AGREEMENT made this ______ day of ________, 2003, by and among THE ANDREW W. MELLON FOUNDATION, THE BOARD OF TRUSTEES OF the University of Michigan, and the other parties whose names appear on the signature page hereof (the "Agreement");

TO WITNESS THAT:

WHEREAS, The Andrew W. Mellon Foundation (the "Foundation") has compiled a database of information relating to academic institutions and persons who have attended them in connection with the Foundation's "College and Beyond" study (the "Database"); and

WHEREAS, the information contained in the Database is sensitive and confidential; and

WHEREAS, The Board of Trustees of the University of Michigan (the "Institution") has requested the Foundation to permit (the "Researcher"), and persons working under the Researcher's direct supervision who have agreed to be bound hereby (the "Authorized Persons") to use the Database for the purpose of conducting a research project; and

WHEREAS, the research project for which the Researcher proposes to use the Database (the "Project") has been approved by an appropriate review board of the Institution and by the Foundation; and

WHEREAS, as a condition of the Foundation's agreement to permit the Researcher and the Authorized Persons to use the Database, the Institution, the Researcher and the Authorized Persons have agreed to observe the Foundation's requirements set forth herein for safeguarding and keeping confidential all information contained in or derived from the Database.

NOW, THEREFORE, in consideration of the premises and the covenants and agreements herein contained, the parties hereto agree as follows:
I. RESTRICTED INFORMATION

For all purposes of this Agreement, the term "Restricted Information" shall mean all documents or records of any kind containing information from the Database provided to the Researcher and the Authorized Persons, and all documents or records of any kind containing information derived therefrom, other than material approved for release in accordance with Article IV of this Agreement.

II. USE OF RESTRICTED INFORMATION

Restricted Information shall be used only by the Researcher and the Authorized Persons, and only for the purpose of conducting the Project at the Institution or another location approved by the Institution. Upon the completion or discontinuance of the Project, or upon any failure to comply with the terms of this Agreement by the Institution, the Researcher or any Authorized Person, the Researcher shall promptly deliver to the Foundation (or at the Foundation's direction, shall destroy) all Restricted Information, and shall perform any and all necessary acts (including without limitation erasing files containing Restricted Information from computer hard drives) such that no record or file whatsoever (electronic or otherwise) containing Restricted Information shall be retained by the Researcher, the Authorized Persons or the Institution.

III. SECURITY OF RESTRICTED INFORMATION

1. The Researcher and the Authorized Persons shall not divulge, publish, or otherwise disclose, orally or in writing, Restricted Information, in whole or in part, except as permitted under Article IV hereof or as otherwise permitted in writing by the Foundation.

2. All work on the Project involving Restricted Information shall be performed only at the facilities of the Institution or another location approved by the Institution. The Researcher and the Authorized Persons shall not remove any hardcopy, tape, compact disk, diskette or other media containing Restricted Information from the Institution or other location approved by the Foundation (except to another location approved by the Institution) for any reason without the approval of the Foundation.
3. The Institution, the Researcher and the Authorized Persons shall implement safeguards to prevent unauthorized access, by electronic or physical means, to Restricted Information. Restricted Information may be copied to and stored on a network server, a mainframe computer, or the storage device of a personal computer or other device, provided that it is protected by password or other secure method to prevent unauthorized access.

4. The Researcher and the Authorized Persons shall not use Restricted Information in any way to identify individual persons or academic institutions or small groups of individual persons or academic persons (e.g., by conducting statistical analyses based on small "cell" sizes, or by cross-tabulating the same data by different variables). If an individual person or academic institution or small group of individual persons or academic institutions is identified for any reason, the Researcher and the Authorized Persons shall make no use of this knowledge and shall hold the identity of the individual person or academic institution or group of individuals or academic institutions in confidence.

5. The Institution, the Researcher and the Authorized Persons agree to notify the Foundation immediately upon (i) the discovery of any breach or suspected breach of security of Restricted Information, (ii) any unauthorized disclosure of Restricted Information, or (iii) the receipt of any legal, investigatory, or other demand for access to Restricted Information in any form.

6. The Institution, the Researcher and the Authorized Persons shall allow employees or agents of the Foundation access to the place work using Restricted Information is performed, if requested, for the purpose of reviewing compliance with this Agreement.

7. The Institution, the Researcher and the Authorized Persons shall not, without the prior approval of the Foundation, attempt to contact any individual persons or academic institutions about whom information is contained in the Database for purposes related to the Project.
IV. RELEASE OF RESTRICTED INFORMATION

1. No Restricted Information shall be released without the explicit and written permission of the Foundation. When the Researcher desires to release material containing Restricted Information, the Researcher shall first submit the material containing Restricted Information to the Foundation for its review. The sole purpose of the Foundation’s review of such material will be to ensure that the confidentiality of information relating to persons and institutions contained in the Database has been preserved. No Restricted Information may be released unless the Foundation is satisfied in its sole and absolute discretion that the material adequately protects the confidentiality of individual persons and academic institutions.

2. Without limiting the generality of Paragraph 1 of this Article, the Researcher shall not release institution-specific data (such as geographical location, history, level of athletic competition, and selectivity) which could, in conjunction with publicly available data, result in the identification of an individual academic institution, or otherwise release Restricted information in such a way as to inadvertently disclose the identity of individual persons or academic institutions or small groups of individual persons or academic institutions.

3. The Foundation shall review any material the Researcher proposes to release within thirty (30) days from the date on which the Researcher submit the material to the Foundation for its review. If the Foundation does not notify the Researcher or the Institution in writing within such thirty-day period that the Foundation objects to the release of the submitted material, the Researcher shall release the submitted material after such period. The Institution shall not be required to pay royalties or other fees to the Foundation with respect to released material.

4. Notwithstanding Paragraphs 1-3 of this Article, it shall not be considered a violation of this Agreement for the Researcher to discuss methodological problems or general attributes of data or findings with professional colleagues, or to have professional colleagues review drafts of research findings, provided such discussions or reviews do not in any way violate the confidentiality of the individual persons and institutions in the Database.
V. RESPONSIBILITY AND INJUNCTIVE RELIEF

The Institution shall be responsible for any damages, loss, cost or liability (including reasonable attorney's fees and the cost of enforcing this indemnity) arising out of or resulting from any unauthorized use or disclosure of Restricted Information by the Institution, the Researcher or the Authorized Persons, or from any other violation of this Agreement. In addition, because money damages would be inadequate for any breach of this Agreement, in the event of any breach or threatened breach of this Agreement by the Institution, the Researcher or the Authorized Persons, the Foundation shall also be entitled, without the requirement of posting a bond or other security, to equitable relief, including injunctive relief and specific performance. Such remedies shall not be the exclusive remedies for any breach of this Agreement but will be in addition to all other remedies available at law or equity to the Foundation.

VI. MISCELLANEOUS

1. This Agreement may be executed in several counterparts, each of which shall constitute an original, but all of which shall constitute one and the same agreement.

2. This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof and supercedes any prior written or oral promises. This Agreement may not be changed, amended or altered orally except in a writing agreed to by the parties hereto.