

CONTRACT

STATE OF GEORGIA

COUNTY OF FULTON

This contract ("**Contract**") is made and entered into by and between the State Charter Schools Commission of Georgia, hereinafter referred to as the "**SCSC**," and [**Contractor Name**], [Contractor Address], hereinafter referred to as the "**Contractor**".

WHEREAS, all state charter schools are subject to an annual audit by an independent certified public accountant licensed in Georgia;

WHEREAS, the SCSC has identified the need to receive more uniform and timely audit reports to adequately monitor state charter schools; and,

WHEREAS, the Contractor has indicated that it is willing, qualified, and experienced to provide such professional services for the SCSC.

NOW, THEREFORE, in consideration of the benefits and duties contained herein, the parties hereby agree as follows:

1. Scope of Services: The SCSC will provide the Contractor a list of state charter schools to be audited under this Contract, hereinafter referred to as "**Engaged Schools**". For each Engaged School, the Contractor will provide auditing services consistent with *Generally Accepted Government Auditing Standards*, including reports of the school's internal controls and compliance, review of the statement of position and statement of activities, the governmental fund balance sheet and income statement, and the reconciliation statements between governmental and full accrual statements and the changes in fund balances budget and actual for the state fiscal year ending June 30, 2018. The Contractor shall provide such audit services in accordance with Contractor's final response as accepted by the SCSC, which is expressly incorporated into this Contract as Attachment A. The Contractor shall provide a written draft audit report for each Engaged School to the governing board of the Engaged School and the SCSC by October 15, 2018. The Contractor shall provide a final audit report for each Engaged School to the governing board of the Engaged School and the SCSC by November 1, 2018. If an Engaged School requires a Single Audit pursuant to 2 C.F.R. § 200.501, the Contractor shall inform the SCSC Executive Director that the Engaged School requires a Single Audit. Upon written confirmation from the SCSC Executive Director that the Engaged School requires a Single Audit, the Contractor shall ensure its services under this Contract meet the requirements of a Single Audit. This Contract shall not be construed to prohibit Contractor from providing additional services to Engaged Schools not covered by this Contract. Services that require additional time and expense arising from a period not within FY18 are not covered within the scope of this Contract. Contractor may negotiate fees with an Engaged School to provide services not covered by this Contract; however, the Contractor must notify the Engaged School of the additional work and proposed fees prior to beginning the services. The SCSC will not be responsible for the payment of any fees not covered within the scope of this Contract.

2. Payment for Services: The SCSC will provide Contractor payments for services provided utilizing the Fee and Invoice Schedules below. The compensation provided by the SCSC under this Contract shall serve as compensation for the Contractor's time and effort as well as payment for all related travel expenses incurred as a result of this Contract. The Contractor shall not be entitled to any other travel reimbursement from the SCSC for services provided under this Contract. The maximum amount that can be paid by the SCSC to the Contractor under this Contract shall be [Contract Amount with Contingencies] (\$) unless the Contract is amended in writing under the provisions of this Contract. The SCSC shall have the right to withhold or deduct payments in the event of the Contractor's nonperformance.

- i. The SCSC will provide the Contractor compensation for the audit services provided under this contract utilizing the fee proposal outlined in Contractor's final response as accepted by the SCSC as described below.
 - a. The Base Fee for services provided under this contract shall be: [List of Base Fee]
 - b. In the event the Contractor identifies unforeseen circumstances while providing services to an Engaged School that will require additional time and expense of the Contractor, the Contractor may request an amendment to the Fee Schedule. Any request to amend the Fee Schedule must be made in writing to the SCSC Executive Director and shall state the reasons for the amendment.

