

**INTEGRATION AGREEMENT FOR
THE CITY OF SAN ANTONIO HOSTING SERVICES FOR A LEARNING
MANAGEMENT SYSTEM**

**REQUEST FOR COMPETITIVE SEALED PROPOSAL
NO: 6100009954**

**BETWEEN THE CITY OF SAN ANTONIO, TEXAS
AND**

ETHINK EDUCATION

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This Agreement is entered into by and between the City of San Antonio, Texas, a home-rule municipal corporation (City), and eThink Education (“eThink”), both of which may be referred to herein collectively as the “Parties”.

The Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

1.0 CONTRACT DOCUMENTS

The terms and conditions for performance and payment of compensation for this Agreement are set forth in the following contract documents, true and correct copies of which are attached hereto and fully incorporated herein for all purposes, and shall be interpreted in the order of priority as appears below:

- a. This Integration Agreement;
- b. City’s Request for Competitive Sealed Proposal (RFCSP) 6100009954, including all attachments, addendums, best and final offers, and clarification statements thereto (Exhibit A);
- c. eThink Education revised pricing (Exhibit B);
- d. eThink Education Statement of Work (SOW) (Exhibit C); and
- e. Think Education Proposal Response to RFCSP 6100009954 (Exhibit D - attached, incorporated in the form signed and submitted by eThink Education).

2.0 TERM

The term of the Agreement will be for a three (3) year period. The City shall have the option to renew for up to two additional one-year periods without additional City Council approval.

3.0 INSURANCE

Prior to the commencement of any work under this Agreement, eThink Education shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's Finance Department, Purchasing Division, which shall be clearly labeled "Hosting Services for a Learning Management System" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must be signed by the Authorized Representative of the carrier, and list the agent's signature and phone number. The certificate should be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's Finance Department, Purchasing Division. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereby City may incur increased risk.

eThink Education's financial integrity is of interest to the City; therefore, subject to eThink Education's right to maintain reasonable deductibles in such amounts as are approved by the City, eThink Education shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at eThink Education's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

TYPE	AMOUNTS
1. Workers' Compensation	Statutory
2. Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage

eThink Education agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same categories of insurance coverage required of eThink Education herein, and provide a certificate of insurance and endorsement that names the eThink Education and the CITY as additional insureds. Policy limits of the coverages carried by subcontractors will be determined

as a business decision of eThink Education. eThink Education shall provide the CITY with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.

As they apply to the limits required by the City, the City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all required endorsements. eThink Education shall be required to comply with any such requests and shall submit requested documents to City at the address provided below within 10 days. eThink Education shall pay any costs incurred resulting from provision of said documents.

City of San Antonio
Attn: Human Resources Department, Fiscal Division
P.O. Box 839966
San Antonio, Texas 78283-3966

EThink Education agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
- Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.
- Provide advance written notice directly to City of any suspension or non-renewal in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, eThink Education shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend eThink Education's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

In addition to any other remedies the City may have upon eThink Education's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order eThink Education to stop work hereunder, and/or withhold any payment(s) which become due to eThink Education hereunder until eThink Education demonstrates compliance with the requirements hereof.

Nothing herein contained shall be construed as limiting in any way the extent to which eThink Education may be held responsible for payments of damages to persons or property resulting from eThink Education's or its subcontractors' performance of the work covered under this Agreement.

It is agreed that eThink Education's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.

It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of the City shall be limited to insurance coverage provided.

eThink Education and any Subcontractors are responsible for all damage to their own equipment and/or property.

4.0 INDEMNIFICATION

ETHINK EDUCATION covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to ETHINK EDUCATION'S activities under this Agreement, including any acts or omissions of ETHINK EDUCATION, any agent, officer, director, representative, employee, consultant or subcontractor of ETHINK EDUCATION, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT ETHINK EDUCATION AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. eThink Education shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or eThink Education known to eThink Education related to or arising out of eThink Education's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at eThink Education's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving eThink Education of any of its obligations under this paragraph.

Defense Counsel - CITY shall have the right to approve defense counsel to be retained by eThink Education in fulfilling its obligation hereunder to defend and indemnify CITY RESPONDENT shall retain CITY approved defense counsel within seven (7) business days of CITY'S written notice that CITY is invoking its right to indemnification under this Contract. If eThink Education fails to retain

Counsel within such time period, CITY shall have the right to retain defense counsel on its own behalf, and eThink Education shall be liable for all costs incurred by CITY. CITY shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

Employee Litigation - In any and all claims against any party indemnified hereunder by any employee of eThink Education, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for eThink Education or any subcontractor under worker's compensation or other employee benefit acts.

5.0 LAW APPLICABLE

- 5.1 THIS CONTRACT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.**
- 5.2 Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Contract shall be heard and determined in the City of San Antonio, Bexar County, Texas.

6.0 TERMINATION

- 6.1 Termination-Breach. Should eThink Education fail to fulfill in a timely and proper manner, as determined solely by the Director, its material obligations under this contract, or violate any of the material terms of this contract, City shall have the right to immediately terminate the contract in whole or in part. Notice of termination shall be provided in writing to the eThink Education, effective upon the date set forth in the notice. City may, in City's sole discretion, provide an opportunity for eThink Education to cure the default. If City elects to offer an opportunity to cure, City shall provide notice to eThink Education specifying the matters in default and the cure period. If eThink Education fails to cure the default within the cure period, City shall have the right, without further notice, to terminate the contract in whole or in part. Such termination shall not relieve eThink Education of any liability to the City for damages sustained by virtue of any breach by eThink Education.
- 6.2 Termination-Notice. City may terminate this contract, in whole or in part, without cause. City shall be required to give eThink Education notice ten days prior to the date of termination of the contract without cause.
- 6.3 Termination-Funding. City retains the right to terminate this contract at the expiration of each of City's budget periods. This contract is conditioned on a best efforts attempt by City to obtain and appropriate funds for payment of any debt due by City herein.
- 6.4 Termination by City may be effected by Director, without further action by the San Antonio City Council.
- 6.5 Regardless of how this Agreement is terminated, eThink Education shall affect an orderly transfer to City or to such person(s) or firm(s) as the City may designate, at no additional cost to City, all completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by eThink Education, or provided to eThink

Education, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by eThink Education. Payment of compensation due or to become due to eThink Education is conditioned upon delivery of all such documents, if requested.

- 6.6 Termination not sole remedy. In no event shall City's action of terminating this Agreement, for cause be deemed an election of City's remedies, nor shall such termination limit, in any way, at law or at equity, City's right to seek damages from or otherwise pursue eThink Education for any default hereunder or other action.

7.0 ENTIRE AGREEMENT

This Agreement, together with its exhibits, if any, constitutes the final and entire agreement between the parties hereto and contains all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto, unless the same are in writing, dated subsequent to the date hereto, and duly executed by the parties.

EXECUTED and **AGREED** to as of the dates indicated below. This Agreement may be executed in multiple copies, each of which shall constitute an original.

CITY OF SAN ANTONIO

ETHINK EDUCATION, Inc.

Troy Elliott, CPA
Deputy
Date: _____

Brian Carlson

Print Name: Brian Carlson
Title: CEO
Date: 8/7/18

Approved as to Form:

Assistant City Attorney