

STATE OF TEXAS §
COUNTY OF TRAVIS §

Division: 210	Program Name: FitnessGram Program
Org Code: 711P	Legal/Funding Authority: 84 th Texas Legislature 2015, GAA, Article III, Rider 87; TGC, Title 10, Subtitle D, Section 2155.067
Speed Chart: 6P029	Contract #: 3493
Payee Name: Varsity Brands Holding Co Inc	PO #: 35233
Payee ID: 14724602728	

TEXAS EDUCATION AGENCY STANDARD CONTRACT

ARTICLE I. PARTIES TO CONTRACT

This agreement is entered into by and between the Texas Education Agency ("TEA"), a Texas State Agency and Varsity Brands Holding Co. Inc. dba BSN Sports LLC ("Contractor"), sole source provider of FitnessGram® 2015, and The Cooper Institute, the owner of FitnessGram® Intellectual Property and web hosting provider.

ARTICLE II. PERIOD OF CONTRACT

TEA shall pay Contractor for the reasonable and approved costs incurred by Contractor in connection with the Contract Project during the period beginning March 1, 2016, and ending August 31, 2017, unless extended or terminated as otherwise provided for this contract. TEA, at its own discretion, may extend the contract awarded for up to two additional fiscal years under the same or different terms subject to appropriation of funds by the Texas Legislature for this project.

ARTICLE III. PURPOSES OF CONTRACT

Contractor shall provide campus-based site licenses to Texas public schools to assist in the collection, storage, and reporting of physical fitness assessment data through FitnessGram® 2015 and perform all of the functions and duties set described herein and in the appendices to this Contract, which are attached hereto and incorporated by reference.

ARTICLE IV. PAYMENT UNDER CONTRACT

Subject to the availability to TEA of funds for the purpose(s) of this Contract, TEA shall pay to Contractor by State of Texas warrant(s) up to the amount of \$1,498,860, for the performance, satisfactory to the TEA, of Contractor's functions and duties under this Contract. Payment to Contractor by TEA will be made in accordance with the Description of Services, Appendix One, which is attached hereto and incorporated herein by reference.

ARTICLE V. GENERAL AND SPECIAL PROVISIONS OF CONTRACT

Attached hereto and incorporated herein by reference are the Contract Terms and Conditions, and the Special Provisions indicated below with an "X" beside each:

- Special Provisions A, Program Specific
- Special Provisions B, Debarment (required if utilizing federal funds)
- Special Provisions C, Lobbying (required if utilizing federal funds & over \$100,000)
- Special Provisions D, Historically Underutilized Business Subcontracting Plan (HSP)
(required for projects over \$100,000.00)

Texas Government Code §2252.901 prohibits the agency into entering into an employment contract, a professional services contract, or a consulting services contract with a former or retired TEA employee before the first anniversary of their last date of regular employment. If TEA enters into a "professional services" contract with a corporation, firm, or other business entity that employs a former or retired employee during the first year of the past employee's departure from the agency, the former or retired employee is restricted from performing services on projects that the employee worked on while employed at TEA.

Texas Government Code §572.069. CERTAIN EMPLOYMENT FOR FORMER STATE OFFICER OR EMPLOYEE RESTRICTED. A former state officer or employee of a state agency who during the period of

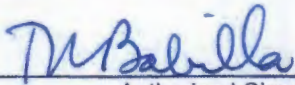
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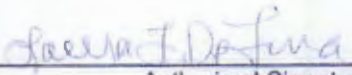
state service or employment participated on behalf of a state agency in a procurement or contract negotiation involving a person may not accept employment from that person before the second anniversary of the date the officer's or employee's service or employment with the state agency ceased.


ARTICLE VI. ENTIRE CONTRACT

This contract together with the documents including but not limited to Appendices, Attachments, Exhibits, Proposal Responses, mentioned herein and incorporated by reference, contains the entire agreement between the parties relating to the rights granted and the obligations assumed in it. Any oral representations or modifications concerning this contract shall be of no force or effect unless contained in a subsequent amendment executed by both parties.

AGREED and accepted on behalf of Contractor effective beginning on the date of the Contract as specified above and as indicated by signature below of a person authorized to bind Contractor.

Typed name: Terrence M. Babilla 
Typed title: President, Chief Operating Officer
BSN Sports, LLC Authorized Signature

Typed name: Dr. Laura DeFina 
Typed title: President and Chief Executive Officer
The Cooper Institute Authorized Signature 04/08/2016

This section reserved for TEA use.	
I, an authorized official of the Texas Education Agency, hereby certify that this contract is in compliance with the authorizing program statute and applicable regulations and authorize the services to be performed as written above.	
AGREED and accepted on behalf of Agency on <u>April 22, 2016</u> (month/day/year) by a person authorized to bind Agency.	
Return an electronic copy to: TEAContracts@tea.texas.gov Norma Barrera Texas Education Agency Purchasing, Contracts and Agency Services Division 1701 North Congress Avenue Rm. 2-125 Austin, Texas 78701-1494	 Mike Morath Commissioner of Education

Appendix One
Description of Services

- I. The Texas Education Code (TEC), §38.101 requires that school districts assess the fitness levels of all students in grades 3-12 who are enrolled in a physical education course, substitute course, or activity at least once annually.

The TEC §38.102 requires the Commissioner of Education to adopt an assessment instrument to be used by a school district in assessing student physical fitness. The assessment instrument must be based on factors related to student health, including factors that have been identified as essential to overall health and function such as aerobic capacity; body composition; and muscular strength, endurance, and flexibility. The assessment must also include criterion-referenced standards specific to a student's age and gender, and be based on the physical fitness level required for good health. In 2007, the TEA identified FitnessGram® as the assessment instrument to be used by Texas public schools.

The TEC §38.103 requires school districts to provide the results of individual student performance on the physical fitness assessment to the agency. The results may not contain the names of individual students or teachers or a student's social security number or date of birth. The results of individual student performance on the physical fitness assessment instrument are confidential and may be released only in accordance with state and federal law.

BSN Sports, LLC is the official sole source Vendor for the FitnessGram® 2015 (FG 2015) software and will supply the necessary software and license agreements. *MMS Education*, subcontractor, will activate the site license and provide technical support to local education agencies (LEAs) for FG 2015.

Contractor is providing up to 7,795 site licenses to the FG 2015 software application to eligible Texas public schools participating in the program. TEA will license all levels of FitnessGram® 2015 provided within this Contract. Contractor shall provide TEA monthly reports identifying the names of the LEAs who have received the FG 2015 site license. This information shall be submitted along with the monthly invoice. Payment shall be made monthly based on the number of enrolled LEAs who have received the FG 2015 site license. All data collected via the FitnessGram® software will be owned by the TEA and LEAs. *BSN Sports, LLC*, and *The Cooper Institute* must submit all FitnessGram® data collected from LEAs to the TEA in a manner to be determined by the agency on or before August 31 of each year.

FG 2015 Features:

- a. State-level aggregate data and reporting options
- b. Tech support provided by the FitnessGram Help Desk
- c. Webhosting managed and maintained by *The Cooper Institute*®
- d. Access to FG 2015 program enhancements and software updates for the Contract duration
 - 1) Web based software that provides access anywhere with Internet connectivity
 - 2) Online course modules within software for teacher staff development
 - 3) Program enhancements and updates as they occur

Item Description	Quantity	Price	Total
FitnessGram Software License Hosted Renewal-2 years	7,396	\$ 180.00 each	\$ 1,331,280
FitnessGram Software New Hosted License-2 years	399	\$ 420.00 each	\$ 167,580
FitnessGram Advanced Support Services (165 hours)	1	Included	Included
Contract Total:			\$ 1,498,860

All funds for site licenses remaining at the end of Fiscal Year 2016 will be rolled forward to Fiscal Year 2017.

II. 2015 – 2017 Project Tasks and Timeline

Task	Begin Date	End Date
1. Technical Support for Student Information System (SIS) Vendors MMS Education shall include advanced technical support services for SIS Vendors. Software updates and program enhancements are included as they become available during the term of the Contract.	3/1/2016	8/31/2017

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**Appendix One
Description of Services**

Task	Begin Date	End Date
<p>2. Technical Support for LEAs</p> <p>Provide guidance and technical support to the LEAs on how to input the data, either by electronic import or data entry related to a LEAs use of the FG software application. Data could include information on teachers, classes, students, fitness test scores, activity assessment scores and activity data. In addition, provide the support call-in numbers and email addresses to the LEAs to report any issues related to FG software function directly to the FitnessGram Help Desk (800-416-5139 or support@fitnessgram.net).</p> <p>(a) Advanced support includes a project manager and implementation specialist</p> <ol style="list-style-type: none"> 1. Work with district administrators on CSV file import options and coordination with SIS Vendors 2. Support of state initiatives with statewide data extracts and reporting <p>(b) Provision of technical support by working cooperatively with MMS Education technical support department in resolving issues related to software function</p> <p>(c) Provision of functioning FG application</p> <p>(d) Support for FG 9 and 10 will end on July 1, 2016. Support for FG 8 was discontinued in summer 2015.</p>	3/1/2016	8/31/2017
<p>3. Web Hosting Agreement</p> <p>The FG License Agreement should remind users of the security standards for mobile devices (tablets, smart phones, laptops, etc.) that may be utilized by the LEA's to collect and store the data.</p> <p>The FG License Agreement will also include requirements of data file structure that LEAs will adhere to for FG data to be hosted.</p>	3/1/2016	8/31/2017
<p>4. Professional Development</p> <p>Professional development will be included in the software program, containing FitnessGram 101 training, Communicating with Stakeholders, Goal Setting with Students, and more.</p>	3/1/2016	8/31/2017
<p>5. LEA Contact Information</p> <p>Contractor will use the contact information provided by the TEA to provide the FG 2015 site licenses to allow access to the program that is hosted.</p>	3/1/2016	8/31/2017
<p>6. Provisional Services for FitnessGram 2015 will include:</p> <ol style="list-style-type: none"> (a) A managed hosted environment (b) Content is held within an encrypted Microsoft Azure SQL database (c) Data is encrypted in transit via HTTPS and at rest via TLS (d) Data will be available seven days a week, twenty-four hours a day, unless an outage has been communicated beforehand (e) Software updates when available to include enhancement and support fixes (f) A redundant environment for high availability to the software (g) Integrated security within the hosted platform (h) Physical security of the data centers (locks, cameras, biometric devices, card readers, alarms) (i) Firewalls, application gateways and IDS to protect the network 	3/1/2016	8/31/2017

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Appendix One
Description of Services

<ul style="list-style-type: none"> (j) Access Control Lists (ACLs) applied to virtual local area networks (VLANs) and applications (k) Authentication and authorization of persons or processes that request access to data (l) Hardening of the servers and operating system instances (m) Redundant internal and external DNS infrastructure with restricted write access (n) Securing of virtual machine objects (o) Securing of static and dynamic storage containers (p) System notification will be posted in advance of any planned maintenance (q) Compliance with the requirements of The Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99); the Federal law that protects the privacy of student education records (r) Security audits on the system will be performed twice a year and results are confidential 		
<p>7. Back-up and Disaster Recovery</p> <p>FitnessGram 2015 will be hosted and managed as part of the Microsoft Azure platform. Data backup, redundancy and other associated support services will be managed within this environment.</p>	3/1/2016	8/31/2017
<p>8. Ensure the Quality of All Communication Prepared and Disseminated</p> <p>All communication and materials related to FG must be reviewed and approved by TEA prior to distributing to campuses, districts, administrators, teachers, SIS vendors, and/or others involved in the FG implementation.</p>	3/1/2016	8/31/2017
<p>9. Deliver and Coordinate Communication and Activities with TEA and FG Districts</p> <p>Maintain and make available guidance and support documents, FAQs, and informational videos for FG. Maintain and update, as needed, all user guidelines and participation agreements. Ensure that TEA is notified of and has approved any changes to formal agreements, policies, or guidelines. Communicate and collaborate as appropriate with key organizations.</p>	3/1/2016	8/31/2017
<p>10. Provide and Maintain FG Infrastructure</p> <p>Ensure servers are sufficient to adequately support FG. Ensure that all appropriate software licensures are in compliance and up to date. New systems and changes to existing systems or services must be approved by TEA prior to beginning work and the changes must be communicated to all stakeholders in a timely manner.</p>	3/1/2016	8/31/2017
<p>11. Maintain Accurate Data Related to FG and Provide Project Reporting and Record Keeping</p> <p>Maintain and make available up-to-date data related to FG as determined by TEA. Invoices for record keeping purposes shall be provided to TEA at the end of each month for processing. Adhere to all applicable laws and rules related to confidential student data. Promptly respond to requests from TEA and other relevant stakeholders. Notify TEA within three working days of requests for data or information regarding the FG site licenses from legislative staff, news media, or other key stakeholders. Participate in bi-weekly collaboration calls with TEA. Ensure that LEAs have access to their historical data related to FG</p>	3/1/2016	8/31/2017