- c. The SCSC Executive Director may approve amendments to the Fee Schedule of no more than (Per School Contingency Amount) per Engaged School and the total of such amendments shall not exceed (Overall Contingency Amount) under this contract. The determination to amend the Fee Schedule is in the sole discretion of the SCSC Executive Director. In the event unforeseen circumstances arise that exceed the scope of this Contract and the fees outlined herein, the parties agree to negotiate additional services and fees in good faith.
- d. In the event the Contractor identifies that an Engaged School that requires a Single Audit pursuant to 2 C.F.R. § 200.501, the SCSC Executive Director may approve a Single Audit Fee of no more than \$3,500 per major program tested. The total of such fees shall not exceed \$35,000 under this contract.
- e. In the event the Contractor does not provide a final audit report to the governing board of an Engaged School by November 1, 2018, the SCSC will reduce the total fee the Contractor would have received for that Engaged School by Five Percent (5%) for every thirty (30) days after November 1, 2018 that the Contractor fails to provide a final audit report to the governing board of an Engaged School. This paragraph shall not apply if the delay in producing the final audit report is the result of an Engaged School's obstruction of the audit process, poor recordkeeping, or any other event that is not within the control of the Contractor. This reduction in fees is intended to compensate the SCSC for any breach by the Contractor of its obligations under this Contract as the actual damages likely to result in this breach are difficult to estimate as of the date of this Contract and would be difficult for the SCSC to prove. This reduction in fees is not intended to serve as a penalty or punishment for any breach by Contractor.

- ii. Invoice Schedule: The SCSC shall provide the Contractor the total to be paid under this Contract upon the receipt of invoices for work completed under this contract. The Contractor shall submit invoices as work progresses with no more than one invoice submitted per calendar month. The SCSC agrees to promptly submit request for payment of the invoice through the Georgia Department of Education. Invoice(s) shall be submitted to: Bonnie Holliday, 1470B Twin Towers East 205 Jesse Hill Jr. Drive, SE, Atlanta, Georgia 30334.

3. Term of Contract: This Contract shall begin on the date on which it is signed by both parties ("**Effective Date**") and shall end at midnight on the date on which Contractor receives payment for the completion of services. In the event this Contract is signed by the parties on different dates, the later date shall control. The SCSC will not make payment for any work performed prior to the Effective Date of this Contract.

4. Renewal: Reserved.

5. Relationship of the Parties: The Contractor's employees shall not be considered employees of the SCSC while performing these services and will not be entitled to fringe benefits normally accruing to employees of the SCSC.

6. Equipment and Supplies: Any equipment, supplies, or materials used in the performance of this Contract which are not explicitly required under this Contract to be provided by the SCSC, shall be at the expense of the Contractor.

7. Compliance with Statutes and Regulations: The Contractor shall perform its obligations hereunder in accordance with all applicable federal and state laws and regulations now or hereafter in effect.

8. Confidentiality: The Contractor agrees to abide by all state and federal laws, rules and regulations, and SCSC policy respecting confidentiality of records, including but not limited to student records, and divulge no information concerning individual records to any unauthorized person.

9. Civil Rights Compliance: The Contractor agrees to comply with the following civil rights statutes: Americans with Disabilities Act (42 U.S.C. 12101, et seq.); Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d through 2000d-4); Title IX of the Education Amendments of 1972 (20 U.S.C. 1681-1683); Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); and the Age Discrimination Act (42 U.S.C. 6101, et seq.). Neither party will discriminate against any SCSC or Contractor

employee or applicant for employment, or against any applicant for enrollment for a course of study, or against any student in his or her course of study or training related to this Contract because of race, color, gender, national origin, age, or disability.

10. Drug-Free Workplace: In accordance with the federal Drug-Free and Communities Act and Amendment of 1989, and the Georgia Drug-Free Workplace Act of 1988 (O.C.G.A. Section 50-24-1, *et. seq.*), the Contractor declares that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance, marijuana or dangerous drug is prohibited at Contractor locations at which individuals are directly engaged in the performance of work pursuant to this Contract.

11. Trading with State Employees: The Contractor shall make no payment to any employee of the SCSC nor to any business entity in which an SCSC employee maintains an ownership interest of 20% or more without obtaining prior written approval from the Executive Director of the SCSC. The Contractor hereby certifies that this Contract does not and will not violate the provisions of Official Code of Georgia Annotated § 45-10-20, *et. seq.*, which prohibit and regulate certain transactions between certain state officials, employees, and the State of Georgia.

