

NOTE: THIS AGREEMENT IS AN EXAMPLE ONLY. THE ACTUAL AGREEMENT SUBMITTED FOR YOUR FIRM'S SIGNATURE MAY VARY BASED UPON THE PARTICULARS OF THE SPECIFIC RFP/RFQ PACKAGE.

AGREEMENT

THIS AGREEMENT dated the _____ day of _____, 20____, is by and between the **STAMFORD BOARD OF EDUCATION** (hereinafter "SBOE"), a public board of education organized and existing pursuant to the laws of the State of Connecticut with a principal place of business located at Government Center, 5th Floor, 888 Washington Boulevard, Stamford, Connecticut, acting herein by _____, its duly authorized Superintendent, and _____ (hereinafter "Contractor"), a _____ with a principal place of business located at _____, acting herein by _____, its duly authorized _____.

WITNESSETH

WHEREAS, SBOE solicited Request for Proposals No. _____ for _____;

WHEREAS, Contractor submitted a proposal in response to said Request for Proposals; and

WHEREAS, SBOE has accepted Contractor's proposal for said work pursuant to the terms hereinafter set forth;

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

- 1. INCORPORATION OF RECITALS.** The above terms and conditions are contractual in nature and not merely recitals and are hereby incorporated into this Agreement;
- 2. SCOPE OF SERVICES.** The scope of services shall consist of those duties, functions, obligations, responsibilities, and tasks set forth in (a) SBOE's Request for Proposals No. _____, attached hereto as Exhibit A and hereby made a part hereof as if fully set forth herein and (b) Contractor's Proposal, attached hereto as Exhibit B and hereby also made a part hereof as if fully set forth herein;
- 3. COMPENSATION.** Contractor's compensation for the services set forth in Section 2, above, shall be based on the Contractor's Proposal attached hereto as Exhibit B;
- 4. TERM.** The Term of this Agreement shall commence upon the execution of this Agreement by both parties and shall terminate ____ (_____) year(s) thereafter. The Term may be extended for _____, additional year(s) at the sole option of SBOE.

5. REVIEW OF WORK. Contractor shall permit SBOE, its agents and/or employees to review, at any time, all work performed pursuant to the terms of this Agreement at any stage of the work.

6. INDEMNIFICATION. Contractor shall indemnify and hold harmless The City of Stamford and SBOE, their officers, agents and employees, from loss, cost, damage, injury, liability, and claim for injury to or death of a person, including employees of Contractor or loss of or damage to property, resulting directly or indirectly from Contractor's negligent performance pursuant to this Agreement, or by any omission to perform some duty imposed by law or this Agreement upon Contractor, its officers, agents and employees. The foregoing indemnity shall include reasonable attorneys' fees and costs of suit, if applicable, and shall not be limited by reason of any insurance coverage required pursuant to this Agreement;

7. ASSIGNMENT. Contractor shall not assign or transfer any portion of the work set forth herein without the prior written approval of SBOE;

8. BOOKS AND RECORDS. Contractor shall maintain or cause to be maintained all records, books, or other documents relative to charges, costs, expenses, fees, alleged breaches of this Agreement, settlement of claims, or any other matter pertaining to the Contractor's demand for compensation by SBOE for a period of not less than three (3) years from the date of the final payment for work performed under this Agreement;

9. INSURANCE. Contractor shall procure, at its sole expense, and maintain for the entire term of this Agreement, including any extensions, insurance coverages as set forth in the Provisions for Required Insurance as set forth in SBOE's Request for Proposals No. _____, attached hereto as Exhibit A;

10. REPRESENTATIONS. Contractor represents that it is qualified in relation to the work to be performed under this Agreement and further represents that it has the requisite skill, expertise, and knowledge necessary to perform the scope of services required under the terms of this Agreement, including any supplementary work. Contractor hereby acknowledges that SBOE has relied upon said representations in entering into this Agreement;