TMB P55

CONTRACT TERMS AND CONDITIONS

A. Definitions as used in these Contract Terms and Conditions:

- *Contract* means the entire document, and all of TEA's attachments, appendices, schedules (including but not limited to the Terms and Conditions and the Special Provisions), amendments and extensions of or to the Standard Contract;
- *Receiving Agency, Party, Owner or TEA* means the Texas Education Agency;
- *Proposer or Respondent* may be used interchangeably in the competitive solicitation. Contractor and Respondent infer pre RFP award status and Contractor infers to post RFP award status;
- *Contractor or Performing Agency* means the party or parties to this Contract other than TEA, including its or their officers, directors, employees, agents, representatives, consultants and subcontractors, and subcontractors' officers, directors, employees, agents, representatives and consultants;
- *Project Manager/Administrator* means the respective person(s) representing TEA or Contractor, as indicated by the Contract, for the purposes of administering the Contract Project;
- *Contract Project* means the purpose intended to be achieved through the Contract;
- *Amendment* means a Contract that is revised in any respect, and includes both the original Contract, and any subsequent amendments or extensions thereto;
- *Major Contract* means any contract over \$10 million cumulative over the life of the contract.
- *Works* means all tangible or intangible material, products, ideas, documents or works of authorship prepared or created by Contractor for or on behalf of TEA at any time after the beginning date of the Contract ("Works" includes but is not limited to computer software, data, information, images, illustrations, designs, graphics, drawings, educational materials, assessment forms, testing materials, logos, trademarks, trade dress, trade name, patentable materials, etc.) this does not include any pre-existing materials of Contractor, or any licensed third party materials provided by Contractor; and,
- *Intellectual Property Rights* means the worldwide intangible legal rights or interests evidenced by or embodied in: (a) any idea, design, concept, method, process, technique, apparatus, invention, discovery, or improvement, including any patents, trade secrets, and know-how; (b) any work of authorship, including any copyrights, moral rights or neighboring rights; (c) any trademark, service mark, trade dress, trade name, or other indicia of source or origin; (d) domain name registrations; and (e) any other similar rights. The Intellectual Property Rights of a party include all worldwide intangible legal rights or interests that the party may have acquired by assignment or license with the right to grant sublicenses.

- B. Contingency:** The Contract, including any amendments, extensions or subsequent contracts are executed by TEA contingent upon the availability of appropriated funds by legislative act. Notwithstanding any other provision in this Contract or any other document, this Contract is void upon the insufficiency (in TEA's discretion) or unavailability of appropriated funds. In addition, this Contract may be terminated by TEA at any time for any reason upon notice to Contractor. Expenditures and/or activities for which Contractor may claim reimbursement shall not be accrued or claimed subsequent to receipt of such notice from TEA.

C. Indemnification:

Acts or Omissions

Contractor shall indemnify and hold harmless the State of Texas and the Texas Education Agency, and/or their officers, agents, employees, representatives, Contractors, assignees, and/or designees from any and all liability, actions, claims, demands, or suits, and all related costs, attorney fees, and expenses arising out of, or resulting from any acts or omissions of the Contractor or its agents, employees, subcontractors, Order Fulfillers, or suppliers of subcontractors in the execution or performance of the Contract and any Purchase Orders issued under the Contract. The defense shall be coordinated by Contractor with the Office of the Attorney General when Texas state agencies are named defendants in any lawsuit and Contractor may not agree to any settlement without first obtaining the concurrence from the Office of the Attorney General. Contractor and TEA agree to furnish timely written notice to each other of any such claim.

Infringements

- 1) Contractor shall indemnify and hold harmless the State of Texas and the Texas Education Agency, and/or their employees, agents, representatives, Contractors, assignees, and/or designees from any and all third party claims involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with the performances or actions of Contractor pursuant to this Contract. Contractor and TEA agree to furnish timely written notice to each other of any such claim. Contractor shall be liable to pay all costs of defense including attorneys' fees. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL.

- 2) Contractor shall have no liability under this section if the alleged infringement is caused in whole or in part by: (i) use of the product or service for a purpose or in a manner for which the product or service was not designed, (ii) any modification made to the product without Contractor's written approval, (iii) any modifications made to the product by the Contractor pursuant to TEA's specific instructions, (iv) any intellectual property right owned by or licensed to TEA, or (v) any use of the product or service by TEA that is not in conformity with the terms of any applicable license agreement.
- 3) If Contractor becomes aware of an actual or potential claim, or TEA provides Contractor with notice of an actual or potential claim, Contractor may (or in the case of an injunction against TEA, shall), at Contractor's sole option and expense; (i) procure for the TEA the right to continue to use the affected portion of the product or service, or (ii) modify or replace the affected portion of the product or service with functionally equivalent or superior product or service so that TEA's use is non-infringing.

CONTRACTOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, CONTRACTOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF CONTRACTOR'S AND CONTRACTOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT. CONTRACTOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. THE TEA AND/OR THE STATE SHALL NOT BE LIABLE TO THE CONTRACTOR, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER.

CONTRACTOR AGREES TO INDEMNIFY AND HOLD HARMLESS TEA, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND/OR ASSIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION IN ITS PERFORMANCE UNDER THIS CONTRACT. CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. CONTRACTOR AND TEA AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

- D. **Subcontracting and Substitutions:** Contractor shall not assign, transfer or subcontract any of its rights or responsibilities under this Contract without prior formal written amendment to this Contract properly executed by both TEA and Contractor. TEA reserves the right to request changes in personnel assigned to the project. The TEA Project Manager must pre-approve any changes in key personnel throughout the contract term. Any changes to the HUB Subcontracting Plan (HSP) must be approved by the Agency HUB Coordinator before staffing changes are initiated. Substitutions are not permitted without written approval of the TEA Project Manager.
- E. **Encumbrances/Obligations:** All encumbrances, accounts payable, and expenditures shall occur on or between the beginning and ending dates of this Contract. All goods must have been received and all services rendered during the Contract period in order for Contractor to recover funds due. In no manner shall encumbrances be considered or reflected as accounts payable or as expenditures.
- F. **Contractor's Proposal:** Contractor's proposal that was furnished to TEA in response to a Request for Proposal is incorporated in this Contract by reference. The provisions of this Contract shall prevail, however, in all cases of conflict arising from the terms of Contractor's proposal whether such proposal is a written part of this Contract or is attached as a separate document.
- G. **Requirements, Terms, Conditions, and Assurances:** The terms, conditions, and assurances, which are stated in the Request for Proposal, in response to which Contractor submitted a proposal, are incorporated herein by reference for all purposes, although the current Terms and Conditions shall prevail in the event of conflict.
- H. **Records Retention and the Right to Audit:** Contractor shall maintain its records and accounts in a manner which shall assure a full accounting for all funds received and expended by Contractor in connection with the Contract Project. These records and accounts shall be retained by Contractor and made available for programmatic or financial audit by TEA and by others authorized by law or regulation to make such an audit for a period of not less than seven (7) years from the date of completion of the Contract Project or the date of the receipt by TEA of Contractor's final claim for payment or final expenditure report in connection with this Contract, whichever is later. If an audit has been announced, the records shall be retained until such audit has been completed.

Pursuant to Government Code, the state auditor may conduct an audit or investigation of the Contractor or any other entity or person receiving funds from the state directly under this contract or indirectly through a subcontract under this Contract. The acceptance of funds by the Contractor or any other entity or person directly under this Contract or indirectly through a subcontract under this Contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, the Contractor or other entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit. Contractor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through the Contractor and the requirement to cooperate is included in any subcontract it awards.

Contractor further agrees that acceptance of funds under this Contract acts as acceptance for TEA to conduct an audit or investigation in connection with those funds. Contractor, subcontractors, and any entities receiving funds through this Contract shall cooperate fully with TEA in the conduct of the audit or investigation, including providing all records pertaining to this Contract that are requested.

- I. **Intellectual Property Ownership:** Contractor agrees that all Works are, upon creation, works made for hire and the sole property of TEA. If the Works are, under applicable law, not considered works made for hire, Contractor hereby assigns to TEA all worldwide ownership of all rights, including the Intellectual Property Rights, in the Works, without the necessity of any further consideration, and TEA can obtain and hold in its own name all such rights to the Works. Contractor agrees to maintain written agreements with all officers, directors, employees, agents, representatives and subcontractors engaged by Contractor for the Contract Project, granting Contractor rights sufficient to support the performance and grant of rights to TEA by Contractor. Copies of such agreements shall be provided to TEA promptly upon request.

Contractor warrants that (i) it has the authority to grant the rights herein granted, (ii) it has not assigned or transferred any right, title, or interest to the Works or Intellectual Property Rights that would conflict with its obligations under the Contract, and Contractor will not enter into any such agreements, and (iii) the Works will be original and will not infringe any intellectual property rights of any other person or entity. These warranties will survive the termination of the Contract. If any preexisting rights are embodied in the Works, Contractor grants to TEA the irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license to (i) use, execute, reproduce, display, perform, distribute copies of, and prepare derivative works based upon such preexisting rights and any derivative works thereof and (ii) authorize others to do any or all of the foregoing. Contractor agrees to notify TEA on delivery of the Works if they include any such preexisting rights. On request, Contractor will provide TEA with documentation indicating a third party's written approval for Contractor to use any preexisting rights that may be embodied or reflected in the Works.

Contractor agrees, at Contractor's expense, to indemnify, hold harmless and defend TEA and the State from claims involving infringement of third parties' licenses, trademarks, copyrights or patents.

For School Districts and Nonprofit Organizations: The foregoing Intellectual Property Ownership provisions apply to any school districts, nonprofit organizations, and their employees, agents, representatives, consultants and subcontractors.

For Education Service Centers (ESCs): The foregoing Intellectual Property Ownership provisions apply to an education service center (ESC) and its employees, agents, representatives, consultants, and subcontractors. If an ESC or any of its subcontractor(s) wish to obtain a license agreement to use, advertise, offer for sale, sell, distribute, publicly display, publicly perform or reproduce the Works, or make derivative works from the Works, then express written permission must first be obtained from TEA Legal Division.

For Colleges and Universities: The foregoing Intellectual Property Ownership provisions apply to any colleges and universities and their employees, agents, representatives, consultants, and subcontractors; provided, that for all Works created or conceived by colleges or universities under the Contract, they are granted a non-exclusive, non-transferable, royalty-free license to use the Works for their own academic and educational purposes only. Colleges and universities are prohibited, however, from advertising, offering for sale, selling, distributing, publicly displaying, publicly performing, or reproducing the Works, or making derivative works from the Works that are created or conceived under this Contract, without the express written permission of TEA Legal Division.

- J. **Time Delays; Suspension; Sanctions for Failure to Perform; Noncompliance:**

Time is of the Essence.

Contractor's timely performance is essential to this Contract.

Suspension

If this Contract is suspended by TEA prior to its expiration date, the reasonable monetary value of services properly performed by Contractor pursuant to this Contract prior to suspension shall be determined by TEA and paid to Contractor as soon as reasonably possible. TEA shall not be required to pay any standby hourly rates during a suspension of Work, if TEA suspends performance of the Work because the Work is defective, or Contractor fails to supply sufficiently skilled workers or suitable materials or equipment, or fails to provide required insurance coverage, or fails to furnish or perform the Work in such a way that the completed Work will conform to this Contract.

