

**JEFFERSON COUNTY PUBLIC SCHOOLS
MEMORANDUM OF AGREEMENT**

THIS MEMORANDUM OF AGREEMENT ("MOA") is entered into between the JEFFERSON COUNTY BOARD OF EDUCATION, a political subdivision of the Commonwealth of Kentucky doing business as the Jefferson County Public Schools, with its principal place of business at 3332 Newburg Road, Louisville, Kentucky 40218 ("JCPS") and ZOOM GROUP, INC., a Kentucky non-profit corporation with its principal place of business at 1904 Embassy Square Blvd. Louisville, Kentucky 40299 ("Contractor").

WITNESSETH:

WHEREAS, JCPS desires to procure certain services of Contractor, which are more fully described below; and

WHEREAS, Contractor has held itself out to be competent and capable of performing the services desired by JCPS;

NOW, THEREFORE, in consideration of the premises, the mutual promises, covenants and conditions contained in this MOA, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, JCPS and Contractor (individually, a "Party" and collectively, the "Parties") agree as follows:

ARTICLE I

Entire Agreement; Amendments

This MOA is the entire agreement between the Parties and supersedes any and all agreements, representations and negotiations, either oral or written, between the Parties before the Effective Date, as defined below, of this MOA. This MOA may not be amended or modified except in writing as provided in Article VII. This MOA is supplemented by the Procurement Regulations of JCPS currently in effect (the "Regulations"), which are incorporated by reference into and made a part of this MOA. In the event of a conflict between any provision of this MOA and any provision of the Regulations, the provision in the Regulations shall prevail.

ARTICLE II

Services

During the Term, as defined below, Contractor will perform (a) the services set forth in Exhibit A, which is attached to and incorporated by reference into and made a part of this MOA, and (b) such other services that are agreed in writing by JCPS and Contractor during the Term in an addendum to this MOA as provided in Article VII (collectively, the "Services").

ARTICLE III Compensation

JCPS shall have no financial responsibility for payment of compensation to Contractor for the performance of the Services. Contractor will bill any third party insurance provider upon written consent of the parent or guardian for all Services provided to JCPS students, including Medicaid, private insurance, or other plans. In no event will Contractor directly bill JCPS or a JCPS student, parent or guardian for the performance of any Services.

ARTICLE IV Term of MOA; Renewal

This MOA shall be effective on the Effective Date. Contractor shall begin performance of the Services on any date after the Effective Date, and shall complete the Services no later than May 24, 2018 (the "Term"). At the sole option of JCPS, this MOA may be renewed for one or more additional one-year renewal terms, upon written notice from JCPS to Contractor at least 30 days prior to the end of the original term or any renewal term.

ARTICLE V Performance of Services by Contractor

A. The Services shall be of a quality and shall be performed in a manner that is within the highest standards of Contractor's profession or business. The Services shall be performed by Contractor, and in no event shall Contractor subcontract with any other person to aid in the completion of the Services without the prior written approval of the MOA Administrator, as defined below.

B. Contractor shall appoint one person who shall be responsible for reporting to JCPS on all Services performed under the terms of this MOA and who shall be available for consultation with the MOA Administrator.

C. Contractor shall be an independent Contractor of JCPS for all purposes of this MOA. Nothing in this MOA is intended to create an employer-employee relationship, joint venture relationship, or partnership between JCPS and Contractor or any personnel assigned to this project by Contractor, and the Parties shall characterize their relationship as an independent Contractor relationship for tax purposes and all other purposes. JCPS shall have the right to exercise control and direction as to the results only and not as to the methods by which Contractor performs or otherwise provides the Services, it being recognized that Contractor will be exercising Contractor's independent judgment. Contractor and any personnel assigned to this project by Contractor shall have no claim under this MOA or otherwise against JCPS for workers' compensation, unemployment compensation, vacation pay, sick leave, retirement benefits, Social Security benefits, disability insurance benefits, unemployment insurance benefits, or any other benefits. JCPS shall not withhold on behalf of Contractor, or in any way be responsible for the payment of, any federal, state, or local income taxes, F.I.C.A. taxes, F.U.T.A. taxes, unemployment compensation or workers' compensation contributions, Social Security, or any other payments or withholdings pursuant to any law or requirement of any governmental body or agency on behalf of Contractor, and all such withholdings, payments, or obligations shall be the sole responsibility of Contractor. JCPS shall issue to Contractor a Form 1099 statement for Contractor's federal and state income tax reporting purposes. Contractor warrants that Contractor will not take a position that is inconsistent with such independent Contractor status, including in any court proceeding. This Article V(C) shall survive the termination of this MOA.