11. INTERPRETATION. Contractor agrees that in the event of any ambiguity between the terms of this Agreement, SBOE's Request for Proposals (Exhibit A) and Contractor's Proposal (Exhibit B), SBOE, in its sole discretion, shall determine the terms and/or document(s) which shall prevail and take precedence;

12. SUBCONTRACTING. Contractor is prohibited from subcontracting this Agreement or any part of it unless SBOE first approves such subcontracting in writing and approves, in writing, the specific subcontractor(s) Contractor proposes to be used. An agreement made in violation of this provision shall confer no rights on any party and shall be null and void. Should SBOE approve of a proposed subcontractor, Contractor agrees to comply with The City of Stamford's Code of Ordinances § 103.4;

13. CONTRACT EXTRAS. Pursuant to The City of Stamford's Code of Ordinances, Section 23-18.4 C., it is specifically understood and agreed by Contractor that all contract extras regarding this Agreement shall be governed by The City of Stamford's Charter and/or Code of Ordinances. SBOE shall not be liable for payment of any additional costs, except as otherwise expressly set forth in this Agreement, unless the provisions of The City of Stamford's Charter and/or Code of Ordinances are fully complied with. The City of Stamford's Charter and Code of Ordinances can be found at www.municode.com;

14. NON-APPROPRIATION. Contractor acknowledges that SBOE is a public board of education, that SBOE's obligation to make payments under this Agreement is contingent upon the appropriation by SBOE of funds sufficient for such purposes for each budget year in which the Agreement is in effect, and that SBOE may terminate this Agreement by way of written notice to Contractor if sufficient funds to prove for the payment(s) hereunder are not so appropriated;

15. COMPLIANCE WITH CITY OF STAMFORD CODE PROVISIONS. Contractor hereby agrees to fully comply with the requirements of The City of Stamford's Code of Ordinances, Sections 103-1 through 103-10, regarding contractors in general. Failure to so comply shall constitute a material breach of the terms of this Agreement, for which SBOE may unilaterally terminate this Agreement by way of written notice to Contractor. The provisions of the City of Stamford Code of Ordinances can be found at www.municode.com ;

16. TERMINATION.

- A. **TERMINATION FOR CAUSE.** If, through any cause, Contractor shall fail to fulfill, in a timely and proper manner, its obligations under this Agreement, or if Contractor shall violate any laws or any of the covenants, agreements, or stipulations of this Agreement, SBOE shall thereupon have the right to terminate this Agreement for cause by giving written notice to Contractor of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. In that event, all finished or unfinished reports, documents, data, studies, photographs, or other material prepared by Contractor pursuant to its performance under this Agreement shall, at the option of SBOE, become SBOE's property. Contractor shall be entitled to receive just and equitable compensation for any satisfactory services completed up to the effective date of termination. Contractor shall not be responsible for any claims resulting from SBOE's use of the documents on another project or changes made to the documents without Contractor's express written permission;

The term "cause" includes, without limitation the following:

- 1) If Contractor furnished any statement, representation, warranty or certification in connection with this Agreement, which is materially false, deceptive, incorrect, or incomplete;

- 2) If Contractor fails to perform to SBOE's satisfaction any material requirement of this Agreement or is in violation of any specific provision thereof or any State or Federal law or requirement; or
- 3) If SBOE reasonably determines that satisfactory performance of this Agreement is substantially endangered or can reasonably anticipate such an occurrence or default.

Should SBOE terminate this Agreement for cause, Contractor shall not be relieved of liability to SBOE for any damages sustained by SBOE by virtue of any breach of this Agreement by Contractor and SBOE may withhold any payment to Contractor for the purposes of setoff until such time as the exact amount of damages due SBOE from Contractor is determined.

