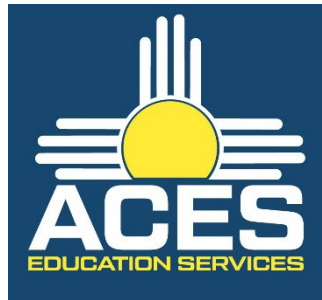


**NEW MEXICO  
ASSOCIATION OF CHARTER SCHOOLS EDUCATION SERVICES**



**AGENCY AGREEMENT AND  
INCORPORATING CONTRACT**

**ACES Contract Number: 25-01**

**Commodity: MARKETING AND/OR DATA ANALYTICS SERVICES**

**Established by:**      ☒ **Cooperative Procurement**      ☐ **Price Agreement**

**CONTRACT TERM (subject to annual renewal):**  
March 14, 2025 through March 14, 2029

**Number of awards: 6**

**CONTRACTORS:**

**Scope A: Marketing**

Agenda, LLC  
Carroll Strategies  
KRQE Media Group  
Schola, Inc.

**Scope B: Data Analytics**

MC2 Education  
Topminnow

**ACES approved by:**

**Date:** 03/14/2025

A handwritten signature in blue ink, appearing to read "Christy Takacs".

Christy Takacs  
Executive Director, Chief Procurement Officer

## **Table of Contents**

INSTRUCTIONS FOR ACES PARTICIPATING AGENCIES .....	3
INSTRUCTIONS FOR CONTRACTORS .....	4
AWARDED CONTRACTORS .....	5-7
AGREEMENT .....	8
ATTACHMENT A .....	18
ATTACHMENT B .....	20
ATTACHMENT C .....	21

# INSTRUCTIONS FOR ACES PARTICIPATING AGENCIES

*To become established as an ACES Participating Agency, or for questions regarding ACES in general, membership, contracts, etc.:*

Christy Takacs, Executive Director  
575-468-ACES (2237) ext. 100;  
Email: [ed@nmaces.org](mailto:ed@nmaces.org)

*For questions regarding purchase orders, invoices or payments:*

Katherine Moore, Business Manager  
575-468-ACES (2237) ext. 101  
Email: [businessoffice@nmaces.org](mailto:businessoffice@nmaces.org)

*For questions regarding procurement, use of contracts, vendor performance, etc.:*

Tammy West, Procurement Manager  
575-468-ACES (2237) ext. 102  
Email: [procurement1@nmaces.org](mailto:procurement1@nmaces.org)

## **PURCHASE ORDER AND PAYMENT INSTRUCTIONS:**

- ✓ A PURCHASE ORDER WITH ALL REQUIRED INFORMATION **MUST** BE RECEIVED BY ACES **PRIOR TO** THE DELIVERY OF ITEMS AND/OR COMMENCEMENT OF SERVICES BY THE CONTRACTOR.
- ✓ ALL PURCHASE ORDERS ISSUED UNDER THIS AGREEMENT MUST REFERENCE THE CORRESPONDING ACES **CONTRACT NUMBER AND COMMODITY TITLE** FOUND ON THE FIRST PAGE OF THIS AGREEMENT DOCUMENT, THE **CONTRACTOR'S NAME** AND A **VERY BRIEF SUMMARY DESCRIPTION** OF WHAT IS BEING ORDERED. If the Contractor requires a secondary contract or signed written quote please include a fully executed copy of that document with the Purchase Order when sending to ACES business office.
- ✓ PURCHASE ORDERS SHALL BE SENT TO ACES BY EMAIL AT: [businessoffice@nmaces.org](mailto:businessoffice@nmaces.org). (If the Contractor has been granted a direct billing waiver [not common] the PO shall be sent to the Contractor instead of ACES and a copy of the PO shall be sent to ACES.)
- ✓ INCLUDE WITH THE PURCHASE ORDER OR EMAIL SEPARATELY A COPY OF A SIGNED QUOTE, SERVICES AGREEMENT OR OTHER DOCUMENT REQUIRED OR PROVIDED BY THE CONTRACTOR WITH A DESCRIPTION OF THE SCOPE OF WORK AND/OR ITEMS TO BE PROVIDED, AND ANY TERMS AND CONDITIONS **(IF APPLICABLE)**.
- ✓ PAYMENT SHALL BE MADE TO ACES **WITHIN 15 DAYS** AFTER RECEIPT OF ACES INVOICE, SO THAT ACES CAN RENDER PAYMENT TO THE CONTRACTOR WITHIN 30 DAYS OF INVOICE. ANY PAYMENT MADE MORE THAN 45 DAYS AFTER INVOICE DATE WILL BE SUBJECT TO LATE FEES AS SET FORTH IN 13-1- 158 NMSA 1978.

**FAILURE TO DO ANY OF THE ABOVE MAY CONSTITUTE FAILURE TO COMPLY WITH NEW MEXICO  
PROCUREMENT CODE AND/OR COULD BE CAUSE FOR AUDIT FINDING.  
PLEASE CONTACT ACES IF YOU HAVE QUESTIONS.**

# INSTRUCTIONS FOR CONTRACTORS

***For general questions, information regarding this contract, questions or issues regarding provision of products and/or services or to refer a school or public agency for membership:***

Christy Takacs, Executive Director  
575-468-ACES (2237) ext. 100;  
Email: [ed@nmaces.org](mailto:ed@nmaces.org)

***For procurement related assistance, questions regarding this contract, or for assistance related to the provision of product and/or services and anything related:***

Tammy West, Procurement Manager  
575-468-ACES (2237) ext. 102  
Email: [procurement1@nmaces.org](mailto:procurement1@nmaces.org)

***For questions regarding purchase orders, invoices or payments:***

Katherine Moore, Business Manager  
575-468-ACES (2237) ext. 101  
Email: [businessoffice@nmaces.org](mailto:businessoffice@nmaces.org)

## **PURCHASE ORDER/INVOICING/PAYMENT INSTRUCTIONS:**

**PAYMENT TERMS: NET 30 *after certification*** that goods/services have been received and meet specifications.

(PER NM LAW, ALL PUBLIC AGENCIES HAVE 15 DAYS TO CERTIFY RECEIPT AFTER RECEIPT OF INVOICE)

- ✓ A PURCHASE ORDER WITH ALL REQUIRED INFORMATION **MUST** BE SENT FROM THE USING AGENCY TO ACES\* **PRIOR TO** THE DELIVERY OF ITEMS AND/OR COMMENCEMENT OF SERVICES BY THE CONTRACTOR.

\*UNLESS A DIRECT BILLING WAIVER HAS BEEN GRANTED BY ACES

- ✓ ONCE A VALID PURCHASE ORDER IS RECEIVED FROM THE USING AGENCY, ACES WILL ISSUE A PURCHASE ORDER TO THE CONTRACTOR. UPON RECEIPT OF AN ACES PURCHASE ORDER, THE CONTRACTOR MAY PROCEED TO DELIVER ITEMS AND/OR PERFORM SERVICES.

- ✓ ALL INVOICES SHALL CONTAIN THE FOLLOWING INFORMATION:

- ACES PURCHASE ORDER NUMBER
- NAME OF ACES PARTICIPATING AGENCY
- DATE(S) OF SERVICE (IF APPLICABLE)

- ✓ INVOICES SHALL BE SENT TO ACES BY EMAIL TO: [businessoffice@nmaces.org](mailto:businessoffice@nmaces.org)

# AWARDED CONTRACTORS

## COMPANY INFORMATION

## SERVICE AREA(S)

### MARKETING SERVICES

#### AGENDA LLC

NM STATEWIDE

1715 5<sup>TH</sup> STREET NW

ALBUQUERQUE, NEW MEXICO 87102

**CONTACT:** Emily Kochalka

**PHONE:** 817-505-8072

**EMAIL:** [ekochalka@agenda-global.com](mailto:ekochalka@agenda-global.com)

**GENERAL EMAIL:** [office@agenda-global.com](mailto:office@agenda-global.com)

**WEB ADDRESS:** [www.agenda-global.com](http://www.agenda-global.com)

**STANDARD BUSINESS HOURS:** M-F 9am to 5pm MST

Refer to Attachment A for scope of services offered

#### CARROLL STRATEGIES

NM STATEWIDE EXCEPT

300 CENTRAL AVE. SW. STE. 2000E

ALBUQUERQUE, NEW MEXICO 87102

**CONTACT:** Tom Carroll

**PHONE:** 505-842-6600

**EMAIL:** [tc@carrollstrategies.net](mailto:tc@carrollstrategies.net)

**WEB ADDRESS:** [www.carrollstrategies.net](http://www.carrollstrategies.net)

**STANDARD BUSINESS HOURS:** M-F 9am to 6pm MST

Refer to Attachment A for scope of services offered

WITHIN SANTA FE CITY

LIMITS

CONTINUED ON NEXT PAGE

# AWARDED CONTRACTORS

## COMPANY INFORMATION

## SERVICE AREA(S)

### MARKETING SERVICES (CONTINUED)

#### KRQE MEDIA GROUP

NM STATEWIDE

13 BROADCAST PLAZA SW

ALBUQUERQUE, NEW MEXICO 87104

**CONTACT:** Rebecca Cook

**PHONE:** 505-764-5260

**EMAIL:** [Rebecca.Cook@krqe.com](mailto:Rebecca.Cook@krqe.com)

**ALT. CONTACT:** Beverlie Frazier

**ALT. CONTACT EMAIL:** [Beverlie.Frazier@kwbq.com](mailto:Beverlie.Frazier@kwbq.com)

**SERVICE REQUESTS EMAIL:** [Beverlie.Frazier@kwbq.com](mailto:Beverlie.Frazier@kwbq.com)

**WEB ADDRESS:** [www.krqe.com](http://www.krqe.com)

**STANDARD BUSINESS HOURS:** M-F 8:30am to 5:30pm MST

Refer to Attachment A for scope of services offered

#### SCHOLA INC.

NM STATEWIDE

2942 N. 24<sup>TH</sup> STREET STE.115; PMB 44189

PHOENIX, AZ 85016-7849

**CONTACT:** Addison Farmer

**PHONE:** 602-697-8094

**EMAIL:** [addison@scholasolutions.com](mailto:addison@scholasolutions.com)

**WEB ADDRESS:** [www.schools.schola.com](http://www.schools.schola.com)

**STANDARD BUSINESS HOURS:** M-F 8am to 5pm MST

Refer to Attachment A for scope of services offered

CONTINUED ON NEXT PAGE

# AWARDED CONTRACTORS

## COMPANY INFORMATION

## SERVICE AREA(S)

### DATA ANALYTICS SERVICES

#### MC2 EDUCATION LLC

NM STATEWIDE

821 SILVER AVENUE

ALBUQUEQRUE, NEW MEXICO 87102

**CONTACT:** Rachel McCormick

**PHONE:** 617-945-6506

**EMAIL:** [rachel@mc2educationllc.com](mailto:rachel@mc2educationllc.com)

**SERVICE REQUESTS EMAIL:** [office@mc2educationllc.com](mailto:office@mc2educationllc.com)

**WEB ADDRESS:** [www.mc2educationllc.com](http://www.mc2educationllc.com)

**STANDARD BUSINESS HOURS:** M-F 8am to 5pm MST

Refer to Attachment A for scope of services offered

#### TOPMINNOW LLC.

NM STATEWIDE

1079 GLENSHAW STREET

N. CHARLESTON, SOUTH CAROLINA 29405

**CONTACT:** Andrea "Kit" Eide Azevedo

**PHONE:** 203-430-5246

**EMAIL:** [kit@topminnow.org](mailto:kit@topminnow.org)

**WEB ADDRESS:** [www.topminnow.org](http://www.topminnow.org)

**STANDARD BUSINESS HOURS:** M-F 8am to 6pm ET

Refer to Attachment A for scope of services offered

<END>

# **AGREEMENT**

This AGREEMENT is made and entered into as of the last date signed by both parties, by and between the New Mexico Charter School Education Services Association (“ACES”), a public entity, existing under the laws of the State of New Mexico with a mailing address of P.O. Box 16326, Albuquerque, NM, 87191 and the CONTRACTOR, as identified and signed under paragraph 27 of this Agreement. Further, any ACES Participating Agency may become party to this agreement by issuing a valid purchase order based on the CONTRACTOR’S quote, referencing this ACES contract number.

## **RECITALS**

WHEREAS, the Joint Powers Agreement (JPA) that created ACES, indicates one of its lawful purposes is, “Purchase of professional services, construction services, and tangible personal property for local public bodies and state agencies when so requested and in accordance with the requirements of the Procurement Code”, and

WHEREAS ACES Members are charter schools party to the JPA as approved by Secretary of the New Mexico Department of Finance and Administration or an ACES Participating Agency, and

WHEREAS the CONTRACTOR was awarded a contract in response to ACES RFP 25-01, and

WHEREAS the parties agree that it is desirable to participate in the cooperative procurement of, or use of an established price agreement for MARKETING AND/OR DATA ANALYTICS SERVICES, to avoid duplicate procurement efforts and obtain the benefits of volume purchasing; and

WHEREAS, ACES, pursuant to the powers vested in it through the JPA, has awarded an Acceptance of Offer and Contract Award to CONTRACTOR to provide MARKETING AND/OR DATA ANALYTICS SERVICES to schools that are parties to the JPA and to Participating Entities that have an Agreement with ACES and represents to its members that said services are for a price that provides economic and other advantages for its members, and

WHEREAS, ACES has initiated a contract for DATA AND ANALYTICS SERVICES and provides it to Participating Agencies in accordance with the Procurement Code NMSA 1978, §§ 13-1-21 to 199 and the New Mexico School Personnel Act NMSA 1978, §§ 22-10A-1, *et seq.*, and such other laws and regulations applicable to this contract, and

WHEREAS, ACES Participating Agencies participate in the solicitation, evaluation and/or use of cooperative contracts managed by ACES, or utilize established price agreements formally solicited by ACES, and become parties to this contract by issuing a valid purchase order referencing this contract, and



WHEREAS, the following documents are hereby incorporated into this contract by reference and made part of this contract:

- RFP 25-01 document with all addenda
- CONTRACTOR'S response to RFP 25-01 as amended and/or otherwise negotiated and awarded by ACES, and as summarized in Attachment A.

NOW, THEREFORE, the parties hereto, in consideration of mutual covenants and promises contained herein,

## **IT IS MUTUALLY AGREED BETWEEN THE PARTIES:**

### **1. PURPOSE**

The purpose of the Agreement is to authorize the parties' mutual participation in RFP 25-01 with the CONTRACTOR.

### **2. TERM OF THE AGREEMENT**

#### **A. *Effective Date.***

- 1) This Agreement shall be deemed effective between ACES and the CONTRACTOR as of **March 14, 2025**, and shall remain in effect until **March 14, 2029**, unless ACES exercises the right of non-renewal during any subsequent term, or unless termination otherwise occurs by either party.
- 2) This Agreement shall be deemed effective between the CONTRACTOR and the ACES Participating Agency upon issuance of a valid purchase order referencing this contract. The date of the agreement commencement between the ACES Participating Agency shall be the date of the purchase order. The purchase order must be dated prior to the final termination date of the total contract term. The term of the agreement between the CONTRACTOR and the ACES Participating Agency is subject to §13-1-150 NMSA 1978.

- B. *Termination Notice.*** This Agreement may be terminated for cause or convenience by an ACES Participating Agency with a minimum of 10 days written notice to the CONTRACTOR; may be terminated for cause by ACES with a minimum of 30 days written notice to the CONTRACTOR; may be terminated with or without written notice upon mutual agreement of both the Participating Agency and CONTRACTOR at any time, or may be terminated by the CONTRACTOR with at least thirty (30) days written notice to ACES and the appropriate ACES Participating Agency.

Immediate termination may only occur if determined necessary in writing by the Participating Agency and approved by ACES. Such shall be based on either egregious non-performance or cause by the CONTRACTOR, or severe, emergency or uncontrollable circumstances on behalf of the Participating Agency.

Prior to exercising any termination, the Participating Agency is responsible for documenting and notifying the CONTRACTOR of any issue(s) regarding service and allowing the CONTRACTOR a reasonable opportunity to remedy the issue(s) prior to termination. This provision is not exclusive and does not waive each party's other legal rights and remedies caused by the ACES Participating Agency,

ACES or the CONTRACTOR for default/breach of this agreement. In terminating, neither party may nullify obligations already incurred for performance or fail to perform professionally prior to the date of termination.

- C. *Termination Management.* Immediately upon receipt by either ACES Participating Agency, CONTRACTOR or ACES of Notice of Termination of this Agreement, none of the parties shall: 1) incur any further obligations for salaries, services, or any other expenditure of funds, 2) shall enter any additional requests for services, 3) parties shall comply with all directives issued by the other parties in the notice of termination as included in this Agreement, and 3) all parties shall take such action as ACES Participating Agency, CONTRACTOR or ACES shall direct for protection, preservation, retention or transfer of all property and all records generated under this Agreement. Within ten (10) days of Notice of Termination is received, CONTRACTOR shall furnish ACES with final Invoice, and within an additional five (5), ACES shall furnish the ACES Participating Agency with final Invoice. Within thirty (30) days of receipt of Notice of Termination the ACES Participating Agency shall pay ACES according to the terms of Section 5, below.

### 3. RELATIONSHIP OF THE PARTIES

- A. This Agreement is between ACES and the CONTRACTOR. Whenever an ACES Participating Agency issues a purchase order in response to CONTRACTOR'S written or verbal quote, based on and referencing this contract, the ACES Participating Agency then becomes party to this agreement and a binding contract between the three parties is created.
- B. CONTRACTOR acknowledges and agrees that ACES' purpose and function is to act as a cooperative procurement agent on behalf of its Participating Agencies so that they may take advantage of these procurement efforts. ACES does not have any subsequent responsibility relating to the quality and fitness of any Products, or the performance of any Services and Construction Services by Contract Holder. Any purchase orders placed by an ACES Participating Agency with Contract Holder directly or through ACES and any resulting contract between the CONTRACTOR and an ACES Participating Agency do not create any additional obligations on the part of ACES.
- C. For transactions which involve ACES transmitting purchase orders on behalf of an ACES Participating Agency to CONTRACTOR, ACES volunteers to act as a payment facilitator to make payments to CONTRACTOR with funds transferred to ACES by the ACES Participating Agency in accordance with the Participating Agency's written instructions and to provide an accounting of all monies paid or received by ACES pursuant to this Agreement. ACES also volunteers to provide informal mediation services between CONTRACTOR and ACES Participating Agency in the event any dispute arises between them.
- D. CONTRACTOR understands and agrees that upon ACES' receipt of funds from the ACES Participating Agency, ACES has no right or authority to thereafter apply those funds to any purpose other than as instructed by the ACES Participating Agency. ACES shall incur no liability to the CONTRACTOR except for liability arising from ACES' own gross negligence or willful misconduct to the extent

allowed by New Mexico law. Through this procurement process and subsequent contract, CONTRACTOR is authorized to provide the described products or services. ACES has no obligation or right to involve itself with the manner or method by which CONTRACTOR provides the products or services.

- E. It is not the intent of the parties to this Agreement, nor shall this Agreement be interpreted to create a new or separate legal entity for the performance of this Agreement.
- F. Each party shall maintain its own respective records and documents associated with the Agreement in accordance with the records retention requirement applicable to public records or as otherwise specified in the contract documents.
- G. CONTRACTOR is responsible for the quality and delivery of the goods and services provided under the Agreement.

#### 4. SCOPE OF WORK

- A. **Services Provided.** Services and/or items shall be provided as stated in the contract documents and as otherwise negotiated and agreed to between the CONTRACTOR and ACES Participating Agency for a specific scope of work.
- B. Under the terms and conditions of this Agreement an ACES Participating Agency as allowed by law may issue orders for items and/or services described herein. The terms and conditions of this contract shall form a part of each order issued hereunder. The items and/or services to be ordered shall be as listed herein and as otherwise quoted to the ACES Participating Agency by the CONTRACTOR in reference to this contract. All orders issued hereunder will bear both an order number and this ACES contract number. It is understood that no guarantee or warranty is made or implied by ACES or the user that any order for any definite quantity will be issued under this contract. The Vendor is required to accept the order and furnish the items and/or services in accordance with the articles contained hereunder for the quantity of each order.
- C. ACES Participating Agencies may negotiate with the CONTRACTOR certain additional terms and conditions relating to the scope of services and other performance details. However, the terms and conditions of this contract may not be altered or amended except with the approval of ACES and in accordance with the State Procurement Code.
- D. **Compliance with Law/Policies.** ACES, CONTRACTOR and ACES Participating Agency shall adhere to all applicable state and federal laws, policies and regulations applicable to ACES or the ACES Participating Agency, including privacy, confidentiality, and security requirements.

#### 5. COMPENSATION

- A. **Prices.** Prices, if listed in this contract, cannot be exceeded. CONTRACTOR and using agency may negotiate lower prices where in agreement to do so.

- B. **Rate of Pay.** The ACES Participating Agency shall pay CONTRACTOR in full for services satisfactorily performed pursuant to this agreement. If the ACES Participating Agency finds that the services are not acceptable, it shall, within ten (10) days after receipt of CONTRACTOR's invoice, provide to CONTRACTOR and ACES a letter of exception explaining the objection to the services along with details of how ACES may provide remediation action.
- C. **Payment Procedure.** The ACES Participating Agency using this ACES contract shall provide a Purchase Order to ACES\* referencing the ACES Contract Number and a specific dollar amount or a "not to exceed amount" for the products and/or services to be ordered. It is recommended that the amount be based on written quote provided by the CONTRACTOR. The Purchase Order shall include the shipping address(s) of the ACES Participating Agency receiving the order. CONTRACTOR shall invoice ACES\* and ACES will invoice the ACES Participating Agency. ***Invoiced amounts shall include the ACES fee embedded in the cost of items/services and not listed separately on the invoice.*** Payments not received within 15 days of receipt of invoice shall be delinquent. Payments 15 days delinquent shall be assessed a 1.5% per month *administrative fee (Procurement Code 13-1-158 (c) NMSA 1978).* *The ACES Participating Agency agrees to these specific terms of payment. ACES will render payment to the CONTRACTOR\* after receipt of payment by the ACES Participating Agency, less the 1.5% ACES fee based on total invoice amount.*

\*Unless a waiver has been granted by ACES authorizing direct invoicing/payment between Contractor and the Participating Agency.

## 6. ORDERING AGENCY RESPONSIBILITY

Receipt, inspection, acceptance and payment for materials and services ordered under this Agreement shall be the exclusive obligation of the ACES Participating Agency.

A complete copy of the ACES contract relied upon for purchase shall be downloaded and kept by the ACES Participating Agency at the time of purchase for audit purposes.

ACES shall not be held liable for payments not made or late payments made by ACES Participating Agencies.

## 7. INSPECTION

Final inspection and acceptance will be made by the ACES Participating Agency at the destination. Supplies/items rejected at the destination for nonconformance with the terms and conditions of this contract shall be removed at the CONTRACTOR'S risk and expense, promptly after notice of rejection by the ACES Participating Agency. Services rejected for nonconformance with the terms and conditions of the contract and/or requirements of the order shall be corrected by the CONTRACTOR promptly after notice of rejection. Items or services not corrected after notice shall not be paid for pursuant to NM state law.

## 8. RESPONSIBILITY

CONTRACTOR shall pay the assigned staff wages and benefits in accordance with its policies and all applicable state and federal laws. The CONTRACTOR shall withhold and transmit payroll taxes, provide unemployment insurance and workers' compensation benefits for the assigned staff. The CONTRACTOR represents that it has informed all assigned staff that they are not entitled to be paid by the ACES Participating Agency for holidays, vacations, disability benefits, insurance, pensions, or retirement plans, or any other benefits offered by the ACES Participating Agency to its employees.

ACES, the CONTRACTOR, and the ACES Participating Agency shall adhere to all applicable state and federal laws, policies, and regulations applicable to privacy, confidentiality, and security requirements and of all data during the term of this Agreement.

## 9. COOPERATION

ACES, the CONTRACTOR, and the ACES Participating Agency agree to cooperate fully and to provide assistance to the other parties in the investigation and resolution of any complaints, claims, actions, or proceedings that may be brought or involve ACES Participating Agency staff or the CONTRACTOR staff under this Agreement.

## 10. AGENCY FURNISHED PROPERTY

Any agency furnished property owned by the ACES Participating Agency shall be returned to the agency upon request or otherwise at the end of the contract term, in the same condition as received except for ordinary wear, tear and modifications order through this contract.

## 11. NON-SOLICITATION

During the term of this Agreement and for a period of one (1) year immediately following the expiration or termination of this Agreement, the ACES Participating Agency shall not hire, solicit for employment, or engage any employee of the CONTRACTOR that has provided services to the ACES Participating Agency under this Agreement.

## 12. AMENDMENT

This Agreement may be amended, changed, or altered only in writing by an instrument executed by ACES and the CONTRACTOR. All fully executed amendments are effective as of the last date signed.

## 13. MERGER

This Agreement incorporates all such covenants, agreements and understandings, including ACES RFP 25-02 and the CONTRACTOR'S responding Proposal as awarded or as otherwise amended, hereto concerning the subject matter hereof have been merged into this written Agreement. No prior agreements or understandings, oral

or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement, with the exception of any properly authorized purchase order for services that pre-date the execution of this Agreement.

#### 14. APPROPRIATIONS AND CONTINUATION OF CHARTER

- A. *Funding.* Pursuant to 13-1-152, NMSA, 1978, this Agreement is contingent upon sufficient appropriations and authorizations being made to or by the ACES Participating Agency for the performance of this Agreement under a multi-term agreement with the Contractor. If sufficient appropriations and authorizations are not made in any subsequent fiscal period following the initial term of a multi-term agreement with the Contractor, the Participating Agency shall provide (at a minimum) 30 days' notice to the Contractor. The Agreement shall terminate on the first day of the next fiscal period, or upon the 31<sup>st</sup> day after written notice is given if less than 30 days to the next fiscal period. The ACES Participating Agency's decision as to whether sufficient appropriations are available shall be accepted by the CONTRACTOR and shall be final. The Participating Agency agrees to provide their best effort to ensure continued funding for the entire term.
- B. *Charter Continuation.* When applicable, this Agreement is contingent upon the continuation of the ACES Member Charter. If the charter is revoked during the term of this Agreement, the Agreement shall terminate immediately upon written notice of such by the ACES Participating Agency to ACES and CONTRACTOR.

#### 15. INSURANCE

CONTRACTOR shall provide proof of Insurance as set forth in RFP 25-02. Inadequate insurance or inadequate proof of insurance may be cause for termination of this Agreement. A certificate of insurance shall be provided, if required, to ACES on or before the effective date of this Agreement and annually at renewal when applicable.

#### 16. SEVERABILITY

If any provision or provisions of this Agreement shall be held to be invalid, illegal, unenforceable or in conflict with the law of any jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

#### 17. APPLICABLE LAW

The laws of the State of New Mexico shall govern this Agreement.

#### 18. ASSIGNMENT and SUBSTITUTION

ACES or CONTRACTOR shall not assign or transfer any interest in the Agreement or assign any claims for money due or to become due under this Agreement without prior written approval of the ACES Participating Agency.

## 19. PURCHASE OF GOODS AND SERVICES

The ACES Participating Agency may issue a valid purchase order for goods and/or services as set forth in this contract. The purchase order shall reference the number and title of the contract and the selected Contractor's name. The procurement of goods and services subject to this Agreement shall be conducted in accordance with and subject to the relevant statutes, ordinances, rules, and regulations that govern each party's procurement practices.

## 20. CONFIDENTIALITY

Any confidential information provided to or developed by CONTRACTOR or ACES or its employees in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization without the prior written approval of the ACES Participating Agency, except as provided in the New Mexico Inspection of Public Records Act. ACES agrees to comply with all federal and state privacy laws relating to records and information maintained by the ACES Participating Agency, including, but not limited to Family Educational Records Privacy Act.

## 21. CONFLICT OF INTEREST

CONTRACTOR, ACES and the ACES Participating Agency warrants respectfully that they do not have an interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement. The CONTRACTOR, ACES, and the ACES Participating Agency, certifies that it and its employees have complied with and will continue to comply with the requirements of the Governmental Conduct Act, NMSA, 1978 §§10-16-1 *et seq.* or any other applicable conflict of interest provisions.

## 22. PENALTIES

The Procurement Code, NMSA 1978 §§ 13-1-28 through 13-1-199 imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities, and kickbacks. All parties agree to not participate in unlawful use of this Agreement.

## 23. EQUAL OPPORTUNITY COMPLIANCE

The CONTRACTOR, ACES and the ACES Participating Agency, agree to abide by all federal and state laws and rules and regulations, and the executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, CONTRACTOR, ACES and the ACES Participating Agency agree to assure that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to, discrimination under any program or activity performed under this Agreement. If the CONTRACTOR, ACES or the ACES Participating Agency is found not to be in compliance with these requirements during the life of this Agreement, they agree to take appropriate steps to correct these deficiencies.

## 24. RECORDS and FINANCIAL AUDIT

The CONTRACTOR shall maintain detailed time and expenditure records that indicate the date, time, nature, and cost of services rendered during the Agreement's term and effect and retain them for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by ACES, ACES Participating Agency, the State Department of Finance and Administration and the State Auditor. The ACES Participating Agency and ACES shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the ACES Participating Agency and ACES to recover excessive or illegal payments.

## 25. INDEMNIFICATION

Any liability incurred in connection with this Agreement shall be subject to the immunities and limitations of the New Mexico Tort Claims Act, §§ 41-4-1 et seq, NMSA 1978, as amended. To the extent permitted by law, the parties shall defend, indemnify and hold harmless the others from all actions, proceedings, claims, demands, costs, damages, unpaid taxes and associated penalties and interest, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the party's negligent act or failure to act, or if caused by the actions of the party's employees, subcontractors, or agents resulting in injury or damage to persons, property of the other party's financial interests during the time when the CONTRACTOR or any employee, agent, or subcontractor thereof has or is performing services pursuant to this Agreement. In the event that any action, suit or proceeding related to the services performed by the CONTRACTOR or any CONTRACTOR employee, agent or subcontractor of ACES under this Agreement is brought against ACES, CONTRACTOR or the ACES Participating Agency, the notified party shall, as soon as practical, but no later than two (2) days after he/she/it receives notice thereof, notify the other Parties and their legal counsel by email and certified mail.

## 26. NOTICES.

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, or by certified, return receipt requested U.S.P.S. either by first class or certified mail as follows (unless delivery by email is agreed to):

### **ACES**

Christy Takacs, Executive Director  
P.O. Box 16326  
Albuquerque, NM 87191

### **CONTRACTOR**

\*Specified under paragraph 27 of this agreement

The ACES Participating Agency shall be given notice to the individual who signed the ACES Member JPA and/or Participating Agency Agreement.



## 27. AUTHORITY

Each party signing below represents that they have all required authority to execute this Agreement.

In WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their authorized officers. This Agreement may be executed in several counterparts and each executed counterpart shall constitute one Agreement, binding on all the parties hereto even though all the parties are not signatories to the original or the same counterpart.

### ACES

By: Christy Takacs

Signature: 

Title: Executive Director

Date: 03/24/2025

### CONTRACTOR

By: Andrea Eide Azevedo  
Printed Name

Signature:   
Andrea Eide Azevedo (Mar 22, 2025 09:51 EDT)

Title: Founding Partner


Date: 03/22/2024

Mailing Address:

1079 Glenshaw Street

North Charleston, SC 29405

**ACES prefers to send all communications under this contract via designated email. Please indicate below if you agree to communicate using this method (optional).**

 I hereby agree to receive communications and notices by email at the following email address instead of through USPS mail:

kit@topminnow.org  
Preferred Email Address

# ATTACHMENT A

## CONTRACTOR: **TOPMINNOW LLC**

### 1.1. Scope of Services available:

Data-inspired decision-making is a proven pathway to breakout success in schools, and yet very few schools are able to do it well. Why? In most schools, there is a multitude of data that live in disparate places (SIS, formative and short-cycle assessments, MLSS trackers, etc.), making it difficult to get a comprehensive picture of what's going on in the school building. Furthermore, school leaders and staff do not always have the time or training to aggregate the data, clean it, validate it, and present it in ways that make it intuitive to understand and facilitate meaningful analysis.

Topminnow's "Data Together" brings school-level data from various sources into one customized place, creating the opportunity for school leaders to use precise analysis to make more sophisticated, data-inspired decisions for their school and their students. Built for school leaders by school leaders, "Data Together" prioritizes customization to meet a school's unique goals, meaningful data visualizations that make analysis more straightforward, and support and thought partnership from people who understand the context of school leadership.

Their data and analytics service and consultancy will allow school leaders to:

- Prepare data easily for DASH Plans, charter renewals, and/or grant applications
- More easily and precisely pinpoint what the school does well, and clearly and collaboratively decide on high leverage focus areas, building or growing a professional culture around shared goals
- Ask meaningful questions that were previously incredibly difficult to answer, such as: "What is the correlation between STEM G.P.A. and SAT performance for my Hispanic female students?"
- Tell the real story of the school in ways that align with mission-specific goals

They do this by:

- Working with school leaders to integrate the most important high-level data and unique metrics – including mission- and charter-specific goals – to capture the context and nuance of the outcomes they're working to improve and the story they're trying to tell
- Building a customized, integrated master spreadsheet with cleaned and validated data that are updated eight times throughout the school year (beginning of year, end of formative assessments, end of terms)
- Creating customized and sophisticated reporting tools that give school leaders access to unprecedented levels of precise information
- Building the capacity of school leadership teams and educators to rigorously analyze data and engage in collaborative meaning-making to turn data into actionable insights that support improved outcomes for students and school culture

Regardless of your school model or what matters most to your school community, Topminnow can support your data-inspired decision-making journey to help you to get sustainable breakout results.

## **1.2. Separate/Secondary Service Contract**

Topminnow LLC requires a Consulting Agreement to be approved and signed by the ACES Participating Agency setting forth the specific negotiated and/or accepted scope of work and terms specific to the requesting Participating Agency. A sample of the Consulting Agreement has been included as Attachment C to this contract. A copy of the fully executed Consulting Agreement shall be included with the Purchase Order when it is sent to ACES.

## **1.3. Pricing.**

See Attachment B for rates and contact Topminnow LLC directly to obtain a written quote for cost based on specific scope of work.

## **1.4. Payment.**

**1.4.1. Payment Terms:** Net 30 (ACES to Contractor); Net 15 (Participating Agency to ACES)

**1.4.2. Payment Requests.**

(This section does not apply to Contractors who have been granted an ACES waiver allowing direct invoicing/payment.)

**1.4.2.1.** Payment requests/invoices shall be sent to ACES Business Office by email at [businessoffice@nmaces.org](mailto:businessoffice@nmaces.org) (preferred) or by mail to P.O. Box 16326, Albuquerque, NM 87191.

**1.4.2.2.** The Contractor shall furnish an original invoice with the ACES Purchase Order Number clearly indicated on each invoice.

**1.4.2.3.** ACES will bill the Participating Agency and will remit payment to Contractor after receipt of payment from Participating Agency, less 1.5% ACES fee.

**1.4.3. Payment Dispute.** An invoice may not be processed if there is a dispute between ACES or the ACES Participating Agency and the Contractor as to the services or items provided and included on the invoice. Payment will be made after, and according to, dispute resolution achieved between the parties.

# ATTACHMENT B



## Partnership Levels and Pricing Guide

Topminnow's **Data Together** program brings school-level data from various sources into one customized place, creating the opportunity for school leaders to use precise analysis to make more sophisticated, data-inspired decisions for their school and their students.

Built for school leaders by school leaders, **Data Together** prioritizes customization to meet a school's unique goals, meaningful data visualizations that make analysis more straightforward, and support and thought-partnership from people who understand the context of school leadership.

Topminnow offers three different levels of partnership, in addition to several additional services, to suit our school partners' unique needs:

### **I. Partnership Level: Data**

The goal of this partnership level is to bring all the school's data together (data aggregation) so that school leaders and teams can make intelligent, timely, and data-inspired decisions that span all of their data sources.

#### **Services include:**

##### **Custom Master Spreadsheet Build**

Topminnow will interview school leadership and learn about the school's goals and culture in order to inform the build of a customized, aggregated master spreadsheet with cleaned and validated data that captures the school's most important data. To promote accessibility and usability, the Master Spreadsheet is hosted in Google Suite. The base cost for this partnership level includes aggregation of the following data sources:

- Student Information Service (SIS), e.g. PowerSchool
- Short-cycle/formative assessment, e.g. MAP/iReady
- Statewide Assessment

Schools have the option to include additional data sources for additional cost dependent on specific sources (see "Pricing" section below).

### **Cleaned and Updated Master Spreadsheet Data**

Topminnow will clean and update the data aggregation minimally at the beginning of the year when rosters are verified, at the end of academic terms, and following BOY, MOY, and EOY assessments. More frequent updating may be possible depending on the school's SIS and available permissions.

### **Dedicated Access to Aggregated Data**

While the Master Spreadsheet is protected in order to prohibit data corruption, unintentional or otherwise, Topminnow replicates the aggregated data in a "Sandbox" that users can use to transform the data as they like. Additionally, schools are able to access previous versions of the Master Spreadsheet data as they wish.

### **Personalized Consulting Support**

Topminnow provides consulting services to school leaders and their leadership teams on the functionality of the Master Spreadsheet tool and best practices for engaging relevant members of staff in the tool.

## **II. Partnership Level: Information**

The goal of this partnership level is to create a deeper understanding of the composition and progress of students for school leaders at a glance. Through custom-built data roll ups that calculate progress against school-specific metrics that live directly in the Master Spreadsheet, the school leader has access to information that would ordinarily take time and specialized understanding of data manipulation to have on hand.

This level includes all of the **Partnership Level: Data** services, plus the customized build of "roll-ups" within the Master Spreadsheet.

## **III. Partnership Level: Knowledge**

The goal of this partnership level is to provide school leadership with highly sophisticated reporting and analysis. For schools at this level, Topminnow creates a suite of customized, interactive reports based on a school's goals that are designed for a variety of potential purposes.

This level includes all of the **Partnership Level: Information** services, plus:

### **End of Year Executive Report**

Designed to facilitate strategic planning for school leadership and/or sharing with stakeholders, this report includes custom data visualizations and reporting on school-specific goals and other goals and metrics that the school prioritizes.

### **Interactive Reports**

Each school has goals that are critically important to achieve. With these goals in mind, Topminnow builds schools customized and interactive reports that allow schools access to unprecedented levels of precise information. Schools receive a new version of their custom interactive report at the MOY and EOY, along with specific insights generated by Topminnow.

### **Heat Maps**

Designed to distill student subgroup information into easily detectable trends, Topminnow Heat Maps are a starting point for meaning making, hypothesis generation, and agreement among members of the school community. Schools receive heat maps at BOY, MOY, and EOY, along with specific insights generated by Topminnow.

### **Customized Insights**

At Winter Break, school leaders will receive a set of succinct insights based upon data from the first half of the year in order to inform strategy heading into the second half of the year. Insights are gleaned from aggregated data and to the extent possible, anecdotal/qualitative data from the school.

## **OPTIONAL SERVICES FOR INFORMATION AND KNOWLEDGE PARTNERSHIP LEVELS**

### **Staff Professional Development**

The Topminnow approach to building a data-inspired culture at school turns the typical rituals around data into a highly collaborative, generative, professional process that ultimately leads to a shared sense of possibility and unity. Centering around the heat maps, our professional development sessions are customized to each school and ideally take place at pre-service, middle of the year, and end of year. Utilizing the customized tools that Topminnow builds for the school, we lead highly interactive, action-oriented, and strengths-based sessions with real outcomes and structures emerging as a result.

### **Data Presentation to Governance Councils / External Bodies or Officials**

Should you wish to have Topminnow staff present your school's data in depth on your behalf as an external validator, we are able to develop presentations or testimonies collaboratively with school leadership.

### **Fractional Chief Data and Analytics Officer**

Large districts and CMOs are able to afford the services of Chief Data and Analytics Officers, who drive data strategy, insights, and structures, but very few standalone schools or small CMOs are able to do so. Schools that are in need of those services without having to commit

resources to that function in a full-time capacity are able to work in a fractional way with Topminnow. Services are billed hourly at a rate of \$175/hour for qualifying schools.

## Pricing

While total fees will be dependent upon school's grade levels served and the finalization of all of the customized components of the school's custom data hub + tools, base costs for the different partnership levels are as follows:

Partnership Level	Custom build fee (one-time)	Annual subscription*	YoY inflation increase**
Data	Starts at \$5,000	Starts at \$10,000	3%
Information	Starts at \$7,000	Starts at \$10,000	3%
Knowledge	Starts at \$10,000	Starts at \$12,500	3%

\*Billed monthly in arrears (July - June)

\*\*On yearly subscription fees only

Base costs for all partnership levels include aggregation, cleaning, and validation of the following data sources:

- Student Information Service (SIS), e.g. PowerSchool
- One (1) short-cycle/formative assessment, e.g. MAP/iReady
- Statewide Assessment

Schools have the option to include additional data sources, reports, aggregation cycles, and/or services (e.g., professional development, training) at additional cost, which is calculated upon a full understanding of scope and complexity.

## For Schools in Expanded Formats

For schools serving students in expanded school formats (K-8, K-12, 5-12, etc.), it may be necessary to create two data hubs to represent each "school level" in ways that reflect their unique structure (for example, if each "school level" utilizes different assessments that are determinative for school operations). Costs for services will be greater should the need for multiple data hubs and reporting arise.

# ATTACHMNT C

## **SAMPLE Consulting Agreement**

This Consulting Agreement ("Agreement") is entered into and effective as of DATE by and between Topminnow, LLC ("Topminnow"), a South Carolina limited liability company, and CLIENT ("Client"), having its principal office at ADDRESS. The purpose of this Agreement is to set forth the terms and conditions under which Topminnow will perform consulting services ("Services") for Client and the parties hereby agree as follows:

### **A. Consulting Services**

1. Topminnow agrees to perform the services for Client as agreed by Topminnow and Client in a separate Statement of Work which upon signature by both parties, will be incorporated in and carried out in accordance with this Agreement (the "Services"). This Agreement is effective as of Client and shall continue until the Services are completed, unless terminated at an earlier date by either party pursuant to the terms set forth in Section "E" below.
2. Services to be performed by Topminnow will be as set forth in Statements of Work signed by Topminnow and Client. Topminnow agrees to perform Services in a professional manner and to use reasonable efforts to meet schedules established in the Statement of Work. Topminnow agrees to promptly notify Client if it will not be able to comply with any provision of a Statement of Work and the parties agree to negotiate in good faith to establish alternate schedules as necessary.
3. Topminnow shall perform the Services under the general direction of Client, but Topminnow shall determine the manner and means by which the Services are accomplished and Client agrees to abide by Topminnow decisions.
4. Topminnow acknowledges that (i) it is an independent consultant of Client, not an employee, (ii) its services will be utilized by Client on an as-needed basis as set forth in one or more Statements of Work.
5. Client acknowledges that Topminnow does not represent clients in the media and that Topminnow team members undertake no lobbying activities. At no time under this engagement will any employee or contractor of Topminnow be involved in any work or activity that would require lobbying disclosure pursuant to any federal, state, or local law or regulation.

### **B. Compensation**

1. The rate of compensation to be paid to Topminnow will be as set out in each Statement of Work.
2. Client shall pay all fees within thirty (30) business days after receipt of Topminnow's invoice. If Client disputes any of Topminnow's invoiced fees, Client shall advise Topminnow in writing within ten (10) days of receipt of Topminnow's invoice. Any dispute over fees that is not raised within the 10-day period will be considered waived.



3. Topminnow will provide submission of original receipts showing Consultant's payment of expenses relevant to performing the services. Only the following expenses may be reimbursed: (a) reasonable local travel, if applicable, but not commuting expenses; (b) duplication, printing and reproduction; (c) postage and special mailings; (d) specialized supplies required to conduct consulting services required by this Agreement; (e) long distance travel expenses including transportation, lodging and meals. Expenses listed under this paragraph shall only be reimbursed if in accordance with Client's internal expense reimbursement policy and Topminnow has received prior written approval by the Client staff member charged with overseeing Consultant's work under this Agreement.
4. Topminnow is not eligible to participate in any employee benefits of Client regular employees.

### **C. Ownership of Copyrights and Other Intellectual Properties**

1. Client acknowledges and agrees that all technology, inventions, and other work product of any nature whatsoever, that are created, prepared, produced, authored, edited, amended, conceived or reduced to practice by Topminnow individually or jointly with others during the period of his/her relationship with Client (including before and following the date of this Agreement) and relating to the Services (collectively, "Intellectual Property"), as well as any and all rights in and to copyrights, trade secrets, trademarks (and related goodwill), patents and other intellectual property rights therein arising in any jurisdiction throughout the world (collectively, "Intellectual Property Rights"), shall be the sole and exclusive property of Topminnow, LLC.
2. Topminnow grants to Client a non-exclusive, royalty-free, non-transferable, non-sublicensable license to Intellectual Property related to the Services solely to the extent required for the purpose for which it is intended, and only for the term of this Consulting Agreement.
3. Without limitation of the foregoing, any materials developed by Topminnow in connection with Topminnow's performance of the Services may be utilized by Topminnow in any way, and without accounting to the Client, provided that all such jointly developed materials that are works of authorship shall clearly indicate joint copyright ownership, and shall include appropriate credit to all authors or researchers.
4. Without limitation of the foregoing, any materials brought by Topminnow in connection with Topminnow's performance of the Services such as frameworks, templates, and rubrics shall be and remain the intellectual property of Topminnow. The Client shall be free to use or disclose such materials (with appropriate credit to Topminnow and the other authors thereof, and with Topminnow's copyright notice on them) for any non-commercial purpose.
5. The Parties acknowledge that in the conduct of business the Client and the Topminnow have developed and own certain intellectual properties including, but not limited to, trademarks, service marks, trade names, logos, ideas, concepts, techniques, processes and the like, whether or not reduced to a tangible form or medium ("Unrelated Intellectual Properties (IP)"), and that the Parties have no ownership or other proprietary interest in or to such Unrelated Intellectual Properties (IP).

## D. Confidentiality

1. In the course of providing services under this Agreement, Topminnow may be exposed to Confidential Information regarding Client, its operations (including but not limited to information concerning its Board members, employees, attorneys, consultants, strategies, and budgets), its partners, its work, and its customers. Topminnow shall hold in confidence and treat and safeguard as private and confidential all Confidential Information of Client at least to the same standard as Topminnow keeps its own confidential information of a similar nature, but in any event using no less than a reasonable degree of care. Topminnow agrees not to disclose any details about any work it performs for Client to any third party unless authorized in writing to do so or if required to do so by law. However, Client hereby consents to Topminnow using Client's name, brand, logo or similar marks along with a general description of the work Topminnow performs for Client for the limited purpose of marketing and publicizing Topminnow's services in general and to other potential clients.
2. **Student Data in Particular:** Topminnow understands that Client will provide student data that may contain personally identifiable information from an education record of a student to Topminnow pursuant to the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g (b)(1)(F), and regulations issued under FERPA, 34 C.F.R. § 99.31 (a)(6). Topminnow agrees that it will maintain the confidentiality of the data in accordance with 20 U.S.C. § 1232g(b)(1)(F), 34 C.F.R. § 99.31(a)(6), the terms of this Confidentiality Agreement, and the terms of the **FERPA Data Sharing Agreement to be executed by both parties**.
3. Topminnow agrees that any work created pursuant to this Agreement is confidential and proprietary, and shall belong to Client. Topminnow shall convey only so much of such information, as applicable, to his/her employees, subcontractors, or other agents as such persons must know to fulfill the purposes of this Agreement. Topminnow shall keep confidential any and all of the Client's confidential, proprietary, or trade secret information to which Topminnow has access during the term of this Agreement.
4. The provisions of this Section D shall survive any expiration, termination, or rescission of this Agreement.

## E. Termination

1. Topminnow or Client may terminate this Agreement without cause upon thirty (30) days written notice to the other party. In the event of termination pursuant to this clause, Client shall pay Topminnow any fees then due and payable for services completed up to and including the date of such termination.
2. Topminnow or Client may terminate this Agreement, effective immediately upon written notice to the other party, if the other party materially breaches this Agreement and/or the terms of the Statement of Work, and such breach is incapable of cure, or with respect to a material breach capable of cure, the other party does not cure such breach within thirty days after receipt of written notice of such breach. Topminnow may terminate this Agreement, effective immediately, in the event Client fails to pay amounts due under this Agreement within ten (10) business days after receipt of written notice of such failure. Further, either party may terminate this Agreement immediately upon written notice if the other party becomes insolvent, is dissolved or liquidated, makes a general assignment for the benefit of its creditors, files or has filed against it a petition for bankruptcy, or has a receiver appointed for a substantial part of its assets. The termination of this Agreement by either party shall automatically terminate any and all Statement(s) of Work unless otherwise agreed.

## **F. Dispute Resolution**

In the event the parties are unable to resolve a dispute arising from this Agreement through good faith negotiation, the parties will submit the dispute to non-binding mediation. If complete agreement cannot be reached within ten (10) days of submission to mediation, any appropriate claims may be brought in a state or federal court of competent jurisdiction or resolved through binding arbitration if the parties mutually agree in writing to such arbitration.

## **G. Remedies and Attorneys' Fees**

The remedies provided to the parties hereto by this Agreement are not exclusive or exhaustive, but cumulative and in addition to any other remedies the parties hereto may have, at law or in equity.

Should a party hereto institute any action or proceeding at law or in equity or in connection with an arbitration, to enforce any provision of this Agreement, including an action for declaratory relief, or for damages by reason of an alleged breach of any provision of this Agreement or otherwise in connection with this Agreement, or any provision thereof, the prevailing party is entitled to recover from the losing party or parties reasonable attorneys' fees and costs for services rendered to the prevailing party in such action or proceeding.

## **H. Other Business Activities**

Topminnow may be engaged or employed in any other business, trade, profession, or other activity while performing work under the Agreement.

## **I. Limitation of Liability**

In no event will either party be liable or responsible to the other for any type of incidental, punitive, indirect or consequential damages, including, but not limited to, lost revenue, lost profits, replacement goods, loss of technology, rights or services, loss of data, or interruption or loss of use of service or equipment, even if advised of the possibility of such damages, whether arising under theory of contract, tort (including negligence), strict liability or otherwise. In any event, the liability of Topminnow to Client for any reason and upon any cause of action shall be limited to the total value of the fees paid hereunder. This limitation shall apply to all causes of action in the aggregate, including, without limitation, to breach of contract, breach of warranty, negligence, strict liability, misrepresentations, and other torts.

## **J. Indemnification**

Topminnow's services are limited to performing the services outlined in the attached Statement of Work. Topminnow agrees to defend, indemnify, and hold Client, its directors, officers, and employees harmless from and against any and all claims, liabilities, losses, and expenses (including reasonable attorneys' fees) directly, indirectly, wholly or partially arising from or in connection with any act or omission of Topminnow, its employees and agents involving this Agreement. Client agrees to defend, indemnify, and hold Topminnow harmless from and against any and all claims, liabilities, losses, and expenses (including reasonable attorneys' fees) directly, indirectly, wholly or partially arising from or in connection with any act or omission of Client, its employees and agents involving this Agreement. The provisions of this paragraph shall survive any expiration, termination, or rescission of this Agreement. If either party becomes aware of any suit or claim covered by this paragraph, such party will promptly notify the other party in writing.

## **K. General Provisions**

1. This Agreement shall be governed by the laws of the State of South Carolina, without regard to conflicts of laws principles.
2. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.
3. This Agreement contains the entire agreement of the parties hereto with respect to the subject matter hereof and supersedes all prior agreements written or oral with respect thereto. This Agreement may be amended, superseded, canceled, renewed or extended, and the terms hereof may be waived, only by a written instrument signed by each of the parties or, in the case of a waiver, by the party waiving compliance.
4. Each party shall be excused from performance under this Agreement for any period, and the time of any performance shall be extended to the extent reasonably necessary under the circumstances and to the extent that such party is prevented by performing, in whole or in part, its obligations under this Agreement, as a result of any act of God, any governmental authority, war, civil disturbance, or any other cause beyond its reasonable control.

## **L. Assignment**

Neither party may assign its rights or obligations under this Agreement without the other party's prior written consent, which will not be unreasonably be withheld, however, either party may assign this Agreement and/or any of its rights hereunder upon written notice to the other party to any entity which acquires all or substantially all of the business of the assigning party relating to this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date herein above written.

CLIENT

TOPMINNOW

Signature:

Signature:

Name:

Name:

Title:

Title:

Date:

Date: