

## INTERLOCAL AGREEMENT FOR SCHOOL NUTRITION ASSISTANCE

This Agreement made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2014 by and between Town of Collierville Board of Education, a public school district, located at 500 Poplar View Parkway, Collierville, TN 38017 and the following public school districts: Town of Arlington Board of Education, Bartlett City Board of Education, City of Lakeland Board of Education, City of Germantown Board of Education, and City of Millington Board of Education (the "Districts" or the "Boards") (hereinafter collectively referred to as the "Parties").

### WITNESSETH:

**WHEREAS**, the Tennessee Legislature passed Public Chapter No. 256 of the 2013 Public Acts to amend Title 49 relative to local educational agencies, including Tennessee Code Annotated §49-2-127(b), which authorizes the governing body of a municipality to establish, by ordinance, a municipal board of education in compliance with Tennessee Code Annotated §49-2-201; and

**WHEREAS**, the Parties were lawfully established by respective local ordinance pursuant to Tennessee Code Annotated §49-2-106 and in compliance with Tennessee Code Annotated §49-2-201; and

**WHEREAS**, Town of Collierville Board of Education is an entity authorized pursuant to the laws of the State of Tennessee to operate a public school district within Shelby County, Tennessee; and

**WHEREAS**, the Boards are entities authorized pursuant to the laws of the State of Tennessee to operate public school districts within Shelby County, Tennessee; and

**WHEREAS**, the Parties intend to commence instruction beginning with the 2014-2015 school year and continuing each year thereafter; and

**WHEREAS**, pursuant to Tennessee Code Annotated §7-51-908, the Parties are authorized to contract among themselves for matters concerning education; and

**WHEREAS**, the Parties are in need of School Nutrition services in order to serve their present and future needs; and

**WHEREAS**, Town of Collierville Board of Education has a School Nutrition staff with sufficient qualifications to provide those services to the Boards; and

**WHEREAS**, the Parties have agreed to enter into this Agreement to effect the purposes stated herein.

**NOW THEREFORE**, in consideration of the mutual covenants contained herein, the sufficiency of which is hereby confirmed, the Town of Collierville Board of Education (the "Provider") and the Boards agree as follows:

1. Purpose - The purpose of this Agreement is to authorize the Provider to deliver School Nutrition services to the Districts in exchange for consideration under the following terms and conditions.
2. Designated Representatives - To implement this Agreement, each Party's Director of Schools shall be designated as that Party's representative with regard to their respective Districts' School Nutrition needs, the budgeting process outlined herein, and all other matters pertaining to those services provided pursuant to this Agreement. Such designees, hereinafter collectively referred to as the "Directors," shall serve as the point of contact for the Provider, the Provider's Director, and all School Nutrition personnel.
3. Services - The Provider shall cause its School Nutrition personnel ("Nutrition Personnel") to deliver the School Nutrition services (the "Services") outlined on Attachment A to the Districts pursuant to applicable federal, state and local laws, codes, rules and regulations.
4. Third-Party Contract(s) - The Parties expressly acknowledge, and this Agreement contemplates, that Provider shall enter into a third-party contract for school nutrition software (the "Software") necessary for the delivery of the Services outlined on Attachment A. The Software shall be provided to the Districts subject to the terms and conditions stated on Attachment B.

Upon Provider's selection of a Vendor of such school nutrition software, the Parties agree to enter into an Addendum to this Agreement, which shall incorporate each such third-party contract by reference, and which shall bind all Parties to all terms, conditions, obligations, limitations, and exclusions set forth therein as if a signatory thereto, including but not limited to any warranties, limitations on warranties, limitations of liability, intellectual property rights and restrictions, and termination provisions, and further, that all such terms, conditions, obligations, limitations and exclusions shall apply to any claim by any District or Board against Provider concerning the subject matter hereof.

5. Oversight- Except as provided on Attachment B, the Provider shall use its own facilities, equipment, personnel, and personnel policies in providing the Services under this Agreement. Nutrition Personnel shall be

considered employees of the Provider for all purposes and shall not be under the control or supervision of the Boards or the Directors.

6. Scope and Quality of Services - As part of the annual consultation process outlined in Paragraph 8, the Provider shall coordinate with the Directors so that the Parties may provide input to the Provider about the scope and quality of the Services provided hereunder and projected future needs. The Provider shall take reasonable care to ensure that the Services meet the Directors' satisfaction; provided, however, that Nutrition Personnel shall remain subject only to the Provider's performance review process and personnel policies.
7. Relationship Between the Parties - The relationship between the Boards or the Boards' Directors and the Provider or the Provider's Nutrition Personnel shall be that of an independent contractor. No principal-agent or employer-employee relationship is created by this Agreement.
8. Annual Consultation - As part of the annual budget process for each municipal school district, there shall be a meeting of the Directors with regard to all interlocal agreements between their respective districts, including the instant Agreement, during which meeting the Directors shall consult in good faith regarding the quality of services, scope of services, budget for services, and future service needs provided under each such agreement.
9. Consideration - For and in consideration of the Services listed in Attachment A, the Districts shall pay the Provider a proportional share of the Providers Initial School Nutrition Budget and Annual School Nutrition Budget as follows:
  - a) Initial Expenditures - The Provider's Director shall prepare an initial budget for School Nutrition Services (hereinafter referred to as the "Initial School Nutrition Budget") to be provided to the Directors prior to the reporting period of the 2014-2015 school year. Such Initial School Nutrition Budget shall be approved by all the Directors after reasonable consultation in good faith and shall be included herein as Attachment C.
  - b) Annual Expenditures - The Provider's Director shall prepare a reasonable estimate of the annual expenditures for School Nutrition Services and shall provide a report of such estimates annually to all Directors no later than March 1, except the report of the estimated annual expenditures for the 2014-15 school year, which shall be provided to all Directors as soon as practicable following approval

of this Agreement. Thereafter, as part of the consultation process outlined in Paragraph 8, the Directors shall meet and consult in good faith and adopt a budget for School Nutrition Services (hereinafter referred to as the "Annual School Nutrition Budget") for the applicable term. The Directors must approve the Annual School Nutrition Budget no later than April 1 or, in the case of the 2014-15 Annual School Nutrition Budget, as soon as practicable, but no later than May 15, to allow for appropriate lead time for the Parties to develop operational and budgetary plans for the following school year.

- c) Extraordinary Expenditures - Services beyond what is agreed upon in the Initial School Nutrition Budget and Annual School Nutrition Budget(s) will be outside the scope of this Agreement and must be agreed upon, in writing, by the Provider and the party(s) for whom the additional work will be performed prior to commencement of any such work.
- d) Apportionment of School Nutrition Expenditures Among Boards - The Boards shall pay the Provider a proportional share of the Provider's Initial School Nutrition Budget and Annual School Nutrition Budget(s) as calculated by each District's Average Daily Membership ("ADM"). The Parties' total ADM and each District's percentage thereof shall be recalculated annually and shall be based on the Directors' First Monthly Student Membership/ Attendance Report as submitted to the Tennessee Department of Education.

The Parties agree and acknowledge that each Boards' proportional share of the Provider's Initial School Nutrition Budget and a portion of the Provider's 2014-15 Annual School Nutrition Budget shall be calculated based on each District's estimated ADM until the Districts' actual ADM is reported to the Tennessee Department of Education in or around October 15, 2014. At that time, the apportionment described herein shall be reallocated as follows. If the District's actual proportional share is *more than* the District's estimated proportional share, the District will be responsible for paying Provider the amount of such deficit. If the District's actual proportional share is *less than* the District's estimated proportional share, the Provider shall refund the amount of such excess.

- e) Good Faith Efforts to Reach Agreement - In the event of a disagreement between the Parties, with regard to the Annual School Nutrition Budget(s), the Parties agree to work in good faith to reach a mutually agreeable solution. The Parties expressly

acknowledge and agree that if, after best efforts to reach such agreement, any Party shall not agree on the Annual School Nutrition Budget, such disagreement shall not be considered a breach of this Agreement. Termination of this Agreement on the basis of a disagreement over the Annual School Nutrition Budget shall be permitted only under the conditions outlined in Paragraph 14. In no event may the non-agreeing Party use budgeting or planned expenditures as a basis for termination for cause pursuant to Paragraph 13.

10. Payment - The Provider shall invoice the Boards monthly, with the first payment being due June 15, 2014. All payments shall be remitted within thirty (30) calendar days to Collierville Schools, Attention: Chief Financial Officer, 500 Poplar View Parkway, Collierville, TN 38017.
11. Term - The initial term of this Agreement shall commence on May 1, 2014 and continue for three (3) school years until June 30, 2017. The Agreement shall automatically renew for additional one (1) year terms thereafter, unless a Party delivers written notice of intent to terminate to all Parties pursuant to Paragraph 12 below. Except as otherwise provided in Paragraph 17, and except as, and only to the extent, expressly provided in Paragraph 13 of the instant Agreement, the Provider shall not suspend or terminate the Services outlined on Attachment A during the initial, three-year term of this Agreement
12. Termination Without Cause
  - a) Provider - After the initial three-year term, the Provider shall have the right upon giving one hundred twenty (120) days written notice to all the Districts before the expiration of the then-current term to terminate this Agreement, provided that the effective date of any such termination shall be July 1 following such notice. Termination by the Provider pursuant to this paragraph shall terminate this Agreement in its entirety with respect to all Parties.
  - b) Districts - After the initial three-year term, the Districts shall have the right upon giving ninety (90) days written notice to all the Parties before expiration of the then-current term, to terminate this Agreement, provided that the effective date of any such termination shall be July 1 following such notice. Termination by one District pursuant to this paragraph shall be effective only with regard to that District; the Agreement shall continue under the same terms and conditions with respect to all other Parties.

13. Termination With Cause - If, through any cause, any Party shall breach a material term of this Agreement by failing to fulfill in a timely and proper manner its obligations under this Agreement or by violating any of the covenants, agreements, or stipulations of this Agreement, the non-breaching Party may terminate this Agreement. The non-breaching Party shall provide all Parties with written notice specifying the nature of the breach, and the breaching Party shall have thirty (30) days in which to cure the breach. Should the breaching Party fail to cure the breach, the non-breaching Party shall provide written notice of such failure to cure and such Agreement shall terminate as to that Party no earlier than fourteen (14) days after such notice. Termination by one Party, other than the Provider, pursuant to this paragraph, shall be effective only with regard to that Party; the Agreement shall continue under the same terms and conditions with respect to all other Parties. Except for circumstances beyond the Provider's control which make the continued performance of this Agreement impossible or impracticable with respect to the non-breaching Districts, termination by the Provider pursuant to this paragraph shall be effective only with regard to the breaching District; the Agreement shall continue under the same terms and conditions with respect to all other Districts.
  
14. Termination for Good Faith Disagreement Over Annual Student Information Management Budget - If, after good faith efforts, any Party shall not agree on the Annual School Nutrition Budget(s), the non-agreeing Party may terminate the Agreement only if such disagreement is in "good faith" as defined below. In the event of a "good faith" disagreement, the non-agreeing Party shall have the right to terminate this Agreement prior to the expiration of the initial three-year term upon giving written notice to all Parties no later than thirty (30) days following receipt of the Provider's report(s) of estimated annual expenditures, or at least ninety (90) days before the expiration of the then-current term, whichever is earlier, provided that the effective date of any such termination shall be July 1 following such notice. Termination by one Party, other than the Provider, pursuant to this paragraph, shall be effective only with regard to that Party; the Agreement shall continue under the same terms and conditions with respect to all other Parties.

A "good faith" disagreement is defined as follows:

- a) For the 2015-16 school year, a disagreement will be deemed in "good faith" if the 2015-16 Annual School Nutrition Budget exceeds the 2014-15 Annual School Nutrition Budget by 10% by line item, excluding Annual Software Costs.

- b) For the 2016-17 school year, a disagreement will be deemed in "good faith" if the 2016-17 School Nutrition Budget exceeds the 2015-16 Annual School Nutrition Budget by 5% by line item, excluding Annual Software Costs.
  - c) For all subsequent years following the initial three-year term, termination based on any disagreement over budgeting or planned expenditures may be accomplished pursuant to Paragraph 12.
15. Conflict - The Provider shall maintain a School Nutrition calendar available to all Parties to this Agreement and shall take all reasonable steps to avoid scheduling conflicts which would prevent the Provider's Nutrition Personnel from attending meetings at the request of a Director. In the event of a scheduling conflict, the Directors affected by such conflict shall inform the Provider so that the Parties may reach a mutually agreeable solution. The Parties mutually covenant with each other that best efforts will be used at all times to provide timely notice of any and all potential conflicts that may affect other Districts' access to School Nutrition services.
16. Access to School Nutrition Services - The Parties acknowledge that School Nutrition Services provided under this Agreement are equally available to all signatories hereto. The Provider agrees that Nutrition Personnel employed in furtherance of this Agreement shall use best efforts at all times to provide equal access to the Services.
17. Force Majeure - If performance of this Agreement or any obligation under this Agreement is prevented, restricted, or interfered with by causes beyond any Party's reasonable control ("Force Majeure"), and if the Party unable to carry out its obligations gives the other Parties prompt written notice of such event, then the obligations of the Party invoking this provision shall be suspended to the extent necessary by such event. The term Force Majeure shall include, without limitation, acts of God, fire, explosion, vandalism, storm or other similar occurrence, orders or acts of military or civil authority, or by national emergencies, insurrections, riots, or wars, or strikes, lock-outs, work stoppages. The excused Party shall use reasonable efforts under the circumstances to avoid or remove such causes of non-performance and shall proceed to perform with reasonable dispatch whenever such causes are removed or ceased. An act or omission shall be deemed within the reasonable control of a Party if committed, omitted, or caused by such Party, or its employees, officers, agents, or affiliates.

18. Liability - Each Party to this Agreement shall be solely responsible for its own actions and the actions of its employees and agents conducted pursuant to this Agreement. The Provider shall offer the Services to the Parties in an advisory role, and all decision-making authority remains entirely vested in the Districts. The Parties confer no agency or authority, either express or implied, on the Provider for which any third party may rely. To the extent permitted by Tennessee law, each party to this Agreement shall hold harmless the Provider, and its members, directors, agents and employees, including Provider's Nutrition Personnel, from any and all liabilities arising out of the rendition of services hereunder unless such liabilities arise from the willful and intentional acts of Provider or its members, directors, agents and employees.
19. Governing Law - This Agreement shall be exclusively governed by the laws of the State of Tennessee.
20. Notice - All notices required under this Agreement shall not be effective unless in writing and sent by certified mail to the following:
- a) Notices to Bartlett Board of Education shall be sent to:  
  
Attn: Superintendent's Office  
Bartlett City Schools  
5650 Woodlawn Drive  
Bartlett, TN 38134
  - b) Notices to Town of Arlington Board of Education shall be sent to:  
  
Attn: Superintendent's Office  
Arlington Community Schools  
12140 Donelson Farms Parkway  
Arlington, TN 38002
  - c) Notices to Collierville Schools Board of Education shall be sent to:  
  
Attn: Superintendent's Office  
Collierville Schools  
500 Poplar View Parkway  
Collierville, TN 38017

d) Notices to City of Lakeland Board of Education shall be sent to:

Attn: Superintendent's Office  
Lakeland School System  
10001 Highway 70  
Lakeland, TN 38002

e) Notices to City of Germantown Board of Education shall be sent to:

Attn: Superintendent's Office  
Germantown Municipal Schools  
6685 Poplar Ave., Suite 202  
Germantown, TN 38138

f) Notices to City of Millington Board of Education shall be sent to:

Attn: Superintendent's Office  
Millington Municipal Schools  
7965 Veteran's Parkway, Suite 102  
Millington, TN 38053

21. Entire Agreement - This Agreement and any attachments included herewith at the time of execution of this Agreement contain the entire agreement between the Parties as to the subject matter herein, and no statements, promises, or inducements made by any party or agent of any party that is not contained in this written Agreement shall be valid or binding.
22. Modifications in Writing - This Agreement may not be amended, enlarged, modified or altered except in writing and signed by all affected Parties.
23. Dispute Resolution - Whenever any dispute arises between the Directors and the Provider or the Provider's Nutrition Personnel under this Agreement which is not resolved by routine meetings or communications, the disputing parties agree to seek resolution of such dispute in good faith by participation in non-binding mediation as soon as feasible. Any Party to this Agreement may participate in the mediation in an attempt to resolve the dispute.
24. Assignment - The rights and obligations of this Agreement are not assignable.
25. No Consent to Breach - No consent or waiver, express or implied, by any Party to this Agreement to or of any breach or default by any other Party

to this Agreement in the performance by such other Party of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default of the same or any other obligations hereunder. Failure on the part of any Party to this Agreement to complain of any act or failure to act of any other Party to this Agreement, or to declare such Party in default, irrespective of how long such failure continues, shall not constitute a waiver by the non-defaulting party of its rights hereunder.

26. Severability - If any provision of this Agreement is held to be invalid, unlawful, or unenforceable under present or future laws, such provision shall be fully severable, and this Agreement shall be construed and enforced as if such invalid, unlawful, or unenforceable provision had not been a part hereof. The remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by such invalid, unlawful, or unenforceable provision or by its severance therefrom.
27. Headings - The headings in this Agreement are for convenience and reference and are not intended to define or limit the scope of any provision of this Agreement.
28. Effective Date - This Agreement shall not be binding upon the Parties until it has been properly approved by the Boards of Education of the respective parties and has been signed by the authorized representatives of the Parties. When it has been so approved and signed, this Agreement shall be effective as of May 1, 2014.

IN WITNESS WHEREOF, the Parties have executed this Agreement by their duly authorized representatives on the date and year hereof.

**Collierville Board of Education**

\_\_\_\_\_  
Mark Hansen, Chairman

\_\_\_\_\_  
John Aitken, Superintendent

APPROVED AS TO FORM:

\_\_\_\_\_  
Board Attorney

**Bartlett Board of Education**

\_\_\_\_\_  
Jeff Norris, Chairman

\_\_\_\_\_  
David Stephens, Superintendent

APPROVED AS TO FORM:

\_\_\_\_\_  
Board Attorney

**Germantown Board of Education**

\_\_\_\_\_  
Lisa Parker, Chairman

\_\_\_\_\_  
Jason Manuel, Superintendent

APPROVED AS TO FORM:

\_\_\_\_\_  
Board Attorney

**Arlington Board of Education**

\_\_\_\_\_  
Dale Viox, Chairman

\_\_\_\_\_  
Tammy Mason, Superintendent

APPROVED AS TO FORM:

\_\_\_\_\_  
Board Attorney

**Lakeland Board of Education**

\_\_\_\_\_  
Kevin Floyd, Chairman

\_\_\_\_\_  
Ted Horrell, Superintendent

APPROVED AS TO FORM:

\_\_\_\_\_  
Board Attorney

**Millington Board of Education**

\_\_\_\_\_  
Greg Ritter, Chairman

\_\_\_\_\_  
David Roper, Superintendent

APPROVED AS TO FORM:

\_\_\_\_\_  
Board Attorney

## ATTACHMENT A- SCOPE OF SCHOOL NUTRITION SERVICES

School Nutrition Services (the "Services") pursuant to this agreement shall include, but not be limited to, the following:

1. Assist and advise the Directors on all matters related to school nutrition and prepare reports and make presentations, as requested.
2. Assist and advise the Districts with regard to establishing goals and objectives for the Districts' school nutrition needs.
3. Assist and advise the Districts with regard to all matters relating to compliance with school nutrition objectives, policies, and procedures of the Tennessee Department of Education and state and federal regulations.
4. Monitor compliance with and recommend necessary compliance and/or accountability measures for the USDA School Breakfast and Lunch programs and the USDA program agreement.
5. Prepare and file reports for USDA reimbursements, subject to review and approval of the Districts.
6. Develop and maintain databases for state reporting, and revenue and expenditure reporting.
7. Coordinate health permits and inspections with the Health Department.
8. Prepare financial analysis and/or reports concerning school nutrition funds, subject to review and approval of the Districts.
9. Recommend and advise the Districts with regard to point of sale program and software, and monitor such software for incorporation of desired enhancements.
10. Serve as liaison between the Districts and third-party vendor of school nutrition software, and coordinate updates, modifications, and technical issues related to such software.
11. Assist with and coordinate training of the District's school nutrition employees on point of sale program, school nutrition software, and compliance matters.
12. Assist and advise the Directors with developing annual budgets for school nutrition services.

13. Assist and advise Districts with planning for and development of monthly menus for school nutrition services.
14. Develop and perform nutrient analysis of menus and recipes.
15. Assist and advise Districts with coordination and support of special food programs, as requested.
16. Evaluate and make recommendations with regard to procurement of school nutrition equipment, supplies, and food products.
17. Any other such duties reasonably related to School Nutrition services as assigned or requested by the Directors.

## ATTACHMENT B - THIRD-PARTY CONTRACT(S)

The Interlocal Agreement for School Nutrition Services contemplates that Provider shall select and enter into a third-party contract with a vendor (the "Vendor") for school nutrition software (the "Software"), which Software is necessary for the delivery of the Services outlined on Attachment A. Upon Provider's selection of a Vendor of such school nutrition software, the Software will be made accessible to the Districts subject to the following terms and conditions:

1. Scope of Services to be Provided under Third-Party Contract - The Vendor shall provide all services and deliverables to the Districts as required, described, and detailed in the Vendor's Statement of Work.
2. Consideration - Payment for the Districts' access to and use of the Software and for any other services provided under the Vendor's Statement of Work shall be made as follows:
  - a) Initial Software Costs - The Vendor's initial costs for all necessary software components and licensing for deployment and implementation of the Software in the Districts ("Initial Software Costs") shall be included in the Provider's Initial School Nutrition Budget and, accordingly, shall be apportioned among the Districts pursuant to Section 9.d. of the Agreement.
  - b) Annual Software Costs - The Vendor's annual costs associated with the use of the Software ("Annual Software Costs") shall be included in the Provider's Annual School Nutrition Budget(s) and, accordingly, shall be apportioned among the Districts pursuant to Section 9.d. of the Agreement.
3. Vendor Services Outside the Statement of Work - Vendor services beyond what is included in the Vendor's Statement of Work are outside the scope of this Agreement and shall be the responsibility of the District for whom the additional services are requested (the "Requesting District").
  - a) Any District in need of such additional services shall communicate such request to the Provider's Nutrition Personnel. Upon such notice, Nutrition Personnel will function as the Requesting District's point of contact with the Vendor to arrange for such additional services.
  - b) The Requesting District shall enter into a Statement of Work with the Vendor for the additional services and Vendor shall invoice the Requesting District directly for any and all costs and fees related to the provision of such additional services. In no event shall the Provider

be responsible for any charges, fees, or costs related to the provision of such additional services to the Requesting District.

4. Termination -

a) Rights Upon Termination - The Districts' payment for Initial Software Costs and Annual Software Costs shall entitle any District which terminates according to Sections 12, 13 or 14 of the Agreement (the "Terminating District") to its electronic records maintained by the Vendor and any associated records or documents maintained by the Provider, but such Terminating District shall have no right to the software itself, the software license and/or subscription, or any service included in the Vendor's Statement of Work beyond the date of termination. In no event shall the Terminating District be entitled to a refund of its share of the Initial Software Costs.

b) Fees and Costs Related to Termination - Vendor's charges or fees, if any, related to cancelling the Terminating District's access to the Software or packaging and/or exporting the Terminating District's electronic records shall be invoiced directly to the Terminating District. Likewise, any other Vendor charges or fees incurred by Provider that arise out of the terminating District's decision to terminate shall be invoiced by the Provider to the terminating District.

5. Access to Technical Support or Information - The Parties acknowledge that the Provider's Nutrition Personnel are the primary points of contact with the Vendor for the provision of the services outlined in the Vendor's Statement of Work. The Provider's Nutrition Personnel shall develop a protocol for requesting technical support, maintenance, and/or information related to the Software. Such protocol shall ensure that Nutrition Personnel are apprised of all such requests and that the Districts' are provided prompt and efficient access to technical support, maintenance, and/or information from the Vendor.

ATTACHMENT C - PROVIDER'S INITIAL SCHOOL NUTRITION BUDGET

**INTERLOCAL AGREEMENT FOR  
STUDENT INFORMATION MANAGEMENT ASSISTANCE**

This Agreement made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2014 by and between Town of Collierville Board of Education, a public school district, located at 500 Poplar View Parkway, Collierville, TN 38017 and the following public school districts: Town of Arlington Board of Education, Bartlett City Board of Education, City of Lakeland Board of Education, City of Germantown Board of Education, and City of Millington Board of Education (the "Districts" or the "Boards") (hereinafter collectively referred to as the "Parties").

**WITNESSETH:**

**WHEREAS**, the Tennessee Legislature passed Public Chapter No. 256 of the 2013 Public Acts to amend Title 49 relative to local educational agencies, including Tennessee Code Annotated §49-2-127(b), which authorizes the governing body of a municipality to establish, by ordinance, a municipal board of education in compliance with Tennessee Code Annotated §49-2-201; and

**WHEREAS**, the Parties were lawfully established by respective local ordinance pursuant to Tennessee Code Annotated §49-2-106 and in compliance with Tennessee Code Annotated §49-2-201; and

**WHEREAS**, Town of Collierville Board of Education is an entity authorized pursuant to the laws of the State of Tennessee to operate a public school district within Shelby County, Tennessee; and

**WHEREAS**, the Boards are entities authorized pursuant to the laws of the State of Tennessee to operate public school districts within Shelby County, Tennessee; and

**WHEREAS**, the Parties intend to commence instruction beginning with the 2014-2015 school year and continuing each year thereafter; and

**WHEREAS**, pursuant to Tennessee Code Annotated §7-51-908, the Parties are authorized to contract among themselves for matters concerning education; and

**WHEREAS**, the Parties are in need of Student Information Management services in order to serve their present and future needs; and

**WHEREAS**, Town of Collierville Board of Education has a Student Information Management staff with sufficient qualifications to provide those services to the Boards; and

**WHEREAS**, the Parties have agreed to enter into this Agreement to effect the purposes stated herein.

**NOW THEREFORE**, in consideration of the mutual covenants contained herein, the sufficiency of which is hereby confirmed, the Town of Collierville Board of Education (the "Provider") and the Boards agree as follows:

1. Purpose - The purpose of this Agreement is to authorize the Provider to deliver Student Information Management services to the Districts in exchange for consideration under the following terms and conditions.
2. Designated Representatives - To implement this Agreement, each Party's Director of Schools shall be designated as that Party's representative with regard to their respective Districts' Student Information Management needs, the budgeting process outlined herein, and all other matters pertaining to those services provided pursuant to this Agreement. Such designees, hereinafter collectively referred to as the "Directors," shall serve as the point of contact for the Provider, the Provider's Director, and all Student Information Management personnel.
3. Services - The Provider shall cause its Student Information Management personnel ("SIM Personnel") to deliver the Student Information Management services (the "Services") outlined on Attachment A to the Districts pursuant to applicable federal, state and local laws, codes, rules and regulations.
4. Third-Party Contract(s) - The Parties expressly acknowledge, and this Agreement contemplates, that Provider shall enter into a third-party contract for Student Information Management software (the "Software") necessary for the delivery of the Services outlined on Attachment A. The Software shall be provided to the Districts subject to the terms and conditions stated on Attachment B. Each such third-party contract shall be and is hereby incorporated herein by reference, and each of the Parties shall be bound by all terms, conditions, obligations, limitations and exclusions set forth therein as if a signatory thereto, including but not limited to any warranties, limitations on warranties, limitations of liability, intellectual property rights and restrictions, and termination provisions, provided that Provider shall not bind Parties to indemnification of a third party provider to an extent impermissible under Tennessee law. Such terms, conditions, obligations, limitations and exclusions shall apply to any claim by any District or Board against Provider concerning the subject matter hereof.
5. Oversight- Except as provided on Attachment B, the Provider shall use its own facilities, equipment, personnel, and personnel policies in providing the Services under this Agreement. SIM Personnel shall be considered

employees of the Provider for all purposes and shall not be under the control or supervision of the Boards or the Directors.

6. Scope and Quality of Service - As part of the annual consultation process outlined in Paragraph 8, the Provider shall coordinate with the Directors so that the Parties may provide input to the Provider about the scope and quality of the Services provided hereunder and projected future needs. The Provider shall take reasonable care to ensure that the Services meet the Directors' satisfaction; provided, however, that SIM Personnel shall remain subject only to the Provider's performance review process and personnel policies.
7. Relationship Between the Parties - The relationship between the Boards or the Boards' Directors and the Provider or the Provider's SIM Personnel shall be that of an independent contractor. No principal-agent or employer-employee relationship is created by this Agreement.
8. Annual Consultation - As part of the annual budget process for each municipal school district, there shall be a meeting of the Directors with regard to all interlocal agreements between their respective districts, including the instant Agreement, during which meeting the Directors shall consult in good faith regarding the quality of services, scope of services, budget for services, and future service needs provided under each such agreement.
9. Consideration - For and in consideration of the Services listed in Attachment A, the Districts shall pay the Provider a proportional share of the Providers Initial Student Information Management Budget and Annual Student Information Management Budget as follows:
  - a) Initial Expenditures - The Provider's Director shall prepare an initial budget for Student Information Management Services (hereinafter referred to as the "Initial Student Information Management Budget") to be provided to the Directors prior to the reporting period of the 2014-2015 school year. Such Initial Student Information Management Budget shall be approved by all the Directors after reasonable consultation in good faith and shall be included herein as Attachment C.
  - b) Annual Expenditures - The Provider's Director shall prepare a reasonable estimate of the annual expenditures for Student Information Management Services and shall provide a report of such estimate annually to all Directors no later than March 1 except the report of the estimated annual expenditures for the 2014-15

school year, which shall be provided to all Directors as soon as practicable following approval of this Agreement. Thereafter, as part of the consultation process outlined in Paragraph 8, the Directors shall meet and consult in good faith and adopt a budget for Student Information Management Services (hereinafter referred to as the "Annual Student Information Management Budget") for the applicable term. The Directors must approve the Annual Student Information Management Budget no later than April 1 or, in the case of the 2014-15 Annual Student Information Management Budget, as soon as practicable, but no later than May 15, to allow for appropriate lead time for the Parties to develop operational and budgetary plans for the following school year.

- c) Extraordinary Expenditures - Services beyond what is agreed upon in the Initial Student Information Management Budget and Annual Student Information Management Budget(s) will be outside the scope of this Agreement and must be agreed upon, in writing, by the Provider and the party(s) for whom the additional work will be performed prior to commencement of any such work.
- d) Apportionment of Student Information Management Expenditures Among Boards - The Boards shall pay the Provider a proportional share of the Provider's Initial Student Information Management Budget and Annual Student Information Management Budget(s) as calculated by each District's Average Daily Membership ("ADM"). The Parties' total ADM and each District's percentage thereof shall be recalculated annually and shall be based on the Directors' First Monthly Student Membership/ Attendance Report as submitted to the Tennessee Department of Education.

The Parties agree and acknowledge that each Boards' proportional share of the Provider's Initial Student Information Management Budget and a portion of the Provider's 2014-15 Annual Student Information Budget shall be calculated based on each District's estimated ADM until the Districts' actual ADM is reported to the Tennessee Department of Education in or around October 15, 2014. At that time, the apportionment described herein shall be reallocated as follows. If the District's actual proportional share is *more than* the District's estimated proportional share, the District will be responsible for paying Provider the amount of such deficit. If the District's actual proportional share is *less than* the District's estimated proportional share, the Provider shall refund the amount of such excess.

- e) Good Faith Efforts to Reach Agreement - In the event of a disagreement between the Parties, with regard to the Annual Student Information Management Budget(s), the Parties agree to work in good faith to reach a mutually agreeable solution. The Parties expressly acknowledge and agree that if, after best efforts to reach such agreement, any Party shall not agree on the Annual Student Information Management Budget, such disagreement shall not be considered a breach of this Agreement. Termination of this Agreement on the basis of a disagreement over the Annual Student Information Management Budget shall be permitted only under the conditions outlined in Paragraph 14. In no event may the non-agreeing Party use budgeting or planned expenditures as a basis for termination for cause pursuant to Paragraph 13.
  
- 10. Payment - The Provider shall invoice the Boards monthly, with the first payment being due June 15, 2014. All payments shall be remitted within thirty (30) calendar days to Collierville Schools, Attention: Chief Financial Officer, 500 Poplar View Parkway, Collierville, TN 38017.
  
- 11. Term - The initial term of this Agreement shall commence on May 1, 2014 and continue for three (3) school years until June 30, 2017. The Agreement shall automatically renew for additional one (1) year terms thereafter, unless a Party delivers written notice of intent to terminate to all Parties pursuant to Paragraph 12 below. Except as otherwise provided in Paragraph 17, and except as, and only to the extent, expressly provided in Paragraph 13 of the instant Agreement, the Provider shall not suspend or terminate the Services outlined on Attachment A during the initial, three-year term of this Agreement
  
- 12. Termination Without Cause
  - a) Provider - After the initial three-year term, the Provider shall have the right upon giving one hundred twenty (120) days written notice to all the Districts before the expiration of the then-current term to terminate this Agreement, provided that the effective date of any such termination shall be July 1 following such notice. Termination by the Provider pursuant to this paragraph shall terminate this Agreement in its entirety with respect to all Parties.
  
  - b) Districts - After the initial three-year term, the Districts shall have the right upon giving ninety (90) days written notice to all the Parties before expiration of the then-current term, to terminate this Agreement, provided that the effective date of any such termination shall be July 1 following such notice. Termination by

one District pursuant to this paragraph shall be effective only with regard to that District; the Agreement shall continue under the same terms and conditions with respect to all other Parties.

13. Termination for Cause - If, through any cause, any Party shall breach a material term of this Agreement by failing to fulfill in a timely and proper manner its obligations under this Agreement or by violating any of the covenants, agreements, or stipulations of this Agreement, the non-breaching Party may terminate this Agreement. The non-breaching Party shall provide all Parties with written notice specifying the nature of the breach, and the breaching Party shall have thirty (30) days in which to cure the breach. Should the breaching Party fail to cure the breach, the non-breaching Party shall provide written notice of such failure to cure and such Agreement shall terminate as to that Party no earlier than fourteen (14) days after such notice. Termination by one Party, other than the Provider, pursuant to this paragraph, shall be effective only with regard to that Party; the Agreement shall continue under the same terms and conditions with respect to all other Parties. Except for circumstances beyond the Provider's control which make the continued performance of this Agreement impossible or impracticable with respect to the non-breaching Districts, termination by the Provider pursuant to this paragraph shall be effective only with regard to the breaching District; the Agreement shall continue under the same terms and conditions with respect to all other Districts.
14. Termination for Good Faith Disagreement Over Annual Student Information Management Budget - If, after good faith efforts, any Party shall not agree on the Annual Student Information Management Budget(s), the non-agreeing Party may terminate the Agreement only if such disagreement is in "good faith" as defined below. In the event of a "good faith" disagreement, the non-agreeing Party shall have the right to terminate this Agreement prior to the expiration of the initial three-year term upon giving written notice to all Parties no later than thirty (30) days following receipt of the Provider's report(s) of estimated annual expenditures, or at least ninety (90) days before the expiration of the then-current term, whichever is earlier, provided that the effective date of any such termination shall be July 1 following such notice. Termination by one Party, other than the Provider, pursuant to this paragraph, shall be effective only with regard to that Party; the Agreement shall continue under the same terms and conditions with respect to all other Parties.

A "good faith" disagreement is defined as follows:

- a) For the 2015-16 school year, a disagreement will be deemed in "good faith" if the 2015-16 Annual Student Information Management Budget exceeds the 2014-15 Annual Student Information Management Budget by 10% by line item, excluding Annual Software Costs.
  - b) For the 2016-17 school year, a disagreement will be deemed in "good faith" if the 2016-17 Annual Student Information Management Budget exceeds the 2015-16 Annual Student Information Management Budget by 5% by line item, excluding Annual Software Costs.
  - c) For all subsequent years following the initial three-year term, termination based on any disagreement over budgeting or planned expenditures may be accomplished pursuant to Paragraph 12.
15. Conflict - The Provider shall maintain a Student Information Management calendar available to all Parties to this Agreement and shall take all reasonable steps to avoid scheduling conflicts which would prevent the Provider's SIM Personnel from attending meetings at the request of a Director. In the event of a scheduling conflict, the Directors affected by such conflict shall inform the Provider so that the Parties may reach a mutually agreeable solution. The Parties mutually covenant with each other that best efforts will be used at all times to provide timely notice of any and all potential conflicts that may affect other Districts' access to the Services.
16. Access to Student Information Management Services - The Parties acknowledge that Student Information Management Services provided under this Agreement are equally available to all signatories hereto. The Provider agrees that SIM Personnel employed in furtherance of this Agreement shall use best efforts at all times to provide equal access to the Services.
17. Force Majeure - If performance of this Agreement or any obligation under this Agreement is prevented, restricted, or interfered with by causes beyond any Party's reasonable control ("Force Majeure"), and if the Party unable to carry out its obligations gives the other Parties prompt written notice of such event, then the obligations of the Party invoking this provision shall be suspended to the extent necessary by such event. The term Force Majeure shall include, without limitation, acts of God, fire, explosion, vandalism, storm or other similar occurrence, orders or acts of military or civil authority, or by national emergencies, insurrections, riots, or wars, or strikes, lock-outs, work stoppages. The excused Party shall use

reasonable efforts under the circumstances to avoid or remove such causes of non-performance and shall proceed to perform with reasonable dispatch whenever such causes are removed or ceased. An act or omission shall be deemed within the reasonable control of a Party if committed, omitted, or caused by such Party, or its employees, officers, agents, or affiliates.

18. Liability - Each Party to this Agreement shall be solely responsible for its own actions and the actions of its employees and agents conducted pursuant to this Agreement. The Provider shall offer the Services to the Parties in an advisory role, and all decision-making authority remains entirely vested in the Districts. The Parties confer no agency or authority, either express or implied, on the Provider for which any third party may rely. To the extent permitted by Tennessee law, each party to this Agreement shall hold harmless the Provider, and its members, directors, agents and employees, including Provider's SIM Personnel, from any and all liabilities arising out of the rendition of services hereunder unless such liabilities arise from the willful and intentional acts of Provider or its members, directors, agents and employees.
19. Governing Law - This Agreement shall be exclusively governed by the laws of the State of Tennessee.
20. Notice - All notices required under this Agreement shall not be effective unless in writing and sent by certified mail to the following:
  - a) Notices to Bartlett Board of Education shall be sent to:

Attn: Superintendent's Office  
Bartlett City Schools  
5650 Woodlawn Drive  
Bartlett, TN 38134
  - b) Notices to Town of Arlington Board of Education shall be sent to:

Attn: Superintendent's Office  
Arlington Community Schools  
12140 Donelson Farms Parkway  
Arlington, TN 38002

c) Notices to Collierville Schools Board of Education shall be sent to:

Attn: Superintendent's Office  
Collierville Schools  
500 Poplar View Parkway  
Collierville, TN 38017.

d) Notices to City of Lakeland Board of Education shall be sent to:

Attn: Superintendent's Office  
Lakeland School System  
10001 Highway 70  
Lakeland, TN 38002

e) Notices to City of Germantown Board of Education shall be sent to:

Attn: Superintendent's Office  
Germantown Municipal Schools  
6685 Poplar Ave., Suite 202  
Germantown, TN 38138

f) Notices to City of Millington Board of Education shall be sent to:

Attn: Superintendent's Office  
Millington Municipal Schools  
7965 Veteran's Parkway, Suite 102  
Millington, TN 38053

21. Entire Agreement - This Agreement and any attachments included herewith at the time of execution of this Agreement contain the entire agreement between the Parties as to the subject matter herein, and no statements, promises, or inducements made by any party or agent of any party that is not contained in this written Agreement shall be valid or binding.
22. Modifications in Writing - This Agreement may not be amended, enlarged, modified or altered except in writing and signed by all affected Parties.
23. Dispute Resolution - Whenever any dispute arises between the Directors and the Provider or the Provider's SIM Personnel under this Agreement which is not resolved by routine meetings or communications, the disputing parties agree to seek resolution of such dispute in good faith by participation in non-binding mediation as soon as feasible. Any Party to

this Agreement may participate in the mediation in an attempt to resolve the dispute.

24. Assignment - The rights and obligations of this Agreement are not assignable.
25. No Consent to Breach - No consent or waiver, express or implied, by any Party to this Agreement to or of any breach or default by any other Party to this Agreement in the performance by such other Party of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default of the same or any other obligations hereunder. Failure on the part of any Party to this Agreement to complain of any act or failure to act of any other Party to this Agreement, or to declare such Party in default, irrespective of how long such failure continues, shall not constitute a waiver by the non-defaulting party of its rights hereunder.
26. Severability - If any provision of this Agreement is held to be invalid, unlawful, or unenforceable under present or future laws, such provision shall be fully severable, and this Agreement shall be construed and enforced as if such invalid, unlawful, or unenforceable provision had not been a part hereof. The remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by such invalid, unlawful, or unenforceable provision or by its severance therefrom.
27. Headings - The headings in this Agreement are for convenience and reference and are not intended to define or limit the scope of any provision of this Agreement.
28. Effective Date - This Agreement shall not be binding upon the Parties until it has been properly approved by the Boards of Education of the respective parties and has been signed by the authorized representatives of the Parties. When it has been so approved and signed, this Agreement shall be effective as of May 1, 2014.

IN WITNESS WHEREOF, the Parties have executed this Agreement by their duly authorized representatives on the date and year hereof.

**Collierville Board of Education**

\_\_\_\_\_  
Mark Hansen, Chairman

\_\_\_\_\_  
John Aitken, Superintendent

APPROVED AS TO FORM:

\_\_\_\_\_  
Board Attorney

**Bartlett Board of Education**

\_\_\_\_\_  
Jeff Norris, Chairman

\_\_\_\_\_  
David Stephens, Superintendent

APPROVED AS TO FORM:

\_\_\_\_\_  
Board Attorney

**Germantown Board of Education**

\_\_\_\_\_  
Lisa Parker, Chairman

\_\_\_\_\_  
Jason Manuel, Superintendent

APPROVED AS TO FORM:

\_\_\_\_\_  
Board Attorney

**Arlington Board of Education**

\_\_\_\_\_  
Dale Viox, Chairman

\_\_\_\_\_  
Tammy Mason, Superintendent

APPROVED AS TO FORM:

\_\_\_\_\_  
Board Attorney

**Lakeland Board of Education**

\_\_\_\_\_  
Kevin Floyd, Chairman

\_\_\_\_\_  
Ted Horrell, Superintendent

APPROVED AS TO FORM:

\_\_\_\_\_  
Board Attorney

**Millington Board of Education**

\_\_\_\_\_  
Greg Ritter, Chairman

\_\_\_\_\_  
David Roper, Superintendent

APPROVED AS TO FORM:

\_\_\_\_\_  
Board Attorney

## ATTACHMENT A- SCOPE OF STUDENT INFORMATION MANAGEMENT SERVICES

Student Information Management Services (the "Services") pursuant to this Agreement shall include, but not be limited to, the following:

1. Assist and advise the Districts with regard to all matters relating to compliance with student information management and technology objectives, policies, and procedures of the Tennessee Department of Education and state and federal regulations;
2. Assist and advise the Districts with regard to establishing goals and objectives for the Districts' future technology needs;
3. Assist and advise the Directors on all matters related to student information management and prepare reports and make presentations, as requested;
4. Monitor and analyze existing software for incorporation of desired enhancements;
5. Perform detailed reviews and analysis of program changes, new equipment, new technology and other factors and trends impacting existing systems in order to facilitate the development and conformance of system modifications;
6. Manage the Districts' student management software;
7. Assist with and coordinate training of all users of student management system ("SMS") software applications, including developing training materials and conducting workshops;
8. Assist with technical support of all SMS software applications, including providing telephone/email support to such users;
9. Assist each District's technology specialist(s) with regard to all matters related to student information management; and
10. Serve as the primary point of contact and liaison between the Districts and the supplying vendor(s) for technical support, maintenance, and information requests;
11. Develop system-wide reports for all Districts for PowerSchool, subject to review and approval of the Districts;

12. Any other such duties reasonably related to Student Information Management services as assigned or requested by the Directors.

## ATTACHMENT B - THIRD-PARTY CONTRACT(S)

The Interlocal Agreement for Student Information Management Assistance contemplates that Provider shall enter into a third-party contract with NCS Pearson, Inc. (the "Vendor") for PowerSchool Software (the "Software"), which Software is necessary for the delivery of the Services outlined on Attachment A. The Software will be made accessible to the Districts subject to the following terms and conditions:

1. Scope of Services to be Provided under Third-Party Contract - The Vendor shall provide all services and deliverables to the Districts as required, described, and detailed in the Vendor's Statement of Work.
2. Consideration - Payment for the Districts' access to and use of the Software and for any other services provided under the Vendor's Statement of Work shall be made as follows:
  - a) Initial Software Costs - The Vendor's initial costs for all necessary software components and licensing for deployment and implementation of the Software in the Districts ("Initial Software Costs") shall be included in the Provider's Initial Student Information Management Budget and, accordingly, shall be apportioned among the Districts pursuant to Paragraph 9.d. of the Agreement.
  - b) Annual Software Costs - The Vendor's annual costs associated with the use of the Software ("Annual Software Costs") shall be included in the Provider's Annual Student Information Management Budget(s) and, accordingly, shall be apportioned among the Districts pursuant to Paragraph 9.d. of the Agreement.
3. Vendor Services Outside the Statement of Work - Vendor services beyond what is included in the Vendor's Statement of Work are outside the scope of this Agreement and shall be the responsibility of the District for whom the additional services are requested (the "Requesting District").
  - a) Any District in need of such additional services shall communicate such request to the Provider's SIM Personnel. Upon such notice, SIM Personnel will function as the Requesting District's point of contact with the Vendor to arrange for such additional services.
  - b) The Requesting District shall enter into a Statement of Work with the Vendor for the additional services and Vendor shall invoice the Requesting District directly for any and all costs and fees related to the provision of such additional services. In no event shall the Provider

be responsible for any charges, fees, or costs related to the provision of such additional services to the Requesting District.

4. Termination -
  - a) Rights Upon Termination - The Districts' payment for Initial Software Costs and Annual Software Costs shall entitle any District which terminates according to Paragraphs 12, 13 or 14 of the Agreement (the "Terminating District") to its electronic records maintained by the Vendor and any associated records or documents maintained by the Provider, but such Terminating District shall have no right to the software itself, the software license and/or subscription, or any service included in the Vendor's Statement of Work beyond the date of termination. In no event shall the Terminating District be entitled to a refund of its share of the Initial Software Costs.
  - b) Fees and Costs Related to Termination - Vendor's charges or fees, if any, related to cancelling the Terminating District's access to the Software or packaging and/or exporting the Terminating District's electronic records shall be invoiced directly to the Terminating District. Likewise, any other Vendor charges or fees incurred by Provider that arise out of the Terminating District's decision to terminate shall be invoiced by the Provider to the Terminating District.
5. Access to Technical Support or Information - The Parties acknowledge that the Provider's SIM Personnel are the primary points of contact with the Vendor for the provision of the services outlined in the Vendor's Statement of Work. The Provider's SIM Personnel shall develop a protocol for requesting technical support, maintenance, and/or information related to the Software. Such protocol shall ensure that SIM Personnel are apprised of all such requests and that the Districts' are provided prompt and efficient access to technical support, maintenance, and/or information from the Vendor.

ATTACHMENT C - PROVIDER'S INITIAL  
STUDENT INFORMATION MANAGEMENT BUDGET