

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (this “MOU”) is made and entered into as of May __, 2024, by and between the Newark Board of Education (“NBOE”) and Brigaid LLC, a Delaware limited liability company (“Brigaid” or “Partner”), (together with NBOE, each individually, a “Party”, and collectively, “the Parties”).

WHEREAS, the Parties desire to enter into a partnership to work toward the goal of improving food quality and increasing participation in the food service program at NBOE; and

WHEREAS, such partnership is reliant on funding to be provided by RWJBarnabas Health.

NOW THEREFORE, the Parties agree as follows:

I. Partnership. NBOE retains Brigaid to provide the services (the “Services”) described in the Scope of Work attached hereto as Exhibit A (the “Scope of Work”). Brigaid will use commercially reasonable efforts to perform the Services; *provided*, that Brigaid will be excused from performance in the event that the funding from RWJBarnabas Health that is described in the Scope of Work is not timely paid to Brigaid.

II. Access to NBOE Facilities. In order to facilitate the Services, NBOE agrees to provide reasonable access to NBOE facilities to Brigaid and its employees.

III. Compliance with Law. Brigaid will comply with all laws, regulations, municipal codes and ordinances and other workplace requirements and standards applicable to the provision of the Services including, without limitation, federal and state laws governing wages and overtime, civil rights/employment discrimination, equal employment, safety and health, verifiable security background checks, employees’ citizenship, withholdings, pensions, reports, record keeping, and campaign contributions and political finance.

IV. Insurance. Brigaid agrees to obtain and keep in force, at any time that it is providing the Services to NBOE, insurance coverage that is commensurate with the insurance coverage that Brigaid is required to obtain and keep in force by other public school districts to which Brigaid provides services. Partner shall procure and maintain for the duration of the MOU commercial insurance against claims for injuries to persons and/or damages to property which may arise from or in connection with the performance of work hereunder by Partner, or its agents, representatives, employees or subcontractors. Partner represents and warrants that all work provided hereunder will be performed by persons who are licensed, certified and experienced to furnish the Board with these services. This MOU shall be contingent upon proof of insurance coverage for the entire term, notwithstanding that the Newark Board of Education may accept any in place of coverage at the time of the execution of this agreement which may be due to expire prior to the completion date of this agreement.

The Newark Board of Education is to be added as an **additional insured** but only as our interests may appear on all Certificates of Insurance as indicated below.

MINIMUM SCOPE AND LIMITS OF INSURANCE

- A. Comprehensive General Liability Insurance including Completed Operations Coverage, covering bodily injury, personal injury and property damage. Limits of Liability shall be not less than \$1,000,000 Combined Single Limit.
- B. Workers' Compensation and Employers Liability Insurance as required by the State Law of New Jersey.
- C. Commercial Automobile Liability Insurance, with limits of liability not less than \$1,000,000 Combined Single Limit.

V. Independent Contractor. The Parties acknowledge and agree that Brigaid is an independent contractor of NBOE and that NBOE and Brigaid are not joint venturers, partners, or otherwise related to each other in any capacity as a result of this MOU. It is specifically agreed that Brigaid is not an employee of NBOE, that the employees of Brigaid performing the Services will be solely employees of Brigaid and not employees of NBOE.

VI. NBOE Authority. NBOE represents and warrants that (i) it has the full right, power and authority to enter into this Agreement, including, without limitation in connection with any applicable procurement laws, rules or regulations, and (ii) the execution of this Agreement by its representative whose signature is set forth at the end of this Agreement has been duly authorized.

VII. Entire Agreement. This MOU, including Exhibit A, constitutes the entire agreement between the Parties with respect to the Services.

VIII. New Jersey Law. The MOU shall be governed by and construed in accordance with the laws of the State of New Jersey. Any and all proceedings relating to the subject matter hereof shall be maintained in the courts sitting in New Jersey, which courts shall have exclusive jurisdiction for each purpose. The parties agree that any and all claims arising under this Agreement, or related thereto, shall be heard and determined in a court of competent jurisdiction in New Jersey.

IX. Criminal History Background Checks. Partner shall ensure that each worker(s), subcontractors(s), agent(s), intern(s) and/or representative(s) assigned to a school location or to a project involving contact with children has had a criminal history background check, and that said check indicates that no criminal history record information exists on file in either the Identification Division of the Federal Bureau of Investigation or the State Bureau of Identification which would disqualify said individual from employment or coming into contact with children pursuant to N.J.S.A. 18A:6-7.1 et seq. Partner must ensure that said background checks are performed no later than thirty (30) days after execution of this MOU. The services under this MOU shall not begin or proceed until Partner complies with the requirements of this section. Failure to ensure that criminal history background check(s) are performed within said time limitation shall be deemed a

material breach of this agreement by Partner, and as such, serves as a basis for the Newark Board of Education to immediately terminate this MOU.

