

Professional Services Agreement

1. Acceptance. This Contract is conditional upon, and can be accepted only upon, the terms and conditions specified in this Contract. If Consultant has previously proposed or subsequently proposes any terms that add to, vary from, or conflict with the terms of this Contract, Board hereby objects to and rejects such terms. Other than as specifically provided in any separate written agreement between Consultant and Board, these terms and conditions may not be altered, supplemented, or amended without the specific written consent of both Consultant and Board. These terms and conditions constitute the final, complete and exclusive agreement between the parties concerning the purchase of Services from Consultant, and all matters related to this purchase. These terms and conditions supercede all previous and contemporaneous proposals, negotiations, warranties, promises and any other communications between the parties, oral and written, concerning the purchase of Products from Consultant.
2. Payment Terms. Payment to Consultant is subject to compliance with the following requirements:
 - A. Consultant is only entitled to reimbursement for reasonable and actual expenses which are incurred, in accordance with this Contract. Consultant will only be paid for services actually provided in accordance with this contract. In no event shall the total amount to be paid to Consultant exceed the total amount stated in the agreed upon Budget.
 - B. Consultant must submit documentation, along with its invoice for payment, justifying all expenses and costs for which it is seeking reimbursement. Such documentation must also include the number of actual hours worked by its staff, the name of the staff person providing services and, a description of the services provided by each such member of its staff. Payment to consultant is conditioned upon submission of such documentation and the submission of any other documentation as may be requested by the Board or its representatives.
3. Accounts and Records.
 - A. Consultant shall retain, and upon request, make available to the Board, all accounts and records relating to this Agreement for at least three years after final payment is made and all other pending matters are concluded. The Board reserves the right to audit and inspect all accounts and records maintained by Consultant in connection with this Agreement.
 - B. Public and private nonprofit contractors are required to comply with the requirements of 2 CFR Part 200. The nonprofit contractor is responsible for having an audit performed in accordance with and when required by Office of Management and Budget 2 CFR Part 200 and for sending a copy of the report issued as a result of the audit to the Board within 30 days of the audit report's issuance. Furthermore, the Board must approve any independent auditor engaged to assure that the auditor is qualified and meets Government Accounting Office standards as well as to evaluate the scope of the

audit engagement to assure it complies with OMB requirements. **(Not Applicable unless Federal funds are used in the purchase of goods and/or services).**

4. Independent Contractor. The Board and Consultant recognize and agree that Consultant is an independent contractor, and that neither Consultant nor any of Consultant's employees or agents is an employee of the Board or of the Mayor and City Council of Baltimore (the "City").
5. Subcontract or Assignment. Consultant shall give full personal attention to the faithful execution of this Agreement. Consultant shall not subcontract or assign any part of this Agreement without the prior written consent of the Board.
6. Employment. Within one (1) year following separation from the Board or City Schools, a former employee, official or Board member may not assist or represent Consultant other than the Board or City Schools for compensation in any case, controversy, dispute, contract or other specific matter involving the Board or City Schools if that case, controversy, dispute, contract or other specific matter is one in which the former employee, official or Board member significantly participated as an employee, official or Board member of the Board or City Schools. Failure to adhere to or comply with this requirement constitutes a material breach in which the Board reserves the right to impose sanctions, up to and including suspension of this Agreement, withholding of payment, rescission or termination of this Agreement.
7. Indemnification. The Consultant shall defend, indemnify, and hold harmless the Mayor and City Counsel of Baltimore (the "City"), the Board and their respective elected/appointed officials, employees, departments, agencies, agents and volunteers from any and all claims, demands, suits, and actions, including attorney's fees, litigation expenses and court costs, connected therewith, brought against the City, the Board and their respective elected/appointed officials, employees, departments, agencies, agents, and volunteers, arising as a result of any direct or indirect, willful, or negligent act or omission of the Consultant or its employees, agents, or volunteers.
8. Insurance.
(If the total amount of this agreement is under \$25,000.00, these insurance requirements do not apply).
 - A. The Consultant shall procure and keep in force the following required insurance coverage:
 1. Commercial General Liability Insurance at limits of not less than One Million Dollars (\$1,000,000) per occurrence for claims arising out of bodily injuries or death, and property damages, subject to a minimum limit of Three Million Dollars (\$3,000,000) aggregate. Such insurance shall include contractual liability insurance.