Sanctions

If Contractor, in TEA's sole determination, fails or refuses for any reason to comply with or perform any of its obligations under this Contract, TEA may impose such sanctions as it may deem appropriate. This includes but is not limited to the withholding of payments to Contractor until Contractor complies; the cancellation, termination, or suspension of this Contract in whole or in part; and the seeking of other remedies as may be provided by this Contract or by law. Any cancellation, termination, or suspension of this Contract, if imposed, shall become effective at the close of business on the day of Contractor's receipt of written notice thereof from TEA.

- K. Information Security Requirements: Access to Confidential TEA Information.** Contractor represents and warrants that it will take all necessary and appropriate action within its abilities to safeguard TEA Confidential Information and to protect it from unauthorized disclosure. If Contractor discloses any TEA confidential information to a subcontractor or agent, Contractor will require the subcontractor or agent to comply with the same restrictions and obligations as are imposed on Contractor. Whenever communications with Contractor necessitate the release of Confidential TEA Information, additional TEA Confidential forms will need to be signed by each individual who will require access to or may be exposed to that information. Contractor shall access TEA's systems or Confidential TEA Information only for the purposes for which it is authorized. TEA reserves the right to review the Contractor's security policy to ensure that any data that is on the Contractor's servers is secure. Contractor shall cooperate fully by making resources, personnel, and systems access available to TEA and TEA's authorized representative(s).

Contractor shall ensure that any TEA Confidential Information in the custody of Contractor is properly sanitized or destroyed when the information is no longer required to be retained by TEA or Contractor in accordance with this Contract. Electronic media used for storing any Confidential TEA Information must be sanitized by clearing, purging or destroying in accordance with such standards established by the National Institute of Standards and Technology and the Center for Internet Security. These standards are also required if the Contractor is collecting, maintaining, or analyzing data gathered, collected, or provided under this Contract. Contractor must maintain a record documenting the removal and completion of all sanitization procedures with the following information:

- a. Date and time of sanitization/destruction
- b. Description of the item(s) and serial number(s) if applicable
- c. Inventory number(s)
- d. Procedures and tools used for sanitization/destruction

No later than sixty (60) days from Contract expiration or termination or as otherwise specified in this Contract, Contractor must complete the sanitization and destruction of the data and provide to TEA all sanitization documentation.

Access to Internal TEA Network and Systems

As a condition of gaining remote access to any internal TEA network and systems, Contractor must comply with TEA's policies and procedures. TEA's remote access request procedures will require Contractor to submit TEA Applicable Access Request forms for TEA's review and approval. Remote access technologies provided by Contractor must be approved by TEA's Information Security Officer. TEA, in its sole discretion, may deny network or system access to any individual that does not complete the required forms. Contractor must secure its own connected systems in a manner consistent with TEA's requirements. TEA reserves the right to audit the security measures in effect on Contractor's connected systems without prior warning. TEA also reserves the right to immediately terminate network and system connections not meeting such requirements.

Disclosure of Security Breach

Contractor shall provide notice to TEA's Project Manager and TEA's Information Security Officer as soon as possible following Contractor's discovery or reasonable belief that there has been unauthorized use, exposure, access, disclosure, compromise, modification, or loss of sensitive or confidential Comptroller information ("Security Incident"). Within twenty-four (24) hours of the discovery or reasonable belief of a Security Incident, Contractor shall provide a written report to TEA's Information Security Officer detailing the circumstances of the incident which includes at a minimum:

- (1) Description of the nature of the Security Incident
- (2) The type of TEA information involved
- (3) Who may have obtained the information
- (4) What steps Contractor has taken or will take to investigate the Security Incident
- (5) What steps Contractor has taken or will take to mitigate any negative effect of the Security Incident
- (6) A point of contact for additional information

Each day thereafter until the investigation is complete, Contractor shall provide TEA's Information Security Officer with a written report regarding the status of the investigation and the following additional information as it becomes available:

- (1) Who is known or suspected to have gained unauthorized access to TEA information
- (2) Whether there is any knowledge if TEA information has been abused or compromised

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- (3) What additional steps Contractor has taken or will take to investigate the Security Incident
- (4) What steps Contractor has taken or will take to mitigate any negative effect of the Security Incident
- (5) What corrective action Contractor has taken or will take to prevent future similar unauthorized use or disclosure

Contractor shall confer with TEA's Chief Information Security Officer regarding the proper course of the investigation and risk mitigation. TEA reserves the right to conduct an independent investigation of any Security Incident, and should TEA choose to do so, Contractor shall cooperate fully by making resources, personnel, and systems access available to TEA and TEA's authorized representative(s). Subject to review and approval of TEA's Information Security Officer, Contractor, at its own cost, shall provide notice that satisfies the requirements of applicable law to individuals whose personal, confidential, or privileged data were compromised or likely compromised as a result of the Security Incident. If TEA, in its sole discretion, elects to send its own separate notice, then all costs associated with preparing and providing notice shall be reimbursed to TEA by Contractor. If Contractor does not reimburse such costs within thirty (30) days of TEA's written request, then TEA shall have the right to collect such costs.

- L. Refunds Due to TEA:** If TEA determines that TEA is due a refund of money paid to Contractor pursuant to this Contract, Contractor shall pay the money due to TEA within thirty (30) days of Contractor's receipt of written notice that such money is due to TEA. If Contractor fails to make timely payment, TEA may obtain such money from Contractor by any means permitted by law, including but not limited to offset, counterclaim, cancellation, termination, suspension, total withholding, and/or disapproval of all or any subsequent applications for said funds.
- M. Capital Outlay:** If Contractor purchases capital outlay (furniture and/or equipment) to accomplish the Contract Project, title will remain with Contractor for the period of the Contract. TEA reserves the right to transfer capital outlay items for Contract noncompliance during the Contract period or as needed after the ending date of the Contract. This provision applies to any and all furniture and/or equipment regardless of unit price and how the item is classified in Contractor's accounting record. This provision is applicable when federal funds are utilized for the Contract.
- N. TEA Property (terms):** In the event of loss, damage or destruction of any property owned by or loaned by TEA while in the custody or control of Contractor, Contractor shall indemnify TEA and pay to TEA the full value of or the full cost of repair or replacement of such property, whichever is the greater, within thirty (30) days of Contractor's receipt of written notice of TEA's determination of the amount due. This applies whether the property is developed or purchased by Contractor pursuant to this Contract or is provided by TEA to Contractor for use in the Contract Project. If Contractor fails to make timely payment, TEA may obtain such money from Contractor by any means permitted by law, including but not limited to offset or counterclaim against any money otherwise due to Contractor by TEA.
- O. State of Texas Laws:** In the conduct of the Contract Project, Contractor shall be subject to laws or rules of the State of Texas pertaining to and or governing this Contract and the Contract Project. This Contract constitutes the entire agreement between TEA and Contractor for the accomplishment of the Contract Project. This Contract shall be interpreted according to the laws of the State of Texas except as may be otherwise provided for in this Contract.
- P. Federal Regulations Applicable to All Federally Funded Contracts:** The Code of Federal Regulations (CFR) annual edition is the codification of the general and permanent rules published in the Federal Register by the departments and agencies of the Federal Government produced by the Office of the Federal Register (OFR) and the Government Publishing Office. Website: http://www.ecfr.gov/cgi-bin/text-idx?SID=6214841a79953f26c5c230d72d6b70a1&tpl=/ecfrbrowse/Title02/2cfr200_main_02.tpl
- Q. Federal Rules, Laws, and Regulations That Apply to all Federal Programs:** Contractor shall be subject to and shall abide by all federal laws, rules, and regulations, pertaining to the Contract Project, including, but not limited to:
1. Americans With Disabilities Act, P.L. 101-336, 42 U.S.C. sec. 12101, and the regulations effectuating its provisions contained in 28 CFR Parts 35 and 36, 29 CFR Part 1630, and 47 CFR Parts 0 and 64
 2. Title VI of the Civil Rights Act of 1964, as amended (prohibition of discrimination by race, color, or national origin), and the regulations effectuating its provisions contained in 34 CFR Part 100
 3. Title IX of the Education Amendments 1972, as amended (prohibition of sex discrimination in educational institutions) and the regulations effectuating its provisions contained in 34 CFR Part 106, if Contractor is an educational institution
 4. Section 504 of the Rehabilitation Act of 1973, as amended (nondiscrimination on the basis of handicapping condition), and the regulations effectuating its provisions contained in 34 CFR Parts 104 and 105
 5. The Age Discrimination Act of 1975, as amended (prohibition of discrimination on basis of age), and the implementing regulations contained in 34 CFR, Part 110
 6. Family Educational Rights and Privacy Act of 1975, as amended, and the implementing regulations contained in 34 CFR, Part 99, if Contractor is an educational institution

TMB 3510

7. Section 509 of H.R. 5233 as incorporated by reference in P.L. 99-500 and P.L. 99-591 (prohibition against the use of federal grant funds to influence legislation pending before Congress)
8. P.L. 103-227, Title X, Miscellaneous Provisions of the GOALS 2000: Educate America Act; P.L. 103-382, Title XIV, Terms and Conditions of the Elementary and Secondary Education Act, as amended
9. General Education Provisions Act, as amended

R. Point of Contact and Escalation: All notices, reports and correspondence required by this Contract shall be in writing and delivered to the TEA Project Manager listed below or their successors in office. Within thirty (30) days of execution of a contract, the respective Parties will designate the next level of personnel within each organization to address conflicts or ambiguity that cannot be resolved at the Project Manager level.

TEA
 Mackie V. Spradley, Ph.D.
 Director of Enrichment Education and Programs
 Curriculum Division
 Texas Education Agency
 William B. Travis Building
 1701 N. Congress Avenue
 Austin, Texas 78701

CONTRACTOR
 John Bals
 Senior Vice President of Sales
 BSN Sports LLC
 1901 Diplomat Drive
 Farmers Branch, Texas 75234-8990
 Phone: (972) 406-3426
 Fax: (866) 316-5277

S. Forms, Assurances, and Reports: Contractor shall timely make and file with the proper authorities all forms, assurances and reports required by federal laws and regulations. TEA shall be responsible for reporting to the proper authorities any failure by Contractor to comply with the foregoing laws and regulations coming to TEA's attention, and may deny payment or recover payments made by TEA to Contractor in the event of Contractor's failure so to comply. Contractor who is indebted or owes delinquent taxes to the state will have any payments under the Contract applied toward the debt or delinquent taxes owed the state until the account is paid in full, regardless of when the debt or delinquency was incurred. This provision does not apply if the warrant or transfer results in payments being made in whole or in part with money paid to the state by the Federal Government. Pursuant to 34 TAC 201.14 -18 and TGC 2161, Contractors shall maintain business records documenting compliance with the HUB subcontracting plan (HSP) and shall submit a compliance report to the contracting agency monthly, in the format required by the Agency. The compliance report submission shall be required as a condition for payment. If the Contractor subcontracts any part of the contract in a manner that is not consistent with its HUB subcontracting plan, the selected respondent must submit a revised HUB subcontracting plan before subcontracting any of the work under the contract.

If the Contractor subcontracts any of the work without prior authorization and without complying with this section, the Contractor is deemed to have breached the contract and is subject to any remedial actions provided by Government Code, Chapter 2161, and other applicable state law.

T. Signature Authority; Final Expression; Superseding Document: Contractor certifies that the person signing this Contract has been properly delegated this authority. The Contract represents the final and complete expression of the terms of agreement between the parties. The Contract supersedes any previous understandings or negotiations between the parties. Any representations, oral statements, promises or warranties that differ from the Contract shall have no force or effect. The Contract may be modified, amended or extended only by formal written amendment properly executed by both TEA and Contractor.

U. Antitrust: By signing this Contract, Contractor, represents and warrants that neither Contractor nor any firm, corporation, partnership, or institution represented by Contractor, or anyone acting for such firm, corporation or institution has, (1) violated the antitrust laws of the State of Texas under Tex. Bus. & Com. Code, Chapter 15, or the federal antitrust laws; or (2) communicated directly or indirectly the Proposal to any competitor or any other person engaged in such line of business during the procurement process for this Contract.

V. Family Code Applicability: By signing this Contract, Contractor, if other than a state Party, certifies that under Section 231.006, Family Code, that Contractor is not ineligible to receive specified grant, loan, or payment under this Contract and acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate. TEA reserves the right to terminate this Contract if Contractor is found to be ineligible to receive payment. If Contractor is found to be ineligible to receive payment and the Contract is terminated, Contractor is liable to TEA for attorney's fees, the costs necessary to complete the Contract, including the cost of advertising and awarding a second contract, and any other damages or relief provided by law or equity.