X. Funding. This MOU is not a commitment of funds. No monies will be exchanged between the parties for the services rendered or received. It is expressly understood by the parties that the Board's voluntary participation in this MOU does not require any monetary payment of any kind from the Board in exchange for the services being provided by Partner, its subcontractor, agent or representative under this MOU.

XI. Confidentiality. Partner and/or its agents agree to maintain all staff and student information confidentially in accordance with all New Jersey state and federal laws and regulations, including but not limited to, the Children's Online Privacy and Protection Act ("COPPA"), the federal Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the Family Educational Rights and Privacy Act ("FERPA"), Federal Regulations (42 CFR-Part 2 and 42 CFR-Parts 160 & 164), and the N.J. Children of Substance Abusers Legislation of 1999 (N.J.S.A. 18A:40A-7.1). To the extent that Partner is permitted access to and obtains confidential individually identifiable student information/data and/or confidential staff information/data as a result of this MOU, Partner agrees that it will either return all such confidential information/data to the Board within 30 days of the end of the term of this MOU or termination date if terminated by the Board, or that Partner will destroy any such confidential information/data within 30 days of the end of the term of this MOU or termination date if terminated by the Board. To the extent that Partner has access to any Board generated materials or documents as a result of this MOU, Partner agrees that it will similarly either return any such Board generated materials or documents to the Board, or destroy them, within 30 days of the end date of this MOU. Partner acknowledges that it is not permitted to keep, retain or utilize any such Board generated materials for any other purpose other than those necessary to accomplish the work required under this MOU. To the extent that any services are performed by Partner virtually using the internet or some other remote means of electronic transmission, Partner shall ensure that any online internet providers, platforms or other remote means of electronic transmission that it may use to deliver said services are sufficiently secure and adequately safeguard student information, is compliant with all relevant state and federal laws including COPPA, and must be compatible with and comply with the technical requirements of the Board's computer network and/or must be on a Board pre-approved online platform.

XII. Indemnification. In addition to any liability or obligation to the Board that may exist under any other provision of this MOU or by statute or otherwise, Partner shall be liable to and hereby agrees to indemnify, save and hold harmless the Newark Board of Education, the Superintendent, its Board and any of its employees, agents and representatives from and against any and all damages, lawsuits, claims, liabilities and expenses, including reasonable attorney's fees and court costs, which the school district or the Board may sustain, be subject to or be caused to incur by virtue of or as a result of any settlement approved by Partner or of an adverse determination of any claim, demand, suit, proceeding, action or cause of action for any matter or claim that arises as a result of this MOU and the work performed under them including but not limited to any negligence or willful misconduct of Partner its agents, servants, employees, officers, partners, consultants or subcontractors.

XIII. Term/Termination for Convenience. The term of this MOU shall be in effect for three (3) years for the 2024-25, 2025-26 and the 2026-27 school years. Either party may terminate the service provided by Partner at any time, without penalty and for convenience, upon ten (10) days written notice to the other party.

XIV. Compliance with Board Policies and Procedures. Partner shall ensure that each worker(s), subcontractors(s), agent(s) and representative(s) assigned to a school location or to a project involving contact with children will comply with the Board’s Conduct policy as well as all local, state and federal laws and regulations, including those related to public health. Partner also agrees to abide by any safety regulations, executive orders and/or state mandates that may be issued by any state or federal agency governing and/or relating to maintaining the public health and safety including, but not limited to, the use of temperature checks, masks, gloves, vaccinations, testing and social distancing. Should any of Partner’s worker(s), subcontractors(s), agent(s) and/or representative(s) violate any Board policy or public health and safety policy, the Board retains the right to request and have Partner remove said worker(s), subcontractors(s), agent(s) and representative(s) from the school location and/or the program altogether.

XV. Non-Recruitment. During the term of this MOU, and for a period of one year following the termination of this MOU for any reason, in the absence of any prior express, written authorization from the Board Superintendent which may permit Partner to do so, Partner agrees that it will not directly or indirectly hire any of the Board's employees, or solicit any of the Board's current or recently separated employees from the past 12 months, for the purpose of hiring them or inducing them to leave their employment with the Board or offer any status as an independent contractor with Partner, nor will Partner utilize any third party to act on its behalf to try to otherwise hire any Board employee or solicit any Board employee or induce/encourage them to leave employment with the Board. Should Partner violate this provision, this MOU is subject to immediate termination by the Board upon written notice to Partner.

IN WITNESS WHEREOF, the Parties have executed this MOU as of the date set forth above.

NEWARK BOARD OF EDUCATION

BRIGAD, LLC

By: _____
Name:
Title:

By: _____
Name: Daniel Giusti
Title: Manager