2. Business Automobile Liability at limits of not less than One Million Dollars (\$1,000,000) per occurrence for all claims arising out of bodily injuries or death and property damages. The insurance shall apply to any owned, non-owned, leased, or hired automobiles used in the performance of this Agreement.
 3. Workers' Compensation coverage as required by the State of Maryland, as well as any similar coverage required for this work by applicable Federal or "Other States" State Law.
 4. Professional Liability, Errors and Omissions Insurance at a limit of not less than One Million Dollars (\$1,000,000.00) in the event the service delivered pursuant to this Agreement, either directly or indirectly, involves or requires professional services. "Professional Services" for the purpose of this Agreement shall mean any services provided by a licensed, certified or otherwise documented professional.
- B. The City, the Board, and their respective elected/appointed officials, employees, departments, agencies, agents and volunteers shall be covered, by endorsement, as additional insured as respect to liability arising out of activities performed or to be performed by or on behalf of the Consultant in connection with this Agreement.
- C. The Consultant's insurance shall apply separately to each insured against whom a claim is made and/or lawsuit brought.
- D. The Consultant's insurance coverage shall be primary. Any insurance and/or self-insured program maintained by the City or the Board and their respective elected/appointed officials, employees, departments, agencies, agents and volunteers, shall not contribute with the Consultant's insurance or benefit the Consultant in any way. The Consultant acknowledges that it is not entitled to any sovereign immunity rights and protections that may be available to the City or the Board pursuant to § 5-518, Cts. & Jud. Proc., Md. Code.
- E. Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits, except by the reduction of the applicable aggregate limit by claims paid, until after forty-five (45) days prior written notice has been given to the City and the Board. There will be an exception for non- payment of premium, which is ten (10) days' notice of cancellation.
- F. Insurance is to be placed with insurers with a Best's rating of no less than A:VII, or, if not rated with Best's with minimum surpluses the equivalent of Bests' surplus size VII and must be licensed/approved to do business in the State of Maryland.
- G. The Consultant shall furnish the City and the Board's Director of Materials, a "Certificate of Insurance" with a copy of the additional insured endorsement as verification that coverage is in force. The City and the Board reserve the right to require complete copies of Insurance policies at any time.

- H. Failure to obtain insurance coverage as required or failure to furnish Certificate(s) of Insurance as required may render this Agreement null and void; provided, however, that no act or omission of the City or the Board shall in any way limit modify or affect the obligations of Consultant under any provision of this Agreement.
9. Responsibility for payment of taxes. Consultant shall be responsible for all federal and/or state tax, and Social Security liability that may result from the performance of and compensation for these services. The Board assumes no responsibility for the payment of any compensation, wages, benefits, or taxes by, or on behalf of Consultant, its employees and/or others by reason of this Agreement. Consultant shall defend, indemnify and save harmless the Board, the City and the State of Maryland, (when any funds for this Agreement are provided by the State of Maryland or the Federal Government), their officials, officers, agents, and employees from and against any and all claims, costs, and/or losses whatsoever occurring or resulting from:
- A. Consultant's failure to pay any such compensation, wages, benefits, or taxes; and/or
 - B. The supplying to Consultant of work, services, materials, or supplies in connection with or in support of the performance of this Agreement.
10. Criminal Background Check. It is the responsibility of the Consultant to make certain that its employees, agents, volunteers, and contractors who have contact with students be fingerprinted and have a background check in compliance with Title 5, Subtitle 5, Part VI, of the Family Law Article of the Maryland Code.
- A. Employees Having Direct Contact with Students:
Any and all current and future employees of Consultant who have direct contact with students must have a criminal background check and fingerprinting conducted by the Human Resources Department of the City Schools before beginning work in a City School. Previous background checks will not be accepted. The fee for the background check shall be paid by the Consultant by check or money order at the time the fingerprinting is performed. No employee can begin work in a City School until results have been received. Violation of this provision may result in Termination for Cause.
 - B. Employees Do Not Have Direct Contact With Students:
Employees of Consultant who will be placed in a City School but will not have direct contact with students must have on record a Criminal Justice Information Service (CJIS) and NCIC background checks. Copies of the background checks must be forwarded to the Contract Monitor before services can commence. Every two years the Consultant shall submit copies of background checks to the Contract Monitor. Should any employee be flagged during the term of this agreement, the Consultant shall contact the Contract Monitor within 24 hours of notification. Violation of this provision may result in Termination for Cause.