12. Contractor Not a State Employee: Contractor certifies that services will not be provided by an employee of the State of Georgia.

13. Conflicts of Interest: Contractor shall take all reasonable steps to avoid any and all conflicts of interest, including the appearance of a conflict of interest.

14. Recordkeeping requirements: The Contractor agrees to maintain full and complete records which pertain to this Contract for a period of three (3) years from the date of final payment under this Contract, or until all litigation, claims, or audit findings involving the records have been resolved if such claim or audit is started before the expiration date of the three-year period.

15. Access to records: The SCSC or any duly authorized representatives, shall have access to any books, documents, papers, and records of the Contractor which are directly pertinent to this Contract at any time during normal business hours for the term of this Contract and/or three (3) years thereafter for the purpose of making an audit, examination, excerpts, and transcriptions.

16. Copyright: Any papers, reports, graphs, forms, guides, evaluations, spreadsheets, databases and other material which are produced under or as a result of this Contract are to be deemed a "work made for hire", as such term is defined in the Copyright laws of the United States with all interests vesting in such work product to the State of Georgia on through the SCSC. To the extent authorized by law, this agreement provides the Contractor a perpetual and irrevocable license to allow its use of any models, code, programs, or methodology developed under this Contract.

17. Open Records Act: The Contractor understands that the Georgia Open Records Act ("ORA"), (O.C.G.A. Section 50-18-70, *et. seq.*) is applicable to the services provided pursuant to this Contract and agrees to comply with all provisions of the ORA and to make records pertaining to the performance of services or functions under this Contract available for public inspection upon request, unless otherwise exempt under other provisions of the ORA.

18. Contractor's Indemnification Obligation. The Contractor agrees to indemnify and hold harmless the State of Georgia, SCSC and its officers, employees, agents, and volunteers (collectively, "**Indemnified Parties**") from any and all costs, expenses, losses, claims, damages, liabilities, settlements and judgments, including reasonable value of the time spent by the Attorney General's Office, related to or arising from:

- i. Any breach of the Contract;
- ii. Any negligent, intentional or wrongful act or omission of the Contractor or any employee, agent or subcontractor utilized or employed by the Contractor;
- iii. Any failure of services to comply with applicable specifications, warranties, and certifications under the Contract;
- iv. The negligence or fault of the Contractor in design, testing, development, manufacture, or otherwise with respect to the services provided under the Contract;
- v. Claims, demands, or lawsuits that, with respect to the goods (if any) or any parts thereof, allege product liability, strict product liability, or any variation thereof;
- vi. The Contractor's performance or attempted performance of the Contract, including any employee, agent or subcontractor utilized or employed by the Contractor;
- vii. Any failure by the Contractor to comply with the "*Compliance with Statutes and Regulations*" provision of the Contract;

- viii. Any failure by the Contractor to make all reports, payments and withholdings required by federal and state law with respect to social security, employee income and other taxes, fees or costs required by the Contractor to conduct business in the State of Georgia or the United States;
- ix. Any infringement of any copyright, trademark, patent, trade dress, or other intellectual property right; or
- x. Any failure by the Contractor to adhere to the confidentiality provisions of the Contract.

a. Duty to Reimburse State Tort Claims Fund. To the extent such damage or loss as covered by this indemnification is covered by the State of Georgia Tort Claims Fund (the "**Fund**"), the Contractor (and its insurers) agrees to reimburse the Fund. To the full extent permitted by the Constitution and the laws of the State and the terms of the Fund, the Contractor and its insurers waive any right of subrogation against the State, the Indemnified Parties, and the Fund and insurers participating thereunder, to the full extent of this indemnification.

b. Litigation and Settlements. The Contractor shall, at its own expense, be entitled to and shall have the duty to participate in the defense of any suit covered by this indemnification against the Indemnified Parties. No settlement or compromise of any claim, loss or damage entered into by the Indemnified Parties shall be binding upon Contractor unless approved in writing by Contractor. No settlement or compromise of any claim, loss or damage entered into by Contractor shall be binding upon the Indemnified Parties unless approved in writing by the Indemnified Parties.

c. Survives Termination. All indemnification obligations of the Contractor shall survive termination of the Contract.

