Number: 2-218740-09

Date: MAR 2 6 2007

MASTER CONTRACT BETWEEN THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY AND VANDERBILT UNIVERSITY FOR PURCHASE OF PROFESSIONAL SERVICES

This Master Contract is entered into on this day of word, 200, by and between THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY BY AND THROUGH THE METROPOLITAN BOARD OF PUBLIC EDUCATION ("MBPE") and VANDERBILT UNIVERSITY ("Contractor"). This contract consists of the following documents(s):

- a) This Master Contract,
- b) Annexes to this Master Contract that are anticipated to be added in the future

In the event of conflicting provisions, all documents shall be construed according to the following priorities:

- a) Any properly executed amendment or change order to this contract, (most recent with first priority),
- b) This contract.
- c) Annexes to this Master Contract that are anticipated to be added in the future
- 1. <u>Duties and Responsibilities of Contractor</u>. Contractor agrees to provide and MBPE agrees to purchase the services specified in all annexes to this contract approved by both parties.
- 2. Term.
 - a) The term of this contract begins January 1, 2007 and ends December 31, 2011.
 - b) In no event shall the term of this contract exceed five (5) years.
- Compensation. Contractor shall be paid as specified in all approved annexes to this contract. There will be no other charges or fees for the performance of this contract. All payments by Metro shall be made within sixty (60) days of receipt of invoice.
- 4. <u>Contractor Performance Evaluation</u>: The performance of the Contractor shall be determined as specified in all approved annexes to this contract.

- 5. <u>Taxes</u>. MBPE shall not be responsible for any taxes that are imposed on Contractor. Furthermore, Contractor understands that it cannot claim exemption from taxes by virtue of any exemption that is provided to MBPE.
- 6. <u>License</u>. Contractor warrants and represents that it is the owner of or otherwise has the right to and does hereby grant MBPE a license to use any software provided for the purposes for which the software was obtained.
- 7. <u>Termination Breach</u>. Should either party fail to fulfill in a timely and proper manner its obligations under this contract or if it should violate any of the terms of this contract, the other party shall have the right to immediately terminate the contract. The non-breaching party shall give the other party thirty (30) days to cure the breach, following reasonable notice and prior to termination. Such termination shall not relieve the party of any liability to the other party for damages sustained by virtue of any breach by the party.
- 8. <u>Termination Funding.</u> Should funding for this contract be discontinued, either party shall have the right to terminate the contract immediately upon written notice to the other party. However, MBPE shall be obligated to pay in full any amount owed to Contractor for work completed under the Contract.
- 9. <u>Termination Notice</u>. Either party may terminate this contract at any time upon thirty (30) days written notice to the other party.
- 10. <u>Compliance with Laws</u>. The parties agree to comply with any applicable federal, state and local laws and regulations.
- 11. Assignment-Consent Required. The provisions of this contract shall inure to the benefit of and shall be binding upon the respective successors and assignees of the parties hereto. Except for rights to money due to Contractor under the Contract, neither this contract nor any of the rights and obligations of Contractor or MBPE hereunder shall be assigned or transferred in whole or in part without the prior written consent of the other party. Any assignment or transfer shall not release the parties from their obligations hereunder.

12. Notices.

Notice of assignment of any rights to money due to Contractor under this contract <u>MUST</u> be mailed or hand-delivered to the attention of the CHIEF ACCOUNTANT, ACCOUNTING DEPARTMENT, BUSINESS OFFICE, METROPOLITAN PUBLIC SCHOOLS, 2601 BRANSFORD AVENUE, NASHVILLE, TN 37204, with a copy to the recipient for Metro notices listed below.

a) All other notices to Metro shall be mailed or hand delivered to:

Bob Watkins Purchasing Agent Metropolitan Nashville Public Schools 2601 Bransford Avenue Nashville, TN 37204 615-259-8488 bob.watkins@mnps.org

b) Notices to Contractor shall be mailed or hand-delivered to:

Amy Casseri
Director, Pediatric Services Development
Vanderbilt Children's Hospital
Suite 2410, 2200 Children's Way
Nashville, TN 37232-9900
615-936-6020
amy.casseri@vanderbilt.edu

with copy to:

Office of Grants & Contracts Management Vanderbilt University Medical Center 3319 West End Avenue, Suite 100 Nashville, TN 37203-6869

Contractor's Federal Tax I.D. Number: 62-0476822

c) Contractor designates the following as the Contractor's agent for service of process and will waive any objection to service of process if process is served upon this agent:

Designated Agent:

David Williams II 405 Kirkland Hall 2201 West End Avenue Nashville, TN 37240 615-322-8333

- 13. Maintenance of Records. Contractor shall maintain documentation for all charges against MBPE. The books, records, and documents of Contractor, insofar as they relate to work performed or money received under the contract, shall be maintained for a period of three (3) full years from the date of final payment and will be subject to audit, at any reasonable time and upon reasonable notice by MBPE or its duly appointed representatives. The records shall be maintained in accordance with generally accepted accounting principles.
- Metro Property. Any Metro property, including but not limited to books, records and equipment, that is in Contractor's possession shall be maintained by Contractor in good condition and repair, and shall be returned to MBPE by Contractor upon termination of the contract to the extent required by the contract. All goods, documents, records, and other work product specifically defined as part of the scope of the Contract and property produced during the performance of this contract and specifically agreed to as a work-for-hire are deemed to be Metro property.

- 15. Modification of Contract. This contract is expected to be amended periodically by the addition of annexes executed by all parties and their signatories hereto. All change orders, where required, shall be executed in conformance with section 4.24.020 of the Metropolitan Code of Laws.
- 16. Partnership Joint Venture. Nothing herein shall in any way be construed or intended to create a partnership or joint venture between the parties or to create the relationship of principal and agent between or among any of the parties. None of the parties hereto shall hold itself out in a manner contrary to the terms of this paragraph. No party shall become liable for any representation, act or omission of any other party contrary to the terms of this paragraph.
- 17. <u>Waiver</u>. No waiver of any provision of this contract shall affect the right of any party thereafter to enforce such provision or to exercise any right or remedy available to it in the event of any other default.
- 18. <u>Employment</u>. Neither party shall subscribe to any personnel policy which permits or allows for the promotion, demotion, employment, dismissal or laying off of any individual due to race, creed, color, national origin, age, sex, or which is in violation of applicable laws concerning the employment of individuals with disabilities.
- 19. Criminal Background Checks. Prior to the delivery of services, Contractor shall apply for a criminal background check for each employee and student who will be on school property or working with MBPE students off-site. The State of Tennessee criminal background check contractor shall be used. The cost shall be the responsibility of the Contractor. The results of the criminal background checks shall be reported to MBPE. If any shows a history of criminal record, MBPE shall decide whether the contractor's employee or student shall be allowed to deliver services under the contract. In the event that Contractor's employee or student is rejected by MBPE, MBPE will provide the reason for the rejection to the employee or student, and to Contractor, upon receiving written consent from the employee or student. If Contractor has previously obtained within the last five years a criminal background check on an employee as part of a State of Tennessee professional licensing procedure, the Contractor shall authorize MBPE to obtain from the State agency the results of such background checks and a new check will not be required.
- 20. <u>Insurance</u>. During the term of this Contract, Contractor shall maintain Automobile Liability insurance with limits not less than One Million Dollars (\$1,000,000.00), General Liability and Medical Professional Liability insurance with limits of not less than One Million Dollars (\$1,000,000.00) per occurrence and Three Million Dollars (\$3,000,000.00 aggregate. The Metropolitan Government and DAVIDSON COUNTY shall be included as an additional insured as regards to the general liability coverage. General liability and automobile liability insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to the Metropolitan Government of Nashville and Davidson County. There shall be no endorsement or modification to make insurance excess over other available insurance. Contractor shall maintain workers' compensation insurance with statutory limits

as required by the State of Tennessee or other applicable laws and employers' liability insurance with limits of not less than One Hundred Thousand Dollars (\$100,000.00). Contractor may elect to provide the coverages above through a program of self-insurance. A certificate of insurance in a form satisfactory to Metro, evidencing said coverage shall be provided to Metro prior to commencement of performance of this Contract. Throughout the term of this contract, Contractor shall provide an updated certificate of insurance upon expiration of the current certificate.

- 21. Contingent Fees. Contractor hereby represents that Contractor has not been retained or retained any persons to solicit or secure a Metropolitan Board of Public Education contract upon an agreement or understanding for a contingent commission, percentage, or brokerage fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business. Breach of the provisions of this paragraph is, in addition to a breach of this contract, a breach of ethical standards which may result in civil or criminal sanction and/or debarment or suspension from being a contractor or subcontractor under Metropolitan Board of Public Education contracts.
- Gratuities and Kickbacks. It shall be a breach of ethical standards for any person 22. to offer, give or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigating, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter, pertaining to any program requirement of a contract or subcontract or to any solicitation or proposal therefore. It shall be a breach of ethical standards for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or a person associated therewith, as an inducement for the award of a subcontract or order. Breach of the provisions of this paragraph is, in addition to a breach of this contract, a breach of ethical standards which may result in civil or criminal sanction and/or debarment or suspension from being a contractor or subcontractor under Metropolitan Board of Public Education contracts.
- 23. <u>Indemnification and Hold Harmless</u>. Contractor shall indemnify and hold harmless Metro, its officers, agents and employees from:
 - a) Any claims, damages, costs, and attorneys' fees for injuries or damages arising, or alleged to arise, in part or in whole, from the acts or omissions of Contractor, its officers, employees and/or agents, including its sub or independent contractors, in connection with the performance of this contract:

- i. Which are negligent; or
- ii. Which result in violation of the federal or state civil rights statutes (such as 42 U.S.C. § 1983); or,
- iii. Which arise directly from or out of the negligent selection, supervision, or retention of Contractor's employees or subcontractors even if the resulting harm arises from intentional acts of Contractor's employees or subcontractors so long as the indemnification is consistent with Tennessee law.
- b) Any claims, damages, penalties, costs and attorney fees arising from any failure of Contractor, its officers, employees and/or agents, including its sub or independent contractors, to observe applicable laws, including, but not limited to, labor laws and minimum wage laws. Any claims, damages, penalties, costs and attorney fees arising from any failure of contractor, its officers, employees and/or agents, including its sub or independent contractors, to observe applicable laws, including, but not limited to, labor laws and minimum wage laws.
- c) MBPE will not indemnify, defend or hold harmless in any fashion the Contractor from any claims, regardless of any language in any attachment or other document that the Contractor may provide.
- 24. <u>Entire Contract</u>. This contract and all approved annexes set forth the entire agreement between the parties with respect to the subject matter hereof and shall govern the respective duties and obligations of the parties.
- 25. <u>Force Majeure</u>. No party shall have any liability to the other hereunder by reason of any delay or failure to perform any obligation or covenant if the delay or failure to perform is occasioned by force majeure, meaning any act of God, storm, fire, casualty, unanticipated work stoppage, strike, lockout, labor dispute, civil disturbance, riot, war, national emergency, act of Government, act of public enemy, or other cause of similar or dissimilar nature beyond its control.
- 26. Governing Law. The validity, construction and effect of this contract and any and all extensions and/or modifications thereof shall be governed by the laws of the State of Tennessee. Tennessee law shall govern regardless of any language in any attachment or other document that the Contractor may provide.
- 27. <u>Venue</u>. Any action between the parties arising from this agreement shall be maintained in the courts of Davidson County, Tennessee.
- 28. <u>Severability</u>. Should any provision of this contract be declared to be invalid by any court of competent jurisdiction, such provision shall be severed and shall not affect the validity of the remaining provisions of this contract.
- 29. <u>Non-Discrimination</u>. It is the policy of the Metropolitan Government not to discriminate on the basis of age, race, sex, color, national origin, or disability in its hiring and employment practices, or in admission to, access to, or operation of

its programs, services, and activities. With regard to all aspects of this contract, Contractor certifies and warrants it will comply with this policy. No person shall be excluded from participation in, be denied benefits of, be discriminated against in the admission or access to, or be discriminated against in treatment or employment in Metro's contracted programs or activities, on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal or Tennessee State Constitutional or statutory law; not shall they be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of contracts with Metro or in the employment practices of Metro's Contractors. Accordingly all Contractors shall, upon request, be required to show proof of such nondiscrimination and to post, in conspicuous places, that are available to all employees and applicants, notices of nondiscrimination.

- 30. <u>Confidentiality of Records</u>. All educational records created, disclosed or maintained pursuant to the terms of this contract are <u>confidential</u> and shall be created, disclosed and maintained pursuant to the provisions of Family Educational Rights and Privacy Act to the extent it is applicable, also known as FERPA (20 U.S.C.A. § 1232g), its regulations and Board policy.
- 31. Compliance with the Americans with Disabilities Act. The parties will be required to provide assurances that it does not discriminate on the basis of disability in admission to, access to, or operations of its program, services, or activities, including hiring or employment practices. The parties will insure that qualified applicants and participants with disabilities in its services, programs, or activities have communication access that is equally effective as that provided to people without disabilities. Information shall be made available in accessible formats and auxiliary aids and services shall be provided upon the reasonable request of a qualified person with a disability.
- 32. <u>Effective Date</u>. This contract shall not be binding upon the parties until it has been signed first by the Contractor and then by the authorized representatives of the Metropolitan Board of Public Education and has been filed in the office of the Metropolitan Clerk. When it has been so signed and filed, this contract shall be effective as of the date first written above.

THE METROPOLITAN GOVERNMENT OF **NASHVILLE AND DAVIDSON COUNTY** BY AND THROUGH THE **METROPOLITAN BOARD OF EDUCATION: Purchasing Agent:**

RECOMMENDED: Department Head: Department: APPROVED AS TO AVAILABILITY OF **FUNDS:** Account Number: Various Assistant Superintendent of Business and Facility Services, MBPE Chairman of the Board

Metropolitan Board of Education 707 22 2008 Director of Finance び

APPROVED AS TO INSURANCE:

APPROVED AS TO FORM AND. **LEGALITY**

Metropolitan Attorney

FILED IN THE OFFICE OF THE **METROPOLITAN CLERK:**

VANDERBILT UNIVERSITY

APPROVED BY:

Assoc. Vice Chancellor for Health **Affairs**

DEC 2 7 2006

Date

Sworn to and subscribed to before me, a Notary Public, this 27th day of 20 06 hv by the of Contractor and duly authorized to execute this instrument Contractor's behalf.

Notary Public

My Commission Expires:

MAR 2 6 2007 Date Filed: _

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	Nashville, TN 37232-4220								
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