W. Dispute Resolution: The dispute resolution process provided for in Chapter 2260 of the Texas Government Code must be used by TEA and Contractor to attempt to resolve all disputes arising under this Contract. The parties may agree to mediation of their dispute at any time. However, if all issues in dispute are not completely resolved through direct negotiations between the parties within 180 days after the Agency receives Contractor's notice of claim, then the parties must submit the dispute to mediation before a mutually acceptable mediator in Travis County, Texas. The mediation must be completed on or before 270 days after the Agency receives Contractor's notice of claim. Completion of the mediation is a condition precedent to the filing of a contested case hearing under Chapter 2260. The Agency's participation in mediation or any other dispute resolution process shall not waive any of the Agency's contractual or legal rights and remedies, including but not limited to sovereign immunity.

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- X. Interpretation:** In the case of conflicts arising in the interpretation of wording and/or meaning of various sections, parts, Appendices, Terms and Conditions, Special Provisions, Exhibits, and Attachments or other documents, the TEA Contract and its Terms and Conditions, Appendices and Special Provisions shall take precedence over all other documents which are a part of this Contract.
- Y. Education Service Center:** No funds transferred to Regional Education Service Centers or to school districts may be used to hire a registered lobbyist.
- Z. Compliance with Laws:** Contractor shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any court or administrative bodies or tribunals in any matter affecting Contractor's performance, including if applicable, workers' compensation laws, minimum and maximum salary and wage statutes and regulations, prompt payment and licensing laws and regulations. For the entire duration of the Contract, Contractor shall maintain all required licenses, certifications, permits, and any other documentation necessary to perform this Contract. When required or requested by the Agency, Contractor shall furnish TEA with satisfactory proof of its compliance with this provision.
- AA. Public Information:** The TEA is subject to the provisions of the Texas Public Information Act. If a request for disclosure of this Contract or any information related to the goods or services provided under the Contract or information provided to the TEA under this Contract constituting a record under the Act is received by the TEA, the information must qualify for an exception provided by the Texas Public Information Act in order to be withheld from public disclosure. Contractor authorizes the TEA to submit any information contained in the Contract, provided under the Contract, or otherwise requested to be disclosed, including information Contractor has labeled as confidential proprietary information, to the Office of the Attorney General for a determination as to whether any such information may be exempt from public disclosure under the Act. If the TEA does not have a good faith belief that information may be subject to an exception to disclosure, the TEA is not obligating itself by this Contract to submit the information to the Attorney General. It shall be the responsibility of the Contractor to make any legal argument to the Attorney General or appropriate court of law regarding the exception of the information in question from disclosure. The Contractor waives any claim against and releases from liability the TEA, its officers, employees, agents, and attorneys with respect to disclosure of information provided under or in this Contract or otherwise created, assembled, maintained, or held by the Contractor and determined by the Attorney General or a court of law to be subject to disclosure under the Texas Public Information Act.
- Contractor is required to make any information created or exchanged with the state pursuant to this Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the state. The TEA Project Manager will provide the specific format by which the Contractor is required to make the information accessible by the public.
- BB. Gratuities:** By signing this Contract, Contractor represents and warrants that the Contractor has not given, offer to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted response.
- CC. Venue and Jurisdiction:** Subject to and without waiving any of the Agency's rights, including sovereign immunity, this Contract is governed by and construed under and in accordance with the laws of the State of Texas. Venue for any suit concerning this solicitation and any resulting contract or purchase order shall be in a court of competent jurisdiction in Travis County, Texas.
- DD. Protests:** Any actual or prospective Bidder, Respondent, or Contractor who is aggrieved in connection with the solicitation, evaluation, or award of this or any other contract by the Texas Education Agency may submit a formal protest to the Director of the Agency's Contracts and Purchasing Division. This protest procedure shall be the exclusive method by which anyone may make a challenge to any aspect of the Agency's contracting process. The Agency will not be required to consider the merits of any protest unless the written protest is submitted within ten (10) working days after such aggrieved person knows, or reasonably should have known, of the occurrence of the action which is protested. The protest document must meet with all requirements in applicable law and Agency's rules (Title 19 of the Texas Administrative Code, at § 30.2002) <http://ritter.tea.state.tx.us/rules/tac/index.htm>.
- If the protest procedure results in a final determination by the Agency that a violation of law has occurred in its contracting process in a case in which a contract has been awarded, then the Agency may declare the contract void at inception. In that event, the party who had been awarded the contract shall have no rights under the contract and no remedies under the law against the Agency.
- EE. Liability for and Payment of Taxes:** Contractor represents and warrants that it shall pay all taxes or similar amounts resulting from this Contract, including, but not limited to, any federal, State, or local income, sales or excise taxes of Contractor or its employees. TEA shall not be liable for any taxes resulting from this Contract.
- FF. Severability:** In the event that any provision of this Contract is later determined to be invalid, void, or unenforceable, the invalid provision will be deemed severable and stricken from the Contract as if it had never been incorporated herein. The remaining terms, provisions, covenants, and conditions of this Contract shall remain in full force and effect, and shall in no way be affected, impaired, or invalidated.



- GG. Conformance:** The Contractor warrants that all goods and services furnished shall conform in all respects to the terms of this Contract, including any drawings, specifications or standards incorporated herein, and any defects in materials, workmanship, and free from such defects in design. In addition, contractor warrants that goods and services are suitable for and will perform in accordance with the purposes for which they are intended.
- HH. Felony Criminal Convictions:** Contractor represents and warrants that Contractor has not and Contractor's employees assigned to TEA projects have not been convicted of a felony criminal offense, or that, if such a conviction has occurred, Contractor has fully advised TEA as to the facts and circumstances surrounding the conviction.
- II. Criminal Background Checks:** If during the term of this Contract, Contractor, and/or Contractor staff, or subcontractor have access to Texas public school campuses, all Contractor and/or Contractor's staff must submit to a national criminal history record information review (includes fingerprinting) and meet all eligibility standards and criteria as set by Agency before serving in assignments on behalf of the Agency. This requirement applies to all individuals who currently serve or will serve in Agency assignments that have the possibility of direct contact with students. Assignments are contingent upon meeting Agency eligibility standards. Contractor and/or any staff member of Contractor who may perform services under this contract must complete this criminal history review before the beginning of an assignment. If said individuals have not completed this requirement or the review results in a determination that Contractor is not eligible for assignment, this contract will be terminated effective immediately or the date of notice of non-eligibility, whichever is earliest.
- JJ. Assignment of Contract:** This Contract may not be assigned, sold, or transferred without the express written consent of the TEA Purchasing, Contracts, and Agency Services (PCAS) Division. An attempted assignment after Contract award without the TEA approval will constitute a material breach of contract.
- KK. Buy Texas:** In accordance with Government Code, Section 2155.444, the State of Texas requires that during the performance of a contract for services, Contractor shall purchase products and materials produced in the State of Texas when available at a price and time comparable to products and materials produced outside the state. This provision does not apply if Contractor receives any federal funds under this Contract.
- LL. Excluded Parties List System:** The Texas Education Agency and the Contractor must adhere to the directions provided in the President's Executive Order (EO) 13224, Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, which may be viewed at <http://www.whitehouse.gov/briefing-room/presidential-actions/executive-orders>. That Executive Order prohibits any transaction or dealing by United States persons, including but not limited to the making or receiving of any contribution of funds, goods, or services to or for the benefit of those persons listed in the General Services Administration's Excluded Parties List System (EPLS) which may be viewed on the System for Award Management (SAM) site at <http://www.sam.gov>.
- MM. Suspension and Debarment:** Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntary excluded from participation in this transaction by any federal, state or local government entity and that Contractor is in compliance with the State of Texas statutes and rules relating to procurement. If Contractor is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this contract.
- NN. Electronic and Information Resources Accessibility Standards and Reporting:** State agencies shall procure products which comply with the State of Texas Accessibility requirements for Electronic Information Resources specified in 1TAC Chapter 213 when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation.
- Section 508 of the US Rehabilitation Act of 1973 has been revised and adopted. Therefore, all current and potential Contractors are hereby notified of the requirement. The current technical requirements for accessibility contained within this regulation form the basis for our Texas TAC rules on EIR Accessibility.
- This refresh of 508 uses the WCAG 2.0 AA Accessibility Guidelines (also ISO/IEC standard 40500) as the new technical standard that Federal agencies are now required to meet when procuring products and services. With the adoption of 508 requirements being adopted, DIR will be modifying the TAC rules to synchronize with it.
- Given this coming change, all Texas agencies and institutions of higher education have begun using or specifying WCAG 2.0 AA guidelines for the design of new websites or web applications. The rationale is twofold:
1. It could be technically difficult and expensive to bring these websites/applications to WCAG 2.0 AA later.
 2. WG 2.0 AA is a superior, more flexible standard and is in use all over the world. If a website is compliant with WCAG 2.0 AA, it will, by default comply with our current TAC rules on EIR Accessibility.

Web development Contractors should already be familiar with designing to this standard, and their ability to meet these standards should be a strong consideration in the selection process.

The free online resources listed below are available to assist developers and content producers in transitioning to these guidelines.

WCAG 2.0 at a glance

IBM Developer Guidelines Web Checklist

Webaim.org Accessibility Checklist

Contractor must employ real users with disabilities for manual testing. Contract is required to provide a report that will include the results of auto-testing, screen-by-screen assessments, pass/fail status for each of the identified compliance standards to be met and recommendations for how to repair the screens/pages that do not meet the standards. Remediation recommendations shall be provided to the code level. The report should include documentation of the experience of real users with disabilities and may recommend techniques for improving the usable accessibility of the application. Awarded Vendor shall validate, by title, if all accessibility requirements have been met.

All websites must follow Federal 508 accessibility requirements and Web Content Accessibility Guidelines (WCAG) 2.0 AA standards and be tested for accessibility before acceptance by TEA. For sites developed outside of TEA, the contractor must contract with a third party with expertise and a proven track record in accessibility testing. The third party must evaluate the site and produce a report that verifies the site is compliant to (WCAG) 2.0 AA.

- OO. Collusion:** Contractor certifies and represents that Contractor has not colluded with, nor received any assistance from, any person who was paid by TEA to prepare specifications or a solicitation on which a Contractor's bid or proposal is based and will not allow any person who prepared the respective specifications or solicitation to participate financially in any contract award.
- PP. Social Security Numbers Withheld:** TEA will not provide Social Security Numbers (SSNs) to any Contractor under this contract unless specifically specified as part of the project requirements. TEA, its Contractors and their subcontractors, will not require or request school districts to provide SSNs under this contract. Contractor agrees that in executing tasks on behalf of the TEA, they will not use any student-identifying information in any way that violates the provisions of FERPA, and will destroy or return all student-identifying information to TEA within thirty (30) days of project completion. An authorized officer of the company must certify that ALL records have either been properly destroyed or returned to the Agency in order to close out the contract.
- QQ. Proprietary; Confidential Information; Nondisclosure; Press Releases:** All information gathered, produced, derived, obtained, analyzed, controlled or Accessed by Contractor in connection with a contract resulting from this RFP ("Confidential Information") shall be and remain Confidential Information and shall not be released or disclosed by Contractor without the prior written consent of the TEA, which consent must specifically identify the Confidential Information to be disclosed by Contractor and the nature of the disclosure for which consent is sought. Contractor, its employees and subcontractors, agree that in executing tasks on behalf of the TEA, they will not use any student-identifying information in any way that violates the provisions of FERPA, and will destroy or return all student-identifying information within thirty (30) days of project completion. Contractor also agrees not to disclose any information to which it is privy under this Contract without the prior consent of the agency. Contractor will indemnify and hold harmless the State of Texas, its officers and employees, and TEA, its officers and employees for any claims or damages that arise from the disclosure by Contractor or its Contractors of information held by the State of Texas.
- Except when defined as part of the Work under this Contract, Contractor will not make any press releases, public statements, or advertisement referring to the Project or the engagement of Contractor in connection with the Project, or release any information relative to the Project for publication, advertisement or any other purpose without the prior written approval of TEA.
- RR. Independent Contractor:** Contractor shall serve as an independent Contractor in providing services under this Contract. Contractor's employees are not and shall not be construed as employees or agents of the State of Texas.
- SS. Contractor Performance:** All state agencies must report unsatisfactory Contractor performance on purchases over \$25,000. Contractors who are in default or otherwise not in good standing under any other current or prior contract with TEA at the time of selection will not be eligible for award of this contract. A Contractor's past performance will be measured based upon pass/fail criteria, in compliance with applicable provisions of §§2155.074, 2155.075, 2156.007, 2157.003, and 2157.125, Gov't Code. Contractor s may fail this selection criterion for any of the following conditions: A score of less than 90% in the Contractor Performance System, currently under a Corrective Action Plan, having repeated negative Contractor performance reports for the same reason, having purchase orders that have been cancelled in the previous 12 months for non-performance (i.e. late delivery, etc.). TEA may conduct reference checks with other entities regarding past performance. In addition to evaluating performance through the Contractor Performance Tracking System (as authorized by 34 Texas Administrative Code §20.108), TEA may examine other sources of Contractor performance including, but not limited to, notices of termination, cure notices, assessments of liquidated damages, litigation, audit reports, and non-renewals of contracts. Any such investigations shall be at the sole discretion of TEA, and any negative findings, as determined by TEA, may result in non-award to the Contractor.

