

Agreement for Purchase of Services

This Agreement for Purchase of Services (the "Agreement") is entered into by and between _____ County First Steps to School Readiness Local Partnership ("Local Partnership") and _____ ("Vendor") as of this ____ day of _____, 20__ (the "Effective Date"). In this Agreement the Local Partnership and Vendor sometimes shall be referred to individually as a party and collectively as the parties.

WHEREAS, Local Partnership desires to purchase certain Services, as defined below, from Vendor; and

WHEREAS, Vendor desires to provide to Local Partnership the Services pursuant to the terms of this Agreement.

NOW, THEREFORE, for and in consideration of the mutual promises set forth herein, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. **Performance of Services.** Vendor shall provide Local Partnership with the services ("Services") pursuant to the terms and conditions of this Agreement and as described in any applicable Statement(s) of Work ("SOW"). The initial SOW is attached hereto as Exhibit A. Each SOW will be effective only if in writing and executed by each party. Each SOW may include, if applicable: (a) the SOW effective date and SOW term; (b) identification of the specifications applicable to the Services; (c) an implementation plan, if appropriate; (d) fees, costs and expenses and any additional payment terms; (e) Local Partnership and Vendor responsibilities; (f) additional definitions, license rights, and other terms applicable to such SOW; and (g) as the circumstances warrant, a description of timelines, Service levels, consequences and remedies for nonperformance, interdependencies and other terms and conditions related to such Services. Any reference to the term "Agreement" shall include the applicable SOW. In the event of any conflict between the provisions of the main body of this Agreement and any SOW, the terms of the SOW will control only if such SOW expressly acknowledges the conflicting term(s) of the main body of this Agreement and provides that the parties mutually agree that the terms of the SOW shall control with respect to such term(s). Otherwise the terms of the main body of this Agreement shall control. While present on any Local Partnership premise, Vendor shall comply with all Local Partnership policies.

2. **Warranties.** Vendor warrants to Local Partnership that: (a) Vendor will perform the Services in a good, workmanlike, timely and competent manner consistent with industry standards using personnel with the requisite levels of education, skill and experience to perform the Services; (b) all Services will be performed in compliance with the applicable SOW(s); (c) Vendor has the full right, power, and authority to enter into this Agreement and to perform its obligations hereunder; and (d) Vendor shall transfer to Local Partnership good title to all deliverables, free of any liens, security interests or other encumbrances. If any warranties specified herein or otherwise, applicable are breached by the Vendor, Local Partnership may elect to: (i) require the Vendor to correct, at Vendor's sole expense, any nonconformance by re-performing the Services; or (ii) require Vendor to immediately refund to Local Partnership the

price of the Services. The foregoing remedies are in addition to all other remedies available at law or equity and shall not be deemed to be exclusive.

3. **Payment.** Vendor shall submit to Local Partnership invoice(s) and any supporting documentation which Local Partnership requests regarding the Services provided to Local Partnership. Local Partnership shall pay all undisputed invoices for Services within forty five (45) days of the receipt of the applicable invoice. Local Partnership shall be entitled to offset or reduce any amounts owed to Vendor in such amounts which Vendor owes to Local Partnership pursuant to this Agreement. Payment of compensation to Vendor may be dependent upon and subject to the allocation and payment of funds to the Local Partnership and is contingent upon availability of such funds. Local Partnership has the authority, without damages or penalty, to terminate the Agreement or any SOW at any time or to change the amount of the allocation to Vendor and negotiate changes, if needed, in the scope of the Agreement should the amount of funding be less from that anticipated.

4. **Term and Termination.** This Agreement shall begin on the Effective Date and continue for a period of one (1) year thereafter. Each SOW may state a term applicable to the SOW. Upon expiration of the initial term of the Agreement and any subsequent renewal term, this Agreement automatically shall renew for successive periods of one (1) year each unless either party provides the other party with notice of non-renewal prior to the expiration of the then current term. Local Partnership may terminate this Agreement or any SOW at any time in its sole discretion by providing notice of termination to Vendor at least thirty (30) days prior to the effective date of such termination. Additionally, Local Partnership may suspend performance of the Services by providing notice to Vendor. The following sections shall survive termination of this Agreement: 2, 5, 6, 7, 8, 10, 11, 12 and 16.

