

**GALLUP, INCORPORATED**

August 2, 2018

Beth Sumner  
Assistant Superintendent of Instruction  
Trigg County Public Schools  
202 Main Street  
Cadiz, KY 42211

Dear Beth,

Thank you for choosing Gallup, Inc. ("Gallup") to provide Gallup Student Poll services for Trigg County Public Schools ("Client"). This Engagement Letter with an effective date of August 2, 2018 ("Effective Date") is to confirm our mutual understanding with respect to the scope of services to be performed by Gallup, the respective responsibilities of Gallup and Client related to this engagement and the fees expected to be charged for the services.

The more detailed obligations of each party for each project, including its price, payment schedule and timeline are set forth in Exhibit A ("Scope of Services"). Only those services set forth in Exhibit A will be performed. Modifications to the Services shall require a written Change Order. Such Change Order shall set forth in detail the effect of the changes on Exhibit A, including, but not limited to, with respect to the price and timeline adjustments required to modify the Services. Under no circumstances shall any Change Order be effective until it has been duly agreed to and executed by an authorized representative of each party.

This Engagement Letter including all exhibits, together with Gallup's General Business Terms attached hereto, constitutes the entire agreement between Client and Gallup with respect to this engagement, supersedes all other oral and written representations, understandings or agreements related to this engagement, and may not be amended except by the mutual written agreement of Client and Gallup.

Please indicate your acceptance of this agreement by signing in the space provided below and returning a copy of this Engagement Letter to our office.

Thank you for giving Gallup the opportunity to provide the requested consulting services to your organization.

Very truly yours,  
Gallup, Inc.

AGREED AND ACCEPTED:  
Trigg County Public Schools on behalf of itself and its  
subsidiaries and/or affiliates

Signed: \_\_\_\_\_

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

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

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

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

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

2018

**1. PAYMENT OF INVOICES.**

1.1 Client shall pay Gallup during the term of this Agreement the fees determined for each project agreed upon by both parties and specified in the Scope of Services in accordance with the agreed upon payment schedule.

1.2 Client shall further pay all reasonable out-of pocket expenses of Gallup's personnel associated with client-approved travel (including transportation, lodging and meals) and any freight, respondent incentives, or costs associated with the purchase of listed sample.

1.3 Payment shall be due upon receipt of the invoice. If Client objects to all or any portion of any invoice, Client shall notify Gallup of its objection within fifteen (15) days from the date of Client's receipt of the invoice, give reasons for the objection, and pay only that portion of the invoice not in dispute. Balances not in dispute and unpaid in excess of 30 days shall bear interest at a rate of 11% per annum. In the event that Client is delinquent in payment of any undisputed invoice beyond 45 days, Gallup may, at its option, withhold deliverables or suspend any and all services until the account is made current.

1.4 Client shall be responsible for all Sales, Use, VAT or similar taxes imposed on the services.

**2. CONFIDENTIALITY.**

2.1 Each party has made and will continue to make available to the other party information that is not generally known to the public and at the time of disclosure is identified as, or would reasonably be understood by the receiving party to be, proprietary or confidential ("Confidential Information"). Confidential Information may be disclosed in oral, written, visual, electronic or other form. Confidential Information shall include all business plans, strategies, forecasts, projects, analyses, financial information, business processes, methods and models, all organizational information, system architecture, software, graphics, computer programs, design ideas, concepts, flow charts, diagrams, progress reports, methods research and any other personal or intellectual property relating to either party, its respective parent or subsidiaries and Personal Data. "Personal Data" shall mean any information related to any identified or identifiable natural or legal person, such as Client's employees, customers, partners or any other third party (including such third parties' employees) and any other additional data deemed as personal data under the applicable personal data protection laws, which are made available to Gallup for processing them on behalf of Client pursuant to this Agreement and all Statements of Work issued pursuant to said Agreement. Confidential Information as defined herein shall not include: (a) information in the public domain at the time of its communication; (b) information, which enters the public domain, through no fault of the receiving party, subsequent to the time of its communication to the receiving party; (c) information which is obtained in good faith by either party from a third party, provided such third party is not bound by a confidentiality agreement with Gallup or Client, as applicable; or (d) information independently developed by employees or agents of a party without access to the Confidential Information of the other party.