C. Employment of Sex Offenders:

The Consultant shall at all times be compliant with the Criminal Procedure Article of Annotated Code of Maryland Section 11-722 that states that a person who enters a contract with a County Board of Education or a nonpublic school may not knowingly employ an individual to work at a school if the individual is a registered sex offender. If a registered sex offender is employed by the Consultant, the Consultant is prohibited from assigning that employee to perform management, delivery, installation, repair, construction or any other type of services on any City Schools property. Violation of this provision may result in Termination for Cause.

12. Student's Education / Medical / Psychological Records / Consents. Consultant and its employees, agents, volunteers and contractors shall maintain the confidentiality of all medical, psychological, and student records in compliance with federal and state laws. Specifically, Consultant acknowledges its responsibility to ensure compliance with the confidentiality provisions of the Family Educational Rights and Privacy Act (20 USC §1232g; 34 CFR §99); The Health Insurance Portability and Accountability Act of 1996 (HIPAA) 45 CFR Part 160 and Part 164, Subparts A and E, and Code of Maryland Regulations §13A.08, with respect to school records provided by the Board, if applicable. Additionally, Consultant shall procure from the parent or guardian of each student receiving services hereunder a written consent in favor of Consultant and the Board for the mutual disclosure of such records by and among the Board, Consultant and Consultant's employees, agents, volunteers and contractors. Any confidential information provided by City Schools to Consultant, including all copies thereof must be used by Consultant only as permitted by this Agreement and only for the purposes herein described. Such information shall not be disseminated or disclosed to any third party, not a party to this Agreement, without the express written consent of City Schools, and can only be done so in accordance with applicable privacy laws Consultant agrees to return to City Schools all such information within 15 days of the expiration of termination of this Agreement; or with the express consent of City Schools, Consultant may destroy such information within 15 days of termination or expiration of this Agreement, certifying to City Schools in writing that the information has been destroyed.

Protection of Student Records:

Consultant and its affiliates or subcontractors, at their own expense, have a duty to and shall protect from disclosure any and all Student Records which they come to possess or control, wherever and however stored or maintained, in a commercially reasonable manner in accordance with current industry standards.

Each Consultant or its affiliates or subcontractors shall implement and maintain a comprehensive data - security program for the protection of Student Records whether the Records are stored electronically and/or in hard copy. The safeguards contained in such program shall be consistent with and comply with the safeguards for protection of Student Records, and information of a similar character, as set forth in all applicable federal and state law and written policy of the City Schools or Maryland State Board of Education ("MSBE") concerning the confidentiality of Student Records. Such data-security program shall include, but not be limited to, the following:

- A. A security policy for employees related to the storage, access and transportation of data containing Student Records;
- B. Reasonable restrictions on access to records containing Student Records, including access to any locked storage where such records are kept;
- C. A process for reviewing policies and security measures at least annually;
- D. Creating secure access controls to Student Records, including but not limited to passwords; and
- E. Encrypting of Student Records that are stored on laptops, portable devices or being transmitted electronically.

The Consultant and its affiliates shall notify City Schools as soon as practical, but no later than twenty-four (24) hours, after they become aware of or suspect that any Student Records which Consultant or its affiliates possess or control have been subject to a Student Records breach.

The Consultant shall incorporate the requirements of this Section in all subcontracts requiring each of its affiliate to safeguard Student Records in the same manner as provided for in this Section.

Nothing in this Section shall supersede in any manner Consultant's or its affiliate's obligations pursuant to HIPAA, FERPA or the provisions of this Contract concerning the obligations of the Partner as a service provider to City Schools.

