052 and Texas Administrative Code, Title 19, § 100.1203, the records of a student enrolled at the Pre-K Site Operator, as a campus or site approved by the TEA to operate under a Harmony charter school, are government records. During the term of the MOU, Harmony shall have reasonable access to all information pertaining to students enrolled at the Pre-K Site Operator pursuant to the MOU during regular school business hours. Harmony shall have the right to make and retain copies of documents, notes, and all data pertaining Eligible Student. Upon termination of the MOU, the Pre-K Site Operator must transfer all records pertaining to students and other aspects of this MOU to Harmony. Harmony shall retain these records in accordance with applicable law.

1.6.2 **FERPA Compliance.**

- A. For purposes of this MOU and during the term set forth under Section, pursuant to the Family Educational Rights and Privacy Act of 1974 (“FERPA”), the Pre-K Site Operator is the custodian of records pertaining to students of Harmony who receive educational services from the Pre-K Site Operator. As a material element of this MOU, the Pre-K Site Operator must put in place procedures to ensure compliance with FERPA by its corporate officers and directors, employees and Pre-K Site Operator faculty and staff.
- B. The Pre-K Site Operator understands and acknowledges that once students are enrolled in Harmony’s kindergarten program, parental consent will be required prior to the Pre-K Site Operator having any further access student information.

1.6.3 HIPAA Compliance. In such instances and to the extent required by the Health Insurance Portability and Accountability Act (“HIPAA”), and subject to 45 CFR Parts 160 and 164 (“the HIPAA Privacy Regulations”), the Pre-K Site Operator agrees to comply with HIPAA and the HIPAA Privacy Regulations.

1.7 **IMMUNITY AND INSURANCE.**

1.7.1 All obligations of the Pre-K Site Operator contained in this MOU shall not apply to any liability resulting from the sole negligence or fault of Harmony, its board of directors, officers, agents, or employees. In the event of joint and concurrent negligence or fault of the Pre-K Site Operator and Harmony, the Pre-K Site Operator's responsibility for any costs, fine or award pursuant to this MOU, if any, shall be apportioned comparatively in accordance with the law of the State of Texas, without, however, waiving any governmental immunity available to either Harmony or the Pre-K Site Operator under Texas or federal law, and without waiving any defenses of the parties under Texas or federal law.

1.7.2 The provisions of this Section 1.7 are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity and shall apply to all obligations under Section 1.3, as well as any claims arising under this MOU.

1.7.3 Harmony must timely notify the Pre-K Site Operator of any demand, lawsuit or other notice of a claim related to this MOU; and Harmony shall be entitled to select and be represented by counsel of its choice.

1.7.4 The Pre-K Site Operator and Harmony shall consult one another prior to the settlement of any lawsuit or hearing filed in connection with any matter related to this MOU and in which Harmony and the Pre-K Site Operator are both parties.

1.7.5 The Parties acknowledge that they are subject to, and shall comply with, the applicable provisions of the Texas Tort Claims Act, as set out in the Civil Practice and Remedies Code, Section 101.001, et seq., and the remedies authorized therein regarding claims or causes of action that may be asserted by third parties for accident, injury, or death. The Pre-K Site Operator and Harmony shall promptly notify each other in writing of any claims or demands that become known against them in relation to or arising out of activities under this MOU.

1.7.6 It is expressly understood and agreed that no party to this MOU waives any immunity, defense, or other protection to which it may be entitled, under either state or federal law, as a result of its participation in this MOU nor as the result of any obligations contained in this MOU.

1.3.9 **Third-party Policy of Insurance.** The Pre-K Site Operator must provide and maintain in effect during the existence of this MOU a third-party policy of insurance of the type and with not less than the amounts indicated in Exhibit A, which is attached hereto and incorporated herein by reference. The Pre-K Site Operator must name Harmony as additional named insured on its insurance policies by endorsement or rider with waiver of subrogation. Pre-K Site Operator shall provide certificates of insurance as well as a copy of policies and riders prior to commencement of services, annually thereafter and upon request by Harmony. Failure to maintain required insurance shall constitute a material breach of this MOU and may result in immediate termination.

