

FORM: GENERAL TERMS & PROVISIONS FOR PERSONAL SERVICE AGREEMENTS

FY 2018-2019 UPDATE

EXHIBIT B GENERAL TERMS & CONDITIONS

- 1 **Contractor Obligations.** The Contractor shall provide the services as set forth in Exhibit A, in accordance with the timeline set forth and for the costs set forth in Exhibit A, and shall comply with all the terms and provisions in this Agreement and the Exhibits that are attached hereto and incorporated herein by reference. The Contractor shall provide services using the highest standard of care and professionalism used in the Contractor's business or profession.
 - 1.1 The Contractor warrants that it is engaged in an ongoing practice or business, that it maintains an independent place of business and is providing services as an independent contractor. The Contractor shall maintain independent control over the delivery of service to ESD112 and shall be responsible for paying and withholding unemployment, workers compensation and employment taxes.
 - 1.2 The Contractor shall submit an invoice to ESD112 as required in Exhibit A, detailing services that were provided and the amount that is owed for services provided. Final invoice must be billed by the date as agreed. If ESD112 does not receive the final invoice by the date specified, the Contractor may not be paid for services billed in the final invoice. If the Contractor is paid more than the amount owed under the terms of this Agreement, it shall be considered an overpayment. If an overpayment occurs prior to completion of the Agreement, ESD112 may withhold the amount of the overpayment from payment for subsequent invoices. If an overpayment cannot be reclaimed by withholding future payments, the Contractor shall remit the overpayment to ESD112 within forty-five (45) days of being notified of the overpayment. Invoices may be billed electronically to contracts.invoices@esd112.org or by mail at ESD112's business mailing address.
 - 1.3 Except where Exhibit A states something to the contrary, the Contractor is solely responsible for securing all materials, supplies and print/copy services, and for any travel or other expenses that are necessary to provide the services. If the Contractor wishes to use ESD112 materials, supplies or print/copy services, the Contractor shall pay ESD112 in advance for costs associated with such items to the extent they are included in the contract service fee.
 - 1.4 The Contractor shall secure and maintain insurance coverage in the amounts specified in Exhibit C, and shall comply with the provisions described therein.
 - 1.5 If the Agreement is funded under federal award, the Contractor shall read and hereby acknowledges its understanding and acceptance of the disclosure and terms in the included Exhibit for Federal Funds Disclosure Requirements (if applicable) related to ESD112's use of federal funds to partially or completely fund its obligations under this Agreement, by signature of the Agreement.
 - 1.6 The Contractor shall comply with the following requirements if the Contractor or any of its officials, employees or agents may have access to children or may provide services on school district property:
 - 1.6.1 Fingerprint records are required by Washington State law for contractors who have regularly unsupervised access to children (RCW 28A.400.303). Contractors working in early learning programs may use the results from Department of Early Learning (DEL) background checks to satisfy the school district background requirement (Office of Superintendent of Public Instruction-Office of Professional Practices).
 - 1.6.2 The Contractor agrees that no person who has pled to or been convicted of a felony crime specified in RCW 28A.400.322, who provides services under this agreement, shall have access to children.
 - 1.7 The Contractor and its officials, employees or agents shall not use tobacco on ESD112 or school district property in violation of RCW 28A.210.310, or ESD112 or school board policies adopted in accordance therewith.
- 2 **ESD112 Obligations.** In exchange for the services set forth in Exhibit A, Section I, ESD112 shall pay the Contractor the invoiced amount, not to exceed the amount set forth in Exhibit A unless both parties sign an amendment to the Agreement.
 - 2.1 The total amount ESD112 shall pay is inclusive of all expenses, except where Exhibit A, Section I states something to the contrary. The Contractor shall only be paid for those expenses that are identified in Exhibit A, Section I and which are authorized by ESD112.

2.2 ESD112 shall pay the Contractor within forty-five (45) days of the receipt of the Contractor's invoice and requested receipts, subject to verification that the services were provided to ESD112's satisfaction and ESD112 approval of the payment. If there is a dispute regarding the Contractor's performance of the services, or the amount or appropriateness of a claimed expense, ESD112 may withhold payment until the dispute is resolved.

2.3 Payments made to the Contractor shall, where appropriate, be subject to 1099 reporting.

3 Termination.

3.1 ESD112 may terminate this Agreement for any reason, with or without cause. ESD112 will provide the Contractor written notice that it is terminating the Agreement. The Agreement shall terminate on the date specified in the notice ESD112 provides. Written notice shall be deemed to have been provided on the earlier of the date it is actually received or the third day after the date the notice is deposited in the mail for deliver to the address noted above.

3.2 The Contractor may terminate this Agreement if ESD112 violates the terms of this Agreement and fails to remedy the violation within thirty (30) days of receiving written notice from the Contractor of the violation.