- 13. Compliance with Laws. Consultant shall comply with all federal, state, and local laws, statutes, ordinances, rules, and regulations applicable to the services to be rendered under this Agreement. Consultant's violation of any of these laws, statutes, ordinances, rules, or regulations constitutes a breach of this Agreement and entitles the Board to terminate this Agreement immediately upon delivery of written notice of termination to Consultant.
- 14. Non-Discrimination. Consultant shall not, in its conduct and performance under this Agreement, discriminate against any employee, applicant for employment, independent professional or any other person because of race, color, religious creed, ancestry, national origin, age, sex, sexual orientation, sexual identity, disability or handicap. Consultant shall comply with all state and federal laws prohibiting discrimination in hiring or employment opportunities. In the event of the Consultant's noncompliance with this non-discrimination clause or with any such laws, City Schools may be terminated or suspended this agreement in whole or in part, and the Consultant may be declared temporarily ineligible for further contracts. City Schools reserves the right to impose any and all other legal sanctions and remedies available for violating this clause.
- 15. MBE/WBE Compliance. Consultant shall comply with the requirements of Article 5, Subtitle 28 et seq. of the Baltimore City Code, as amended from time to time, pertaining to Minority and Women's Business Enterprises. (MBE/WBE Requirements). The enforcement and interpretation of the MBE/WBE Requirements is vested in the Board. The

Board may grant such exceptions and waivers of the MBE/WBE Requirements as it deems is in the best interest of the Baltimore City Public School System. Consultant's failure to comply fully with these requirements constitutes a breach of this Agreement, and entitles the Board, at its option, to terminate this Agreement immediately upon delivery of written notice of termination to Consultant.

A consultant who fails to comply with any provisions pertaining to the above MBE/WBE requirements, including but not limited to the failure to provide required paperwork to demonstrate compliance with MBE/WBE requirements, is subject to any and all of the following penalties: (1) suspension of contract; (2) withholding of funds; (3) rescission of contract based on material breach; (4) refusal to accept a bid; (5) disqualification (debarment) of a bidder, contractor, or other business from eligibility for providing goods or services to the board for a period not to exceed 2 years; and (6) payment of liquidated damages.

City Schools and Consultant acknowledge and agree that the Program will be damaged (including, but not limited to, loss of goodwill, detrimental impact on economic development, and diversion of internal staff resources) if Consultant does not comply with the requirements of the MBE Program and related contract provisions. Because such damages would be difficult, if not impossible, to ascertain with precision, Consultant agrees that upon a determination by City Schools that Consultant failed to comply with one or more of the specified requirements of the MBE Program or related contract provisions, Consultant shall pay liquidated damages to City Schools calculated in accordance with the rates set forth below. Consultant expressly agrees that City Schools may withhold payment on any invoices as a set-off against liquidated damages owed. Consultant further agrees that for each specified violation, the agreed upon liquidated damages are reasonably proximate to the loss City Schools is anticipated to incur as a result of such violation. City Schools may waive the liquidated damages payable under this section if City Schools determines, in City Schools' sole discretion, that Consultant has made good faith efforts to comply with the specified requirement of the MBE Program or related contract provisions or that other good cause exists for waiving the liquidated damages payable hereunder. Nothing in the foregoing sentence shall be construed as granting City Schools the option to waive liquidated damages in order to seek actual damages instead. City Schools reserves the right to terminate this Agreement and, except as expressly set forth above, exercise all other rights and remedies provided in this Agreement or by law. The rates for calculating liquidated damages shall be:

- A. Failure to submit each monthly payment report in full compliance with this paragraph of this Agreement: \$120 per day until the monthly report is submitted as required.
- B. Failure to include in its agreements with MBE subcontractors a provision requiring submission of payment reports in full compliance with the terms of this Agreement: \$1,000 per MBE subcontractor.
- C. Failure to comply with terms of this Agreement in terminating, canceling, or changing the scope of work/value of a contract with an MBE subcontractor and/or amendment of the MBE participation schedule set forth in Consultant's MBE Affidavit: the difference between the dollar value of the MBE participation

commitment on the MBE participation schedule for that specific MBE firm and the dollar value of the work actually performed by that MBE firm under this Agreement.