2.2 The receiving party shall, except as otherwise provided below (i) not use or reproduce the Confidential Information for any purpose other than as required to perform in connection with the applicable Scope of Services; (ii) protect the confidentiality of the Confidential Information with the same degree of care as receiving party uses for its own similar information, but in no event less than reasonable care; or (iii) not disclose the Confidential Information to any third party, without the prior written approval of the disclosing party. Notwithstanding the foregoing, the

receiving party may disclose Confidential Information to the extent such information is required to be disclosed by law, including a subpoena, or to respond to a regulatory request; provided the receiving party promptly notifies the disclosing party in writing of such intention prior to any disclosure to allow the disclosing party to seek a protective order or similar relief in the disclosing party's sole and absolute discretion. Each party shall immediately advise its employees and others to whom the Confidential Information is disclosed of their obligations under this Agreement and shall take reasonable steps to ensure that the Confidential Information is securely maintained by its employees and agents.

2.3 Neither party shall disclose any terms or conditions of this Agreement without the prior written consent of the other party, except as required by applicable law; provided however, that either party may disclose the terms or conditions of this Agreement to a third party under an obligation of confidentiality to such party in connection with customary financial reporting, a proposed sale, merger, acquisition, change in control, consolidation, or other similar transaction.

2.4 Upon termination or expiration of this Agreement, Confidential Information shall be returned to the disclosing party or destroyed. Electronic copies of or containing Confidential Information that are automatically generated through data backup and/or archiving systems and which are not readily accessible to the receiving party's business personnel shall not be deemed to violate this Agreement, so long as such electronic copies are not disclosed or used in violation of this Agreement. Notwithstanding the foregoing, nothing in this Agreement shall prohibit the receiving party's legal department or counsel from retaining one (1) copy, including any electronic copy, of any of the Confidential Information as necessary to comply with regulatory recordkeeping requirements applicable to disclosing party.

2.5 Gallup agrees to the following as it relates to Personal Data:

2.5.1 To prevent unauthorized use, dissemination or publication of the Personal Data, and implement any technical and organizational measures to protect Personal Data which are required by the applicable law.

2.5.2 To implement appropriate technical and organizational measures to protect Personal Data against (i) accidental or unlawful destruction or loss, (ii) unauthorized disclosure or access, in particular where processing involves the transmission of Personal Data over a network, (iii) alteration, and (iv) all other unlawful forms of processing.

2.5.3 To inform Client promptly in writing if it becomes aware of any unauthorized use or disclosure of Personal Data by itself or others.

2.5.4 When collecting, using, storing, transferring and otherwise processing Personal Data, Gallup shall adhere to all applicable export and personal data laws, regulations and rules.

**3. REPRESENTATIONS AND WARRANTIES.**

3.1 The parties represent and warrant that: (a) each has the full power and authority to enter into this Agreement; (b) this Agreement is duly authorized by all necessary action and has been duly executed and delivered; and (c) neither party has entered into any agreement with any other entity that contains restrictive provisions regarding confidentiality and/or non-competition that may impair their ability to perform their specific obligations under the terms of this Agreement.

3.2 Gallup represents and warrants that it or its personnel will perform the Services: (a) in a good, timely, efficient, professional and workmanlike manner; (b) with at least the same degree of accuracy, quality, efficiency, completeness, timeliness and responsiveness as are equal to the accepted industry standards applicable to the performance of the same or similar

services; and (c) using personnel who are fully familiar with the technology processes, procedures and equipment to be used to deliver the Services.

3.3 Gallup is the lawful owner or licensee of all programs and materials used by it in the performance of the Services contemplated hereunder that have not been provided by Client; such programs and materials have been lawfully developed or acquired by Gallup and Gallup has the right to permit Client access to or use of such programs and materials. Gallup represents and warrants that none of the Services or deliverables provided under this Agreement will infringe on any patent, copyright, trademark, trade secret or other intellectual property right of any third party and agrees to defend and to indemnify and hold harmless Client, its parent, subsidiaries, affiliates, employees and representatives, for all costs and expenses associated with the defense or settlement of any claim that the Services infringe a patent, copyright, trademark, trade secret or other intellectual property right and shall pay any judgments or settlements based thereon.

3.4 In connection with the performance of services set forth in an applicable Scope of Services, Gallup shall comply, and shall cause Gallup's employees and consultants/subcontractors to comply, with all statutes, regulations, ordinances, judgments, permits and other governmental rules or restrictions, whether domestic or foreign, applicable to Gallup's execution of this Agreement.

3.5 EXCEPT AS SET FORTH IN THIS AGREEMENT OR IN ANY SCOPE OF SERVICES, NEITHER PARTY MAKES ANY OTHER REPRESENTATIONS AND WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

#### **4. TERM AND TERMINATION.**

4.1 This Agreement will commence on the Effective Date and will remain in effect until terminated in accordance with the terms and conditions set forth herein.

4.2 Either party may terminate this Agreement or any Scope of Services if the other party breaches any material obligation set forth herein or in the applicable Scope of Services, which breach is incapable of cure or which, being capable of cure, has not been cured within thirty (30) days after receipt of written notice of such breach from the non-breaching party, or within such additional cure period as the non-breaching party may authorize in writing.

4.3 Either party may immediately terminate this Agreement or any Scope of Services by written notice to the other party if the other party becomes insolvent, makes a general assignment for the benefit of creditors, files a voluntary petition of bankruptcy, suffers or permits the appointment of a receiver for the its business or assets, or becomes subject to any proceeding under any bankruptcy or insolvency law, whether domestic or foreign, or has wound up or liquidated, voluntarily or otherwise. If any of the above events occurs, the affected party shall promptly notify the other party of its occurrence.

4.4 Client or Gallup may terminate this Agreement or any applicable Scope of Services without cause upon 60 days' written notice. Notwithstanding any other terms and conditions of this Agreement, should Client cancel this Agreement without cause prior to completion of services, Gallup shall be entitled to the payment of fees for services completed prior to termination of this Agreement and 25% of the remaining balance of fees associated with contracted work yet to be performed. For example, if the contract is for a period of three years and Client terminates this agreement after Year 1, Client shall owe 25% of the remaining contract

price for Years 2 and 3 in addition to any outstanding invoices for work completed prior to termination.

#### **5. INTELLECTUAL PROPERTY RIGHTS.**

5.1 Gallup Intellectual Property means any instructional materials, software programs, diagrams, copyrighted assessments or surveys and anything else that Gallup uses or distributes to Client in connection with this Agreement or an applicable Scope of Services that has been developed prior to or independent of this Agreement by Gallup ("Gallup Property"). Gallup Property is not considered work product or a "work for hire" under the terms of this Agreement.

5.2 For any Gallup Property used, incorporated into, required for use of, or provided with any Services provided to Client hereunder, Gallup hereby grants Client a worldwide, non-exclusive, nontransferable license to use Gallup Property as incorporated into or provided with the applicable Services within Client's organization. Client may not make, have made, sell, offer for sale, execute, reproduce, display, perform, distribute externally to any third party copies of, or prepare derivative works of Gallup Property without the written permission of Gallup.

5.3 All products, reports, documents, compilations of data and other materials produced or developed by Gallup under a Scope of Services which are either: (a) created using the funds, expertise, facilities, personnel, time, material or proprietary information of Client; or (b) are derivatives of any Client proprietary information shall be the sole property of Client. These materials do not include any Gallup Property or derivatives thereof. Gallup agrees to assist Client, or its designee, at Client's expense, in every proper way to secure Client's rights in the materials.

#### **6. GOVERNING LAW; DISPUTE RESOLUTION.**

6.1 This Agreement shall be construed and interpreted according to the laws of the State of Nebraska without regard to the conflicts of law principles in Nebraska.

6.2 In the event of any dispute, claim, question, or disagreement arising from or relating to this Agreement or the breach thereof, the parties hereto shall use their best efforts to settle the dispute, claim, question, or disagreement. To this effect, the parties shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties. If the parties do not reach such solution within a period of thirty (30) days, then, upon notice by either party to the other, disputes, claims, questions, or disagreements shall be settled by arbitration administered by the American Arbitration Association in accordance with the provisions of its commercial dispute resolution rules.

#### **7. RELATIONSHIP OF PARTIES.**

7.1 Gallup will act solely as an independent contractor rendering professional services. Gallup shall have no authority to execute contracts or make commitments on behalf of Client. Nothing contained herein shall be deemed to create the relationship of employer and employee, or principal and agent, joint venturer or partner between Gallup and Client.

7.2 Gallup will function as a non-exclusive consultant to Client. Client acknowledges that, during the term of this Agreement and thereafter, Gallup will offer, undertake, and continue to provide Consulting Services for organizations other than Client. In no event shall Gallup be relieved of its obligation to protect Confidential Information.

#### **8. NOTICES.**

Any notice or other communication required or permitted to be made or given by either party pursuant to this Agreement shall be in writing

delivered to the individual whose name appears on the signature block of the Scope of Services.

**9. LIMITATION OF DAMAGES.**

Neither party shall be liable to the other party for any indirect, incidental, consequential, exemplary, punitive or special damages, including lost profits, regardless of the form of the action or theory of recovery, even if that party has been advised of the possibility of those damages.

**10. USE OF NAME, TRADEMARKS OR LOGOS.**

Neither party shall originate any publicity, news release, or other announcement, written or oral, whether to the public press, the trade, any of the other party's customers, suppliers or otherwise, relating to this Agreement or any Scope of Services, or to the existence of an arrangement between the parties without the prior written approval of the other party. Without limiting the foregoing, neither party shall use any names, trademarks or logos of the other party without the prior written consent of such party.

**11. INTEGRATION.**

This Agreement constitutes the entire agreement between the parties and supersedes all other prior or contemporaneous communications between the parties (whether written or oral) relating to the subject matter of this Agreement. This Agreement may be modified or amended solely in writing signed by both parties and executed by an authorized officer. Each Scope of Services attached hereto and each Addendum executed under this Agreement shall incorporate the terms and conditions of this Agreement.

**12. SEVERABILITY.**

The provisions of this Agreement shall be deemed severable, and the unenforceability of any one or more provisions shall not affect the enforceability of any other provisions. In addition, if any provision of this

Agreement, for any reason, is declared to be unenforceable, the parties shall substitute an enforceable provision that, to the maximum extent possible and in accordance with applicable law, preserves the original intentions and economic positions of the parties.

**13. CONFLICT OF TERMS.**

If a term in a Scope of Services or Addendum conflicts with a term in this Agreement, the provisions of this Agreement will prevail unless the Scope of Services or Addendum specifically states that the conflicting term will prevail.

**14. WAIVER.**

No failure or delay by either party in exercising any right, power or remedy shall operate as a waiver of such right, power or remedy, and no waiver shall be effective unless it is in writing and signed by the waiving party. If either party waives any right, power or remedy, such waiver shall not waive any successive or other right, power or remedy the party may have under this Agreement.

**15. ASSIGNMENT.**

Neither party may assign any rights in nor delegate any obligations under this Agreement or any portion thereof without the written consent of the other. Any such attempt to transfer will be deemed null and void.

**16. FORCE MAJEURE.**

Neither party shall be liable for any losses arising out of the delay or interruption of its performance of its obligations under this Agreement due to any act of God, war, terrorism, civil disturbance, court order or natural disaster, or any other cause beyond the reasonable control of the affected party.

**17. SURVIVAL.**

Sections 2, 3, and 5 shall survive the termination or expiration of this Agreement.



## SCOPE OF SERVICES – Exhibit A

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**CLIENT PROJECT MANAGER: BETH SUMNER.** GALLUP SHALL BE RESPONSIBLE FOR REPORTING TO CLIENT PROJECT MANAGER. GALLUP WILL NOT MAKE ANY CHANGES TO THE SCOPE OF SERVICES WITHOUT THE WRITTEN APPROVAL OF CLIENT PROJECT MANAGER. WRITTEN APPROVAL MAY BE IN THE FORM OF EMAIL, FAX OR WRITTEN CHANGE ORDER.

**GALLUP PROJECT MANAGER: LISA GOTSCHNER.** CLIENT PROJECT MANAGER SHALL MAKE ANY REQUEST FOR CHANGES TO THE SCOPE OF SERVICES TO GALLUP PROJECT MANAGER. GALLUP SHALL NOT BE RESPONSIBLE FOR MAKING ANY CHANGES NOT DIRECTED TO GALLUP'S PROJECT MANAGER.

### PROJECT DELIVERABLES:

- Gallup will provide Client with access to the Gallup Student Poll survey during the national survey administration, September 24, 2018 through October 26, 2018. Up to 5,000 students in grades 5-12 may participate in the survey.
- Each school that participates will receive a school overall report with the school's data and comparisons to the overall data collected nationally. In addition, if the Client district is registered and more than two schools participate, Gallup will provide a district overall report. (Reporting requires a minimum threshold of 30 students participating to generate the Engagement Index.)
- Gallup will provide Client school and district leaders with access to two post-survey, open-enrollment live Webinars. Each live webinar will be offered at multiple times for the convenience of the participants. Gallup will share a temporary link to a recorded webinar should any school or district leader be unable to attend any of the live webinar options.
  - **Reading Your Gallup Student Poll Scorecard** - This 55-minute webinar will provide participants with information about the four elements the survey measures. During this webinar, participants will learn how to read, analyze and interpret the results on their scorecard. This will help participants maximize the impact that the Gallup Student Poll will have in their school or district and help to prioritize initiatives.
  - **Making the Most of Your Gallup Student Poll Results** - This 55-minute webinar will provide you with information about the four elements the survey measures. During this webinar, participants will learn how to take action on their Gallup Student Poll results to help inform school improvement and influence student success. Participants will receive practical application and action planning information to help them implement concrete next steps.
- Gallup will provide Client with one Gallup Student Poll Toolkit for use within the school or district.

Gallup has relied on information provided by Client in defining the Scope of Services and determining the pricing for the above-described services. Gallup will rely on this information as being accurate and complete. Any discrepancy in the information provided by Client may change the Scope of Services and/or the pricing. Gallup will notify Client upon discovering a discrepancy in the information provided by Client and inform Client of the impact on the Scope of Services, timeline and pricing of the services.

### PROJECT PRICING:

The pricing for the Services, exclusive of expenses and costs otherwise payable under the General Terms and Conditions, shall be as follows. All prices are expressed in US dollars.

**\$2,000.00**

### PROJECT BILLING SCHEDULE:

Gallup will invoice the entire Service Fee upon receipt of this signed agreement.

# BILLING CONTACT FORM

**Complete this form and fax or email with signed contract/statement of work to:**

Lisa Gotsdiner at [lisa\\_gotsdiner@gallup.com](mailto:lisa_gotsdiner@gallup.com)

**(Invoice will not be generated and sent until signed contract/statement of work is received)**

**Please provide information on the person who should receive the invoice. Please provide an email address as this is our preferred method of delivery.**

Name \_\_\_\_\_

Title \_\_\_\_\_

Organization \_\_\_\_\_

Address \_\_\_\_\_

City, State ZIP \_\_\_\_\_

Telephone \_\_\_\_\_

Fax \_\_\_\_\_

E-Mail \_\_\_\_\_

**If a purchase order # is *required* by your district on Gallup's invoice, please provide number or fax copy of the PO - Purchase order # \_\_\_\_\_**