D. Contractor shall at all times during the Term (a) comply with all applicable federal, state and local statutes, regulations, ordinances, and (b) obtain and keep in force all licenses, permits and certificates necessary for the performance of the Services.

E. Contractor shall (a) hold harmless, indemnify, and defend JCPS and its Board members, agents, and employees from any and all claims or losses accruing or resulting from injury, damage, or death of any person, firm, or corporation, including Contractor and any personnel assigned to this project by Contractor, in connection with the performance of this MOA, and (b) hold harmless, indemnify, and defend JCPS and its Board members, agents, and employees from any and all claims or losses incurred by any supplier, Contractor, or subcontractor furnishing work, services, or materials to Contractor in connection with the performance of this MOA. This Article V(E) shall survive the termination of this MOA.

F. Contractor shall require and verify that all employees/Contractors of Contractor performing Services under this MOA are covered by professional liability insurance in amounts no less than \$1,000,000 per occurrence/\$3,000,000 in the aggregate and shall provide certificates of insurance evidencing this coverage to the MOA Administrator.

ARTICLE VI Equal Opportunity

During the Term, Contractor shall not discriminate against any employee, applicant, subcontractor or JCPS student because of race, color, national origin, age, religion, marital or parental status, political affiliations or beliefs, sex, sexual orientation, gender identity, gender expression, veteran status, genetic information, or disability.

ARTICLE VII Changes

JCPS and Contractor may at any time, by mutual agreement set forth in a written addendum to this MOA, make changes in (a) the definition of the Services, (b) the scope of the Services, and (c) the time within which the Services are to be performed.

ARTICLE VIII Termination for Convenience of JCPS

JCPS may terminate this MOA in whole or in part at any time by giving written notice to Contractor of such termination and specifying the effective date thereof, at least thirty (30) days before the specified effective date. Upon termination, the rights and obligations of the Parties shall be as set forth in Article X.

ARTICLE IX Termination for Default

JCPS may, by written notice of default to Contractor, terminate the whole or any part of this MOA, upon (a) the commission by Contractor or any personnel assigned to this project by Contractor of any act which is a violation of the provisions of Article XI of the Regulations entitled "Ethics and Standards of Conduct," or assisting or participating in or knowingly benefitting from any act by any employee of JCPS which is a violation of such provisions, (b) an occurrence of dishonest, fraudulent or illegal conduct or misappropriation of JCPS funds by Contractor or any personnel assigned to this

project by Contractor, (c) the indictment or entry of a guilty plea or a plea of no contest to a felony offense by Contractor or any personnel assigned to this project by Contractor, or (d) a material breach of this MOA by Contractor, provided that JCPS has first given written notice to Contractor describing the breach with reasonable specificity and demanding that Contractor take action to cure the breach, but Contractor has failed to cure the breach within the period of 10 days after Contractor's receipt of such notice. Upon termination, JCPS may secure the required services from another Contractor. If the cost to JCPS exceeds the cost of obtaining the Services under this MOA, Contractor shall pay the additional cost. The rights and remedies of JCPS provided in this Article shall not be exclusive and are in addition to the rights and remedies of JCPS under Article X of this MOA or as provided by law.

ARTICLE X Obligations Upon Termination

Upon the termination of this MOA under either Article VIII or Article IX, (a) each Party shall be required to carry out any provisions which contemplate performance by or impose obligations on such Party after the effective date of termination, including, without limitation, Articles V(C), V(E), XII, XIII, XV, XVI(D) and XVI(F), (b) termination shall not affect any liability or other obligation which has accrued prior to the effective date of termination, including, with limitation, any liability or loss or damage on account of a breach of this MOA, and (c) JCPS shall have no obligation to pay any compensation to Contractor for periods after the effective date of termination, except the obligation to pay any compensation that accrued before the effective date of termination.

ARTICLE XI Disputes

Any differences or disagreements arising between the Parties concerning the rights or liabilities under this MOA, or any addendum entered into under Article VII of this MOA, shall be resolved through the procedures set out in the Regulations.

