

**TOLEDO CITY SCHOOL DISTRICT  
MASTER SERVICES AGREEMENT**

This **MASTER SERVICES AGREEMENT** (“MSA” or “Agreement”) shall begin on the Effective Date, as defined in Section 2 below, by and between The Board of Education of the Toledo City School District (“TPS”), a public school district under the laws of the State of Ohio and **VENDOR**, a Corporation organized under the laws of the state of Ohio having its principal place of business at **ADDRESS** (“Company”).

**1. ENGAGEMENT AND STATEMENTS OF WORK.**

TPS engages Company to perform repair and maintenance services or work such as **service description**, which may include the provision of certain deliverables (collectively, the “Services” or the “Work”) and which are further described in TPS Purchase Order (“PO”) documents executed during the Term of this Agreement by an authorized representative from each party.

The PO associated with this Agreement shall contain: (i) a detailed description of the scope of Services or Work to be performed, (ii) the amount, schedule and method of compensation to be paid to Company by TPS; and (iii) the term of the PO, if different from the term of this MSA. The PO issued pursuant to this Agreement shall be deemed incorporated into and governed by the terms of this MSA, and the Company’s provision of Services shall be governed by this MSA as supplemented by the terms of the applicable PO. Where the terms of a PO conflict with the terms of the MSA, the terms of the MSA shall prevail, except to the extent that the PO expressly states that the MSA is to be overridden or modified with the prior written consent of TPS. No TPS financial obligation will arise without issuance of a PO.

TPS may at any time, in writing, make reasonable changes in the Work described in a PO. If any changes cause an increase in the cost of, or the time required for the performance of, any Work under a PO, an equitable adjustment shall be made in Company’s fee or delivery schedule, or both. Any Company claim for an adjustment must be asserted and approved prior to performance of the Services.

**2. TERM**

The term of this Agreement (“Term”) shall begin on the “Effective Date” and end on **DATE** (“Expiration Date”), unless sooner terminated as provided below. The “Effective Date” is defined as the date that a purchase order associated with a fully signed MSA is numbered and funds are certified by the Treasurer. If any PO is in effect at the time of the expiration of this Agreement, then as it applies to such PO only, the Term of this Agreement will be extended until the expiration or termination of such PO.

**3. COMPENSATION AND PAYMENT TERMS.**

Services or Work may be performed on a lump sum or time and materials basis, as set forth in each PO. Services or Work performed on a time and materials basis may or may not be subject to a guaranteed maximum price, as set forth in the PO. If no price is set forth in the PO, then the Work or Services shall be performed on a time and materials basis, at the hourly rates attached hereto as Exhibit A. The services shall be performed as specified on Exhibit A.

- (a) The foregoing will be the entire compensation to be paid to Company and will be in full discharge of any and all liability in contract or otherwise with respect to all Services rendered by the Company and Company’s employees, subcontractors, agents, representatives, and directors (“Company Personnel”).

- (b) All fees will be paid in U.S. Dollars and delivered to Company's principal place of business specified in the first paragraph of this Agreement.
- (c) Company's price (whether lump sum or time and materials) for the Services includes all federal state and local taxes including, without limitation, sales, use, excise, privilege, payroll and/or occupational taxes, any value added tax that is not recoverable by TPS and any other taxes, fees, and/or duties applicable to the Work and/or Services purchased under this Order.

Upon termination as provided below (except in the event of termination for default), all fees shall be payable on a pro-rated daily basis up to the date of termination and no installments shall be payable thereafter.

When any applicable law, rule or regulation makes any payment prohibited or improper or requires the payment of a reduced fee, the portion of the fee so affected shall not be paid or if paid shall be refunded to TPS.

TPS shall be entitled at all times to set off any amount owing at any time from Company to TPS in connection with this or any other agreement between Company and TPS.

All Services or Work performed on a time and material basis is subject to audit by TPS. The accounting records, receipts, vouchers and other documentation related to the Services and Work shall be kept on a generally recognized accounting basis and shall be available to TPS for audit at all times and shall be maintained for 6 years after completion of the Services and Work comprising each PO at the Company's principal place of business. The cost of the audit shall be borne by TPS, except that the Company shall pay such costs if the audit reveals any material discrepancy in the amounts charged.

#### **4. INSPECTIONS, TESTING AND ACCEPTANCE.**

All Services and/or any deliverables shall be subject to inspection and test by TPS at all times and places.

Acceptance or rejection of the Services and/or any deliverables shall be made as promptly as practical after delivery, but failure to inspect and accept or reject the Services and/or deliverables or failure to detect defects by inspection, shall neither relieve Company from responsibility for all requirements relating to such Services and/or deliverables nor impose liabilities on TPS for its failure to identify such defects.