2 RESPONSIBILITIES OF HARMONY

2.1 **ENROLLMENT.** The Pre-K Site Operator must review and finalize the eligibility of students for enrollment in the Pre-K program for three-year old children. Harmony shall have final authority to approve and complete the official enrollment of all Eligible Students, as defined in Sec. 1.2.1 of the MOU.

2.2 **CONSIDERATION TO BE PAID BY HARMONY FOR STUDENT SERVICES.** In

consideration of the provision of the educational services under the MOU, **Harmony** shall remit _____ percent (____%) of the funds received from the TEA, limited to Average Daily Attendance (ADA) funds from the Foundation School Program (and excluding any other allotment or state funding source) to the Pre-K Site Operator in consideration for services provided. In addition, for services provided by Harmony, including but not limited to shared software usage and related support, Harmony shall invoice the Pre-K Site Operator an additional ten percent (10%) of the TEA funds. Any funds received by the Pre-K Site Operator under this Article II, are subject to repayment by the Pre-K Site Operator in the event that Harmony is required to repay such amounts to the TEA due to incorrect information provided by the Pre-K Site Operator to Harmony.

2.3 REPORTING AND ACCOUNTABILITY. For purposes of accountability under the Texas Education Code, Chapter 39, and for funding under the Foundation School Program, Chapter 48, a student who is provided prekindergarten education services in a Pre-K Site Operator shall be reported by Harmony. Harmony shall make the required reports and shall retain accountability for the student. Harmony shall be responsible for submitting required PEIMS reports to TEA. The Pre-K Site Operator must remain responsible for the provision of timely and accurate information to assist Harmony in submitting the reports as set forth in this MOU.

2.4 CAMPUS CALENDAR. The Campus shall follow the TEA-approved school calendar selected by Harmony. Pre-K Site Operator may establish its own annual calendar of events, provided, that if there is a conflict with Harmony school calendar, the Campus calendar will control. The Campus will suspend and/or close school due to inclement weather if and when the _____ is closed for such reasons.

3 SPECIAL PROGRAMS

3.1 CHILD FIND AND EVALUATION. Any students attending a Pre-K Site Operator, regardless of disability, who are experiencing difficulty in the general classroom, shall be considered for all support services available to all students. The Pre-K Site Operator must cooperate fully with Harmony in its Child Find and free appropriate public education ("FAPE") obligations to qualifying students.

3.2 ELIGIBILITY DETERMINATIONS, INDIVIDUAL EDUCATION PROGRAM ("IEP") DEVELOPMENT, INDIVIDUAL FAMILY SERVICE PLANS ("IFSP") AND PLACEMENT.

3.2.1. In order to fulfill Child Find obligations and provide FAPE, Harmony will convene an Admission, Review, and Dismissal ("ARD") Committee meeting for any student for whom a full and individual initial evaluation ("FIE") is conducted. The purpose of the ARD committee meeting will be to determine eligibility for special education and related services under the Individuals with Disabilities Education Act ("IDEA"), pursuant to 20 U.S.C. Section 1400, et seq. and Title 19 of the Texas Administrative Code Section 89.1050, and for the purpose of the development, review, and revision of each eligible student's IEP.

Each IEP shall be designed to offer an eligible student a FAPE, as defined by state and federal laws, in the least restrictive environment as determined by each student's ARD committee.

3.2.2 Harmony shall convene a Section 504 Committee meeting for any student for whom Harmony suspects may be a qualified student with a disability. The purpose of the Section 504 Committee meeting will be to determine eligibility under Section 504 of the Rehabilitation Act of 1973, pursuant to 34 C.F.R. 104.31, et seq., and for the purpose of ensuring that each eligible student's unique needs are met as adequately as the needs of students without disabilities. If developed, a "504 Plan" will be designed by the 504 Committee to offer the student a FAPE, as defined by state and federal laws, in the least restrictive environment determined by each student's 504 committee.

