

## **PERSONAL SERVICES AGREEMENT**

**THIS AGREEMENT** is made and entered into as of January 1, 2013 by and between KNOX COUNTY SCHOOLS ("KCS") and GARY L. SPENCER ("Spencer") for certain professional services to be provided.

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In March 2008, the Knoxville Area Chamber Partnership—through its Partnership Initiatives Fund ("PIF")—entered into a Memorandum of Understanding with the Knox County Board of Education to sponsor a long-term project ("the Project") to design, develop, and implement an integrated management information system for KCS. The goal of this ongoing Project is to create a unique Education Management Information System ("EMIS") that supports KCS in monitoring and managing district-wide, school-level, and program financial and non-financial resources, and in designing and evaluating individualized student instruction. As of January 1, 2013, completion of the project is expected to take an additional twelve to eighteen months.

In its role as sponsor of the project, PIF hired Spencer, an independent contractor, to serve as an external project manager. PIF provided Spencer to KCS at no cost to KCS from March 2008 through December 2011. Thereafter, Spencer contracted directly with Knox County Schools to provide his professional services at a cost in 2012 of \$91,280.

Spencer's participation in the Project gives Spencer a unique level of competence regarding the current status of the Project, the work remaining to be done, and the nature of future Project deliverables. Another party would require an extended period of time to acquire the same level of competence regarding the Project that Spencer possesses, which would result in a significant, unacceptable, and costly delay in completing the Project.

Time being of the essence for the successful continuation and completion of the Project, KCS desires to engage Spencer to provide consulting and other professional services, and Spencer has agreed to provide such services on the terms outlined herein.

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**NOW THEREFORE**, for and in consideration of the mutual covenants contained herein and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do agree as follows:

1. Engagement of Spencer. KCS hereby engages Spencer as an independent contractor to provide the services described herein for the benefit of KCS. Spencer hereby accepts such engagement and agrees to provide the services.
  
2. Spencer's Services. During the term of this Agreement, Spencer agrees to make his best effort to consult with and to assist KCS and KCS agrees to make its best effort to supply sufficient human, financial, and other resources, to:

a. Complete construction of the EMIS data warehouse – In February 2009, KCS entered a five year contract with Follett Software Company ("Follett") to build and maintain a data warehouse which holds the financial and non-financial data that is the "backbone" of EMIS. Data warehouse construction is scheduled to be completed in 2012.

b. Publish additional releases of customized reporting – A key component of EMIS is a unique internet-based custom reporting portfolio called "Homeroom," which was designed by Spencer and developed by Follett. Follett published the first release of "Homeroom" at the beginning of the 2011 – 2012 academic year. KCS currently plans two additional releases of "Homeroom" to be published during the next twelve to eighteen months.

c. Build a first set of management tools –The work of designing, developing, and implementing a first set of EMIS management tools, including dashboards, standard data warehouse queries, and periodic reports, will continue beyond the date of data warehouse completion for an estimated additional twelve months.

3. Scope of Authority. Spencer shall not have the authority to bind KCS.

4. Term and Termination. The term of this Agreement shall begin on January 1, 2013 and shall continue thereafter until the work described in Section 2 shall be completed, as determined in the sole discretion of KCS, provided, however, that either party may terminate this Agreement at any time by giving the other party written notice at least thirty (30) days prior to the effective date of termination specified in the notice. Spencer shall be entitled to be compensated through the effective date of termination, and the parties shall be released from any other liabilities or obligations hereunder, other than settling any outstanding financial obligations to third parties that may exist at the time of termination and any obligations which are intended to survive the termination of this Agreement.

5. Compensation. For the services rendered by Spencer, KCS shall pay to Spencer personal compensation in the amount of eighty dollars (\$80.00) per hour worked by Spencer to be billed and paid at the end of each calendar month, upon presentation of an invoice setting forth the details of hours worked in a form acceptable to KCS.

Spencer shall bill KCS for no more than 100 hours worked in a calendar month, that is, Spencer's maximum billing for personal services shall be \$8,000 per calendar month during the term of this Agreement. Should Spencer's actual hours worked during a calendar month be more than 100, Spencer shall include the total of the hours worked in his invoice and show the hours exceeding 100 as being billed at \$0.00 per hour. Spencer shall then note on his invoice the effective rate per hour actually worked. For example, should Spencer work 200 hours during a calendar month, the first 100 would be billed at \$80.00 per hour and the second 100 at \$0.00 per hour, resulting in a total \$8,000 monthly billing. Spencer's invoice would then note that the effective rate per hour for services rendered was \$40.00.

Spencer shall also be paid monthly for all out-of-pocket expenses related to the Project. As soon as practicable, following the end of a calendar month, Spencer shall present an invoice detailing the out-of-pocket expenses, based upon any previously agreed upon per diem, per mile, or other rates, and original documentation substantiating other expenses, as applicable. Notwithstanding the foregoing, expenses for the time spent by Spencer in traveling to and from Company facilities, as well as the mileage incurred traveling to and from his place of residence shall not be reimbursable.

The amounts billed by Spencer shall be strictly personal compensation to Spencer or reimbursement of out-of-pocket expenses. All other costs of the Project provided by third-party vendors, but excluding the normal tools and equipment for which Spencer himself is responsible for obtaining and maintaining, including, but not limited to, the costs of other services, shall be billed separately to KCS and paid directly by KCS to the provider of the services or product vendor.

Under no circumstances shall the total dollar value of this contract, being the total compensation and expenses paid to or on behalf of Gary Spencer, exceed Ninety Nine Thousand Dollars and No Cents (\$99,000.00) per calendar year.

Spencer shall not be eligible for or entitled to participate in any of the KCS employee benefit or insurance plans provided by KCS to its employees.

KCS shall provide to Spencer office space on KCS premises and internet connections. These resources shall be provided at no cost to Spencer.

6. Nature of Relationship. The relationship of Spencer to KCS is and shall be that of an independent contractor, and no rights or benefits, such as workers' compensation, pension rights or liabilities, insurance rights or liabilities, arising out of or relating to the employer/employee relationship shall accrue to Spencer as a result of the Agreement or its performance. No relationship other than that of independently contracting parties shall exist or be implied between the parties.

7. Taxes. Spencer shall be considered to be an independent contractor for purposes of federal and state income and employment taxes and shall be responsible for payment of all income, withholding and other taxes payable upon amounts received hereunder.

8. Inventions. Any and all inventions, discoveries, developments and innovations conceived by Spencer during this engagement relative to the duties under this Agreement shall be the exclusive property of KCS; and Spencer hereby assigns all right, title, and interest in the same to KCS. Any and all inventions, discoveries, developments and innovations conceived by Spencer prior to the term of this Agreement and utilized by him in rendering duties to KCS are hereby licensed to KCS for use in its operations and for an infinite duration.

9. Right to Injunction. The parties hereto acknowledge that the services to be rendered by Spencer under this Agreement and the rights and privileges granted to KCS under the Agreement are of a special, unique, unusual, and extraordinary character which gives them a

peculiar value, the loss of which cannot be reasonably or adequately compensated by damages in any action at law, and the breach by Spencer of any of the provisions of this Agreement will cause KCS irreparable injury and damage. Spencer expressly agrees that KCS shall be entitled to injunctive and other equitable relief in the event of, or to prevent, a breach of any provision of this Agreement by Spencer. Resort to such equitable relief, however, shall not be construed to be a waiver of any other rights or remedies that KCS may have for damages or otherwise. The various rights and remedies of KCS under this Agreement or otherwise shall be construed to be cumulative, and no one of them shall be exclusive of any other or of any right or remedy allowed by law.

10. Confidentiality. Spencer may from time to time have access to confidential student records or other information which is required to be kept confidential under state or federal laws or regulations. Spencer agrees to hold such information in confidence and not to use or disclose such information except in accordance with applicable laws and regulations.

11. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Tennessee.

12. Modification. No change or modification of any term of this Agreement shall be valid unless it is in writing and signed by both KCS and Spencer.

13. Successors and Assigns. All of the provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, if any, successors, and assigns.

14. Notices. Any notice given in connection with this Agreement shall be given in writing and shall be delivered either by hand to the other party or by certified mail, return receipt requested, to the other party at the following address:

To KCS:

Attn: Bob Thomas or Gail Byard  
Knox County Schools  
PO Box 2188  
Knoxville TN 37902

To Spencer:

Gary L. Spencer  
5201 Malibu Drive  
Knoxville TN 37918

Either party may, at any time, designate by written notice to the other party given in accordance with the terms of this Agreement, a change in the above address.

15. Entire Agreement. This Agreement constitutes the entire understanding between the parties and supersedes all prior agreements or understandings between KCS and Spencer.

16. Waiver. Waiver by one party hereto of breach of any provision of this Agreement by the other shall not operate or be construed as a continuing waiver.

17. Assignment. Spencer may not assign or transfer any of his rights under this Agreement or subcontract for the performance of any services required of Spencer hereunder without the prior written approval of KCS.

18. Unenforceability of Provisions. If any provision of this Agreement, or any portion thereof, is held to be invalid or unenforceable, then the remainder of this Agreement shall nevertheless remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

KNOX COUNTY SCHOOLS

GARY L. SPENCER

\_\_\_\_\_  
Dr. James McIntyre, Jr.                      Date  
Superintendent

\_\_\_\_\_  
Date

APPROVED AS TO LEGAL FORM:  
Contract No. 12-517

KNOX COUNTY, TENNESSEE

\_\_\_\_\_  
David M. Sanders                      Date  
Deputy Knox County Law Director

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Tim Burchett                      Date  
Mayor