- D. Failure to meet Architect/Engineer/Contractor's total MBE participation goal and sub goal commitments: the difference between the dollar value of the total MBE participation commitment on the MBE participation schedule and the MBE participation actually achieved.
- E. Failure to promptly pay all undisputed amounts to a subcontractor in full compliance with the prompt payment provisions of this Agreement: \$100 per day until the undisputed amount due to the subcontractor is paid.

Payment from the board to the consultant is contingent upon compliance with and submission of the required paperwork pertaining to the above MBE/WBE requirements. **(Not Applicable if there are no MBE/WBE requirements associated with the contract).**

- 16. Termination for Convenience. The Board or its designee shall have the right in its absolute discretion to terminate this Agreement for its convenience, in whole or in part, at any time and for any reason or for no reason, without incurring any liability, upon no less than ten (10) days prior written notice to Consultant. If the Board terminates this Agreement for its convenience, then Consultant shall have no other right to compensation or payment except for actual services rendered and actual expenses paid prior to the date of termination that has been approved by the Board's Contract Monitor. Upon receipt of the notice and unless otherwise directed by the Board's Contract Monitor, Consultant immediately shall stop performing services under this Agreement on the date and to the extent specified in the notice but shall complete performance of any services not terminated by the notice and shall take any other action directed in the notice or by the Board's Contract Monitor.
- 17. Professionals. In the event the services to be provided by Consultant must by law be provided by individuals who are licensed and/or certified, Consultant shall only assign individuals to provide services under this Agreement who are licensed and/or certified in accordance with the law. Additionally, Consultant shall only assign individuals who have been credentialed by the Consultant to provide the specific professional services required by this Agreement. All such individuals assigned by Consultant to provide services shall maintain their license and/or certification in good standing (not under review or subject to suspension, credentials current) during the entire term of this Agreement. Consultant shall, prior to providing services, submit documentation that the individuals assigned to provide services are properly credentialed and are licensed and/or certified to the Director of Materials, 200 E. North Avenue, Baltimore, Maryland 21202.
- 18. Performance Evaluation. The Board or its authorized agents or representatives may conduct an evaluation of the Consultant's performance under this Agreement. Consultant shall fully cooperate with the Board or its authorized agents or representatives and shall provide such information and documents as may be requested to conduct the performance evaluation.
- 19. Governing Law. This Agreement shall be construed by and governed under the laws of the State of Maryland and subject to the jurisdiction of its courts. Furthermore, the parties agree

that any suits or actions brought by either party against the other shall be filed in a court of competent jurisdiction in Baltimore City.

20. Entire Agreement. This Agreement supersedes all prior oral and written proposals and communications between Consultant and the Board related to Consultant's services to be performed. The terms of the associated solicitation, and the Consultant's responses and validly executed Amendments are herein incorporated by reference to this Agreement. This Agreement may not be modified orally, and no modification or any claimed waiver of any of the provisions hereof shall be binding unless in writing and signed by the party against whom enforcement of such modification or waiver is sought. In the event of a conflict between the terms and conditions of any of the Contract Documents, the controlling terms and conditions shall be, in this order, those of:
 - A. This Agreement; then
 - B. IFB/RFP-_____, including any attachments, exhibits, and addenda; then
 - C. The Response.
21. Waiver. No waiver of any breach of any provision of this Agreement shall operate as a waiver of such provision of this Agreement or as a waiver of subsequent or other breaches of the same or any other provision of this Agreement, nor shall any action or non-action by either party be construed as a waiver of any provisions of this Agreement or of any breach thereof unless the same has been expressly declared or recognized as a waiver by such party in writing.
22. Termination for Default. If the Consultant fails to fulfill its obligation under this Agreement properly and on time, or otherwise violates any provision of the Agreement, the Board or its designee may terminate the Agreement by written notice to the Consultant. The notice shall specify the acts or omissions relied upon as cause for termination. All finished or unfinished work provided by the Consultant shall, at the Board's option, become the Board's property. The Board shall pay the Consultant fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by Consultant's breach. If the damages are more than the compensation payable to the Consultant, the Consultant will remain liable after termination and the Board can affirmatively collect damages.
23. Withholding Payment. In addition to any other available remedies, if, in the opinion of the Board, the Consultant fails to perform in accordance with the terms of this Contract or any other Contract with the Board, the Procurement Officer or a department designee responsible for paying invoices may refuse or limit approval of any invoices for payment, and may cause payments to the Consultant to be reduced or withheld until such time as the Board determines that the Consultant has met the performance terms as established by the Contract or may retain said funds in satisfaction of any portion of a claim for damages or liquidated damages.