ARTICLE XII Contractor's Work Product

Unless waived in writing by the MOA Administrator, JCPS shall retain ownership in and the rights to any reports, research data, creative works, designs, recordings, graphical representations or other works of a similar nature (hereinafter "Works") produced or delivered by Contractor under this MOA. Contractor agrees that the Works are "works for hire" and Contractor assigns all right, title and interest in the Works to JCPS. This Article XII shall survive the termination of this MOA.

ARTICLE XIII Proprietary Information

At all times during the Term and thereafter, Contractor and all personnel assigned by Contractor to this project will hold in strictest confidence and will not disclose, use, or publish any Proprietary Information, as defined below, of JCPS except as such disclosure, use or publication may be required in connection with Contractor's performance of the Services, or unless JCPS expressly authorizes such disclosure, use or publication in writing. The term "Proprietary Information" shall mean all information, data and records relating to JCPS's business, business plans, trade secrets, financial statements, services, personnel information, student information, and any other proprietary information of JCPS which JCPS treats as confidential with respect to the general public. For purposes of this Article XIII, the term "Proprietary Information" shall not include information that Contractor

can show by competent proof (a) was known to Contractor prior to disclosure by JCPS and not subject to a duty or obligation of confidentiality or nondisclosure on the part of Contractor; (b) was generally known to the public at the time JCPS disclosed the information to Contractor; (c) became generally known to the public after disclosure by JCPS through no act or omission of Contractor; (d) was disclosed to Contractor by a third party having a bona fide right both to possess the information and to disclose it to Contractor; or (e) is otherwise public information under applicable law. Upon the termination of this MOA for whatever reason, Contractor will deliver to JCPS, or if agreed by JCPS in writing will destroy, all data, records, reports, summaries, plans, notes, memoranda and documents, together with all copies thereof (whether in tangible or intangible form), and any other material containing or disclosing any Proprietary Information of JCPS. This Article XIII shall survive the termination of this MOA.

ARTICLE XIV MOA Administrator

A. JCPS shall appoint a MOA Administrator for the purposes of daily administrative decision-making pertaining to this MOA. If Contractor and the MOA Administrator disagree on any circumstance or set of facts pertaining to the administration or execution of this MOA, JCPS shall resolve the matter after notification by either the MOA Administrator or the Contractor in the manner prescribed by the Regulations. If JCPS fails to give notice to Contractor of the appointment of a MOA Administrator, the MOA Administrator shall be the JCPS Director, Family Resource & Youth Centers.

B. The MOA Administrator shall be responsible for compliance by JCPS personnel with the following obligations of JCPS under this MOA:

- a) Identify students who are in need of Services and make referrals to Contractor;
- b) Collaborate with Contractor to schedule mutually convenient Pre Employment Transition Services (Pre ETS) sessions;
- c) Provide adequate space that is free from interruption for individual and group
Pre ETS sessions (ideally furnished with tables and chairs allowing students to work individually and in small groups, as appropriate);
- d) Ensure students are in the designated Pre ETS area by the starting time of each session;
- e) Ensure teachers are aware of and encourage students' participation, as needed;
- f) Ensure students are aware they are required to complete any and all class work missed as a result of their attendance; and
- g) Require all employees, Contractors or agents of Contractor performing services under this MOA to have on file a Criminal Records Check, per Kentucky law and JCPS requirements, completed no more than five years ago. Employees, Contractors or agents convicted of any of the following, per JCPS Board Policy 03.6, shall not be permitted to provide Services:
 - Any conviction for sex-related offences;
 - Any conviction for offenses against minors;
 - Any conviction for felony offenses, except as provided below;
 - Any conviction for deadly weapon-related offenses;
 - Any conviction for drug-related offenses, including felony drug offenses, within the past seven years;
 - Any conviction for violent, abusive, threatening or harassment related offenses; or
 - Other convictions determined by the Superintendent/designee to bear a reasonable relationship to the ability to perform Services under this MOA.

ARTICLE XV
Right to Audit

Contractor shall retain all records relating to the performance of the Services for five (5) years after the end of the Term. During such period, JCPS shall have the right to inspect and audit all accounting reports, books or records which concern the performance of the Services. Inspection shall take place during normal business hours at Contractor's place of business. This Article XV shall survive the termination of this MOA.

