

**EATON BOARD OF EDUCATION REGULAR MEETING**  
**Hollingsworth East Elementary**  
**February 10, 2020**  
**6:00 p.m.**

**I. Opening of the Meeting**

**A. Call to Order** – President Noble called the meeting to order.

**B. Roll Call** – President Noble called the roll.

E. Beeghly Present D. Durham Present B. Myers Present

L. Noble Present T. Parks Present

**C. Pledge of Allegiance** – President Noble led the Pledge of Allegiance.

**D. Recognition of Visitors**

No requests have been made.

**E. Executive Session**

To consider the employment of a public employee or official.

The following individuals were invited to attend: Jeff Parker, MissAnne Imhoff, Rachel Tait, Teresa Woodin, and Hannah King.

Motion by Mr. Durham, second by Mr. Beeghly to convene executive session.

Beeghly Y Durham Y Myers Y Noble Y Parks Y

President declares motion Passed.

**#1920-043**

President convenes executive session at 6:01 p.m.

President resumes open session at 6:09 p.m.

**II. Treasurer's Business – Rachel Tait**

***ADOPTION OF CONSENT AGENDA ITEM – FINANCIAL***

Action by the Board of Education in "Adoption of Consent Agenda Item" at this point of the agenda means that item A is adopted by one single motion unless a member of the Board, the Superintendent, or the Treasurer requests that any such item be removed from the "Consent Agenda Items" and voted on separately.

**A. The Treasurer recommends approval of the following:**

1. Approve minutes of the January 13, 2020 Organizational Meeting.
2. Approve minutes of the January 13, 2020 Regular Board Meeting.
3. Submission of Warrants.
4. Submission of Financial Report.
5. Submission of Investment Report.
6. Approve FY20 Supplemental Appropriations.
7. Advance of \$200.00 from 001 0000 General Fund to 599 9220 Title IV-A FY20.
8. Approve Then and Now purchase order to Esber for services beginning July 1, 2019 for \$4,450.
9. Approve Then and Now purchase order to Butler Behavioral Health Services, Inc. for services beginning January 27, 2020 for \$8,070.00.
10. Approve contract with Rea & Associates to perform services related to records and transactions for the purpose of verifying data reported on the Medicaid School Program Agency Cost Report for Fiscal year 2019 through Fiscal Year 2021 (Attachment A).

Motion by Mr. Beeghly, seconded by Mr. Durham

Discussion – None.

Beeghly Y Durham Y Myers Y Noble Y Parks Y

President declares motion Passed.

**#1920-044**

**III. Reports**

- A. Miami Valley Career Technology Center Report** – Mr. Parks said the MVCTC Board meeting will be tomorrow.
- B. Parks and Recreation Board Report** – Mr. Myers – No report.
- C. Superintendent Report** – Mr. Parker provided Board Members with a copy of the new Eagle News newsletter. Mr. Parker said there is an item on the agenda for Focus 3, which is R Factor. He said staff in most classifications were involved in the decision process.
- D. Other Reports** – None.

**IV. Old Business** – None.

**V. New Business**

***ADOPTION OF CONSENT AGENDA ITEMS - PERSONNEL***

Action by the Board of Education in “Adoption of Consent Agenda Items” at this point of the agenda means that items A through D are adopted by one single motion unless a member of the Board, the

Superintendent, or the Treasurer requests that any such item be removed from the “Consent Agenda Items” and voted on separately.

**A. Employment – Certificated Staff Supplemental Contracts**

The Administration recommends the following supplemental contracts for the 2019-2020 school year. Salary and duties per Board Policy, Negotiated Agreement, Administrative Rules and Regulations, and any applicable state requirements.

1. Jennifer Jones, Program Assistant Track, ½ stipend

**B. Employment – Certificated Staff – Substitute Teacher/Tutor as Certified by the Preble County Educational Service Center**

The Administration recommends approval of the following substitute teacher/home instruction tutor for the 2019-2020 school year, as certified by the Preble County Educational Service Center.

1. Gabrielle Cooper
2. James W. Harlan
3. Jacob A. Kamm
4. Hannah King, retroactive to January 24, 2020
5. Steven R. Moore
6. Ronald Stoeckel

**C. Employment – Non-Certificated Substitutes**

The Administration recommends employment of the following personnel for the 2019-2020 school year. Employment contingent upon certification (if necessary), criminal record check, and all other state and local requirements. Salary and duties per Board Policy, and Administrative Rules and Regulations with no fringe benefits.

1. Jennifer Goldick, Substitute Custodian, retroactive to January 29, 2020
2. Beverly Stutzman, Substitute Educational Aide.

**D. Employment –Extracurricular Positions**

The following positions have been posted and neither an employee of the district holding an educator license, who meets all of the Board’s qualifications, nor a nonemployee of the district holding an educator license, who meets all of the Board’s qualifications, has applied for, been offered, or accepted the position. The Administration recommends the employment of this nominee on one-year limited contract for the 2019-2020 school year, or as noted, contingent upon completion of all state and local requirements. Salary and duties per Board Policy, Negotiated Agreement, and Administrative Rules and Regulations.

1. Hannah Luther, Assistant Track – Middle School

Motion by Mr. Durham, seconded by Mr. Myers

Discussion – None.

Beeghly Y Durham Y Myers Y Noble Y Parks Y

President declares motion Passed.

**#1920-045**

### ***ADOPTION OF CONSENT AGENDA ITEMS - ADMINISTRATIVE***

Action by the Board of Education in “Adoption of Consent Agenda Items” at this point of the agenda means that items E through L are adopted by one single motion unless a member of the Board, the Superintendent, or the Treasurer requests that any such item be removed from the “Consent Agenda Items” and voted on separately.

#### **E. Eaton High School Registration Booklet**

The Administration recommends approval of the 2020-2021 Registration Booklet for Eaton High School. The booklet is on file at the high school and the Central Office.

#### **F. Agreement with Butler Behavioral Health Services**

The Administration recommends approval of an agreement with Butler Behavioral Health Services to provide group services for students, beginning January 27, 2020 through June 30, 2020 (Attachment B).

#### **G. Agreement with Sinclair Community College**

The Administration recommends approval of payment rates for Sinclair Community College to provide college level courses to students under Ohio’s College Credit Plus program for the 2020-2021 school year (Attachment C).

#### **H. Agreement with Focus 3, LLC**

The Administration recommends an agreement with Focus 3, LLC to provide culture and climate training for staff (Attachment D).

#### **I. Agreement with BC Technologies Company, DBA FinalForms**

The Administration recommends approval of an agreement with BC Technologies Company, DBA FinalForms, to provide online form and registration services (Attachment E).

#### **J. Purchase of Maintenance Truck**

The Administration recommends approval to accept a bid from Beau Townsend Ford to purchase a 2020 F-350 SD Regular Cab DRW XL Truck, with plow and accessories, to be used by the maintenance department, at a cost of \$67,738.50.

### **K. Insurance Coverage**

The Administration recommends approval to include the East Elementary Parent Teacher Organization on the district's insurance policy, retroactive to January 24, 2020.

### **L. Approval of Summer Camps**

The Administration recommends approval of the following summer camps.

1. Youth Girls Basketball Camp, grades 2-8, June 8-11, 2020.
2. Youth Cheer Camp, grades 1-8, June 8-11, 2020.
3. Youth Football Camp, grades 3-8, June 8-11, 2020.
4. Youth Boys Soccer Camp, grades 4-8, June 15-18, 2020.
5. Youth Tennis Camp, grades 3-8, June 15-18, 2020.
6. Youth Volleyball Camp, grades 3-8, June 15-18, 2020.
7. Youth Golf Camp, grades 3-12, June 16-19, 2020.
8. Youth Boys Basketball Camp, grades 3-8, June 22-25, 2020.
9. Youth Girls Soccer Camp, grades 4-8, June 22-25, 2020.

Motion by Mr. Beeghly, seconded by Mr. Durham

Discussion – None.

Beeghly Y Durham Y Myers Y Noble Y Parks Y

President declares motion Passed.

**#1920-046**

### **M. Executive Session**

To consider the employment of a public employee or official.

The following individuals were invited to attend: Jeff Parker, MissAnne Imhoff, Rachel Tait, Marvin Horton, Scott Couch, Brian Camp, Kip Powell, and Teresa Woodin.

Motion by Mr. Parks, second by Mr. Durham to convene executive session.

Beeghly Y Durham Y Myers Y Noble Y Parks Y

President declares motion Passed.

**#1920-047**

President convenes executive session at 6:19 p.m.

President resumes open session at 8:33 p.m.

## VI. Adjournment

Motion by Mr. Myers, seconded by Mr. Beeghly, to adjourn the meeting.

Discussion – None.

Beeghly Y Durham Y Myers Y Noble Y Parks Y

President declares motion Passed.

**#1920-048**

President adjourns meeting at 8:33 p.m.

DATE \_\_\_\_\_

PRESIDENT \_\_\_\_\_

TREASURER \_\_\_\_\_

### Upcoming Meeting

Meeting: Regular Board Meeting  
Date/Time: March 9, 2020 – 6:00 p.m.  
Location: East Elementary School



January 10, 2020

Ms. Rachel Tait  
Eaton Community Schools  
306 Eaton Lewisberg Road  
Eaton, OH 45320

Dear Ms. Tait:

This letter is to explain our understanding of the arrangements for, and the nature and limitations of, the services we are to perform for Eaton Community Schools (the "School") with respect to certain records and transactions of the School for the purpose of verifying data reported on the Medicaid School Program Agency Cost Report. The School's management is responsible for the compliance with those requirements. The specific procedures to be performed are included in the following link:

<http://education.ohio.gov/Topics/Finance-and-Funding/Programs/The-Ohio-Medicaid-Schools-Program>.

**Engagement Services**

Our engagement will be conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants. Because the procedures included in the attachment to this letter do not constitute an audit made in accordance with generally accepted auditing standards, we will not express an opinion on any of the specific elements, accounts, or items referred to in our report or on the financial statements of the School taken as a whole.

At the conclusion of our engagement, we will submit a report in letter form outlining the procedures performed and our findings resulting from the procedures performed.

Our report will contain a statement that it is intended solely for the use of the School, Ohio Department of Medicaid and the Ohio Department of Education and should not be used by those who have not agreed to the procedures and taken responsibility for the sufficiency of the procedures for their purposes. Should you desire that others be added to our report as specified parties, please contact us as it will be necessary to obtain their agreement with respect to the sufficiency of the procedures for their purpose.

Eaton Community Schools  
January 10, 2020  
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Our report will also contain a paragraph pointing out that if we had performed additional procedures or if we had conducted an audit in accordance with generally accepted auditing standards, matters in addition to any findings that may result from the procedures performed might have come to our attention and been reported to you.

The procedures that we will perform are not designed and cannot be relied upon to disclose errors, fraud or illegal acts, should any exist. However, we will inform the appropriate level of management of any material errors that come to our attention and any fraud or illegal acts that come to our attention, unless they are clearly inconsequential.

Furthermore, the procedures are not designed to provide assurance on internal control or to identify significant deficiencies or material weaknesses. However, we will communicate to management and the board of education any significant deficiencies or material weaknesses that become known to us during the course of this engagement.

#### **The School's Responsibilities**

The sufficiency of these procedures included in the attached link, is solely the responsibility of the Specified Parties. We make no representation regarding the sufficiency of the procedures described above either for the purpose for which these services have been requested or for any other purpose.

In addition, management is responsible for the design and implementation of programs and controls to prevent and detect fraud, and for informing us about all known or suspected fraud affecting the entity involving management, employees who have significant roles in internal control, and others where the fraud could have a material effect on the MSP cost report. Management is also responsible for informing us of its knowledge of any allegations of fraud or suspected fraud affecting the entity received in communications from employees, former employees or others.

#### **Records and Assistance**

If circumstances arise which in our professional judgment prevent us from completing the engagement, we retain the unilateral right to take any course of action permitted by professional standards, including withdrawal from the engagement.

During the course of our engagement, we may accumulate records containing data that should be reflected in your books and records. You will determine that all such data, if necessary, will be so reflected. Accordingly, you will not expect us to maintain copies of such records in our possession.

The assistance to be supplied by your personnel has been discussed and will be coordinated with the contracted billing agent, Weswurd. The timely and accurate completion of this work is an essential condition to our completion of our services and issuance of our report. The fee below presumes that all information requested to complete the procedures will be obtained electronically.



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**Fees, Costs and Access to Documentation**

The fees for the services described above are estimated not to exceed \$1,775 for each of the cost report dates ending 2019, 2020 and 2021 and may be subject to adjustments based on unanticipated changes in the scope of our work. All other provisions of this letter will survive any fee adjustment. Interim billings will be submitted as work progresses and as expenses are incurred. Billings are due upon submission.

In the event we are requested or authorized by the School or are required by government regulation, subpoena, or other legal process to produce our documents or our personnel as witnesses with respect to our engagements for the School, the School will, so long as we are not a party to the proceeding in which the information is sought, reimburse us for our professional time and expenses, as well as the fees and expenses of our counsel, incurred in responding to such requests.

**Claim Resolution**

The School and Rea & Associates, Inc. agree that no claim arising out of services rendered pursuant to this agreement by or on behalf of the School shall be asserted more than two years after the date of the report issued by Rea & Associates, Inc. The School waives any claim for punitive damages. Rea & Associates, Inc.'s liability for all claims, damages and costs of the School arising from this engagement is limited to the amount of fees paid by the School to Rea & Associates, Inc. for the services rendered under this arrangement letter.

If any term or provision of this agreement is determined to be invalid or unenforceable, such term or provision will be deemed stricken and all other terms and provisions will remain in full force and effect.

This letter constitutes the complete and exclusive statement of agreement between Rea & Associates, Inc. and the School, superseding all other proposals, oral or written, and all other communications with respect to the terms of the engagement between the parties.

If this letter defines the arrangements as you understand them, please sign and date a copy and return it to us. We appreciate your business.

*Rea & Associates, Inc.*

Confirmed on behalf of the School:

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Rachel Tait, Treasurer

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Date

## AGREEMENT

This Agreement is entered into on **January 27, 2020** by and between the Butler Behavioral Health Services, Inc. (hereinafter referred to as "**Agency**"), 1502 University Blvd., Hamilton Ohio 45011 and Eaton East School (herein after referred to as "**School**").

**WHEREAS**, the **School** desires to retain **Agency** to provide group services for students served by the **School**; and

**WHEREAS**, the **Agency** is licensed to practice counseling in the State of Ohio

**NOW THEREFORE**, in consideration of the mutual promises contained herein the **Agency** and **School** agree as follows:

### I. TERM

The term of this agreement shall be from January 27, 2020 through June 30, 2020.

### II. SERVICES AND DUTIES

2.1 Services and Duties: All services to be provided under this agreement shall be solely for the benefit of **School** clients.

**Agency** shall perform duties and provide services as follows:

A. Provide Behavioral Coaching to teachers, administrators, and other school personnel.

2.2 **Agency** will provide a minimum of four (4) hours of coaching on one (1) specified day of the week.

2.3 Absences: **Agency** shall notify the **School** within one (1) hour of unplanned absence.

### III. COMPENSATION

For performance of the duties under this Agreement, the **School** agrees to pay **Agency** at the rate of **\$126.10** per hour with cumulative payment of \$8070.00. Payment shall be issued thirty (30) days following the last day of the month. **Payment shall be preceded by the submission of a proper invoice by the Agency.**

### IV. INSURANCE

4.1 The **Agency** shall, during the term of this Agreement, provide comprehensive professional liability insurance with minimum coverage of One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000.00) aggregate.

### VIII. TERMINATION

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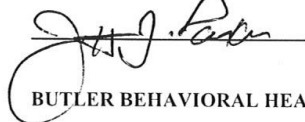
8.1 The **School** may terminate this agreement at any time, without notice, for cause. The term "cause" shall include any of the following:

1. Any intentional or grossly negligent act of **Agency** which materially injures or may injure the reputation or interest of the **School**;
2. **Agency's** breach or non-compliance with any provisions of this agreement.

8.2 Either party of this Agreement may terminate this agreement, without cause, with a Thirty- (30) day written notice of cancellation.

In witness whereof, the parties have executed this Agreement as of the date above first written.

SCHOOL *East Elementary K-2, Eaton Community School*

  
\_\_\_\_\_

BUTLER BEHAVIORAL HEALTH SERVICES, INC.

By: \_\_\_\_\_

Randy Allman, CEO

**EXHIBIT A  
PAYMENT RATES FOR 2020-2021 ACADEMIC YEAR**

**COLLEGE CREDIT PLUS  
AGREEMENT  
BETWEEN  
SINCLAIR COMMUNITY COLLEGE  
AND**

\_\_\_\_\_  
Eaton Community SCHOOL DISTRICT

The following rates shall be in effect for the 2020-2021 school year, including summer 2020, fall 2020 and spring 2021:

\$41.64 per credit hour	<b>Category 1 Courses:</b> College courses taught at a high school by a high school teacher.
\$41.64 per credit hour	<b>Category 2 Courses:</b> College courses taught at a high school by a Sinclair instructor.
\$41.64 per credit hour	<b>Category 3 Courses:</b> College courses taught at a Sinclair location or online by a Sinclair instructor.

The parties understand and agree that the rates stated above for Category 2 and 3 Courses constitute “an alternative funding structure” and “an alternative payment structure” as those terms are used in Ohio Revised Code Section 3365.07 and/or Ohio Administrative Code Section 3333-1-65.6.

**SINCLAIR COMMUNITY COLLEGE**

**DISTRICT**

\_\_\_\_\_

\_\_\_\_\_

Dr. Steven Lee Johnson, President and CEO

Name/Title: Jeff J. Parker,  
Superintendent

\_\_\_\_\_

Date

\_\_\_\_\_

Date

## Focus 3 Workshop

### *Agreement between Focus 3 and Eaton Community Schools*

This Agreement ("Agreement") is made and entered into by and between Eaton Community Schools ("Customer") and Focus 3, LLC ("Focus 3"). Focus 3 and Customer each hereby agree:

#### *Focus 3 agrees to:*

- Deliver the Scope of Work attached hereto as Exhibit A (the "Services") on dates and locations to be mutually determined by the parties in good faith (the "Event").
- Provide all the materials and/work product as set forth in the Scope of Work attached hereto to Customer prior to the Event, in either digital or physical format, for the purpose of printing, distribution, presentation, etc. on the day(s) of the Event.
- Submit business travel expenses that are reasonable and necessary to providing the services contemplated to Customer following delivery of the Event.

#### *Customer agrees to:*

- Pay Focus 3 the total fee as set forth in detail on Exhibit A.
- Reimburse Focus 3 for out of pocket travel expenses (flight, car, hotel, meals) that are reasonable and necessary for providing the Services delivered. All expenses to be paid within 30 days of the date set forth on the invoice.
- Provide all necessary audio/visual equipment for the Event according to Focus 3's expressed needs.
- **Direct all questions regarding updates and changes to this contract to David Trichel: David@Focus3.com or 203-561-3581.**
- **Direct all questions regarding invoicing, purchase orders, and certificate of insurance to Rita Newcomb: Rita@Focus3.com or 614-546-6246.**

Each of Focus 3 and Customer acknowledge and agree that all of the Services will be performed, and any work product delivered will be, subject to the terms and conditions set forth on Exhibit B and that each of Customer and Focus 3 will be subject to the terms and conditions set forth on Exhibit B. **Focus 3's W-9 is provided at Exhibit C.**

The signatures below indicate acceptance of the preceding terms and Exhibit A and Exhibit B hereto. This Agreement will become effective as of the date of the last signature below.

David Trichel

Account Manager

Focus 3

Jeff Parker

Superintendent

Eaton Community Schools

## Exhibit A

### *Delivery Description*

#### **Year One**

##### Culture Playbook

- Focus 3 will facilitate the leadership team in identifying the cultural standards. The deliverable will be a Culture Playbook that can be used to communicate core beliefs, required behaviors, and desired outcomes.
- It begins by facilitating a 60 minute webinar with the leadership team to teach what culture is, why it's important, and a leader's role in building it. The goal is to develop a shared definition and understanding of culture prior to the on-site workshop. At the conclusion of the webinar, participants will be encouraged to think about what beliefs and behaviors will be essential to success.
- Within 2-4 weeks of the webinar, Focus 3 will conduct an on-site workshop to guide the leadership team in identifying their core beliefs, behaviors, and outcomes. Focus 3 will take the input from this workshop and begin drafting the Culture Playbook while working with the designated point of contact to refine it into a final version.

##### The R Factor Workshop

- Focus 3 will facilitate an on-site workshop to teach administrators, teachers, and staff the R Factor and the Six R Factor Disciplines.
- Workshop will cover:
  - The Performance Pathway (Leadership→ Culture→ Behavior = Results)
  - How behavior skills drive job skills.
  - How to take ownership of your 20 square feet of the culture and strategy.
  - The R Factor (E+R=O), how to apply it as a mindset and a skill set.
  - The impact of Disciplined behaviors versus Default behaviors on performance and relationships.
  - Why blaming, complaining, and defending (BCD) doesn't work and how to redirect it.
  - The Six R Factor Disciplines:
    - Press Pause
    - Get Your Mind Right
    - Step Up
    - Adjust & Adapt
    - Make a Difference
    - Build Skill

- Participants will receive the R Factor workbook to begin practicing application of E+R=O and the six R Factor Disciplines through personal reflection and group exercises.

#### Virtual Training

- Following the workshop, Focus 3 will provide access to its R Factor virtual training (VT) program for all administrators, teachers, and staff on an annual subscription basis.
- The R Factor VT features eight courses that are designed to teach and reinforce the fundamentals learned in the workshop.
- The R Factor VT can be accessed 24/7 via computer, tablet, or smartphone throughout the duration of the subscription.

#### Certification

- Focus 3 will facilitate a full-day on-site workshop designed to prepare and equip your selected internal trainers to teach the R Factor.
- Individuals receiving R Factor certification are required to attend the R Factor workshop and complete the R Factor VT prior to certification.
- The certification workshop will feature:
  - Teach-backs for participants to practice facilitating the R Factor content.
  - Review and guidance in facilitating meetings, conducting exercises, and using the R Factor workbook.
  - Sharing of best practices and for teaching the R Factor to different audiences.
- Certified trainers will receive electronic copies of the R Factor workbook for educators, the R Factor Facilitator Guide, and the R Factor slide deck.
- Ongoing Support & Coaching
  - To support the leadership and the certified R Factor trainers, Focus 3 will provide two 60 minute webinars per semester.
  - These webinars will allow the staff to ask questions, share experiences, and clarify application of the R Factor.

#### Year Two

##### The R Factor Advanced Workshop

- Focus 3 will deliver an on-site workshop to principals, key teachers, and R Factor certified staff.
- This workshop will address:
  - Advanced application of the R Factor.
  - How to teach students the R Factor and the Six Disciplines.



- How to use worksheets to address the educational, social, and home-related issues students deal with on a daily basis.
- Developing a plan to teach the R Factor to the students.

#### The R Factor Keynote

- Focus 3 will deliver a 60-90 minute R Factor keynote at the beginning of Year Two. The keynote will serve as a reminder of the R Factor disciplines learned over the past year, and it will also be an energizer for the staff as they begin to teach the R Factor to students.

#### Ongoing Support

- Focus 3 will provide two 60 minute webinars per semester.
- These webinars will allow the staff to ask questions, share experiences, and clarify application of the R Factor.

#### Student Content Licenses

- Focus 3 will provide the right to use the R Factor content for internal use, including but not limited to internal instruction, communication, posters, and desktop reminders on an annual subscription basis. Schools will not have the right to use the R Factor with any third party without the express written consent of Focus 3.
- Following Year Two, Eaton Community Schools will pay an annual fee of \$1,425 (25% of Year Two Student Content Licenses) for new student content licenses.

System Install	Price	QTY	Subtotal
<b>Year 1</b>			
Culture Playbook	\$10,000.00	1	\$10,000.00
Culture Coaching & Planning	\$2,500.00	1	\$2,500.00
R Factor Workshop	\$5,000.00	1	\$5,000.00
R Factor Certification	\$7,500.00	1	\$7,500.00
R Factor Virtual Training	\$1,250.00	1	\$1,250.00
Ongoing Support for Certified Trainers	\$625.00	4	\$2,500.00

Attachment D

**Year 2**

R Factor Advanced Workshop	\$7,500.00	1	\$7,500.00
R Factor Keynote	\$5,000.00	1	\$5,000.00
Ongoing Support	\$625.00	4	\$2,500.00
R Factor Virtual Training	\$1,250.00	1	\$1,250.00
Student Content Licenses	\$3.00	1,900	\$5,700.00
Subtotal			<b>\$50,700.00</b>
Total			<b>\$50,700.00</b>

## Exhibit B

### TERMS AND CONDITIONS

All Services and/or work product provided by Focus 3 are made subject to the following terms and conditions. Focus 3 expressly rejects any different or additional terms or conditions contained in any documents submitted by Customer. Focus 3's provision of any Services or work product to Customer are expressly made conditional on Customer's assent to these terms and conditions.

1. Except as otherwise agreed in a writing signed by Customer and Focus 3, this Agreement constitutes the entire agreement, between Focus 3 and Customer relating to the provision of Services or work product by Focus 3 to Customer. Terms or conditions contained in any document issued by Customer that in any manner purport to alter, modify, change, suspend, or add to any term or condition contained herein shall be deemed excluded from such Customer document and waived by Customer.
2. The price of the Services and/or any work product provided by Focus 3 shall be as stated in this Agreement; provided, however, Focus 3 shall also be permitted to invoice customer for any reasonable out-of-pocket expenses incurred by Focus 3 in connection with the Services, such as airfare, car rental, dining, lodging and other travel-related expenses.
3. Customer cannot modify, cancel, or otherwise alter the Services, scope of Services or any work product to be provided by Focus 3 without Focus 3's written consent (which may be withheld at Focus 3's sole discretion) after the date of this Agreement. Customer shall be responsible for the payment of the aggregate contract price without discount if it cancels or terminates the Services without the prior written consent of Focus 3 (which may be withheld at Focus 3's discretion). Notwithstanding the foregoing, Customer shall only be obligated to pay for, and Focus 3 shall only be obligated to provide, the specific Services set forth in the Statement of Work that Customer elects, in a written notice to Focus 3, to purchase. Focus 3's performance of any particular Service for Customer, without protest from the Customer, shall also be deemed to be a request for such Service by the Customer.
4. Time is an important consideration with respect to the Services and delivery of any work product. Focus 3 shall not be responsible for non-performance or delays in the performance of the Services or delivery of work product due to causes beyond its reasonable control, including, but not limited to, acts of God, acts of Customer, and strikes or other labor disturbances.
5. FOCUS 3 WARRANTS THAT THE SERVICES OR ANY WORK PRODUCT FURNISHED HEREUNDER SHALL SUBSTANTIALLY CONFORM TO THE DESCRIPTION OF SERVICES OR WORK PRODUCT SET FORTH IN THE SCOPE OF WORK. FOCUS 3

MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, AND SPECIFICALLY EXCLUDES ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

6. CUSTOMER'S EXCLUSIVE REMEDY AGAINST FOCUS 3, AND FOCUS 3'S SOLE OBLIGATION, FOR ANY AND ALL CLAIMS, WHETHER FOR BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, SHALL BE LIMITED TO FOCUS 3'S REPLACING WORK PRODUCT OR REPERFORMING SERVICES THAT DO NOT CONFORM TO THE SPECIFICATIONS IN THE SCOPE OF WORK OR, AT FOCUS 3'S OPTION, REFUNDING THE PRICE OF THE SERVICES IN QUESTION OR THE WORK PRODUCT IN QUESTION. IN NO EVENT SHALL FOCUS 3 HAVE ANY LIABILITY FOR DAMAGES IN AN AMOUNT EXCEEDING THE PRICE OF THE SERVICES OR WORK PRODUCT IN QUESTION, NOR SHALL FOCUS 3 HAVE ANY LIABILITY FOR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES.
7. All payments owed by Customer to Focus 3 are to be made via ACH within 30 days of the date on the invoice for any applicable work product or Services provided by Focus 3. Payments beyond 30 days will incur a 5% service fee (of total invoice amount not counting expenses) and an additional 5% fee every two weeks until the invoice is paid in full.
8. This Agreement shall be governed by the laws of the state of North Carolina. Customer, acting for itself and its successors and assigns, hereby expressly and irrevocably consents to the exclusive jurisdiction of the state and federal courts of the state of North Carolina for any litigation which may arise out of or be related to this agreement. Customer waives any objection based on *forum non conveniens* or any objection to venue of any such action.
9. Focus 3 reserves the right to enforce these terms and conditions at any time and none shall be deemed waived unless such waiver is in writing signed by a duly authorized officer of Focus 3. All rights and remedies granted herein are in addition to all remedies available at law or in equity.
10. Nothing contained in this Agreement shall in any way limit, or be construed to limit, Focus 3's ownership of Focus 3's intellectual property including its Systems and Contents as well as its patents, trademarks, copyright, trade secrets, drawings, designs, models and any related reference documentation in any form that is made or developed by Focus 3 for itself or any other party prior to, during or after the term of this Agreement. Nothing contained in this Agreement shall in any way limit, or be construed to limit, Focus 3's ability to perform or provide similar (or the same) services or work product to third parties.
11. Customer agrees not to sell or disseminate outside its organization any work product or content provided by Focus 3 to Customer.

## Exhibit C

### **FinalForms Agreement**

This FinalForms Agreement ("Agreement") is made and entered into on \_\_\_\_\_, by and between BC Technologies Company, doing business as FinalForms ("FinalForms" or "Party"), an Ohio corporation, and the \_\_\_\_\_ ("Customer" or "Client" or "Subscriber" or "Party"), (collectively, "the Parties").

The Support Services ("Services") contemplated by this Agreement shall be set forth in an Exhibit, which shall be attached to and made a part of this Agreement.

*The Parties hereto agree as follows:*

#### **1. Contract Period**

This Agreement is effective when signed by Customer and FinalForms representatives ("Effective Date"). The initial term of this Agreement begins on the Effective Date and ends one calendar year from the Effective Date. The term will renew automatically for additional one (1) year terms at FinalForms' then-current development, academic and athletic form fee rates, notice of which shall be provided to Customer sixty (60) days prior to the end of the then-current term, unless terminated in writing by either party at least thirty (30) days prior to the end of the then-current term, or upon termination under Section 4 of the Agreement.

#### **2. Billing and Payment**

**Payment Dates.** Payments for services rendered between March 16<sup>th</sup> and September 15<sup>th</sup> will be invoiced on September 15<sup>th</sup> in each year of this Agreement. Payments for Services rendered between September 16<sup>th</sup> and December 15<sup>th</sup> will be invoiced on December 15<sup>th</sup> in each year of this Agreement. Payments for Services rendered between December 16<sup>th</sup> and March 15<sup>th</sup> will be invoiced on March 15<sup>th</sup> in each year of this Agreement.

**Payment Terms.** Payment for the Services under this Agreement shall be set forth in an Exhibit, which shall be attached to and made a part of this Agreement. Payment is due within thirty (30) days of Customer's receipt of an invoice from FinalForms. Services will be suspended for up to seven (7) days if payment is not received when due. Should Customer fail to pay FinalForms the complete agreed upon consideration within the seven (7) day suspension period, FinalForms shall have the right to terminate the Agreement, effective immediately.

#### **3. Representations and Warranties**

**Compliance with the Laws.** Each Party shall, at its own expense, comply with all laws, regulations and other legal requirements that apply to it and this Agreement.

**Acceptable Use.** Customer is solely responsible for the content of any postings, data, or transmissions using the Services, or any other use of the Services by Customer or by any person or entity Customer permits to access the Services. Customer represents and warrants that it will not violate or tamper with the security of any FinalForms computer equipment or program. If FinalForms has reasonable grounds to believe that Customer is utilizing the Services for any illegal or disruptive purpose, FinalForms may suspend the Services immediately with or without notice to Customer. FinalForms may terminate the Agreement as contemplated in Section 4 if FinalForms determines that Customer failed to adhere to the foregoing acceptable use standards.

**DISCLAIMER.** THE WARRANTIES SET FORTH IN THIS SECTION 3 ARE THE ONLY WARRANTIES MADE BY FINALFORMS. FINALFORMS MAKES NO OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES, ANY RELATED SERVICE, OR SOFTWARE. FINALFORMS HEREBY EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR IMPLIED WARRANTIES ARISING FROM A COURSE OF DEALING OR COURSE OF PERFORMANCE. NO ORAL OR WRITTEN INFORMATION GIVEN BY FINALFORMS, ITS EMPLOYEES OR LICENSORS WILL CREATE A WARRANTY. FINALFORMS MAKES NO WARRANTY EXPRESSED OR IMPLIED, REGARDING THE ACCURACY, ADEQUACY, COMPLETENESS, LEGALITY, RELIABILITY OR USEFULNESS OF ANY FORM OR DATA THAT IT CONVERTS INTO ELECTRONIC FORMAT FOR CUSTOMER, OR THIRD PARTIES SUCH AS PARENTS OR STUDENTS, AT CUSTOMER'S REQUEST, PURSUANT TO THIS AGREEMENT

**Foreign Language Translations.** FinalForms may provide translations of data it receives from Customer into languages other than English, through a third-party external translation service, which is intended solely as a convenience to the non-English-reading public. Due to the inherent nuances of translating a foreign language, FinalForms cannot guarantee the accuracy, reliability, or performance of the third-party external translation service nor the limitations provided by this service, such as the inability to translate specific files or data. Therefore, FinalForms expressly disclaims liability for any direct, indirect, incidental, special, or consequential damages that may result from or relate to an inaccuracy in the translation of Customer data into a language other than English.

#### **4. Termination**

Either Party may give notice of termination of the Agreement at least thirty (30) days prior to the expiration of the original term. If Customer terminates this Agreement, all amounts due for use of the Software based on the number of students whose data has been converted into electronic format in accordance with this Agreement, and the Support Services ("Services") actually rendered prior to the termination of this Agreement shall be immediately due and payable by Customer.

If a Party fails to perform or observe any material term or condition of this Agreement, and the failure continues un-remediated for seven (7) days after receipt of written notice of noncompliance, the other Party may terminate this Agreement, or, where the failure is a nonpayment by Customer of any charge when due, FinalForms may, at its option, terminate or suspend Services in accordance with Section 2 of this Agreement.

This Agreement may be terminated immediately upon written notice by FinalForms if it becomes insolvent or involved in a liquidation or termination of business, files a bankruptcy petition, has an involuntary bankruptcy petition filed against it (if not dismissed within thirty days of filing), becomes adjudicated bankrupt, or becomes involved in an assignment for the benefit of its creditors.

#### **5. Licenses**

FinalForms hereby grants to Customer a personal, nonexclusive, nontransferable license during the term of this Agreement to use, in object code form, all software and related documentation provided by FinalForms ("Software"), which may be furnished to Customer under this Agreement. Customer agrees to use commercially reasonable efforts to ensure that its employees and users of all Software hereunder comply with this Agreement. Customer also agrees to refrain from taking any steps, such as reverse assembly or reverse compilation, to derive a source code equivalent to the Software. All Software furnished to Customer under this Agreement shall be used by Customer only for Customer's internal business purposes, and shall not be reproduced or copied in whole or in part.

#### **6. Customer Data**

Customer is the custodian of all data that it supplies to FinalForms, which is to be strictly held as confidential. FinalForms will not access, delete or alter Customer data within FinalForms or within any other software or application employed by Customer without the express consent of Customer.

Customer hereby consents to the use by FinalForms of Customer's name, logo, and other identifying information in marketing materials that contain a list of representative customers. FinalForms will grant Customer administrators access to the application and data for a minimum of seven (7) years after contract termination. Customer has the option to receive a backup of data prior to deletion, per Section 10 of this Agreement.

All right, title, and interest in and to the Software, and all copyrights, patents, trademarks, service marks, or other intellectual property or proprietary rights relating thereto, belong exclusively to FinalForms. Any modification to the Software performed by Customer directly or indirectly extending the current capabilities shall be the property of FinalForms, and all copyrights and other rights are hereby assigned to FinalForms.

## **7. Limitation of Liability**

As set forth below, under no circumstances will FinalForms, its executives, employees, or designees be liable for any indirect, incidental, special, or consequential, damages that result from Customer's use of or Customer's inability to use the Services, including but not limited to: loss of revenue or lost profits, or damages that result from mistakes, omissions, interruptions, deletion of files or email, errors, defects, viruses, delays in operation or transmission, theft, destruction, or unauthorized access to FinalForms' records, programs or services, even if such Party has been advised of the possibility of such damages. In the event of any breach by FinalForms of this Agreement, FinalForms' liability to Customer will not exceed the amount paid to FinalForms by Customer during the previous three (3) months.

**No Infringement:** FinalForms warrants the Software will not infringe any patents, trademarks, copyright, or any proprietary rights of a third party or constitute a misuse or misappropriation of a trade secret. Customer shall notify FinalForms promptly in writing of any known action brought against Customer based on an allegation that Customer's use of any materials infringes any patent, trademark, copyright, or infringes any right of a third party, or constitutes misuse or misappropriation of a trade secret ("Infringement"). FinalForms may agree to defend, indemnify, and hold Customer harmless from any such action at FinalForms' sole expense, provided that FinalForms shall have the sole control of the defense of any such action, all negotiations and/or its settlement, and Customer reasonably cooperates with FinalForms in such defense, negotiations and/or settlement.

## **8. Customer Responsibility**

For purposes of Section 8 of this Agreement, "communications" shall mean all electronic correspondence generated or received by Customer and its employees and designees, excluding such correspondence between Customer and FinalForms, through the use of any Service provided by FinalForms to Customer under this Agreement.

Customer is solely responsible for the content of communications transmitted by Customer using the Services. Customer is solely responsible for the content of all documents, data, and student records FinalForms converts into electronic format and makes available to Customer online, at the request of Customer, and shall defend, indemnify, and hold harmless FinalForms from and against any liability and costs (including reasonable attorneys' fees) arising from FinalForms conversion of such documents, data, and student records into electronic format and making such documents, data, and student records available online.

Customer is not permitted to resell the Services.

To the extent deemed necessary by Customer, Customer shall implement security procedures necessary to limit access to the Services to Customer's authorized users and shall maintain a procedure external to the Services for reconstruction of lost or altered files, data, or programs.



Customer is responsible for establishing designated points of contact to interface with FinalForms.

#### 9. Confidential Information

**Definition.** For purposes of this Agreement, "Confidential Information" shall mean information including, without limitation, all Customer data, computer programs, code, algorithms, names and expertise of employees and consultants, know-how, formulas, processes, ideas, inventions (whether patentable or not), schematics, and other technical, business, financial, and product development plans, forecasts, strategies and information marked "Confidential," or if disclosed orally, is identified as confidential at the time of disclosure. In addition to the foregoing, Confidential Information shall include third party software, if any, that may be provided to Customer under this Agreement, including any related source or object codes, technical data, data output of such software, documentation, or correspondence owned by the applicable licensor. Confidential Information excludes information that: (i) was or becomes publicly known through no fault of the receiving party; (ii) is independently developed by the receiving party without the participation of individuals who have had access to the Confidential Information; (iii) is approved by the disclosing party for disclosure without restriction in a written document which is signed by a duly authorized representative or designee of such disclosing party; and (iv) the receiving party is legally compelled to disclose, provided, however, that prior to any such compelled disclosure, the receiving party will (a) assert the privileged and confidential nature of the Confidential Information against the third party seeking disclosure, and (b) cooperate fully with the disclosing party in protecting against any such disclosure and/or obtaining a protective order narrowing the scope of such disclosure and/or use of the Confidential Information. In the event that such protection against disclosure is not obtained, the receiving party will be entitled to disclose the Confidential Information, but only as and to the extent necessary to legally comply with such compelled disclosure.

Each Party agrees to use the other Party's Confidential Information solely for the purposes of carrying out its obligations under this Agreement, and to refrain from disclosing that Confidential Information to any third-party, unless and to the extent: (a) any disclosure is necessary or appropriate in connection with the performance of its obligations or exercise of its rights under this Agreement; (b) any disclosure is required by applicable law including public records law (O.R.C. §149.43, *et seq.*) or open meetings law (O.R.C. §121.22, *et seq.*); provided that, if practicable, the party required to make such disclosure uses reasonable efforts to give the party to whom the relevant Confidential Information relates reasonable advance notice thereof (i.e., so as to afford that party an opportunity to intervene and seek an order or other appropriate relief for the protection of its Confidential Information from any unauthorized use or disclosure) and the Confidential Information is only disclosed to the extent required by law; (c) any disclosure is made with the consent of the disclosing party; or (d) to employees, consultants or agents to whom disclosure is necessary to realize the benefit of this Agreement and who agree to be bound by the terms hereof.

FinalForms will disclose any breach of its security system affecting personal information, in accordance with the requirements of R.C. 1349.19, if applicable.

**Nondisclosure.** During the term of this Agreement and for a period of two (2) years thereafter, each Party agrees to maintain all Confidential Information in confidence to the same extent that it protects its own similar Confidential Information, but in no event using less than reasonable care, and to use such Confidential Information only as permitted under this Agreement. Each Party agrees to only disclose the other Party's Confidential Information to its employees: (a) with a need to know to further permitted uses of such information; and (b) who are informed of the nondisclosure/non-use obligations imposed by Section 9 of this Agreement. Both Parties shall take steps each determines appropriate to implement and enforce such non-disclosure/non-use obligations.

#### **10. Back-up of Data**

FinalForms will deliver a full back-up of Customer Data in .BAK format in a CD by US priority mail, if Customer pays a charge of \$100 per back-up copy in advance of receiving the CD(s).

#### **11. General Provisions and Force Majeure**

(a) This Agreement, including any amendments and attachments hereto that are incorporated herein, constitute the entire agreement between the Parties and shall be binding on the Parties. No modification, termination, or waiver of any provisions of this Agreement shall be binding upon a Party unless evidenced in writing signed by authorized representatives of the Parties. No provision of any purchase order or other document issued by Customer, which purports to alter, vary, modify, or add to the provisions of this Agreement, shall be binding upon FinalForms or effective for any purpose, unless expressly accepted by FinalForms in a signed writing by an authorized representative.

It is further expressly understood and agreed that, there being no expectations to the contrary between the Parties, no usage of trade or other regular practice or method of dealing, either within the computer software industry, FinalForms' industry, or between the Parties shall be used to modify, interpret, supplement, or alter in any manner the express terms of this Agreement or any part thereof.

(b) Nothing contained in this Agreement shall be construed as creating a joint venture, partnership, or employment relationship between the Parties.

(c) The Software shall not be exported or re-exported in violation of any export provisions of the United States or any other applicable jurisdiction.

(d) This Agreement may not be assigned, sublicensed, or transferred, in whole or in part, by Customer without the prior written consent of FinalForms. Any attempted assignment, subletting or transfer shall be void.

(e) If any provision or provisions of this Agreement shall be held to be invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

(f) No delay or failure of FinalForms or Customer in exercising any right herein, and no partial or single exercise thereof shall be deemed of itself to constitute a waiver of such right or any other rights herein. Any waiver by FinalForms or Customer of any breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent or other breach.

(g) In the event that either Party is unable to perform any of its obligations under this Agreement or to enjoy any of its benefits because of natural disaster, terrorism, fire, explosion, power blackout, earthquake, flood, the elements, strike, embargo, labor disputes, acts of civil or military authority, war, acts of God, acts or omissions of carriers or suppliers, acts of regulatory or governmental agencies, actions or decrees of governmental bodies or communication line failure not the fault of the affected Party, or other causes beyond such Party's reasonable control (a "Force Majeure Event"), the Party who has been so affected shall immediately give notice to the other Party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Agreement shall be immediately suspended. If the period of nonperformance exceeds seven (7) days from the receipt of notice of the Force Majeure Event, the Party whose ability to perform has not been so affected may, by giving written notice, immediately terminate this Agreement as provided in Section 11 of this Agreement.

(h) At FinalForms' request, no more frequently than annually, Customer shall furnish FinalForms with a signed certification verifying that the Software is being used pursuant to the terms of this Agreement and listing the locations where the Software is being used.

(i) This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, and each of which together shall constitute a single instrument.

(j) This Agreement shall be governed by and construed under the laws of the State of Ohio applicable to contracts made in and wholly to be performed in the State of Ohio.

## 12. Signatures

Signature below by an authorized representative confirms a Party's consent to the terms and conditions of this Agreement.

### CUSTOMER

By: \_\_\_\_\_  
Position: \_\_\_\_\_

By: \_\_\_\_\_  
Position: \_\_\_\_\_

Date: \_\_\_\_\_

### FINALFORMS

By: \_\_\_\_\_  
Position: \_\_\_\_\_

Date: \_\_\_\_\_

### FinalForms Agreement - Exhibit A

This Exhibit shall be attached to and made a part of the FinalForms Agreement between FinalForms and \_\_\_\_\_ ("Customer").

The following definition shall apply to the FinalForms Agreement:

**Support Services ("Services")** – includes, but is not limited to: conversion of Customer-approved forms and data into electronic format; web hosting for online forms; data storage; provision of access to stored Customer data; access to electronic communication tools using online email system, manual notifications or automatic notifications; access to features that allow filtering, sorting, printing and emailing data; email and phone Customer support; online and in-person training.

#### PAYMENT OPTIONS AND PAYMENT PLANS

##### 1. SETUP FEE

*\* Customer will be billed at the rate of noted on the quote.*

The Setup Fee covers the development of the FinalForms system, including customization, for Academics and/or Athletics and/or Staff. The total Setup Fee will be invoiced upon signing the Agreement and will be due within thirty (30) days of signing the Agreement.

##### 2. ANNUAL FEES (per student)

*\* Customer will be billed at the rate of noted on the quote.*

Invoices are automatically send on September 15th, December 15th, and April 15th, and shall be due within thirty (30) days of receipt of such invoice unless otherwise agreed upon, which is noted as:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

#### Signatures

Signature below by an authorized representative confirms a Party's consent to the terms set forth above.

#### CUSTOMER

By: \_\_\_\_\_  
Position: \_\_\_\_\_

By: \_\_\_\_\_  
Position: \_\_\_\_\_

Date: \_\_\_\_\_

#### FINALFORMS

By: \_\_\_\_\_  
Position: \_\_\_\_\_

Date: \_\_\_\_\_