B. **TERMINATION FOR CONVENIENCE.** SBOE may terminate this Agreement at any time SBOE determines that the purposes of the distribution of monies under the Agreement would no longer be served by the services provided. SBOE shall effect such termination by giving written notice of termination to Contractor and specifying the effective date thereof, at least twenty (20) days before the effective date of such termination. In that event, all finished or unfinished documents and other materials as described Subsection A shall, at the option of SBOE, become property of SBOE. If the Agreement is terminated by SBOE as provided herein, Contractor shall be paid an amount which bears the same ratio to the total compensation as the services actually and satisfactorily performed to the effective date of termination bear to the total services of Contractor pursuant to the terms of the Agreement, less payments of compensation previously made, and subject to SBOE's right of set off for any damages pursuant to the terms of the Agreement;

17. DISPUTE RESOLUTION.

A. **EXECUTIVE MEETING.** The parties shall endeavor to resolve all claims, disputes, or other matters in controversy arising out of or related to this Agreement ("Claims") through a meeting of the chief executives of each party, or their respective designees ("Executive Meeting").

A request for an Executive Meeting shall be made by a party in writing and delivered to the other party. The request may be made concurrently with the filing of a non-binding mediation as set forth herein. The Executive Meeting shall be a condition precedent to mediation unless 30 days have passed after the Executive Meeting has been requested with no meeting having been held.

The Executive Meeting shall be held in the place where the Project is located, unless another location is mutually agreed upon.

- B. **MEDIATION.** Any Claim subject to, but not resolved by, an Executive Meeting shall be subject to mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its applicable rules and procedures in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation.

The request may be made concurrently with the filing of arbitration but, in such event, mediation shall proceed in advance of arbitration, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

- C. **ARBITRATION.** Any Claim subject to, but not resolved by, mediation shall, in the sole discretion of SBOE, be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its applicable rules and procedures in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law.

Any judgment will be entered or court action will be brought in a court of competent jurisdiction within the State of Connecticut.

- D. **PERFORMANCE DURING DISPUTE.** Unless otherwise directed by SBOE, Contractor shall continue performance under this Agreement while matters in dispute are being resolved.

- E. CLAIMS FOR DAMAGES. Should either party to this Agreement suffer injury or damage to person or property because of any act or omission of the other party or of any of its employees, agents or others for whose acts it is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

18. GOVERNING LAWS. This Agreement shall be governed by the laws of the State of Connecticut and the parties hereby waive any choice of law provisions contained therein;

19. STUDENT DATA PRIVACY. To effectuate the transfer of data subject to FERPA, if applicable, the Contractor agrees and acknowledges as follows:

- A. The Contractor shall ensure compliance in all respects with the provisions of the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g, (“FERPA”) including any amendments or other relevant provisions of federal law, as well as all requirements of Chapter 99 of Title 34 of the Code of Federal Regulations. Nothing in this Agreement may be construed to allow either party to maintain, use, disclose or share student information in a manner not allowed by federal or state law or regulation.
- B. Student information, student records and student-generated content, as those terms are defined pursuant to Connecticut General Statutes §10-234aa (collectively “student data”), are not the property or under the control of the Contractor;
- C. The Board shall have access to and may request the deletion of student data in the possession of the Contractor except when such data is (A) otherwise prohibited from deletion or required to be retained under state or federal law, or (B) stored as a copy as part of a disaster recovery storage system and that is (i) inaccessible to the public, and (ii) unable to be used in the normal course of business by the Contractor, provided the Board may request the deletion of any such student data if such copy has been used by the operator to repopulate accessible data following a disaster recovery; at any time by notifying Contractor, in writing, of such request and identifying the information to be deleted;
- D. The Contractor shall not use student data for any purposes other than those authorized pursuant to this Agreement with the Board;
- E. The procedures by which a student, parent or legal guardian of a student may review personally identifiable information contained in student data and correct erroneous information, if any, in such student record is set forth in Board Policy, with specific reference to Policy 5115 (as may be amended from time to time) and its associated Regulation(s), a copy of which may be found at <http://www.stamfordpublicschools.org/district/board-education/pages/policy-handbook>.

- F. The Contractor shall take actions designed to ensure the security and confidentiality of student data;
- G. The Contractor shall adhere to the following procedures to notify the Board in the event that there has been an unauthorized release, disclosure or acquisition of student data:
 - 1) Upon the discovery of a breach of security that results in the unauthorized release, disclosure or acquisition of student information, excluding any directory information contained in such student information, the Contractor shall notify, without unreasonable delay, but not more than thirty days after such discovery, the Board in writing through the Superintendent of Schools of such breach of security. During such thirty-day period, the Contractor may (A) conduct an investigation to determine the nature and scope of such unauthorized release, disclosure or acquisition, and the identity of the students whose student information is involved in such unauthorized release, disclosure or acquisition, or (B) restore the reasonable integrity of the Contractor's data system.
 - 2) Upon the discovery of a breach of security that results in the unauthorized release, disclosure or acquisition of directory information, student records or student-generated content, the Contractor shall notify, without unreasonable delay, but not more than sixty days after such discovery, the Board of such breach of security. During such sixty-day period, the Contractor may (A) conduct an investigation to determine the nature and scope of such unauthorized release, disclosure or acquisition, and the identity of the students whose directory information, student records or student-generated content is involved in such unauthorized release, disclosure or acquisition, or (B) restore the reasonable integrity of the Contractor's data system.
- H. Student data shall not be retained or available to the Contractor upon expiration of the Agreement between the Contractor and the Board, except a student, parent or legal guardian of a student may choose to independently establish or maintain an electronic account with the Contractor after the expiration of such Agreement for the purpose of storing student-generated content.
- I. All student-generated content shall be the property of the student or the parent or legal guardian of the student.
- J. The Contractor shall implement and maintain security procedures and practices designed to protect student information, student records and student-generated content from unauthorized access, destruction, use, modification or disclosure that, based on the sensitivity of the data and the risk from unauthorized access, (1)

use technologies and methodologies that are consistent with the guidance issued pursuant to section 13402(h)(2) of Public Law 111-5, as amended from time to time, (2) maintain technical safeguards as it relates to the possession of student records in a manner consistent with the provisions of 45 CFR 164. 312, as amended from time to time, and (3) otherwise meet or exceed industry standards.

- K. The Contractor shall not use (1) student data for any purposes other than those authorized pursuant to this Agreement, or (2) personally identifiable information contained in student data to engage in targeted advertising.
- L. The parties agree that this Agreement controls over any inconsistent terms of conditions contained within any other agreement entered into by the parties concerning student data
- M. If a court of competent jurisdiction finds that any provision of this Agreement is invalid, illegal or unenforceable, in any respect, then such invalidity, illegality or unenforceability shall not affect or impair any other remaining provisions of this Agreement, which shall remain in full force and effect. Moreover, if a court of competent jurisdiction finds that any provision of this Agreement is excessively broad, then such provision shall be construed by limiting it so as to be enforceable to the extent compatible with applicable law.

20. GIFTS: During the term of this Agreement, including any extensions, Contractor shall refrain from making gifts of money, goods, real or personal property or services to SBOE or The City of Stamford or any appointed or elected official or employee of their Boards, Commissions, Departments, Agencies or Authorities. All references to Contractor shall include its members, officers, directors, employees, and owners of more than 5% equity in Contractor. Violation of this provision shall constitute a material breach of this Agreement, for which this Agreement may be summarily terminated.

21. CODE OF ETHICS. Contractor shall comply with the Stamford Municipal Code of Ethics as codified in Chapter 19 of the City of Stamford Code of Ordinances and shall be considered an “employee”, as defined in that Chapter, strictly for the purpose of compliance thereto. Contractor is prohibited from using its status as a contractor to The City of Stamford or SBOE to derive any interest(s) or benefit(s) from other individuals or organizations.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK. SIGNATURE PAGE FOLLOWS.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written. Signed, sealed and delivered in the presence of:

STAMFORD BOARD OF EDUCATION

Print:
Witness

By: _____
_____, Superintendent

Date: _____

Print:
Witness

CONTRACTOR

Print:
Witness

By: _____

Date: _____

Print:
Witness

Approved as to Form:

Approved as to Insurance:

Asst. Corp. Counsel

Risk Manager

Date: _____

Date: _____

SAMPLE