19. Patent/Copyright Infringement Indemnification. Contractor shall, at its own expense, be entitled to and shall have the duty to participate in the defense of any suit instituted against the State and indemnify the State against any award of damages and costs made against the State by a final judgment of a court of last resort in such suit insofar as the same is based on any claim that any of the services constitutes an infringement of any United States Letters Patent or copyright, provided the State gives the Contractor immediate notice in writing of the institution of such suit, permits Contractor to fully participate in the defense of the same, and gives Contractor all available information, assistance and authority to enable Contractor to do so. Subject to approval of the Attorney General of the State of Georgia, the SCSC shall tender defense of any such action to Contractor upon request by Contractor. Contractor shall not be liable for any award of judgment against the State reached by compromise or settlement unless Contractor accepts the compromise or settlement. Contractor shall have the right to enter into negotiations for and the right to effect settlement or compromise of any such action, but no such settlement shall be binding upon the State unless approved by the State.

a. In case any of the services is in any suit held to constitute infringement and its use is enjoined, Contractor shall, at its option and expense:

- i. Procure for the State the right to continue using the services;
- ii. Replace or modify the same so that it becomes non-infringing; or
- iii. Remove the same and cancel any future charges pertaining thereto.

b. Contractor, however, shall have no liability to the State if any such patent, or copyright infringement or claim thereof is based upon or arises out of:

- i. Compliance with designs, plans or specifications furnished by or on behalf of the SCSC as to the services;
- ii. Use of the services in combination with apparatus or devices not supplied by Contractor;
- iii. Use of the services in a manner for which the same was neither designed nor contemplated; or
- iv. The claimed infringement of any patent or copyright in which the SCSC or any affiliate or subsidiary of the SCSC has any direct interest by license or otherwise.

c. Survives Termination: All the above indemnification obligations of the Contractor shall survive termination of the Contract.

20. Non-profit Contractor: Reserved.

21. Security and Immigration Compliance: Prior to undertaking any work under this Contract, Contractor shall execute the affidavit attached hereto as Attachment B to ensure compliance with the Georgia Security and Immigration Compliance Act (O.C.G.A Section 13-10-91) or an affidavit confirming the Contractor's exemption under O.C.G.A. Section 13-10-90. If the Contractor does not have any employees and does not hire or intend to hire employees for the purposes of satisfying or completing all or part of this contract, the Contractor shall provide a copy of his or her state issued driver's license or state

issued identification card provided that such state issued driver's license or identification is issued by a state listed as compliant with the Immigration Verification Requirement of the Illegal Immigration Reform and Enforcement Act of 2011 listed in Attachment D. Contractor further agrees that it will obtain an affidavit (attached hereto as Attachment C) from each subcontractor or, if the subcontractor has no employees and does not hire or intend to hire employees for the purposes of satisfying or completing the terms and conditions of any part of this Contract, Contractor shall obtain a copy of the state issued driver's license or state issued identification card of such contracting party provided that such state issued driver's license or identification is issued by a state listed as compliant with the Immigration Verification Requirement of the Illegal Immigration Reform and Enforcement Act of 2011 listed in Attachment D. The Contractor shall provide the SCSC all documents obtained pursuant to this paragraph within five business days of receipt.

22. Boycott of Israel: Contractor certifies that Contractor is not currently engaged in, and agrees for the duration of this Contract not to engage in, a boycott of Israel as defined in O.C.G.A. § 50-5-85.

23. Inability to perform: In the event that either party is unable to fulfill the terms of the Contract due to circumstances beyond their control, including but not limited to, fire, flood, or other acts of nature, or by war or attack by the public enemy or by other act of God, then this Contract shall be terminated by notice of the conditions causing such inability to perform being given to the other party. At such time both parties shall be entitled to the benefits received only to the extent that they have met the terms of the Contract.