3.2.3 **Placement.** Each student's placement will remain at the sole discretion of that student's ARD committee or 504 committee as required by Title 19 of the Texas Administrative Code § 89.1050; 34 C.F.R. § 300.116; and 34 C.F.R. 104.34. For students that meet Pre-K Eligibility requirements specified in Section 1.2, the Pre-K Site Operator will be treated as the school the student would attend if they were nondisabled, for purposes of 34 C.F.R. 300.116(c).

3.2.4 **ARD Committee Meetings.** Harmony shall be responsible for convening all ARD committee meetings for students attending the Pre-K Site Operator, including issuing any notices required before or after an ARD committee meeting pursuant to 34 C.F.R. 300.300, 300.322, 300.503, and Title 19 of the Texas Administrative Code § 89.1045. Harmony shall provide the Pre-K Site Operator notice of the meeting at least five (5) business days in advance of the meeting, hereafter known as Proper Notice. With Proper Notice, the Pre-K Site Operator will provide data for the present levels of academic achievement and functional performance ("PLAAFP") and development of goals. Harmony will use this data to prepare the IEP draft, and will coordinate the ARD meeting, and maintain the audit file.

3.2.5 **Requests for ARD Committee Meetings by a Parent or Guardian.** In the event a parent or guardian requests an ARD committee meeting, the Pre-K Site must immediately notify Harmony's designated personnel in writing.

3.2.6 **ARD Committee Participation.** The Pre-K Site Operator must ensure that a general education teacher of the student is available to participate in required ARD committee meetings convened by Harmony during the student's period of attendance at the Pre-K Site Operator. Harmony must coordinate with the Pre-K Site Operator to schedule the ARD committee meeting, giving no less than 5 business days' notice prior to scheduling the same. Any costs related to those teachers or providers' participation in such meetings shall be borne exclusively by the Pre-K Site Operator.

3.2.7 IFSP Development. In the event that a student's parent seeks to enroll a student at Pre-K Site Operator but seeks the development of an IFSP, Harmony will convene an ARD committee meeting to consider an IFSP and, if deemed appropriate by Harmony, develop an IFSP for the student as a parentally placed private school student.

3.2.8 Indemnification—Special Education. The Pre-K Site Operator Operator shall indemnify, defend, and hold harmless Harmony from any and all claims arising from:

- 3.2.8.1 Failure to provide FAPE;
- 3.2.8.2 Failure to implement IEPs or 504 Plans;
- 3.2.8.3 Inappropriate placement decisions;
- 3.2.8.4 Violations of IDEA or Section 504.

4 EMERGENT BILINGUAL STUDENTS

4.1 If a student attending a Pre-K Site Operator has been identified as a second language learner, The Pre-K Site Operator Operator shall obtain appropriate documentation from and conduct and establish a Language Proficiency Assessment Committee ("LPAC") with regard to the student's dominant oral language, the student's level of oral proficiency, and the type, level, frequency and duration of instruction and/or support services needed. The Pre-K Site Operator Operator will provide direct instruction by certified bilingual/ESL teachers as well as appropriate translators and interpreters. The Pre-K Site Operator Operator shall:

- Conduct all required language proficiency assessments in accordance with Texas Education Agency (TEA) requirements;
- Establish and convene a Language Proficiency Assessment Committee (LPAC), or equivalent process, as required by law;
- Determine the student's dominant language, level of proficiency, and required instructional services;
- Provide appropriately certified bilingual or ESL teachers and required instructional supports;
- Maintain all required documentation and records related to LPAC determinations and services;
- Ensure full compliance with all applicable laws, regulations, and TEA guidance regarding emergent bilingual students.

The Pre-K Site Operator Operator shall be solely responsible for any compliance failures, audit findings, or liabilities arising from the provision or failure to provide services to second language learners.

Harmony shall not be responsible for the operational implementation of bilingual or ESL

services but retains the right to review documentation and intervene if necessary to ensure compliance with applicable law.

5 INDEPENDENT ASSESSMENT AND EVALUATION

5.2 Unless specific assessment procedures are required by law for the students of Harmony, the Pre-K Site Operator may develop, identify, purchase, or otherwise acquire the use of a common assessment process that the Pre-K Site Operator will use to evaluate performance and progress of students attending the Pre-K Site Operator and to evaluate the effectiveness and cost-efficiency of the Program. This assessment process will be used exclusively by the Pre-K Site Operator and the Harmony.

6 PUBLIC INFORMATION ACT & COMMUNICATIONS

6.2 The Parties agree that, if any Party hereto receives inquiries regarding or requests for documents within its possession under the Texas Public Information Act (“TPIA”) that is in any way related to the Pre-K Site Operator, Harmony, or this MOU, said Party shall, within twenty-four (24) hours of receipt by the designated officer for that Party who handles TPIA requests (“Designated Public Information Liaison”), provide notice of such requests to the other Party for the coordination of disposition of that request.

6.3 **Use of Name and Branding of Harmony.** The Pre-K Site Operator Operator shall not represent itself as a Harmony Public Schools campus or site; Use Harmony’s name, logo, or branding without prior written consent of Harmony Public Schools. Any materials, documents, publications or media that reference Harmony must receive prior written approval from Harmony, which Harmony may withhold in its sole discretion.

6.4 **Parent Communications.** The Pre-K Site Operator Operator shall ensure all communication with parents are accurate and truthful, avoid misrepresentation of services or affiliation, escalate any issues to Harmony in a prompt and appropriate manner were prudent and necessary.

7 CHANGE OF PARTICIPATION, CLOSURE OR TERMINATION

7.2 WITHDRAWAL BY HARMONY.

7.2.4 Harmony may withdraw from participation in this MOU at the end of any school year by giving prior written notice to the Pre-K Site Operator of its intent to withdraw. Such notice shall be provided no later than April 1 of the ongoing school year and shall be effective on the last school day of that school year. The last day of school shall be determined by the school calendar of Harmony.

7.2.5 Harmony shall remain responsible for all of its obligations under this MOU arising prior to the effective date.

7.2.6 The Pre-K Site Operator and Harmony agree to reasonably cooperate with one another after the effective date of its withdrawal with regard to any correction and/or completion of student records and other information, audits, and similar matters for which either party requests the assistance of the other.

7.2.7 Notwithstanding the above, Harmony may immediately terminate this MOU upon written notice in the event of:

- Student health or safety violations;
- Loss of required licensing or regulatory compliance;
- Failure to comply with DFPS, TEA, or applicable law;
- Submission of false, inaccurate, or untimely data;
- Material breach of this MOU;
- Conduct resulting in reputational harm to Harmony.

No cure period shall be required where immediate action is necessary to protect students, funding, or compliance.

7.3 TERMINATION OR CLOSURE OF PRE-K SITE OPERATOR.

7.3.4 Termination or Closure -- Circumstances Beyond the Pre-K Site Operator's Control.

- A. In the event the Pre-K Site Operator is required at any time, due to circumstances beyond its control (e.g., change of law, loss of legal status, unexpected funding cuts made by state or federal government or operation of law), to close a Pre-K Site Operator or terminate operation in its entirety, then it shall provide Harmony at least sixty (60) days' notice prior to the effective date of the closure of the Pre-K Site Operator(s) or termination of its operation.

8 GENERAL PROVISIONS

8.2 **PARTIAL INVALIDITY.** If any provision, article, section, subsection, paragraph, sentence, clause or phrase of this MOU, or the application of same to any person or set of circumstances, is for any reason held by a court of competent jurisdiction to be invalid, void, or otherwise unenforceable, or if a change in applicable law results in the same, the remaining provisions shall continue in full force and effect, unless a written amendment to this MOU is approved by the Parties.

8.3 **INTEGRATION AND COMPLETE AGREEMENT.** This MOU, together with any instruments or documents expressly incorporated herein by reference, and any attachments hereto, contains the entire agreement between the parties with respect to the subject matter hereof. No other agreement, statement, or promise made by or to any

officer, employee, official, trustee, or agent of any party that is not contained herein shall be of any force and effect. Any modifications to the terms of this MOU must be in writing and approved and signed by the Parties.

8.4 INDEPENDENT RELATIONSHIP. None of the provisions of this MOU are intended to create, nor may be deemed to create any relationship between the Parties other than that of independent entities contracting with each other to perform services and functions together that each Party is authorized by law to perform independently. Nothing in this MOU shall create an employer/employee relationship or agency relationship among or between any of the Parties, and no Party to this MOU is an employer, employee, or agent of any other party to this MOU.

8.4.4 ASSIGNMENT. Except as otherwise required herein, neither Party may sell, assign, pledge, transfer or convey any interest in this MOU nor delegate the performance of any duties hereunder, by transfer, by subcontracting or by any other means, without the prior written consent of the other Party. Services to be performed under this MOU may be subcontracted upon the written approval of Harmony's representative. As a condition of consent, if same is given, the Pre-K Site Operator shall remain liable for completion of the services outlined in this MOU in the event of default by the successor, assignee, transferee or subcontractor. Any references in this MOU to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by Harmony in accordance with this MOU. Any attempt to assign, transfer, pledge, convey or otherwise dispose of any part of, or all of its right, title, interest or duties to or under this MOU, without said written approval, shall be void, and shall confer no rights upon any third person.

8.5 CONSTRUCTION OF MOU. Unless the context requires otherwise, words used in this MOU shall be given their ordinary meaning. If a word is connected with and used with reference to a particular subject matter or is used as a word of art, the word shall have the meaning commonly used by persons working within that particular subject matter or art. Words in the present or past tense include the future tense unless otherwise provided. The singular includes the plural and the plural includes the singular unless otherwise provided. Words of one gender include both genders unless otherwise provided. The headings at the beginning of the various provisions of this MOU have been included only in order to make it easier to locate the subject covered by each provision and are not to be used in construing this MOU unless otherwise provided.

8.6 ALTERNATIVE DISPUTE RESOLUTION. The Parties expressly acknowledge and agree that nothing in this MOU is meant to waive, release or extinguish any right on the part of any Party to file a lawsuit to enforce this MOU and to seek to recover any and all damages caused by the breach of this MOU. However, PRIOR TO AND AS A CONDITION PRECEDENT TO THE INSTITUTION OF ANY SUCH LEGAL PROCEEDING, the Parties agree to attempt to resolve any dispute arising from or with regard to the interpretation or performance of this MOU through non-binding mediation presided over by a mediator mutually acceptable to the Parties involved in the dispute.

8.7 **APPLICABLE LAW.** This MOU shall be governed by, and interpreted and enforced in accordance with, the laws of the State of Texas, without regard to any provisions relating to a choice of laws. This MOU is performable in Harris County, Texas. Unless otherwise required by law, exclusive venue for any dispute or proceeding concerning the interpretation and/or enforcement of this MOU shall be in the state and federal courts of Harris County, Texas.

8.8 **NOTICE.** Any notice or communication required or permitted hereunder shall be given in writing, sent by (a) personal delivery, or (b) expedited delivery service with proof of delivery, (c) United States mail, postage prepaid, registered or certified mail, or (d) via facsimile, telegram or e-mail, address as follows:

If to Pre-K Site Operator	If to the Harmony
NAME ADDRESS EMAIL	NAME ADDRESS EMAIL

8.9 **SURVIVAL.** The terms and obligations contained in Sections 1.3 (including all subparts) and 1.7 (including all subparts) shall survive the termination or expiration of this MOU.

8.10 **LEGAL AUTHORITY.** The signatories to this MOU for Harmony and the Pre-K Site Operator each represent, warrant, assure and guarantee that they have full legal authority to execute this MOU on behalf of each party respectively, and to bind each party to all of the terms, conditions, provisions and obligations herein contained.

Harmony Public Schools

Pre-K Site Operator

By:
Title:
Date:

By:
Title:
Date: