

**FIRST AMENDMENT TO SHINE ASSIST CONTRACT**

**THIS FIRST AMENDMENT** ("First Amendment") to the Shine Assist Agreement effective as of December 16, 2014 ("Agreement") between Jefferson County Board of Education ("Board"), and Shine Early Learning, Inc. ("Shine")(together, the "Parties"), is made this 15<sup>th</sup> day of September, 2015.

**WITNESSETH:**

WHEREAS in furtherance of Board's efforts to maintain its program, it has enlisted Shine's assistance in preparing an application for its Head Start re-competition grant ("Designation Renewal System" or "DRS Grant"); and

WHEREAS, The Parties desire to amend certain terms and provisions of the Agreement; and

**NOW THEREFORE**, in consideration of the mutual undertakings and covenants of the Parties and for other good and valuable consideration, receipt and sufficiency of which is hereby acknowledged, the Parties do hereby agree as follows:

The Agreement shall be amended as set forth:

1. Section I shall be deleted and replaced with the following:

**IA. Shine Assist Services:**

From September 15, 2015 through December 16, 2016, Shine shall provide the Shine Assist Services set forth in Exhibit A to Board's Existing Program comprising 1,741 Head Start (ages 3-5) children and 152 Early Head Start (ages 0-3) children. The Shine Assist Services specified in Exhibit A may be subject to change, at the discretion of Shine and approved by Board.

**I.B. RFP Application Support:**

Beginning on September 15, 2015, Shine shall provide the following services to Board:

1. Complete grant writing and development support, including project management
2. Tools for obtaining community support and tracking letters of support.
3. RFP Application coaching, review and editing.
4. Budget modeling & hands-on budgeting assistance.
5. Assistance in describing Implement services, which services shall be included in said application.

**I.C. Shine Access:**

Beginning on September 15, 2015 and continuing throughout the Term hereof (as defined below), Board shall have access, at no additional cost, to "Shine Access", Shine's comprehensive online library of service area plans, policies, tools and templates.

I.D. Shine Insight:

- 1. From September 15, 2015 through June 30, 2016, Shine shall license to Board the use of its “Shine Insight” database system of real-time, role based data for Head Start programs, for the 1,893 children enrolled in its Head Start and Early Head Start programs, as well as the children enrolled in its Pre-K program, the license fee for which shall be included in the fee for the Implement services set forth below. For a six-week period beginning September 15, 2015, Shine shall provide dedicated implementation support, product management support and time allocation for the roll-out of Shine Insight, for the Dedicated Support Fee included in Section A. Any upgrades to the Insight software are provided to Board at no additional cost.
- 2. During the period from September 15, 2015 through June 30 2016, Shine shall produce a full scope project plan and cost analysis for additional integrations and customizations to be developed in collaboration with Board. The Board shall have the option to elect to have Shine implement such integrations and customizations at the cost specified by Shine and in such event, the plan shall be implemented according to a mutually agreed-upon schedule.
- 3. Following discussions between the parties regarding Board’s needs and specifications, Shine shall produce a full-scope project plan and cost analysis to expand Shine Insight services to integrate with Board’s Infinite Campus. The Board shall have the option to elect to have Shine implement such expansion at the cost specified by Shine, agreed to by Board, according to a mutually-agreed upon implementation schedule.
- 4. Shine’s license to the Board of its Shine Insight database will continue throughout the Term hereof.

I.E. Shine Implement:

1. SHINE STAFFING

- a. From September 15, 2015 through June 30, 2016, Shine shall provide the services of four (4) full- time Health and Family Engagement employees to work with the 152 children enrolled in Board’s Early Head Start program. Such staff will work out of offices provided by Board at the District locations mutually agreed to by Shine and Board.
- b. Beginning on July 1, 2016 and continuing throughout the Term hereof, Shine shall provide a total of forty (40) full-time Health and Family Engagement employees whose services it will provide to the Board’s 232 EHS and 1,319 Head Start students (for a total of 1,551 children).

2. RECRUITMENT & ELIGIBILITY

Shine shall be responsible for the recruitment of potential enrollees and the evaluation of eligibility Head Start/Early Head Start applicants, including verification and intake, using the eligibility criteria that Board has developed. Board staff will provide support to Shine during this process and Board, through its Head Start Director, will be responsible for final enrollment

decisions regarding applicants that Shine determines to be eligible. All Head Start staff, except for the forty—four referenced above shall be the sole employees of Board.

### 3. HUMAN RESOURCES

Board shall be responsible for all Human Resources matters concerning its employees and Shine shall be similarly responsible for its employees. Board shall make all hiring, firing and terms of employment decisions regarding its staff and Shine shall do the same. Shine staff shall notify Board's supervisory staff regarding any performance-related issues it observes. Shine shall performed all required staff background checks as required by federal and state law and Board policy.

### 4. HEALTH

Shine Health staff shall provide the following services:

- a. Provide monitoring of health compliance
- b. Enter data on health events into Shine Insight
- c. Follow up with families for missing events
- d. Work with Board's Nutritional Consultant to complete child nutrition assessments
- e. Coordinate health screenings- heights and weights, hearing, vision, etc.

### 5. FAMILY SERVICES

Shine Family Services staff shall provide the following services:

- a. Strengths assessments
- b. Goal setting
- c. Follow up
- d. Referral
- e. Parent workshops
- f. Encouragement of parents to participate in governance structure
- g. Provide mental health consultations to family and staff

### 6. MONITORING

Shine staff shall provide the following services:

- a. Maintain Shine's Insight database with all relevant child and family data
- b. Provide relevant reports to Board staff (e.g. MBIs, MBOs)
- c. Collaborate in implementing Self-Assessment System for Continuous Improvement and Evaluation tool (SASCIE)
- d. Provide a Data Breach Policy to Board
- e. Provide a Certificate of Liability Insurance to Board



7. QUARTERLY AND ANNUAL REVIEW CONFERENCES:

The parties shall hold quarterly and annual review conferences to discuss the following services/areas:

<b>Contracted Personnel Review</b>	<ul style="list-style-type: none"><li>• Review of all Contracted Personnel w/ performance rating</li><li>• Open Positions</li></ul>
<b>Recruitment/Enrollment</b>	<ul style="list-style-type: none"><li>• Enrollment levels</li><li>• Wait Lists</li></ul>
<b>Family Services</b>	<ul style="list-style-type: none"><li>• Family Goal Setting Review and future Planning Needs</li><li>• Parent Workshops</li></ul>
<b>Policy Council / Parent Council</b>	<ul style="list-style-type: none"><li>• Performance Review w/ Feedback from Board/Council</li></ul>
<b>Head Start Monitoring</b>	<ul style="list-style-type: none"><li>• Record Keeping: Teacher, Children, Family</li><li>• Self-Assessment</li><li>• PIR Planning</li></ul>
<b>Budget Review</b>	<ul style="list-style-type: none"><li>• Actual versus Budget</li><li>• Forecasts</li></ul>

2. Section II shall be deleted and replaced with the following:

II. TERM AND RENEWAL

A. The Commencement Date of this agreement shall be September 15, 2015.

B. Throughout this agreement the "Term" shall be defined as follows:

1. If Board is awarded the DRS Grant, the "Term" shall be the period of September 15, 2015 through the last day of the Project Period set forth on Board's DRS Grant Federal Award Announcement ("FAA").
2. If Board is not awarded the DRS Grant, then this Agreement shall automatically terminate on the date on which Board is notified that it has not received the DRS Grant, or later, if requested by Board.
3. If Board is awarded the DRS Grant for fewer than 800 children (EHS and HS combined), then Shine shall have the right to terminate this Agreement in accordance with Section IV.11.B below.

3. Section III shall be deleted and replaced with the following:

III. FEES

In consideration of the services and materials provided by Shine hereunder, Board shall pay to Shine the following fees:

- A. Shine Assist Services Fee: The balance of \$40,000 payable in full after successful completion of grant development work through Shine Assist, expected on or before December 14, 2015.
  - B. RFP Application Support Fee: Included in the Shine Assist Services Fee.
  - C. Shine Access License Fee: Included in the Shine Assist Services Fee.
  - D. Shine Insight Dedicated Support Fee (as described in Section I.D.1 above): \$8,000 payable within ten (10) days following execution of this amendment.
  - E. Shine Insight Customization and Integration Fee (as described in Section I.D.2 above), if Board exercises its option to implement such customizations and integrations.
  - F. Shine Insight Data Bases Fee (as described in Section I.D.3 above), if Board exercises its option to expand its Shine Insight services to integrate with Board's specified data bases.
  - G. Shine Implement Fee for 152 Early Head Start children is not to exceed \$328,521 the first payment to be pro-rated for the 15 days starting September 15 through the end of the month and payable upon execution, and the balance then payable in nine equal monthly installments no later than the tenth day of each month from October 1, 2015 through June 30, 2016.
  - H. Annual Shine Implement Fee for the projected funded enrollment of 1,551 Head Start and Early Head Start children:  $\$1,480/\text{child} \times 1,551 \text{ children} (1,319 \text{ Head Start and } 232 \text{ Early Head Start children}) = \$2,295,480$ , payable in twelve equal monthly advance installments for each year during the Term, beginning on July 1, 2016. Each advance monthly payment shall be invoiced to Board no later than ten days preceding the first of each month, with the first payment due by July 1, 2016. No advance payments shall be made for months that fall outside Board's then-current grant year. For example, if Board's first grant year ends on June 30, 2017, no payments shall be made in June 2017 for July, 2017, but on July 1, 2017, payment will be made for July and August, 2017.
  - I. The portion of the Annual Shine Implement Fee covering salaries of employees serving JCPS Head Start and Early Head Start shall increase each contract year by the percentage of COLA ("Cost of Living Allowance") increase awarded to Board specifically for its HS and EHS programs by the Office of Head Start in the applicable calendar year, which increase may be awarded after the anniversary date of the agreement, in which case, the increase shall be granted retroactively to the start of the contract year. Similarly, this fee shall decrease in any contract year in which Board's Head Start funding may be reduced as a result of across-the-board Head Start cuts such as sequestration, by a percentage equal to the percentage of such across-the-board reduction, which reduction may be made retroactive to its effective date.
4. Section IV shall be amended to delete the first subparagraph of section IV.3. and add the following subparagraph

To the maximum extent permitted by applicable law, each party agrees to indemnify, defend and save harmless the other, including its agents, employees, officers and directors from and against any and all claims, demands, suits, actions, recoveries, judgments and costs, and expenses (including reasonable attorneys' fees) in connection therewith on account of the loss of life, property or injury or damages to the person, body or property of any person or persons, whatsoever, which shall arise from or result directly or indirectly from any and all claims brought by its own employees, arising out of or in connection with their employment; regardless of whether the courts find the parties to be co-employers. Each indemnification obligation in this agreement shall not be limited by, but rather, shall be in addition to, the insurance obligations contained in this Agreement. Each party shall immediately notify the other in writing of any action or suit pending or filed or any claim which may result in litigation against the other, or any of the other's employees or agents.

5. Section IV shall be amended by adding the following:

11. DEFAULT/TERMINATION:

A. In the event of a material breach or default of this Agreement by Shine, Board shall have the right to terminate this Agreement if, after receiving written notice of such breach or default, Shine fails to cure same within 90 days of receipt of notice. Any termination pursuant to this paragraph shall take effect six months following expiration of the 90-day cure period, so that Board may identify a new contracted provider or internalize the resources to provide services directly. During such six-month period, Board shall remain obligated to pay Shine for services rendered, upon receipt of invoice for same.



- B. In the event that Board is granted the DRS grant for fewer than 800 children (EHS and HS combined), Shine shall have thirty days following receipt of Board's FAA to elect to terminate this Agreement.

12. INSURANCE: Each party shall procure and maintain at its own expense, until at least two years after the completion of all services performed under this Agreement and any modification hereto, liability insurance for damages imposed by law and assumed under this Agreement, of the kinds and in the amounts hereinafter provided, from insurance companies admitted or approved to do business in the State of Kentucky. The parties expressly understand and agree that any insurance protection required by this Agreement shall in no way limit the party's obligations assumed in this Agreement, and shall not be construed to relieve either party from liability in excess of such coverage.

1. The types and minimum amount of insurance shall be as follows:

A. General Liability Insurance

- i. The minimum limits of liability for this insurance shall be as follows:

a) Bodily Injury Liability

Each Occurrence: \$1,000,000.00

Aggregate: \$3,000,000.00

b) Property Damage Liability

Each Occurrence: \$1,000,000.00

Aggregate: \$3,000,000.00

- ii. The coverage to be provided under this policy shall include contractual liability coverage.

B. Comprehensive Automobile Liability Insurance

The Comprehensive Automobile Liability policy shall cover owned, non-owned and hired vehicles and/or buses for the approved transport of children with minimum limits as follows:

- i. Bodily Injury Liability: \$2,000,000.00 each occurrence; and  
ii. Property Damage Liability: \$2,000,000.00 each occurrence.

C. Workers' Compensation Insurance

Each party shall provide Workers' Compensation Insurance for its own employees, in accordance with the requirements of the laws of Ohio and shall include an endorsement to extend coverage to any state which may be interpreted to have legal jurisdiction.

D. Employer's Liability Insurance

Employer's Liability Insurance with limits not less than:

- (1) \$1,000,000 Bodily Injury, each occurrence;  
(2) \$1,000,000 Disease each employee;  
(3) \$1,000,000 Disease aggregate limit.

E. Excess Liability: \$10M

F. Professional Liability:

Each Occurrence: \$1,000,000.00

Aggregate: \$3,000,000.00

G. Abuse & Molestation:

Each Occurrence: \$1,000,000.00

Aggregate: \$3,000,000.00

2. Each party shall, prior to the commencement of services required under this Agreement, provide the other with valid Certificates of Insurance as evidence of its insurance coverage in accordance with the foregoing provisions. Such certificates of insurance shall specify that the insurance provided is of the types and is in the amounts required in Subsection A(1)(a), (b), (c), (d) and (e) above.
3. Standard exclusions will be allowed provided they are not inconsistent with the requirements set forth Subsection A(1)(a), (b), (c), (d) and (e) above. Allowance of any additional exclusions will be in the discretion of the other party. Regardless of the allowance of exclusions or deductions in Kentucky, each party shall be responsible for the deductible limit of its policy and all exclusions consistent with the risks each party assumes under this Agreement and as imposed by law.
4. The Certificates shall provide for notice in writing to the other party prior to any cancellation, expiration, or non-renewal during the term the insurance is required in accordance with this Agreement. In the event that either party provides evidence of insurance in the form of certificates of insurance valid for a period of time less than the period during which that party is required by the terms of this Agreement to maintain insurance, said certificates shall be acceptable, but the party shall be obligated to renew its insurance policies as necessary and to provide new certificates of insurance from time to time, so that the other party is continuously in possession of evidence of the insured party's insurance in accordance with the foregoing provisions.
5. In the event either party fails or refuses to renew any of its insurance policies, or any policy is canceled, terminated, or modified so that the insurance does not meet the requirements of this Agreement, the other party may refuse to make payment of any further monies due under this Agreement until such time as the party reinstates the insurance, consistent with the requirements of this Agreement. If a party does not reinstate the insurance within 30 days of notice by the other of the insurance lapse, the non-defaulting party may terminate this Agreement.
6. Each party shall immediately notify the other in writing of any action or suit pending or filed or any claim which may result in litigation against the other by any person, organization or other entity.

13. NOTICES: Any notices required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given to the party to whom intended if a) delivered by registered and certified mail, return receipt requested b) delivered by overnight courier; or c)



delivered by hand. Until changed by notice in the manner specified above, the addresses of the parties to this Agreement shall be:

If to Board:  
Dr. Donna Hargens  
Jefferson County Board of Education  
4322 Bishop Lane  
Louisville, Kentucky 40218

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With a copy to:

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If to Shine:  
Victor Ortiz  
Shine Early Learning, Inc.  
63 West 125<sup>th</sup> Street  
New York, NY 10027

With a copy to:

Melissa Polaner, Esq.  
Shine Early Learning, Inc.  
63 West 125<sup>th</sup> Street  
New York, NY 10027

14. **INDEPENDENT CONTRACTOR:** The relationship of Shine to Board is that of an Independent Contractor. Shine, its agents and employees shall act in an independent capacity in the performance of this Agreement and shall not be considered employees of Board and shall not have the right to bind or obligate Board in any manner. The parties acknowledge that Shine is providing the goods and services provided hereunder in the normal course of its business operations and that it provides similar services to other Head Start programs. The parties further acknowledge that Board is ultimately responsible for complying with all Head Start regulations and other requirements and that Board has the ultimate authority over all programmatic decisions.

15. **APPLICABLE LAW:** The Parties agree that this Agreement shall be construed and enforced under the laws of the State of Kentucky.

16. **WAIVER:** No term or provision hereof shall be deemed waived and no breach excused by the parties unless such waiver or consent shall be in writing and signed by the appropriate officers of the parties.

17. **BINDING:** The respective rights and obligations provided in this Lease shall bind and inure to the benefit of the parties hereto, their successors and permitted assigns.

The Parties hereby acknowledge that the Agreement, as modified by this First Amendment, embodies the entire agreement of the Parties with respect to the services to be provided by Shine to Board supersedes all prior communications or agreements, whether oral or written.

Except as specifically set forth herein, all other terms and provisions of the Agreement shall remain unmodified and in full, force and effect and are hereby ratified.

**IN WITNESS WHEREOF**, each of Board and Shine has caused its duly authorized representative to sign this First Amendment in the space provided below.

Program Name: JEFFERSON COUNTY BOARD OF EDUCATION

Signature: \_\_\_\_\_

Name [printed] \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

SHINE EARLY LEARNING, INC.

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

Name: Douglas Whiteman

Title: President

Date: 9/2/15