24. Termination: This Contract may be terminated by either party by providing written notice to the other party thirty (30) days prior to the termination of services, or upon written mutual agreement of both parties. Upon termination under this paragraph, the SCSC agrees to pay the Contractor for costs incurred prior to the date of termination, and the Contractor agrees to deliver all materials, data, reports, and other information collected or created by the Contractor or its subcontractors under this Contract prior to the date of termination.

25. Funding: Notwithstanding any other provision of this Contract, the parties hereto acknowledge that the SCSC may not lawfully pledge the State's credit. In the event that the SCSC does not receive funds for this Contract or that the source of payment is insufficient with respect to the services and deliverables under this Contract, the Contract shall terminate without further obligation of the SCSC as of that moment. The determination by the SCSC of the events stated above shall be conclusive.

26. Publicity: Any publicity given to the services provided under this Contract, including but not limited to, notices, information pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Contractor shall not be released prior to approval by the Executive Director of the SCSC.

27. Assignment: This Contract shall not be assigned or transferred by the Contractor unless consented to in writing by the SCSC.

28. Amendments in Writing: No modifications or alteration of this Contract will be valid or effective unless each modification or alteration is made as an amendment to this Contract and signed by both parties.

29. Severability: If any provision of this Contract is held to be invalid, illegal, or unenforceable for any reason, the validity, legality and enforceability of the remaining provisions of this Contract will not be adversely affected.

30. Choice of Law: This Contract shall be deemed to have been executed in Fulton County, Georgia, and all questions of interpretation and construction shall be governed by the laws of the State of Georgia.

31. Vendor Lobbyist Certification. Contractor hereby certifies that, as of the effective date of this Contract, any lobbyist employed by Contractor has registered with the Georgia State Ethics Commission and complied with the requirements of the Executive Order dated October 1, 2003 ("*Providing for the Registration and Disclosure of Lobbyists Employed or Retained by Vendors to State Agencies*"). This Contract may be declared void at the SCSC's sole discretion, if it is determined that Contractor has made false certification hereinabove or has violated such certification by failure to carry out the requirements of such Executive Order.

32. Debarred, Suspended, and Ineligible Status. Contractor certifies that the Contractor and/or any of its subcontractors have not been debarred, suspended, or declared ineligible by any agency of the State of Georgia or as defined in the Federal

Acquisition Regulation (FAR) 48 C.F.R. Ch.1 Subpart 9.4. Contractor will immediately notify the SCSC if Contractor is debarred by the State or placed on the Consolidated List of Debarred, Suspended, and Ineligible Contractors by a federal entity.

33. Use of Third Parties. Except as may be expressly agreed to in writing by the SCSC, Contractor shall not subcontract, assign, delegate or otherwise permit anyone other than Contractor or Contractor's personnel to perform any of Contractor's obligations under this Contract or any of the work subsequently assigned under this Contract. No subcontract which Contractor enters into with respect to performance of obligations or work assigned under the Contract shall in any way relieve Contractor of any responsibility, obligation or liability under this Contract and for the acts and omissions of all subcontractors, agents, and employees. All restrictions, obligations and responsibilities of the Contractor under the Contract shall also apply to the subcontractors. Any contract with a subcontractor must also preserve the rights of the SCSC. The SCSC shall have the right to request the removal of a subcontractor from the Contract for good cause.

34. Third Party Beneficiaries: There are no third-party beneficiaries to the Contract. The Contract is intended only to benefit the SCSC and the Contractor.

35. Notices: Any notice to be made by either party to the other shall be sufficiently made if delivered in hand, or three (3) calendar days after posting, if sent by US Post. Such notices shall be provided to a party hereto at the address set forth in the first paragraph or such other address that has been designated in writing to the other party for purposes of legal notice.

36. Multiple Counterparts: This Contract may be executed in counterparts which, when taken together, will constitute one Contract. Copies of this Contract will be equally binding as originals and faxed or scanned and emailed counterpart signatures will be sufficient to evidence execution.

IN WITNESS WHEREOF, the parties state and affirm that they are duly authorized to bind the respected entities designated below as of the day and year indicated.

STATE CHARTER SCHOOLS COMMISSION
OF GEORGIA

By: _____
Authorized Name:
Title:

By: _____

Date: _____

Date: _____