

ANN ARBOR PUBLICS SCHOOLS

CONSULTANT/CONTRACTOR TERMS AND CONDITIONS

1. Termination. Either party may, by written notice delivered to the other party, terminate this Agreement prior to expiration of the term hereof for the following reasons: (i) the breach of this Agreement by the other which breach is not cured within ten (10) days after written notice of such breach is sent; (ii) the dissolution or bankruptcy of a party; or (iii) embezzlement or fraud, dishonesty, lying, cheating, defrauding or deceiving in the performance of the other party's obligations hereunder. Notwithstanding such termination, any liability or obligation of either party, which may have accrued prior to such termination, shall continue in full force and effect.
2. Independent Contractor. Consultant/Contractor expressly acknowledges that his status under this Agreement shall be that of an independent contractor, and not that of an agent or employee or joint venture of AAPS, for all purposes, including without limitation payment of social security, withholding and any other taxes imposed by state or federal law.
3. Confidentiality and Proprietary Information: Work for Hire. Consultant/Contractor acknowledges and agrees, and shall cause individuals provided by Consultant/Contractor to perform the Services to acknowledge and agree, to the following:
 - a) The Services and all documentation relating thereto (including this Agreement and its terms), reports prepared by Consultant/Contractor relating to AAPS or the Services, and information provided by AAPS to Consultant/Contractor is privileged and confidential. Consultant/Contractor agrees to use all due care to safeguard information provided by AAPS and to prevent the unauthorized use or disclosure thereof. The services provided by consultant will be made in a highly professional and competent manner, meeting or exceeding generally accepted competence and proficiency standards for the type and nature of services provided.
 - b) Consultant/Contractor shall, upon completion of the tasks assigned pursuant to this Agreement, upon termination of this Agreement or upon demand, return any and all information (including any copies or reproductions thereof) in his possession or control to AAPS.
 - c) Consultant/Contractor agrees and warrants that for the duration of this Agreement, and for five (5) years thereafter, neither Consultant/Contractor nor any of its employees, agents and contractors will disclose, copy, use, deliver or otherwise make available to any person or entity, directly or indirectly, or use in any way without the express prior written consent of AAPS (except as necessary to perform duties assigned to Consultant/Contractor by AAPS), any information of AAPS which is confidential and proprietary to, and/or trade secret of, AAPS. The foregoing restriction shall apply to all such information, whether created by Consultant/Contractor or received directly or indirectly by Consultant/Contractor for AAPS during the term of this Agreement.
 - d) Any reports, compilations, records, or other work product produced by Consultant/Contractor for AAPS under this Agreement shall be conclusively deemed to be a work for hire, and all rights thereto, whether copyright or otherwise shall be, and the same hereby are, assigned irrevocably to AAPS.

e) Consultant/Contractor agrees to adhere to all Board Policies and State and Federal laws including, but not limited to, FERPA, Non-Discrimination and Harassment.

4. Employment of Personnel. Consultant/Contractor may employ other persons to assist in the performance of the Services and shall be responsible for, and in full control of, the work of such personnel. *Consultant/Contractor* shall be solely responsible for the actions or omissions, for filing all necessary forms and returns, and for making all required payments to all relevant governmental authorities for itself and its agents and employees. Consultant/Contractor must comply with the School Safety Initiative Public Act 680 of 2006, including MCL 380.1230 et seq. If Consultant/Contractor is assigned to “regularly and continuously” work in any school (in a classroom, elsewhere on school property, or on a school bus or school related vehicle) Consultant/Contractor shall provide results of a LiveScan FBI/Michigan state police fingerprint check prior to providing services to AAPS.

5. No Authority to Bind. Consultant/Contractor shall have no power or authority to execute any agreements or contracts for or on behalf of AAPS nor to bind AAPS in any other manner.

6. Indemnification. Consultant/Contractor shall indemnify and hold AAPS harmless from any liability, claim, loss, damage, or expenses, including reasonable attorney fees, arising from Consultant's/Contractor's acts or omissions in the course of providing the Services.

7. No Assignment. This Agreement may not be assigned by Consultant/Contractor without the prior written consent of AAPS.

8. Binding Effect. This Agreement shall inure to the benefit of and be binding upon, the parties and their respective heirs, personal representatives, successors, as applicable, and permitted assigns but shall not inure to the benefit of any third parties.

9. Amendment. This Agreement may not be amended except by mutual written agreement of the parties.

10. Notices. All notices, requests, demands and other communications shall be in writing and shall be deemed to have been duly given or made if delivered by hand, in which case notice will be deemed effective upon receipt, or, if by mail by certified or registered mail, with postage prepaid to the address of such party set forth above or to such address directed by a party in writing, in which case notice will be deemed effective upon mailing.

11. Enforcement and Dispute Resolution. This Agreement shall be construed and enforced in accordance with the laws of the State of Michigan. Any and all disputes, controversies or claims arising out of or in connection with or relating to this Agreement, or any breach or alleged breach thereof, shall, at the request of either party, be submitted to and settled by arbitration in the State of Michigan pursuant to the rules, then in effect, of the American Arbitration Association (or at any other place or under any other form of arbitration mutually acceptable to the parties involved). The parties hereto specifically agree to arbitrate with the other party in a joint proceeding with regard to all common issues and disputes, and to permit pre-hearing discovery in the time and manner provided by the then applicable Michigan Court Rules. This Agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law. Notice of the demand for arbitration shall be filed, in writing, with the other party to this Agreement and with the American Arbitration Association. The demand for arbitration shall be made within six (6) months after the claim, dispute, or other matter in question arose where the party asserting the claim should reasonably have been aware of the same.

The arbitrator shall have no power to add to, subtract from, or alter the terms of this Agreement, and shall render a written decision setting forth findings and conclusions only as to

the claims or disputes at issue. The expenses of any arbitration shall be borne equally by the parties to such arbitration, provided that each party shall pay for and bear the costs of its own experts, evidence and counsel's fees.

Any award by the arbitrator shall be final and conclusive upon the parties, and a judgment thereon may be entered in the highest court for the forum, state or federal, having jurisdiction.

12. Non-Assignment. Neither party may assign this Agreement, nor its rights and duties hereunder, nor any interest herein without prior written consent from the other.

13. Severability. If any provision of the Agreement should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions of the Agreement shall not in any way be affected, impaired or prejudiced thereby.

14. Headings and Titles. Any article or section headings in this Agreement are for convenience of the parties only and in no way alter, modify, amend, limit or restrict contractual obligations of the parties.

15. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which constitutes one and the same Agreement.

16. No Third Party Beneficiary. Nothing in this Agreement shall be intended to confer third party beneficiary status or rights, pursuant to MCL 600.1405 or under the common law, to any person or entity that is not a party to this Agreement.

Revised October 15, 2015
Purchasing and Business Support Services