3.3 Within fifteen (15) days of the date ESD112 terminates the Agreement, the Contractor shall submit a final invoice for services and expenses incurred up to the termination date. ESD112 shall pay the invoice in accordance with the payment provisions in Section 1.2, above.

3.4 The obligations in paragraph's 1.2, 4.8, 4.9 and 4.13 of this Exhibit shall survive termination of the Agreement.

4 General Provisions.

4.1 **Amendment.** Changes to services the Contractor is obligated to provide or fees ESD112 is obligated to pay shall be addressed in signed amendments to this Agreement, executed thirty (30) days before the amendment is to take effect, unless otherwise mutually agreed.

4.2 **Assignment and Sub-grants.** The Contractor shall not subcontract or assign any of its rights or obligations under this Agreement without the signed written consent of ESD112. If ESD112 agrees in writing to allow the Contractor to subcontract or assign any of the Contractor's obligations, any assignee or subcontractor shall comply with all the terms in this Agreement and the Contractor shall be responsible for ensuring its assignees or subcontractors' compliance.

4.3 **Compliance with Laws.** The Contractor shall comply with all federal, state and local laws, and is solely responsible for withholding and paying any taxes and for securing any licenses or permits that are required in connection with the services the Contractor is providing.

4.4 **Conflict of Interest Prohibited.** The Contractor shall not receive compensation from more than one political subdivision of the state of Washington for the same hours worked. If the Contractor is providing services to another organization that are the same as the services the Contractor is providing to ESD112 and is being compensated by the other organization, the amount ESD112 paid for the services constitute an overpayment, which shall be withheld from future payments or reimbursed as described in paragraph 1.2, above.

4.5 **Entire Agreement and Severability.** This Agreement, inclusive of all listed Exhibits constitutes the final complete and exclusive agreement between the parties and supersedes all prior and contemporaneous understandings or agreements. The Agreement may only be amended by mutual signed written agreement of both parties. The provisions in this Agreement are severable. If any provision in this Agreement is found for any reason to be invalid, illegal or unenforceable, the offending provision may be stricken and the remaining provisions shall remain valid and enforceable.

4.6 **Exclusion, Debarment and Suspension Certification.** Per the requirements of Executive Order 12-549, ESD112 and the Contractor certify that neither they, nor their officers, directors, general managers or persons having primary management or supervisory responsibilities, are on the Excluded Parties List Report (web address: <http://www.sam.gov>) and that they are not presently debarred, suspended, proposed for debarment, or declared ineligible or voluntarily excluded for the award of contracts by any Federal governmental agency or department. ESD112 and the Contractor shall provide immediate written notice to each other if, at any time during the term of this Agreement, including any renewals hereof, they learn that this certification has become erroneous by reason of changed circumstances.

4.7 **Governing Law and Venue.** This Agreement shall be governed by the laws of the State of Washington. Any legal action or proceeding arising in connection with this Agreement shall be filed and heard in state court in Clark County, Washington.

4.8 **Indemnification.** The Contractor shall defend, indemnify and hold harmless ESD112 and its officials, administrators, employees and agents from and against any loss or damage whatsoever arise directly or indirectly from the Contractor's, or the Contractor's subcontractors, agents, officials or employees actions under this Agreement.

4.9 **Intellectual Property.** Any materials the Contractor produces under funding from this Agreement shall be considered "works made for hire" as defined by the United States Copyright Act and shall be owned by ESD112. ESD112 shall be considered the author of such materials. To the extent materials developed in connection with this Agreement are found to be "works made for hire," the Contractor hereby irrevocably assigns all right, title and

interest in such materials, including intellectual property rights, to ESD112 effective from the moment of creation. The Contractor shall not use any materials produced for ESD112 in connection with this Agreement without obtaining ESD112's prior written consent.

- 4.10 Non Discrimination.** Per the requirements of state, local and federal laws, including 13 CFR 145, ESD112 and the Contractor agree not to discriminate on the basis of race, creed, religion, color, national origin, age, families with children, sex, gender expression or identity, honorably discharged veteran or military status, marital status, sexual orientation, or non-job-related physical, sensory, or mental disabilities, or use of a trained guide dog or service animal. Inquiries regarding compliance and/or grievance procedures for ESD112 may be directed to ESD112 at its address provided.
- 4.11 Notice.** Whenever notice is required under this Agreement, it shall be provided by emailing, with receipt confirmation, or mailing notice to the contacts listed. Notice shall be deemed effective upon the earlier of actual receipt or three (3) days after notice is deposited in the United States Postal Service mail, by certified mail, postage prepaid.
- 4.12 Privacy.** The Contractor may have access to educational records that are confidential and subject to privacy protections under the Federal Educational Rights and Privacy Act. The Contractor shall take all necessary steps to protect the confidentiality of educational records and shall not disclose such records or the information obtained from having access to such records without obtaining the consent of ESD112 and the parent of the student the record pertains to.
- 4.13 Records.** The Contractor shall maintain books, records, documents, data and other evidence compiled and related to the performance of the services required in this Agreement and any data that substantiates the payment amount requested, including receipts for incurred expenses. The records shall be retained for a period of six (6) years following completion of the Agreement or termination of the Agreement (Washington State Archives, Local Government Common Records Retention Schedule, Version 4, G550-01-11 Rev.4). At no additional cost, the Contractor shall provide ESD112 access to and copies of any records during the required retention period.
- 4.14 Waiver.** No provision in this Agreement or the right to receive reasonable performance of any obligation in this Agreement shall be deemed waived

EXHIBIT C

INSURANCE REQUIREMENTS

The Contractor shall provide a certificate of insurance coverage as identified below, which shall remain in full force and effect for the entire term of this Agreement. The intent of the required insurance is to protect ESD112 should there be any claims, suits, actions, costs, damages or expenses arising from any negligent or intentional act or omission of the Contractor or its subcontractors, agents, officers or employees, while performing under the terms of this Agreement.

- Commercial Liability Insurance Policy.** Provide a Commercial General or Professional Liability Insurance Policy, including contractual liability, in adequate quantity to protect against legal liability arising out of contract activity in an amount not less than \$1,000,000 per occurrence. If ESD112 approves use of a subcontractor, the Contractor is responsible for ensuring that any subcontractors provide adequate insurance coverage for the activities arising out of subcontracts.
- Automobile Liability.** In the event that services delivered pursuant to this contract involve the use of vehicles, either owned or un-owned by the Contractor, automobile liability insurance shall be required. Provide automobile liability in an amount not less than \$1,000,000 per occurrence, using a Combined Single Limit for bodily injury and property damage.
- Errors and Omissions.** Provide an Errors and Omissions Liability Insurance Policy protecting against professional errors and omissions in an amount not less than \$1,000,000.

The insurance required shall be issued by an insurance company(s) authorized to do business within the state of Washington, and shall name ESD112, its agents and employees as additional insured's under the insurance policy(s). The Contractor shall submit renewal certificates as appropriate during the term of the contract. All policies shall be primary to any other valid and collectable insurance. The Contractor shall instruct the insurers to give ESD112 thirty (30) calendar days advance notice of any insurance cancellation. The Contractor shall, within fifteen (15) calendar days of the date this Agreement is signed, provide ESD112 a certificate of insurance that outlines the coverage and limits defined above and listing ESD112 as an additional insured.

- Waiver Option.** ESD112 has waived liability insurance coverage in consideration of the scope of the contract, background checks and other credentialing available to ESD112.

ESD112 Signature: _____
Cabinet Member / Executive Director

LICENSING AND RELATED REQUIREMENTS

The Contractor shall provide a completed form W-9 to ESD112. All payments made to the Contractor by ESD112 shall be subject to 1099 reporting. The Contractor certifies the Contractor is filing a schedule of expenses with the Internal Revenue Service, has established an account with the Washington State Department of Revenue (if a resident of WA State) and/or other appropriate state and/or local taxing agencies, is maintaining a separate set of records for the Contractor's business, is meeting all reporting requirements, is complying with federal statutes and executive orders and is not on the federal Excluded Parties List Report (located on the web at <http://www.sam.gov>).

The Contractor shall maintain all professional and businesses licenses necessary for the lawful execution of the work described in Exhibit A.

FINGERPRINTING REQUIREMENTS

Fingerprint records and background checks are required by Washington State Law for contractors of an educational service district or school district who have or may have regularly unsupervised access to children (RCW 28A.400.322) Contractors working in early learning programs may use results from the Department of Early Learning (DEL) background check to satisfy the background check requirement. (See Office of Superintendent of Public Instruction—Office of Professional Practices on the web at <http://www.k12.wa.us/ProfPractices/fingerprint>)

The Contractor shall comply with fingerprint and background check requirements and provide ESD112 with evidence of those records to maintain on file, as applicable, to contracted services provided as set forth in Exhibit A.

EARLY RETIRMENT FACTORS (ERF) DISCLOSURES

The Contractor has disclosed if they, or any of the owners / principals of the company, retired under the Washington Department of Retirement Systems (DRS) 2008 Early Retirement Factors (ERF) Act. Retirees under the 2008 ERF will have a benefit payment stop when working for a DRS-Covered employer before age 65.

Refer to DRS Notice for further information:

<http://www.drs.wa.gov/Default.aspx?PageID=15495482&A=SearchResult&SearchID=4948756&ObjectID=15495482&ObjectType=1>.