

CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT

This CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT (the "Agreement") is made and entered into the day of the last signatory under this Agreement (the "Effective Date") by and between Shelby County Board of Education ("SCBE") and _____ ("Recipient").

RECITALS

WHEREAS, SCBE may enter into a business relationship with Recipient if Recipient is the successful bidder under a Request for Proposal issued by SCBE (the "RFP").

WHEREAS, SCBE may provide, make available, or otherwise disclose certain confidential and proprietary information to Recipient in order for the Recipient to be sufficiently informed to enable it to respond to the RFP; and

WHEREAS, SCBE desires to keep all of its proprietary information confidential; and

WHEREAS, Recipient agrees to accept such confidential and proprietary information under the terms and conditions set forth in this Agreement.

NOW THEREFORE, in consideration of the foregoing premises, the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of all of which are hereby acknowledged, the parties covenant and agree as follows:

1. Confidential Information. Confidential Information shall mean any and all information provided to the Recipient that relates in any way to the operation of SCBE's business, including but not limited to, information relating to business negotiations or any potential business relationships of SCBE, all insurance and benefit plans, financial information, certain employee information, intellectual property, claims information and all discoveries, developments, inventions, creations, processes, formulas, methods, concepts or ideas related to the business of SCBE.

2. Exclusions from Confidential Information. Confidential Information shall not include:

(a) Information that is or becomes generally known to the public other than through Recipient's breach of a duty of confidentiality; and

(b) Information that Recipient is required to disclose in response to a valid court order or is otherwise required to disclose by law, but only if it has given SCBE prompt written notice of the potential for such disclosure and the opportunity to seek a protective order or obtain other relief to preserve the confidentiality of the Confidential Information.

3. Obligations.

(a) Recipient shall not discuss or communicate with any person the Confidential Information, except with the Recipient's own representatives with a need to know. Representatives shall be informed by the Recipient of the confidential nature of the Confidential Information and shall be directed by the Recipient to treat the Confidential Information confidentially, except with the prior

written consent of SCBE or as otherwise permitted hereunder. Each Recipient agrees to be responsible for any breach of this Agreement by its representative.

(b) In the event that any unauthorized disclosure of any Confidential Information by or through Recipient should occur, Recipient and SCBE shall promptly take all appropriate actions, including legal proceedings, to protect the further dissemination and use of such Confidential Information, all at the expense of Recipient, and, if any such Confidential Information contains personally identifiable information, Recipient and SCBE shall promptly notify the third party of such disclosure.

4. Use. Recipient may use the Confidential Information only for the limited purpose of responding to the RFP. In no event shall Recipient use the Confidential Information in any manner potentially detrimental to SCBE. Recipient acknowledges that title to the Confidential Information and all derivative works shall remain at all times with SCBE, that the Confidential Information has value and that a license to use the Confidential Information is conditioned on certain consideration. At the end of the RFP process, Recipient shall within fifteen (15) days return to SCBE all Confidential Information or, at SCBE's option, deliver or destroy any materials containing, regarding or derived from any portion of the Confidential Information. Notwithstanding any such delivery or destruction, Recipient's obligations continue hereunder.

5. No Business Relationship Implied. Nothing contained in this Agreement shall be construed as obligating SCBE to continue any business relationship with the Recipient as a result of the execution of this Agreement or the disclosure of Confidential Information. Nor will anything contained in this Agreement be construed as granting or conferring any rights on the Recipient in the Confidential Information.

6. No Warranty. SCBE makes no representations or warranties, express or implied, with respect to the Confidential Information, including but not limited to the accuracy or completeness of the Confidential Information disclosed hereunder.

7. Remedies. (a) Equitable Relief. The Recipient acknowledges that the Confidential Information is valuable and unique and that the covenants contained in this Agreement are reasonable and necessary in order to protect SCBE's legitimate business, and that any violation thereof would result in irreparable injury to SCBE. In the event of a breach or threatened breach of the terms of this Agreement, SCBE's remedy at law would be inadequate and SCBE shall be entitled to an injunction prohibiting such breach. Any such relief shall be in addition to and not in lieu of any appropriate monetary relief.

(b) Responsibility for Damages to Third Parties; Litigation Costs. SCBE shall not be responsible for damages awarded due to the improper disclosure of Confidential Information that is adjudicated to have been caused by the Recipient's negligence or intentional conduct. In the event that SCBE is a named party in a lawsuit related to the improper disclosure of Confidential Information by the Recipient or its representatives, Recipient will reimburse SCBE for its costs and expenses (including, without limitation, damages awarded) incurred in connection with such litigation.

8. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee (without regard to its rules on conflicts of laws), and the

United States. The Recipient irrevocably consents to the exclusive jurisdiction of the courts of Shelby County, Tennessee, including federal courts sitting in the Western District of Tennessee and the Chancery Court for Shelby County, Tennessee, for any action in any way relating to any dispute between the parties.

9. Term. The provisions of this Agreement shall expire five (5) years from the Effective Date herein.

10. Severability. If any covenant or provision contained in this Agreement is construed to be invalid or unenforceable under applicable law, then the remaining covenants will not be affected and any remaining covenants or provisions will then be given full force and effect without regard to the invalid or unenforceable provisions.

11. No Assignment. Neither this Agreement nor Recipient's rights hereunder may be assigned or transferred to any third party. This Agreement constitutes the full and entire agreement between the parties regarding the subject matter hereof, supersedes all prior and contemporaneous agreements, and may not be waived, modified or terminated except in writing. This Agreement will be binding upon and inure to the benefit of the parties, and their respective representatives, successors and permitted assigns.

12. Integration. This Agreement (including the Recitals) constitutes the entire agreement and supersedes all prior and contemporaneous understandings and agreements between the parties relating to the subject matter hereof. This Agreement may not be modified or amended except by written agreement between the parties and none of its provisions may be waived except by written agreement between the parties in each instance.

IN WITNESS WHEREOF, SCBE and Recipient, acting under due and proper authority, have caused this Agreement to be executed as of the day and year first set forth below.

RECIPIENT:

SHELBY COUNTY BOARD OF EDUCATION:

By: _____

By: _____

Title:

Title:

Date: _____

Date: _____