Agencies report satisfactory and exceptional Contractor performance to assist in determining best value. In accordance with Texas Government Code, §2155.074 and §2155.75, Contractor performance may be used as a factor in future contract awards. Contractor performance information is located on the CPA website at http://www.cpa.state.tx.us/procurement/prog/vendor_performance/

TT. Termination: This Contract shall terminate upon full performance of all requirements contained in this Contract, unless otherwise extended or renewed as provided in accordance with the Contract terms and conditions.

1. **Termination for Convenience:** TEA may terminate this Contract at any time, in whole or in part, without penalty, by providing fifteen (15) calendar days advance written notice to the other Party. In the event of such a termination, the Contractor shall, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination. TEA shall be liable for reimbursing only those expenses incurred by the Contractor that are permitted, properly performed under this Contract and were incurred prior to the effective termination date.
2. **Termination for Cause/Default:** If the Contractor fails to provide the goods or services contracted for according to the provisions of the Contract, or fails to comply with any of the terms or conditions of the Contract, TEA may, upon written notice of default to the Contractor, immediately terminate all or any part of the Contract. Termination is not an exclusive remedy, but will be in addition to any other rights and remedies provided in equity, by law or under the Contract.

TEA may exercise any other right, remedy or privilege which may be available to it under applicable law of the state and any other applicable law or may proceed by appropriate court action to enforce the provisions of the Contract, or to recover damages for the breach of any agreement being derived from the Contract. The exercise of any of the foregoing remedies will not constitute a termination of the Contract unless TEA notifies the Contractor in writing prior to the exercise of such remedy.

The Contractor shall remain liable for all covenants and indemnities under the Contract. The Contractor shall be liable for all costs and expenses, including court costs, incurred by TEA with respect to the enforcement of any of the remedies listed herein.

3. **Termination Due to Changes in Law:** If federal or state laws or regulations or other federal or state requirements are amended or judicially interpreted so that either Party cannot reasonably fulfill this Contract and if the Parties cannot agree to an amendment that would enable substantial continuation of the Contract, the Parties shall be discharged from any further obligations under this Contract.
4. **Rights upon Termination or Expiration of Contract:** In the event that the Contract is terminated for any reason, or upon its expiration, TEA shall retain ownership of all associated work products and documentation obtained from the Contractor under the Contract.
5. **Survival of Terms:** Termination of the Contract for any reason shall not release the Contractor from any liability or obligation set forth in the Contract that is expressly stated to survive any such termination or by its nature would be intended to be applicable following any such termination, including the provisions regarding confidentiality, indemnification, transition, records, audit, property rights, dispute resolution, and invoice and fees verification.
6. **Contract Transition:** In the event a subsequent competitive solicitation is awarded to a New Contractor, the Outgoing Contractor shall hand-over to the New Contractor all "Works" including but not limited to the following: data, materials, database access, intellectual property, source code, training materials, access to websites, asset transfer, and maintenance of service commitments. The purpose of transition planning is to ensure a seamless and continuous service when changing from one contract to another. The Outgoing Contractor will begin shipping, transmitting or providing access to all appropriate materials and data to the New Contractor within 10 days of announcement of award at the New Contractor's expense for data processing and production, packing and shipping. The Outgoing Contractor will be responsible for providing the services identified in the Contract until all records have been completely transferred to the New Contractor. The Outgoing Contractor is responsible for performing due diligence to ensure that all the transition activities are identified and completed during the Contract Transition.

The Outgoing Contractor shall submit to TEA requested reports and data. TEA will not release the final invoice until all materials are returned to TEA or their designee. The TEA Project Manager shall approve the Transition Plan prior to its implementation. The Transition Plan must minimize the impacts on continuity of operations and maintain communication with the TEA Project Manager and the New Contractor.

UU. Amendments: All Amendments to this Contract will be in a manner as prescribed by the Agency Contracting Process and are, subject to Paragraph B of the Terms and Conditions and will be made on AMENDMENT TO TEXAS EDUCATION AGENCY STANDARD CONTRACT form. All Amendments will be initiated by the TEA Contracts staff. An Amendment to this Contract will become effective on the date of signature of TEA or the effective date shown on the Amendment document whichever is first.

If the initial major contract (defined as expected value of \$10M or more) solicitation document submitted to the CPA Contract Advisory Team (CAT) changes substantially, agencies are required to resubmit their solicitation documents(s) for CAT review. Changes in the major contract solicitation are considered substantial when: 1) the solicitation change caused the estimated value for the original term of the contract, not including renewal periods, to increase by 25% or more; 2) or there are significant revisions, deletions and/or additions to the specifications, statement of work (SOW), set(s) of deliverables, performance measures, payment methodology, etc.

1. The Contractor is permitted to re-budget among direct cost categories within the approved budget to meet unanticipated requirements and to make limited changes to the approved budget without the issuance of a written Amendment as long as the total budget amount does not change. However, a revised budget document must be preapproved by the TEA Project Manager before the making the changes. Once approved, the documents must be submitted to the Contracts office for incorporation into the Contract file. Failure to submit the budget documents will result in invoices being rejected or payment delayed.
2. Written Amendments are required for the following Contract changes:
 - a. Any revision which would result in the need for additional funding;
 - b. Any revision to the scope of work, deliverables, or objectives of the Contract (regardless of whether there is an associated budget revision requiring prior approval) additionally increases of 25% or more for Major Contracts must be approved by the Comptroller;
 - c. A request to extend the period of the Contract;
 - d. Cumulative transfers among direct cost categories which exceed or are expected to exceed 25 percent of the current total approved budget category;
 - e. Any reduction of funds or reduction in the scope of work;
 - f. Whenever a line item within a class/object code is added;
 - g. An increase in the quantity of capital outlay item(s) requested; and
 - h. An increase or decrease in the number of positions charged to Contract.

All Amendments must be signed by both parties.

W. Payment: Payment for goods or services purchased with appropriated funds will be issued by electronic Direct Deposit from the State Treasury. Direct Deposit is the preferred method of payment. Any payment owed by an Agency must be transmitted electronically to the Contractor no later than 30 days after the later of:

- (1) Day on which the Agency received the goods;
- (2) Date the performance of the service under the contract is completed; or
- (3) Day on which the Agency received the complete and correct invoice for goods or services.

Invoices must be submitted to TEAAccountsPayable@tea.texas.gov, the TEA Project Manager and when applicable the designated Contract Manager. Additional information and a Direct Deposit Authorization application may be found at: <https://fm.xcpa.state.tx.us/fm/payment/index.php>.

1. Payment for service(s) described in this Contract is contingent upon satisfactory completion of the **Deliverables and Services Review and Acceptance Process**. The Contractor must submit final deliverables to TEA for review and approval prior to invoicing. These include test items developed under the contract. "Final" deliverable means a deliverable that, in the belief and testimony of the Contractor, is in final completed form and in compliance with all required specifications as defined by project documentation and this contract. TEA will review each deliverable, including test items, submitted by the Contractor for quality and alignment to the deliverable definition agreed to under the "Deliverables and Services Definition Process". TEA will have fifteen (15) working days to approve a deliverable or request revisions to the deliverable. TEA must review and approve any deliverable before it may be invoiced by the Contractor. If TEA finds a submitted deliverable to be substandard or not in compliance with the deliverable definition agreed to under the "Deliverables and Services Definition Process", the Contractor will have ten (10) working days to address the quality or other compliance requirement and resubmit the deliverable. Additional costs incurred by the Contractor that result from repeated submissions and revising of substandard deliverables will be borne solely by the Contractor and not charged against the contract or to TEA. This process will apply to all deliverables and requirements of the Contract, including test items developed. This does not preclude an arrangement that allows the Contractor to bill against a deliverable as progress is made toward completing that deliverable, so long as documentation of such progress in a form and nature satisfactory to TEA is provided and is approved by TEA. It is up to the Contractor to request incremental billing based on progress towards a deliverable, and such a request must be approved by TEA prior to submission of any invoice by the Contractor. TEA reserves the right to reject and not provide payment for deliverables found to be substandard or not in compliance with the deliverable definition agreed to under the "Deliverables and Services Definition Process", including test items developed under the Contract. The Contractor is strongly encouraged to collaborate with TEA on draft versions of any deliverables or services and request review(s) of such draft versions before submitting a final version.

2. Retainage: TEA may withhold 5% or less of each payment as retainage for certain projects. Retainage fees shall be documented in the Contract and may not be arbitrarily imposed after execution of the Contract. The release of retainage may be requested in the final invoice.
3. Unless otherwise stated, payment under this Contract will be made upon performance of services based upon submission of an expenditure report/invoice, properly prepared and certified, outlining expenditures by cost category. Include the contract number, purchase order number, and the Texas Comptroller of Public Accounts Texas Identification Number (TIN) on all invoices/expenditure reports. The cost categories provided in the expenditure report/invoice must coincide with the cost categories detailed in the approved budget. A list of tasks/activities performed during the invoice period must accompany the expenditure report/invoice. The final expenditure report/invoice is due within forty-five days after the end of the Contract. Payment on the final expenditure report is contingent upon receipt of all reports/products required by this Contract.
4. An encumbrance, accounts payable, and expenditure, as with all other contract accounting terms, will be as defined in the *Financial Accounting and Reporting Module of the TEA Financial Accountability System Resource Guide*. All goods must have been received and all services rendered by the ending date of this Contract in order for Contractor to include these costs as either expenditures or as accounts payable and, thereby, recover funds due. In no manner shall encumbrances be considered or reflected as accounts payable or as expenditures.
5. Contractor who is indebted or owes delinquent taxes to the State will have any payments under the Contract applied toward the debt or delinquent taxes owed the State until the amount is paid in full, regardless of when the debt or delinquency was incurred. TEA shall determine whether a payment law prohibits the Comptroller from issuing a warrant or initiating an electronic funds transfer to a person before TEA enters into a written contract with that person.

Contractor may verify their account status by accessing the Comptroller's website at https://fmx.cpa.state.tx.us/fm/pubs/purchase/restricted/index.php?section=indebted&page=persons_indebted

WW. Prohibition of text messaging and emailing while driving during official federal grant business:

Contractors and their staff, subcontractors, consultants etc. are prohibited from texting messaging while driving a government owned vehicle or while driving their own privately owned vehicle during official business, or from using government supplied electronic equipment to text message or email while driving. Recipients must comply with these conditions under Executive Order 13513, "Federal Leadership On Reducing Text Messaging While Driving," effective October 1, 2009.

XX. Insurance: Contractor represents and warrants that it will, within five (5) business days of being requested by the TEA, provide TEA with current certificates of insurance or other proof acceptable to TEA of the following insurance coverage:

Workers Compensation & Employers Liability: Contractor must maintain Workers' Compensation insurance coverage in accordance with statutory limits.

Workers Compensation: Statutory Limits
 Employers Liability: Each Accident \$1,000,000
 Disease- Each Employee \$1,000,000
 Disease-Policy Limit \$1,000,000

This state of Texas website (Coverage starts with 406 of the Labor code) addresses what Texas requires may be found at: <http://www.tdi.texas.gov/wc/act/index.html>

Commercial General Liability: Occurrence based:
 Bodily Injury and Property Damage
 Each occurrence limit: \$1,000,000;
 Aggregate limit: \$2,000,000;
 Medical Expense each person: \$5,000;
 Personal Injury and Advertising Liability: \$1,000,000;
 Products /Completed Operations Aggregate Limit: \$2,000,000; and
 Damage to Premises Rented to You: \$50,000

Contractor represents and warrants that all of the above coverage is with companies licensed in the state of Texas, with "A" rating from A.M. Best, and authorized to provide the corresponding coverage. Contractor also represents and warrants that all policies contain endorsements prohibiting cancellation except upon at least thirty (30) days prior written notice to TEA. Contractor represents and warrants that it shall maintain the above insurance coverage during the term of this Contract, and shall provide TEA with an executed copy of the policies immediately upon request.

YY. Force Majeure: Neither Contractor nor Texas Education Agency shall be liable to the other for any delay in, or failure of performance, of any requirement included in any Contract resulting from this RFP caused by force

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majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome. Each party must inform the other in writing, with proof of receipt, within three (3) business days of the existence of such force majeure, or otherwise waive this right as a defense.

ZZ. Drug Free Workplace Policy: The Contractor shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. 701 ET SEQ.) and maintain a drug-free work environment; and the final rule, government-wide requirements for drug-free work place requirements under the Code of Federal Regulations incorporated by reference and the Contractor shall comply with the relevant provisions thereof, including any amendments or revisions that may hereafter be issued.

AAA. Abandonment or Default: If the Contractor defaults on the Contract, TEA reserves the right to cancel the Contract without notice and either re-solicit or re-award the Contract to the next best responsive and responsible Contractor. The defaulting Contractor will not be considered in the re-solicitation and may not be considered in future solicitations for the same type of work, unless the specification or scope of work significantly changed. The period of suspension will be determined by the Agency based on the seriousness of the default.

The Texas Government Code and Family Code sites referenced in this document may be viewed at: <http://www.statutes.legis.state.tx.us/>

The Texas Administrative Code site referenced in this document may be viewed at: [http://texreg.sos.state.tx.us/public/readtac\\$ext.viewtac](http://texreg.sos.state.tx.us/public/readtac$ext.viewtac)

Any terms and conditions attached to a solicitation will not be considered unless specifically referred to on this solicitation and may result in disqualification.

Special Provisions – D
Historically Underutilized Business Subcontracting Plan (HSP)

- A. BSN Sports, LLC's HSP is attached and incorporated herein.
- B. Any changes to the HUB Subcontracting Plan (HSP) must be approved by the Agency HUB Coordinator before changes are initiated.
- C. Contractor must submit monthly compliance reports, Prime Contractor Progress Assessment Report (PAR), to the TEA HUB Office verifying compliance with the HSP, including the use/expenditures made to all subcontractors. Submission of the PAR is a condition of payment. PAR forms are due no later than the 10th day of the following month. The PAR is required to be submitted monthly, even if no activity occurred for the month. The PAR forms are to be submitted electronically to HUBOffice@tea.texas.gov, see attached form.

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HUB Subcontracting Plan (HSP)

In accordance with Texas Gov't Code §2161.252, the contracting agency has determined that subcontracting opportunities are probable under this contract. Therefore, all respondents, including State of Texas certified Historically Underutilized Businesses (HUBs) must complete and submit this State of Texas HUB Subcontracting Plan (HSP) with their response to the bid requisition (solicitation).

NOTE: Responses that do not include a completed HSP shall be rejected pursuant to Texas Gov't Code §2161.252(b).

The HUB Program promotes equal business opportunities for economically disadvantaged persons to contract with the State of Texas in accordance with the goals specified in the 2009 State of Texas Disparity Study. The statewide HUB goals defined in 34 Texas Administrative Code (TAC) §20.13 are:

- 11.2 percent for heavy construction other than building contracts,
- 21.1 percent for all building construction, including general contractors and operative builders' contracts,
- 32.9 percent for all special trade construction contracts,
- 23.7 percent for professional services contracts,
- 26.0 percent for all other services contracts, and
- 21.1 percent for commodities contracts.

-- Agency Special Instructions/Additional Requirements --

In accordance with 34 TAC §20.14(d)(1)(D)(iii), a respondent (prime contractor) may demonstrate good faith effort to utilize Texas certified HUBs for its subcontracting opportunities if the total value of the respondent's subcontracts with Texas certified HUBs meets or exceeds the statewide HUB goal or the agency specific HUB goal, whichever is higher. When a respondent uses this method to demonstrate good faith effort, the respondent must identify the HUBs with which it will subcontract. If using existing contracts with Texas certified HUBs to satisfy this requirement, only the aggregate percentage of the contract expected to be subcontracted to HUBs with which the respondent does not have a continuous contract* in place for more than five (5) years shall qualify for meeting the HUB goal. This limitation is designed to encourage vendor rotation as recommended by the 2009 Texas Disparity Study.

SECTION-1 RESPONDENT AND REQUISITION INFORMATION

- a. Respondent (Company) Name: Varsity Brands Holding Co Inc dba BSN Sports, LLC State of Texas VID #: 1472460272
 Point of Contact: _____ Phone #: _____
 E-mail Address: _____ Fax #: _____
- b. Is your company a State of Texas certified HUB? - Yes - No
- c. Requisition #: Proprietary Bid Open Date: N/A

(mm/dd/yyyy)

Enter your company's name here: Varsity Brands Holding Co Inc dba BSN Sports, LLC Requisition #: Proprietary

SECTION-2: RESPONDENT'S SUBCONTRACTING INTENTIONS

After dividing the contract work into reasonable lots or portions to the extent consistent with prudent industry practices, and taking into consideration the scope of work to be performed under the proposed contract, including all potential subcontracting opportunities, the respondent must determine what portions of work, including contracted staffing, goods, services, transportation and delivery will be subcontracted. Note: In accordance with 34 TAC §20.11., a "Subcontractor" means a person who contracts with a prime contractor to work, to supply commodities, or to contribute toward completing work for a governmental entity.

a. Check the appropriate box (Yes or No) that identifies your subcontracting intentions:

- Yes, I will be subcontracting portions of the contract. (If Yes, complete Item b of this SECTION and continue to Item c of this SECTION.)
- No, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources, including employees, goods, services, transportation and delivery. (If No, continue to SECTION 3 and SECTION 4.)

b. List all the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

Item #	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you do not have a continuous contract* in place for five (5) years or less.	Percentage of the contract expected to be subcontracted to HUBs with which you have a continuous contract* in place for more than five (5) years.	Percentage of the contract expected to be subcontracted to non-HUBs.
1		%	%	%
2		%	%	%
3		%	%	%
4		%	%	%
5		%	%	%
6		%	%	%
7		%	%	%
8		%	%	%
9		%	%	%
10		%	%	%
11		%	%	%
12		%	%	%
13		%	%	%
14		%	%	%
15		%	%	%
Aggregate percentages of the contract expected to be subcontracted:		%	%	%

(Note: If you have more than fifteen subcontracting opportunities, a continuation sheet is available online at <http://window.state.tx.us/procurement/prog/hub/hub-subcontracting-plan/>.)

c. Check the appropriate box (Yes or No) that indicates whether you will be using only Texas certified HUBs to perform all of the subcontracting opportunities you listed in SECTION 2, Item b.

- Yes (If Yes, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed.)
- No (If No, continue to Item d, of this SECTION.)

d. Check the appropriate box (Yes or No) that indicates whether the aggregate expected percentage of the contract you will subcontract with Texas certified HUBs with which you do not have a continuous contract* in place with for more than five (5) years, meets or exceeds the HUB goal the contracting agency identified on page 1 in the "Agency Special Instructions/Additional Requirements."

- Yes (If Yes, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed.)
- No (If No, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method B (Attachment B)" for each of the subcontracting opportunities you listed.)

***Continuous Contract:** Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service, to include transportation and delivery under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.

Enter your company's name here: Varsity Brands Holding Co Inc dba BSN Sports, LLC Requisition #: Proprietary

SECTION-3 SELF PERFORMING JUSTIFICATION (If you responded "No" to SECTION 2, Item a, you must complete this SECTION and continue to SECTION 4.)

If you responded "No" to SECTION 2, Item a, in the space provided below explain how your company will perform the entire contract with its own employees, supplies, materials and/or equipment, to include transportation and delivery.

Respondent's employees will (i) provide participating schools with an electronic access code to the FITNESSGRAM software; (ii) maintain the school's opt-in procedure; and (iii) provide the TEA with all reporting and invoices relating to the opt-ins.

SECTION-4: AFFIRMATION

As evidenced by my signature below, I affirm that I am an authorized representative of the respondent listed in SECTION 1, and that the information and supporting documentation submitted with the HSP is true and correct. Respondent understands and agrees that, if awarded any portion of the requisition:

- The respondent will provide notice as soon as practical to all the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor for the awarded contract. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity they (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.
- The respondent must submit monthly compliance reports (Prime Contractor Progress Assessment Report – PAR) to the contracting agency, verifying its compliance with the HSP, including the use of and expenditures made to its subcontractors (HUBs and Non-HUBs). (The PAR is available at <http://www.window.state.tx.us/procurement/prog/hub/hub-forms/progressassessmentrpt.xls>).
- The respondent must seek approval from the contracting agency prior to making any modifications to its HSP, including the hiring of additional or different subcontractors and the termination of a subcontractor the respondent identified in its HSP. If the HSP is modified without the contracting agency's prior approval, respondent may be subject to any and all enforcement remedies available under the contract or otherwise available by law, up to and including debarment from all state contracting.
- The respondent must, upon request, allow the contracting agency to perform on-site reviews of the company's headquarters and/or work-site where services are being performed and must provide documentation regarding staffing and other resources.

M Babillo
Signature

Terrence M. Babillo President
Printed Name Title

April 8, 2016
Date
(mm/dd/yyyy)

Reminder:

- If you responded "Yes" to SECTION 2, Items c or d, you must complete an "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed in SECTION 2, Item b.
- If you responded "No" SECTION 2, Items c and d, you must complete an "HSP Good Faith Effort - Method B (Attachment B)" for each of the subcontracting opportunities you listed in SECTION 2, Item b.

FITNESSGRAM® HOSTING SERVICES TERMS OF USE

Exhibit A

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FITNESSGRAM® HOSTING SERVICES TERMS OF USE

As a Customer ("Customer" or "you" or "your") hereby agree that these Terms of Use ("Terms" or "Agreement") govern your use of The Cooper Institute® ("The Cooper Institute®" or "we" or "our") Hosting Services (collectively, "Services") and the FITNESSGRAM® Software, a fitness education assessment program software that we include as part of the Services, including any applications, Content (defined below), scripts, instruction sets, and any related documentation (collectively "FitnessGram® Software"). By using the Services or FitnessGram® Software, you agree to these terms. **As discussed more in Section 3 below, you retain all rights and ownership you have in your Content that you make available through the Services.**

1. How this Agreement Works.

1.1 Eligibility. You may only use the Services if you are (a) over 13 years old and (b) allowed by law to enter into a binding contract.

1.2 Privacy. The Privacy Policy at <http://www.fitnessgram.net/privacy> governs any personal information you provide to us. **By using the Services or FitnessGram® Software you agree to the terms of the Privacy Policy.**

1.3 FitnessGram® Software. The FitnessGram® Software means, collectively, all of the present and future FitnessGram® Software packages or programs, including without limitation, FITNESSGRAM®, MYHEALTHYZONE™, ACTIVITYGRAM®, NUTRIGRAM®, Healthy Fitness Zone®, and ACTIVITY LOG, and their related components. The FitnessGram® Software is **licensed, not sold**, only in accordance with these Terms.

1.4 FitnessGram® Marks. For the purposes of this Agreement, "The Cooper Institute® Marks" means the following trademarks, service marks, service or trade names, logos, product names, or designations of The Cooper Institute® and its affiliates: "MyHealthyZone™," "FitnessGram®," "ActivityGram®," "NutriGram®," "Healthy Fitness Zone®," together with all goodwill associated therewith, and any other The Cooper Institute® Marks made available from time to time.

1.5 Sales Order. The Terms of this Agreement shall apply after paying the related fees found at <http://www.fitnessgram.net/sales> and providing all required technical data to allow Hosting, and thereby creating an account for The Cooper Institute® Hosting Services ("Account").

1.6 Publicity. Customer agrees that the names and other information of and concerning The Cooper Institute®, the Cooper Aerobics Enterprises™ and Dr. Kenneth H. Cooper, M.D., M.P.H. cannot be used by Customer without prior written approval from The Cooper Institute®.

1.7 Order of Precedence. If there is any conflict between the terms in this Agreement and the Sales Order, then terms of this Agreement govern.

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1.8 Modification. We may modify or discontinue the Services, FitnessGram® Software, or any portions or features thereof at any time without liability to you or anyone else. However, we will make reasonable effort to notify you before we make the change. If we discontinue a Service in its entirety, we will also allow you a reasonable time to download your Content, and we will provide you with a pro rata refund for any unused fees for that Service that you may have prepaid.

2. Use of Services.

2.1 License. Subject to your compliance with this Agreement and the law, you may access and use the Services and the FitnessGram® Software.

2.2 The Cooper Institute® Intellectual Property. We remain the sole owner of all right, title, and interest in the intellectual property in the FitnessGram® Software. We reserve all rights not granted under these Terms.

2.3 Storage. We may create reasonable technical limits on your Content, such as limits on file size, storage space, processing capacity, and other technical limits. We may suspend the Services until you are within the storage space limit associated with your Account.

3. Your Content.

3.1 Your Content. Content means the information and data provided by you concerning your students, schools, and operations.

3.2 Ownership. You retain all rights and ownership of your Content. The Cooper Institute® does not claim any ownership rights to your Content.

3.3 Importing your Content. In order for you to import your Content to The Cooper Institute® Hosting Services you agree to specifically comply with all steps to import or reimport file data available through <http://www.FitnessGram.net/help>.

3.4. Licenses to Your Content in Order to Operate the Services. We require certain licenses from you to your Content to operate and enable the Services. When you upload Content to the Services, you grant The Cooper Institute® a non-exclusive, worldwide, royalty-free, sub-licensable, and transferrable license to use, reproduce, and translate the Content as needed in response to your use of the Services and FitnessGram® Software (such as when you choose to share your Content with others). **This license is only for the purpose of operating and improving the Services.**

3.5 Our Access. We will not access, or view to any of your Content, except as reasonably necessary to perform the Services. Actions reasonably necessary to perform the Services may include (but are not limited to) (a) responding to support requests; (b) detecting, preventing, or

otherwise addressing fraud, security, unlawful, or technical issues; and (c) enforcing these Terms.

3.6 Sharing Your Content.

(a) **Sharing.** Some Services may provide features that allow you to Share your Content with other users or to make it public. "Share" means to email, post, transmit, upload, or otherwise make available (whether to The Cooper Institute® or other users) through your use of the Services. Other users may use, copy, modify, or re-share your Content in many ways. Please consider carefully what you choose to Share or make public, as you are entirely responsible for the Content that you Share.

(b) **Level of Access.** We do not monitor or control what others do with your Content. You are responsible for determining the limitations that are placed on your Content and for applying the appropriate level of access to your Content. If you do not choose the access level to apply to your Content, the system may default to its most permissive setting. It is your responsibility to let other users know how your Content may be shared and adjust the setting related to accessing or sharing of your Content.

3.7 **Termination of License.** You may revoke this license to your Content and terminate our rights at any time by removing your Content from the Service. However, some copies of your Content may be retained as part of our routine backups.

3.8 **Feedback.** You have no obligation to provide The Cooper Institute® with ideas, suggestions, or proposals ("Feedback"). However, if you submit Feedback to us, then you grant The Cooper Institute® a non-exclusive, worldwide, royalty-free license that is sub-licensable and transferrable, to use, reproduce, publicly display, distribute, modify, and publicly perform the Feedback.

3.9 **Account Information.** You are responsible for all activity that occurs via your Account. Please notify FitnessGram® Customer Support (support@FitnessGram.net) immediately if you become aware of any unauthorized use of your Account. You may not (a) Share your Account information (except with an authorized Account administrator) or (b) use another person's Account. Your Account administrator may use your Account information to manage your use and access to the Services.

4. Use of FitnessGram® Software.

4.1 **Subscription-Based FitnessGram® Software License.** We are providing the FitnessGram® Software to you as part of your subscription to use the Services, which are subject to your compliance with these Terms, we grant you a non-exclusive license to install and use the FitnessGram® Software: (a) in the Territory, (b) so long as your subscription is valid, and (c) consistent with these Terms and related documentation accompanying the FitnessGram® Software. "Territory" means your school district established when your Account was created. The FitnessGram® Software requires you to take certain steps to activate your FitnessGram®

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Software or validate your subscription. Failure to activate or register the FitnessGram® Software, validate the subscription, or a determination by The Cooper Institute® of fraudulent or unauthorized use of the FitnessGram® Software may result in reduced functionality, inoperability of the FitnessGram® Software, or a termination or suspension of the subscription.

4.2 General License. If the FitnessGram® Software is provided as part of the Services without restrictions on subscription or number of devices, then subject to your compliance with these Terms, we grant you a non-exclusive license to install and use the FitnessGram® Software (a) in the Territory, (b) for the purpose of using and accessing of the Services, and (c) consistent with these Terms and related documentation accompanying the FitnessGram® Software.

4.3 Restrictions and Requirements.

(a) **Proprietary Notices.** You must ensure that any permitted copy of the FitnessGram® Software that you make contains the same copyright, trademark, and other proprietary notices that appear on or in the FitnessGram® Software.

(b) **Restrictions.** Unless permitted in these Terms, you must not:

- (1) Modify, port, adapt, or translate the FitnessGram® Software;
- (2) Reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code of the FitnessGram® Software;
- (3) Use or offer the FitnessGram® Software on a service bureau basis;
- (4) Circumvent technological measures intended to control access to the FitnessGram® Software
- (5) Develop, distribute, or use with the FitnessGram® Software, products that circumvent the technological measures; or
- (6) Rent, lease, sell, sublicense, assign, or transfer your rights in the FitnessGram® Software, or authorize any portion of the FitnessGram® Software to be copied onto another's device. If you purchase Services for education (named user), then you may designate seats pursuant to the applicable documentation.

(c) **Responsible Use.** The Cooper Institute® communities often consist of users who expect a certain degree of courtesy and professionalism. You must use the Services responsibly. You must not misuse the Services or FitnessGram® Software. For example, you must not:

- (1) Copy, modify, host, sublicense, or resell the Services;
- (2) Enable or allow others to use the Services or FitnessGram® Software using your Account information;

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- (3) Access or attempt to access the Services by any means other than the interface we provided or authorized;
- (4) Circumvent any access or use restrictions put into place to prevent certain uses of the Services;
- (5) Engage in behavior that violates anyone's Intellectual Property Right ("**Intellectual Property Rights**" means copyright, moral rights, trademark, trade dress, patent, trade secret, unfair competition, right of privacy, right of publicity, and any other proprietary rights.);
- (6) Share any information that is unlawful, harmful, threatening, abusive, tortious, defamatory, libelous, vulgar, lewd, profane, invasive of another's privacy, or hateful;
- (7) Impersonate any person or entity, or falsely state or otherwise misrepresent your affiliation with a person or entity;
- (8) Attempt to disable, impair, or destroy the Services, software, or hardware;
- (9) Disrupt, interfere with, or inhibit any other user from using the Services (such as stalking, intimidating, or harassing others, inciting others to commit violence, or harming minors in any way),
- (10) Engage in chain letters, junk mails, pyramid schemes, spamming, or other unsolicited messages;
- (11) Market or advertise any products or services through the Services unless we specifically allowed you to do so;
- (12) Use any data mining or similar data gathering and extraction methods in connection with the Services; or
- (13) Violate applicable law.

6. Fees.

You must pay any applicable taxes unless you can prove your tax exempt status, and any applicable third-party fee (including, for example telephone toll charges, mobile carrier fees, ISP charges, data plan charges, credit card fees, foreign exchange fees). We are not responsible for these fees. We may take steps to collect the fees you owe us. You are responsible for all related collection costs and expenses.

7. Your Warranty and Indemnification Obligations.

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7.1 Warranty. By uploading your Content to the Services, you agree that you have all necessary licenses and permissions, to use and Share your Content.

7.2 Indemnification. You will indemnify The Cooper Institute® and our subsidiaries, affiliates, officers, agents, employees, partners, and licensors from any claim, demand, loss, or damages, including reasonable attorneys' fees, arising out of or related to your Content, your use of the Services or FitnessGram® Software, or your violation of these Terms of this Agreement.

8. Disclaimers of Warranties.

8.1 UNLESS STATED IN THE THIS AGREEMENT, THE SERVICES AND FITNESSGRAM® SOFTWARE ARE PROVIDED "AS-IS." TO THE MAXIMUM EXTENT PERMITTED BY LAW, WE DISCLAIM ALL WARRANTIES EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE. WE MAKE NO COMMITMENTS ABOUT THE CONTENT WITHIN THE SERVICES. WE FURTHER DISCLAIM ANY WARRANTY THAT (A) THE SERVICES OR SOFTWARE WILL MEET YOUR REQUIREMENTS OR WILL BE CONSTANTLY AVAILABLE, UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE; (B) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICES OR SOFTWARE WILL BE EFFECTIVE, ACCURATE, OR RELIABLE; (C) THE QUALITY OF THE SERVICES OR SOFTWARE WILL MEET YOUR EXPECTATIONS; OR THAT (D) ANY ERRORS OR DEFECTS IN THE SERVICES OR SOFTWARE WILL BE CORRECTED.

8.2 WE SPECIFICALLY DISCLAIM ANY LIABILITY FOR ANY ACTIONS RESULTING FROM YOUR USE OF ANY SERVICES OR SOFTWARE. YOU MAY USE AND ACCESS THE SERVICES OR SOFTWARE AT YOUR OWN DISCRETION AND RISK, AND YOU ARE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE USE AND ACCESS OF ANY SERVICE OR SOFTWARE.

9. Limitation of Liability.

9.1 UNLESS STATED IN THIS AGREEMENT, WE ARE NOT LIABLE TO YOU OR ANYONE ELSE FOR ANY SPECIAL, INCIDENTAL, DIRECT, INDIRECT, CONSEQUENTIAL, OR PUNITIVE DAMAGES WHATSOEVER (EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF THESE DAMAGES), INCLUDING THOSE (A) RESULTING FROM LOSS OF USE, DATA, OR PROFITS, WHETHER OR NOT FORESEEABLE, (B) BASED ON ANY THEORY OF LIABILITY, INCLUDING BREACH OF CONTRACT OR WARRANTY, NEGLIGENCE OR OTHER TORTIOUS ACTION, OR (C) ARISING FROM ANY OTHER CLAIM ARISING OUT OF OR IN CONNECTION WITH YOUR USE OF OR ACCESS TO THE SERVICES OR SOFTWARE. NOTHING IN THESE TERMS LIMITS OR EXCLUDES OUR LIABILITY FOR GROSS NEGLIGENCE, FOR OUR (OR OUR EMPLOYEES') INTENTIONAL MISCONDUCT, OR FOR DEATH OR PERSONAL INJURY.

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9.2 OUR TOTAL LIABILITY IN ANY MATTER ARISING OUT OF OR RELATED TO THESE TERMS IS LIMITED TO US \$100 OR THE AGGREGATE AMOUNT THAT YOU PAID FOR ACCESS TO THE SERVICE AND SOFTWARE DURING THE MONTH PRECEDING THE EVENT GIVING RISE TO THE LIABILITY, WHICHEVER IS LARGER. THIS LIMITATION WILL APPLY EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF THE LIABILITY EXCEEDING THE AMOUNT AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

9.3 THE LIMITATIONS AND EXCLUSIONS IN THIS SECTION 9 APPLY TO THE MAXIMUM EXTENT PERMITTED BY LAW.

10. Termination.

10.1 Termination by You. You may stop using the Services at any time. Termination of your Account does not relieve you of any obligation to pay any outstanding fees.

10.2 Termination by Us. We may terminate these Terms if we elect to discontinue the Services or FitnessGram® Software, in whole or in part and we will notify you at least 30 days prior to termination via the email address you provide to The Cooper Institute® with instructions on how to retrieve your Content. If we terminate these Terms for cause, then we will notify you at least 30 days prior to termination via the email address you provide to The Cooper Institute® with instructions on how to retrieve your Content. Unless stated in this Agreement, we may at any time terminate these Terms with you if:

- (a) You breach any provision of these Terms (or act in a manner that clearly shows you do not intend to, or are unable to, comply with these Terms);
- (b) You fail to make the timely payment of fees for the FitnessGram® Software or the Services, if any;
- (c) We are required to do so by law (for example, where the provision of the Services or FitnessGram® Software to you is, or becomes, unlawful); or,

10.3 Survival. Upon expiration or termination of these Terms, any perpetual licenses granted, your indemnification obligations, our warranty disclaimers or limitations of liabilities and dispute resolution provisions stated in these Terms will survive. Upon the expiration or termination of the Services, some or all of the FitnessGram® Software may cease to operate without prior notice.

11. Investigations.

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950

11.1 Screening. We do not review Content uploaded to the Services, but we may use available technologies or processes to screen for certain types of illegal information (for example, child pornography) or other abusive information or behavior (for example, patterns of activity that indicate spam or phishing, or keywords).

11.2 Disclosure. We may access or disclose information about you, or your use of the Services, (a) when it is required by law (such as when we receive a valid subpoena or search warrant); (b) to respond to your requests for customer service support; or (c) when we, in our discretion, think it is necessary to protect the rights, property, or personal safety of us, our users, or the public.

12. Export Control Laws. The FitnessGram® Software, Services, Content, and your use of the FitnessGram® Software, Services, and Content, are subject to U.S. and international laws, restrictions, and regulations that may govern the import, export, and use of the FitnessGram® Software, Services, and Content. You agree to comply with all the laws, restrictions, and regulations.

13. Dispute Resolution.

13.1 Venue. Any claim or dispute you may have against The Cooper Institute® must be resolved by a court located in Dallas County, Texas, U.S.A. under the law of Texas, U.S.A. You agree to submit to the personal jurisdiction of the applicable court in Dallas County, Texas for the purpose of litigating the claim or dispute. The parties specifically disclaim the applicability of the U.N. Convention on Contracts for the International Sale of Goods.

13.2 Injunctive Relief. Notwithstanding the foregoing, in the event of your or others' unauthorized access to or use of the Services in violation of these Terms you agree that we are entitled to apply for injunctive remedies (or an equivalent type of urgent legal relief) in any jurisdiction.

14. Miscellaneous.

14.1 Notice to The Cooper Institute®. You may send the notices to The Cooper Institute® to at the following address: The Cooper Institute®, 12330 Preston Road, Dallas, TX 75230, Attention: Chief Executive Officer.

14.2 Notice to You. We may notify you by email, postal mail, postings within the Services, or other legally acceptable means.

14.3 Entire Agreement. This Agreement constitutes the entire agreement between you and The Cooper Institute® regarding your use of the Services and FitnessGram® Software and supersedes any prior agreements between you and The Cooper Institute® relating to the Services.

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851

14.4 Non-Assignment. You may not assign or otherwise transfer these Terms or your rights and obligations under these Terms, in whole or in part, without our written consent. We may transfer our rights under these Terms to a third party.

14.5 Severability. If a particular term is not enforceable, the unenforceability of that term will not affect any other Terms.

14.6 No Waiver. Our failure to enforce or exercise any of these Terms is not a waiver of that section.

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FitnessGram® Privacy Policy

1. Introduction

FitnessGram® Software ("FitnessGram Software"), a fitness education assessment program software that we include as part of the Services, including any applications, is owned and operated by The Cooper Institute® ("The Cooper Institute" or "we" or "our") and this Privacy Policy ("Policy") includes the following defined terms, in addition to other capitalized words in the Policy.

"Customer" or "you" means employees of School Districts, State Educational Agencies, and parents of students who access data using the FitnessGram® Software under the FitnessGram® Hosting Terms of Service (<http://www.fitnessgram.net/terms>) "FitnessGram ToS").

"FitnessGram Software" means, collectively, all of the present and future FitnessGram Software packages or programs, including without limitation, FITNESSGRAM®, MYHEALTHYZONE™, ACTIVITYGRAM®, NUTRIGRAM®, Healthy Fitness Zone®, and ACTIVITY LOG, and their related components. The FitnessGram Software is licensed, not sold, only in accordance with the ToS.

"Personal information" means any student information defined as personally identifiable information under Family Educational Rights and Privacy Act ("FERPA"), and as personal information under the Children's Online Privacy Protection Act ("COPPA"). This includes the student's name, address, email, social security number and other information that, alone or in combination, would allow a reasonable person in the school community to identify the student with reasonable certainty.

"School District" means a local educational agency, school network, independent school or other school system.

"State Educational Agency" or "SEA" means the educational agency primarily responsible for the supervision of public elementary and secondary schools in any of the 50 states, the Commonwealth of Puerto Rico, the District of Columbia or other territories and possessions of the United States, as well as a national or regional ministry or department of education in other countries, as applicable.

Customer privacy is important to us and we have prepared this Policy to explain to you how The Cooper Institute collects, uses, and discloses information about you. By using the FitnessGram® Software, you expressly agree to the ToS and consent to the collection, use and disclosure of your information as outlined in the Policy. Please read the Policy carefully, and if you have any questions, feel free to contact us using the information provided at the end of the Policy.

In the course of providing our products, we take numerous measures to maintain the security and confidentiality of Personal Information collected or stored by the FitnessGram® Software on behalf of our Customers, School Districts, and State Educational Agencies. In doing so, we enable our Customers to control use, access, sharing and retention of personal information in compliance with the federal FERPA, and other applicable privacy laws and regulations ("Applicable Privacy Laws")

2. Scope of this Policy

This Policy describes:

- what information is collected on behalf of our Customers via the FitnessGram® Software;
- how the FitnessGram® Software uses that information;
- with whom the FitnessGram® Software shares that information; and
- what steps the FitnessGram® Software takes to safeguard this information and ensure that our Customers remain in control of their data at all times

3. Types of Information Collected

There are three types of information that the FitnessGram® Software collects and stores on behalf of our Customers:

- information provided by the Customer to support the use of our products;
- information provided by students, teachers and other school personnel in the course of using our products; and
- usage data including date and time of visits, browser type and operating system type.

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Information provided by our Customers:

The FitnessGram® Software requires some basic information about who is in a classroom and who teaches the class. For example, when a teacher logs into the FitnessGram® Software, a list of students associated with that teacher may be displayed in the application. The FitnessGram® Software references this information from a database that contains roster information (e.g. name, grade level, gender, date of birth, school ID numbers) that the School District supplied to the FitnessGram® Software.

Although not required, Customers may choose to provide additional student demographic data and other school records (e.g. ethnicity, email) to the FitnessGram® Software for further identification or additional reporting capabilities.

Information collected through our products:

Our customers use the FitnessGram® Software to track student data and provide personalized feedback to students to help promote lifelong health and wellness. Students and teachers use our products to engage in a variety of educational experiences, many of which entail inputting personal information. This information falls into several different categories listed below along with examples for each category:

- FitnessGram® collects information on the five components of health-related fitness including: aerobic capacity, body composition, muscular strength, muscular endurance, and flexibility. The purpose of the data collected is to educate and create awareness for student's level of fitness.
- Assessment results. Students and/or teachers may enter results for physical fitness, activity, and nutrition assessments. Students and/or teachers may also complete tests, additional activities or trainings that are tracked within the FitnessGram® Software.
- Device performance and status. Device diagnostic information, such as battery level and installed applications may be collected to support the proper functioning of the device.
- Device and Browser Data. Characteristics of device and browser configurations and persistent identifiers, such as IP addresses and device identifiers, are collected along with associated usage data. The use of "cookies," Web beacons, HTML5 local storage and other similar technologies to collect and store such data. This data is collected to support the security mechanisms of the product and our internal operations, as well as to enable analysis of aggregate usage trends and improve the learning experience.
- System usage. The FitnessGram® Software may collect system usage information in order to ensure proper system capacity for all users

4. Use of Information

The FitnessGram® Software uses information collected and stored on behalf of our customers to support the development and usability of the product and to ensure secure and effective operation of our products. In particular, the FitnessGram® Software may use the information collected in the following ways:

- to continually support the FitnessGram® Software and support our Customers' and their end users' activities;
- to respond to the inquiries and fulfill the requests of our Customers and their end users;
- to send administrative and usage information to the appropriate approved application administrator;
- in the case of customer personnel (e.g., teachers and administrators), to send product information to such personnel;
- to personalize end users' experience with our products and services;
- to improve the effectiveness of our products and support our product development;
- to report on aggregate trends and usage statistics;
- to enforce product access and security controls; and
- to conduct system audits and improve protections against the misuse of our products.

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5. Disclosure of Information

We will only share personal information stored on behalf of our customers with third parties if authorized by the relevant Customer and in the following situations, to the extent we believe in good faith it is necessary or appropriate and permitted by law:

- to comply with the law, respond to requests in legal or government enforcement proceedings (such as complying with a subpoena), protect our rights in a legal dispute, or seek assistance of law enforcement in the event of a threat to our rights, security or property or that of our affiliates, customers, end users or others;
- in the event the FitnessGram® Software or its assets are acquired or transferred to another party, including in connection with any bankruptcy or similar proceedings, provided that such disclosure will be subject to the Policy and any successor to the relevant business will be required to comply with the Policy with respect to information collected under the Policy; and
- to work with third parties who conduct studies or assist us in providing and improving our products and services, such as platform, infrastructure, software and other types of service providers, agents, partners and researchers. Information shared with third parties is de-identified. We contractually bind such parties to prevent disclosure of personally identifiable information by, for example, not using the information for any purpose other than to carry out the services they are performing for the FitnessGram® Software.

6. Third Party Services

Some of our products may be used in conjunction with or enable access to third party services and products, such as those from operating system providers, social media platforms, wireless service providers, device manufacturers, and other application or service providers.

This Policy does not address, and The Cooper Institute, nor its delegates are not responsible for, the privacy, information or other practices of such third parties, including any third party operating any service to which the FitnessGram® Software product or service links. School Districts and SEA customers should carefully consider which third party applications to include among the products and services they provide to students and vet the privacy and data security standards of those providers.

7. Security

The FitnessGram® Software uses industry standard administrative, technical, operational and physical measures to safeguard personally identifiable information in its possession against loss, theft and unauthorized use, disclosure or modification.

In the event The Cooper Institute, or its delegates discovers or is notified of an unauthorized disclosure of personal information within our possession or control, we will, as required by applicable federal and state laws, investigate, take steps to mitigate the potential impact, provide notice of the breach to applicable agencies, including Customers.

8. Review and Correction

FERPA requires schools provide parents with access to their children's education records, and parents may request the option to login to the FitnessGram® Software access the parent dashboard. If you are a parent or guardian and would like to review, correct or update your child's personally identifiable information stored in our product or service, contact your School District. The Cooper Institute, or its delegates will work with your School District to enable your access to and, if applicable, correction of your child's education records.

If you have any questions about whom to contact or other questions about your child's personal information, you may contact us using the information provided below.

9. Data Retention

We will retain personal information collected from our Customers for the period necessary to fulfill the purposes outlined in this Policy and our agreement with that Customer. Specifically, at the direction of our Customers, The Cooper Institute, or its delegates will return or destroy personal information stored by the FitnessGram® Software in accordance with FERPA and other applicable laws upon the request of Customer.

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9/11

10. Updates to this Policy

We may change this Policy in the future. For example, we may update it to comply with new laws or regulations, to conform to industry best practices, or to reflect changes in our product offerings. Such changes to the Policy will become effective when we post the revised Policy on our website: <http://www.fitnessgram.net/privacy>. However, in the event there are material changes in our practices with respect to use and disclosure of personal information, we will notify our Customers affected by the changes, and the changes will become effective when the Customer accepts the new policy.

11. Contact Us

If you have questions about this Policy, please contact us at:

Email: fitnessgram@cooperinst.org

Mail: The Cooper Institute 12330 Preston Road, Dallas, Texas, 75230 Attn: FitnessGram

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850