ARTICLE XVI
Miscellaneous

A. All Articles shall be construed as read, and no limitation shall be placed on any Article by virtue of its descriptive heading.

B. Any notices or reports by one Party to the other Party under this MOA shall be made in writing, to the address shown in the first paragraph of this MOA, or to such other address as may be designated in writing by one Party to the other. Notices shall be effective when received if personally delivered, or three days after mailing if mailed.

C. If any part of this MOA is held to be void, against public policy or illegal, the balance of this MOA shall continue to be valid and binding.

D. This MOA shall be governed and construed in accordance with the laws of the Commonwealth of Kentucky. Any action or claim arising from, under or pursuant to this MOA shall be brought in the Jefferson County, Kentucky, Circuit Court, and the Parties expressly waive the right to bring any legal action or claims in any other courts.

E. No delay or omission by either Party in exercising any right under this MOA shall operate as a waiver of that or any other right or prevent a similar subsequent act from constituting a violation of this MOA.

F. Neither Party to this MOA shall assign the rights or delegate the duties or obligations of this MOA, or any portion hereof, without the prior written consent of the other Party and, to the extent required, any applicable payor.

G. If Contractor has access to student records, Contractor shall at all times (a) comply with the Family Educational Rights and Privacy Act of 1974 ("FERPA"), and (b) limit the access to those records by Contractor's employees and other personnel assigned to this project to those persons for whom access is essential to perform this MOA. Without limitation of the preceding sentence, Contractor agrees to:

- In all respects comply with the provisions of FERPA. For purposes of this MOA, "FERPA" includes the requirements of Chapter 99 of Title 34 of the Code of Federal Regulations.
- Use any such data for no purpose other than to fulfill the purposes of this MOA, and not share any such data with any person or entity other than Contractor and its employees, Contractors and agents, without the approval of JCPS.

- Require all employees, Contractors and agents of Contractor to comply with all applicable provisions of FERPA with respect to any such data.
- Maintain any such data in a secure computer environment, and not copy, reproduce or transmit any such data except as necessary to fulfill the purposes of this MOA.
- Conduct services in a manner that does not permit the identification of an individual student by anyone other than employees, Contractors or agents of Contractor having a legitimate interest in knowing such personal identification, and not disclose any such data in a manner that would permit the identification of an individual student in any published results of studies.
- Destroy or return to JCPS any such data obtained under this MOA within thirty days after the date when it is no longer needed by Contractor for the purposes of this MOA.

G. If this MOA is procured by JCPS under KRS Chapter 45A, Contractor shall at all times during the Term (a) be in continuous compliance with the provisions of KRS Chapters 136, 139, 141, 337, 338, 341 and 342 that apply to the Contractor or subcontractor, and (b) reveal any final determination of a violation by the Contractor or subcontractor of the preceding KRS Chapters.

IN WITNESS WHEREOF, the Parties hereto have executed this MOA to be effective as of February 28, 2018 (the "Effective Date").

JEFFERSON COUNTY BOARD OF
EDUCATION

By: _____
Martin A. Pollio, Ed.D.

Title: Acting Superintendent

ZOOM GROUP, INC

By: Melissa A. Marvel
Melissa A. Marvel, CPA

Title: President\CEO

Exhibit A

DESCRIPTION OF SERVICES

1. Contractor shall provide counseling services from time to time to JCPS students receiving Exceptional Child Education (ECE) services ages 14-21 through its ZOOM GROUP Pre ETS and Community Rehabilitation Partner Program:
 - a) Upon availability and JCPS ECE High School Teacher Request, make a Pre ETS provider available to provide group, and/or individual services within a JCPS school that agrees to have Contractor's provider deliver services to students;
 - b) Collaborate with JCPS to identify/contact students, parents and/or guardians who may benefit from Pre ETS (transition) services;
 - c) Obtain written permission and student information from students, parents, and/or guardians using forms provided by the Contractor;
 - d) Assess students' needs with respect to their interests, skill-set, and potential barriers;
 - e) Collaborate with JCPS in the development of curriculum for work readiness transitions programming;
 - f) Communicate with administrators, parents and/or guardians regarding students' progress, as needed.

Cabinet Member:

CARMEN COLEMAN


(Initials)