If any of the Services and/or any deliverables under this Agreement, are found at any time prior to delivery to be defective, or otherwise not in conformity with the requirements of this Agreement, including any applicable specifications, TPS, in addition to such other rights, remedies and choices as it may have by agreement and/or by law, at its option and sole discretion, and at Company's expense may: (a) reject and return such deliverables; (b) require Company to re-perform/replace the non-conforming Services and/or deliverables with Services and/or deliverables that conform to the requirements of this Agreement; and/or (c) take such actions as may be required to cure all defects and/or bring the Services and/or deliverables into conformity with all requirements.

#### **5. WARRANTIES AND COMPLIANCE WITH LAW.**

5.1 Company warrants that:

- (a) Services, Work and/or any deliverables will be in strict accordance with the specifications, designs and other requirements (including performance specifications) approved or adopted in any PO;
- (b) Services and Work will be performed in a competent and professional manner in accordance with the highest standards and best practices of Company's industry;

- (c) All Services, Work and/or deliverables sold will be free of any claims of any nature and by any third person, including but not limited to claims of Intellectual Property infringement and Company will convey clear title to TPS free from any liens and encumbrances; and
- (d) All Services, Work and/or deliverables will be of merchantable quality, free from all defects in design, workmanship and material and will be fit for the particular purpose for which they are purchased.

5.2 Unless a different period is set forth in the Purchase Order, the warranties in Section 5.1 shall apply for a period of twenty—four (24) months from the date Company completes its engagement. If any of the Services, Work and/or deliverables under this Agreement are found to be defective during the warranty period, then in addition to other rights, remedies and choices it may have under this Agreement or at law or equity, TPS, at its option and sole discretion, and at Company's expense may: (a) reject and return such deliverables; (b) require Company to re-perform/replace the non-conforming Services and/or deliverables with Services and/or deliverables that conform to the requirements of this Agreement; and/or (c) take such actions as may be required to cure all defects and/or bring the Services and/or deliverables into conformity with all requirements. Any attempt by Company to limit, disclaim or restrict any such warranties or any remedies of TPS, by acknowledgment or other wise, in accepting or performing this Agreement, shall be null, void and ineffective without TPS' written consent.

## 6. INDEMNITIES AND INSURANCE.

General. Company shall take all necessary precautions to prevent the occurrence of any injury to persons, property or the environment during the progress of work and ensure that Company Personnel poses a threat to neither TPS' safe environment nor the integrity of its operations. Except to the extent that any injury or damage is due solely and directly to TPS negligence or intentional acts, Company shall release, defend, hold harmless and indemnify TPS, its directors, officers, employees, agents, representatives, successors and assigns against any and all suits, actions or proceedings, at law or in equity, and from any and all claims, demands, losses, judgments, damages, costs (including reasonable attorneys' fees), fines, penalties, expenses or liabilities, including without limitation claims for personal injury or property or environmental damage, resulting from or in any way connected with any act or omission of Company Personnel, Company, its agents, employees or subcontractors, whether acting in the course of their employment or otherwise. Company agrees to include this clause in all related subcontracts. Company further agrees to indemnify TPS for any attorneys' fees or other costs TPS incurs in the event that TPS has to file a lawsuit to enforce any provisions of this Agreement.

Insurance Coverage. During the Term of this Agreement, Company, shall at its own cost, obtain and keep in force for the benefit of Company and TPS all insurance/and or bonds required by law and the following insurance coverage to be provided by insurance carriers acceptable to TPS:

- (a) Worker's Compensation and Employers Liability Insurance per statutory requirements;
- (b) Commercial General Liability with minimum limits for Bodily Injury and Property Damage on an occurrence basis of: \$3,000,000 per occurrence; \$5,000,000 aggregate.
- (c) Business Automobile Liability Insurance covering all vehicles used in connection with the work and covering Bodily Injury and Property Damage with a minimum limit equal to: \$2,000,000 per accident.
- (d) If applicable, Professional Errors and Omissions Insurance covering the activities of Company written on a "claims made" basis with a minimum limit equal to: \$5,000,000 per occurrence.

Additional Insurance Requirements.

- (a) TPS shall be named as additional insured under the policies of insurance set forth in subsections 6.2(b)-(d) above for any and all purposes arising out of or connected to the Services.
- (b) It is the intent of both parties to this Agreement that all insurance purchased by Company in compliance with this Agreement, will be primary to any other insurance owned, secured, or in place by TPS, which insurance shall not be called upon by Company's insurer to contribute in any way. Company shall secure endorsements to this effect from all insurers of such policies.
- (c) Upon request by TPS, Company shall furnish TPS with certificates of insurance and with copies of original endorsements effecting coverage required by this clause. The certificates and endorsements shall identify TPS as an additional insured and shall be signed by a person authorized by that insurer to bind coverage on its behalf. TPS reserves the right to require complete, certified copies of all required insurance policies, at any time.
- (d) All policies provided for herein shall expressly provide that such policies shall not be canceled, terminated or altered without thirty (30) days prior written notice to TPS.
- (e) All insurance specified in this section shall contain a waiver of subrogation in favor of TPS, and its employees for all losses and damages covered by the insurance required by this section.

**7. RELATIONSHIP OF THE PARTIES; ASSIGNMENT AND SUBCONTRACTING.**

Company is an independent contractor to TPS. Company's Personnel are neither employees of TPS nor eligible for participation in any TPS employee benefit programs.

This Agreement and any rights hereunder (except where expressly provided in a signed writing to the contrary) are non-assignable.

This Agreement and any rights hereunder are non-exclusive. This Agreement does not create any right of Company to perform Services for TPS.

**8. GOVERNING LAW.**

Each party's rights and obligations under or in connection with this Agreement shall be governed by the laws of the State of Ohio.

**9. COMPLIANCE WITH LAWS.** Company represents, warrants and certifies that:

It will comply with all applicable laws, regulations, Executive Orders, including without limitation those dealing with the environment, health and safety, records retention and/or the transportation or storage of "hazardous materials". As used in this Agreement, the term "hazardous materials" shall mean any substance or material defined as a "hazardous material," "hazardous substance" or "dangerous good" under 49 CFR 171.8 or any other applicable requirement of any entity with jurisdiction over the activities, goods or services, which are subject to this Order;

Company shall comply with all laws and TPS policies dealing with improper or illegal payments, gifts and gratuities, and Company agrees not to pay, promise to pay or authorize the payment of any money or anything of value, directly or indirectly, to any person for the purpose of illegally or improperly inducing a decision or obtaining or retaining business in connection with this Agreement;

In the hiring of employees for the performance of Services under this Agreement and subsequent TPS POs, no Company Personnel or any person acting on his behalf shall, by reason of race, creed, sex, disability, or color,

discriminate against any citizen of the state in the employment of labor or worker who is qualified and available to perform the work to which employment relates, pursuant to Ohio Revised Code Section 125.111(A)(1).

No Company Personnel or any person acting on his behalf shall, in any manner discriminate against or intimidate any Company employee hired for the performance of Services under this Agreement or subsequent TPS POs on account of race, creed, sex, disability, or color pursuant to Ohio Revised Code Section 153.59(A) .

**10. ENVIRONMENTAL HEALTH AND SAFETY.** Company represents, warrants and certifies that:

It will take appropriate actions necessary to protect health, safety and the environment, including, without limitation, in the workplace and during transport;

In no event will Company utilize any of the following in the performance of Services on TPS property: (i) any chemical substance prohibited pursuant to Section 6 of the US Toxic Substances Control Act (TSCA); (ii) any of the following chemicals: arsenic, asbestos, benzene, beryllium, carbon tetrachloride, cyanide, lead or lead compounds, cadmium or cadmium compounds, hexavalent chromium, mercury or mercury compounds, trichloroethylene, tetrachloroethylene, methyl chloroform, polychlorinated biphenyl (PCB), polybrominated biphenyls (PBB), polybrominated diphenyl ethers (PBDE); (iii) designated ozone depleting chemicals as restricted under the Montreal Protocol (including, without limitation 111 trichloroethane, carbon tetrachloride, Halon-1211, 1301 and 2402, and Chlorofluorocarbons (“CFCs”) 11-13, 111-115, 211-217); (iv) any other chemical or substance, the use of which is restricted in schools or other facilities at which children are present.

**11. EXPIRATION, TERMINATION AND SUSPENSION.**

Expiration. This Agreement shall automatically expire at the end of the Term unless specifically renewed prior thereto by mutual written consent by the parties.

Termination by Mutual Agreement. This Agreement and any PO hereunder may be terminated before the Term by mutual written consent by the parties.

Termination for Convenience. TPS may terminate all or any part of this Agreement and any PO hereunder at any time by written notice to Company specifying the extent of termination and the effective date. Upon such termination (except due to Company's insolvency or default including failure to comply with this Agreement), TPS and Company shall negotiate reasonable termination costs identified by Company within thirty (30) days of termination notice.

Termination for Default. Time is of the essence in this Agreement. Except for delay, which is due to causes beyond the reasonable control and without the fault or negligence of Company, TPS may, by written notice of default, terminate the whole or any part of this Agreement in any one of the following circumstances if:

- (a) Company fails to perform within the time specified herein or any written extension granted by TPS;
- (b) Company fails to make progress as to endanger performance of this Agreement;
- (c) Company breaches, violates or TPS finds to be untrue, any of the certifications, representations and warranties set forth in this Agreement; or
- (d) Company fails to comply with any other terms and conditions of this Agreement.

Such termination shall become effective if Company does not cure such failure within a period of ten (10) days or such longer period as TPS may authorize in writing.

Suspension. TPS may at any time, by written notice to Company, suspend performance of work hereunder, specifying the date of suspension and the estimated duration. Upon receiving any such notice of suspension, Company shall promptly suspend performance of work hereunder to the extent specified, and during the period of such suspension, properly care for and protect all work in progress and materials, supplies and equipment related to the work. Upon TPS' request, Company shall promptly deliver copies of outstanding agreements and subcontracts for materials, equipment and services for the work and shall take such action relative to such agreements and subcontracts as directed by TPS. TPS may at any time withdraw the suspension by written notice to Company specifying the effective date and scope of withdrawal, and Company shall resume diligent performance of the work for which the suspension is withdrawn on the specified effective date of withdrawal.

## **12. RELEASE OF CLAIMS.**

In consideration of the execution of this Agreement by TPS, Company hereby releases TPS from all claims, demands, contracts and liabilities, if any, as of the date of execution of this Agreement, except indebtedness, which may be owed upon a PO signed by TPS.

## **13. WAIVER AND FAILURE TO ENFORCE.**

No claim or right arising out of a breach of this Agreement can be discharged in whole or in part by a waiver or renunciation unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. TPS' failure to enforce at any time or for any period of time any provision hereof shall not be construed to be a waiver of such provision or of the right to TPS thereafter to enforce each and every such provision.

## **14. ACCEPTANCE OF TERMS AND CONDITIONS.**

The parties agree to be bound by and to comply with all the terms and conditions of this Agreement, including any supplements thereto and all specifications and other documents referred to in this Agreement. This Agreement does not constitute an acceptance by TPS of any offer to sell, any quotation or any proposal. Reference in this Agreement to any such offer to sell, quotation or proposal shall in no way constitute a modification of any of the terms of this Agreement. The terms of this Agreement take precedence over any alternative terms and conditions in any other document connected with this transaction unless such alternative terms are expressly incorporated by reference on the face of this Agreement. ANY ATTEMPTED ACKNOWLEDGMENT OF THIS AGREEMENT CONTAINING TERMS AND CONDITIONS INCONSISTENT WITH OR IN ADDITION TO THE TERMS AND CONDITIONS OF THIS AGREEMENT IS NOT BINDING UPON COMPANY UNLESS SPECIFICALLY ACCEPTED BY COMPANY IN WRITING.

## **15. EXECUTION AND MODIFICATION.**

This Agreement and all documents incorporated herein by reference (together with each Order or PO) constitute the complete and final agreement between the parties. Any representations, terms or conditions not incorporated herein shall not be binding upon either party. No course of prior dealings between parties, no course of performance and no usage of trade shall be relevant to determine the meaning of this Agreement even though the accepting or acquiescing party has knowledge of the performance and opportunity for objection. The invalidity, in whole or in part, of any of the foregoing sections of this Agreement shall not affect the remainder of such sections or any other section of this Agreement.

This Agreement wholly cancels, terminates and supersedes all previous negotiations, commitments and writings between the parties in connection therewith. This Agreement shall not become effective or binding upon TPS until signed by an authorized representative of TPS at which time it will be deemed retroactively effective upon the Effective Date.

No change, modification, extension, renewal, ratification, rescission, termination, notice of termination, discharge, abandonment or waiver of this Agreement or any of the provisions hereof; nor any representation, promise or condition relating to this Agreement shall be binding upon TPS unless made in writing and signed by an authorized representative of TPS.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective authorized representatives as of the date first written above.

**BOARD OF EDUCATION OF THE TOLEDO CITY SCHOOL DISTRICT**

**VENDOR**

Signature: \_\_\_\_\_  
Print Name: James R. Gant  
Title: Chief Business Manager  
Date: \_\_\_\_\_

Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Signature: \_\_\_\_\_  
Print Name: Jerome Pecko, Ed. D.  
Title: Superintendent  
Date: \_\_\_\_\_

Signature: \_\_\_\_\_  
Print Name: Matthew J. Cleland  
Title: Treasurer  
Date: \_\_\_\_\_

Signature: \_\_\_\_\_  
Print Name: Lisa A. Sobecki  
Title: Board of Education President  
Date: \_\_\_\_\_