24. Late Submission of Invoices. The parties acknowledge and agree that the Consultant's invoices are to be submitted to the Board in a timely manner, per the terms of the purchase order, after the services have been provided or the goods and materials have been provided to the Board. If invoices are submitted after one calendar year after the last date the Consultant's services have been rendered or the last date when goods and materials were accepted by the Board, then the Board shall have no obligation to pay the stale invoice(s).
25. Recitals. The Recitals are incorporated herein by reference.
26. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute one and the same instrument.
27. Interpretation. The Agreement shall not be construed or interpreted for or against any party hereto because the party drafted or caused that party's legal representative to draft any of its provisions.

ATTACHMENT I

QUOTES, PROPOSALS, AND INVOICE GUIDANCE

The following information provides guidance pertaining to City Schools' documentation requirements when vendors prepare Quotes or Invoices for services.

A **quote** or **proposal** is defined as a document provided to City Schools that 1) details the description of services to be provided, 2) the associated cost for each of those services, and 3) when the services are to be provided. The quote or proposal is prepared and provided prior to the commencement of work and is a part of documentation used when a purchase order is prepared.

An **invoice** is defined as the document provided to City Schools following the completion of services. The invoice details 1) the services that were provided, 2) when the services were provided and 3) the cost for those services. The invoice needs to correspond to the information provided in the quote or proposal submitted by the vendor earlier. Specific requirements for quotes, proposals, and invoices are outlined below.

VENDOR QUOTES / PROPOSALS

Quotes or Proposals are submitted to the school or department in accordance with their request for services and the contract the vendor has with City Schools. Quotes must contain the following information:

- a. The document must be titled "Quote" or "Proposal" and reflect the date of the quote/proposal and contain a quote/proposal number.
- b. The document must reference the applicable City Schools' contract (if applicable).
- c. Reflect vendor name including contact name, phone, address, and email.
- d. The name of the school in which services are being provided along with the Principals name, address and phone number of the school.
- e. Dates of service (start and end date for services being provided).
- f. Detailed scope of work that includes the services to be provided. If the vendor has a current contract on file, the scope of services must be aligned with the contract.
- g. Pricing – pricing should be broken out to include either hourly, per student, daily, program rates, etc. If the vendor has a current City Schools contract, pricing **MUST** be consistent with the contract. Failure to reflect the contracted rate(s) will result in the return of the quote or proposal for correction.

INVOICES

The Vendor shall submit an invoice on a monthly basis detailing the services provided and the actual costs incurred. The invoice must be aligned to the quote or proposal. City Schools' payment terms are Net 30 days. City Schools will not pay for any service that has not been delivered.

Invoices should be forwarded directly to the school or department with a copy to our Accounts Payable office. The invoice at a minimum must include the following information:

- a. The document must be titled “Invoice,” and include the date of the invoice as well as vendor name including contact name, phone, address, and email.
- b. The document must reflect a unique invoice number the vendor has never used before with City Schools.
- c. The document must also reflect the Purchase Order number. Failure to include a Purchase Order number will result in the invoice not being paid.
- d. The name of the school in which services were provided along with the Principals name, address and phone number of the school.
- e. Dates of service for the invoice (start and end date for services that were provided).
- f. Brief description of work that lists the services provided under this invoice.
- g. Total Amount Due – Invoice amount should contain a breakout of the rate used to arrive at the total amount due. Breakout must be consistent with the hourly, per student, daily, program rate, etc. listed in the vendor’s quote or proposal. Failure to align the invoice with the rates listed in the original quote or proposal will result in non-payment of the invoice.