5. **Indemnification.** Vendor shall indemnify, defend and hold harmless Local Partnership and its officers, directors, employees, agents, successors, and assigns from and against all losses, damages, liabilities, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs or expenses of whatever kinds, including reasonable attorneys' fees ("Losses") arising out of or resulting from: (a) any defect in Services, (b) any claim related to performance of the Services, (c) Vendor's breach of any representation, warranty, covenant, or obligation under this Agreement; (d) Vendor's negligence, gross negligence or willful misconduct; and (e) any claim that any of the Services or any deliverable(s) infringe upon, violate or misappropriate any third party patent, copyright, trademark, service mark, trade secret or other right. Local Partnership shall promptly notify Vendor in writing of any suit or claim related to any Loss and shall cooperate with Vendor at Vendor's sole cost and expense in the defense of any such suit or claim. Vendor shall take and have sole control of the defense and settlement of any suit or claim.

6. **Confidentiality.**

a. **Nondisclosure.** The term "Confidential Information" means any and all information disclosed by Local Partnership to Vendor pursuant to this Agreement or to which Vendor otherwise has access to or obtains in the performance of this Agreement. Vendor agrees: (i) not to use any Local Partnership Confidential Information for its own use or for any purpose

except only in connection with performing its obligations under this Agreement; (ii) to hold Local Partnership's Confidential Information in strict confidence and not to disclose such Confidential Information to any third party; and (iii) to take all reasonable measures to protect the confidentiality of and avoid disclosures or use of Local Partnership's Confidential Information. No copies of Local Partnership's Confidential Information may be made unless expressly authorized by this Agreement or approved in writing by Local Partnership. Upon termination of this Agreement, Vendor immediately shall return to Local Partnership all Confidential Information.

b. **Exceptions.** The obligations set forth in the above section, shall not apply to and the term Confidential Information shall not include any information which: (i) was known to Vendor prior to being disclosed by Local Partnership; (ii) is approved for release by written authorization of Local Partnership; (iii) is rightfully received from a third party who provided such information without breach of any separate confidentiality obligation and without restriction on subsequent disclosure; or (iv) is independently developed without reference to the Local Partnership's Confidential Information. In addition, Confidential information may be disclosed to the extent required by court order or as otherwise required by law, provided that, if Vendor is required to make any such disclosure, Vendor notifies Local Partnership promptly upon learning of the possibility of any such requirement, but only to the extent it is permitted to provide such notice, and has given Local Partnership a reasonable opportunity and (cooperated with Local Partnership) to contest or limit the scope of such required disclosure (including application for a protective order).

c. Vendor acknowledges and agrees that the unauthorized disclosure or use of Local Partnership's Confidential Information will cause irreparable harm and significant injury which will be difficult to ascertain and incapable of adequately compensating solely in terms of monetary damages. Accordingly, Vendor agrees that the Local Partnership shall have the right to the issuance of immediate injunctive relief enjoining any breach or threatened breach of Vendor's obligations hereunder.

7. **Security and Privacy of Data.**

a. **Family Educational Rights and Privacy Act of 1974 ("FERPA").** To comply with FERPA and the Family Privacy Protection Act of 2002, Vendor shall maintain the confidentiality of any student educational and personal information or records to which it has access. Vendor shall use and/or disclose protected student educational and personal information or records only to the extent necessary to satisfy obligations under this Agreement and may only do so consistent with this Agreement and FERPA. Such information may not be released without a properly completed authorization signed by the student's parent or guardian. If information is released pursuant to the receipt of a properly completed authorization, documentation of the release must be maintained. A copy of the authorization must be included in this documentation.

b. **Protected Health Information.** To the extent either of the parties exchange or provide access to protected health information, the parties shall execute a business associate agreement and otherwise comply with the applicable provisions of the then current Health Insurance Portability and Accountability Act.

8. Document Inspection and Retention.

a. During normal business hours, Local Partnership and any of its representative(s) shall have the right to enter Vendor's premises, or other such places where duties under the Agreement are being performed, to inspect, monitor, assess, audit, or otherwise evaluate the performance of this Agreement. Local Partnership shall have the right to audit, examine and make copies, excerpts or transcripts from all records unless otherwise precluded by federal or state law, contact and conduct private interviews with Vendor's employees and perform on-site reviews of all matters relating to this Agreement. Vendor shall maintain an accounting system with the supporting fiscal records adequate to assure that all claims for funds are in accordance with the Agreement and with all applicable laws, regulations and policies, both federal and state.

b. Vendor shall ensure that all Vendor and permitted subcontractor materials, documents, papers, accounting records, or other evidence pertaining to costs incurred under this Agreement will be maintained for a period of at least six (6) years after the final payment under this Agreement and that Local Partnership and any of its duly authorized representatives shall have access to any such materials for the purpose of making audits, examinations, excerpts, and transcripts for no less than six (6) years after the date of final payment under this Agreement or a resolution of audit findings, whichever is later. Vendor agrees to retain all financial records and programmatic records, supporting documents, and statistical records for a period of six (6) years after the final payment is made under the Agreement including any amendments and/or extensions to the Agreement. If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the six (6) year period, the records shall be retained until the completion of the action and resolution of all issues which arise from it, or until the end of the regular six (6) year period, whichever is later.

c. The provisions of this Agreement are applicable to any permitted subcontractor. If any inspection, audit, or evaluation is made on the premises of the Vendor, or permitted subcontractor, Vendor shall provide and require each permitted subcontractor to provide all reasonable facilities and assistance for the safety and convenience of the authorized representatives in the performance of their duties. All such inspections and evaluations shall be performed in such a manner that will not unreasonably delay work and any subcontract permitted by Local Partnership shall contain a provision, which sets forth the subcontractor's agreement with the terms set forth in this section.

9. **Criminal History Review.** Vendor shall ensure, to the greatest extent possible, that individuals with any record of engaging in child or elder abuse or neglect, or having any other issues that affects their suitability for employment do not provide the Services under this Agreement. Prior to receipt of funds under this Agreement, the Vendor must demonstrate to the satisfaction of Local Partnership that it has a process in place for reviewing the background of all employees engaged in providing the Services under this Agreement to include at a minimum a Department of Social Services Central Registry and South Carolina Law Enforcement Division check.

10. **Compliance with Law.** In the performance of this Agreement Vendor will comply with all applicable laws, rules, regulations ordinances, and other government directives including, but not limited to, compliance with Title VI and VII of the Civil Rights of 1964; Section 504 of the Rehabilitation Act of 1973, as amended, and regulations issued pursuant thereto; the Americans with Disabilities Act of 1990 and regulations issued pursuant thereto; the Drug Free Workplace Act, S.C. Code Ann. Sections 44-107-10, et. Seq. 1976, as amended; and any similar applicable laws, regulations, or rules. Vendor shall maintain all applicable licenses, permits, or other government required permissions to perform its obligations pursuant to this Agreement.

11. **Intellectual Property Ownership.** Vendor acknowledges and agrees that the Services are work made for hire and any information, know-how, results, deliverables and inventions, and any associated intellectual property, that is made, discovered, created, invented, or generated by Vendor in performance of the Services under this Agreement shall be owned by Local Partnership. Vendor shall execute such documents as Local Partnership requests to transfer to Local Partnership such intellectual property rights.

12. **Data Ownership.**

a. "Data" shall mean for purposes of this Agreement all results, technical information, and materials developed and/or obtained in the performance of the Services hereunder including but not limited to, all reports, surveys, plans, charts, test data, program documentation, recordings (sound and/or video), pictures, drawings, analyses, graphic representations, printouts, notes and memoranda, and documents, whether finished or unfinished, which result from or are prepared in connection with the Services performed hereunder. All property rights in, but not limited to, software, data, and other records entered into any database of the Vendor or supplied to the Vendor and publication rights in any interim, draft, and final reports and other documentation (hard copy and electronic media) produced by the Vendor in connection with the Services under this Agreement shall vest in and be retained by the Local Partnership.

b. The Local Partnership shall have the right to all working papers, reports, charts, programs, and other material developed by the Vendor during the course of this Agreement.

c. All documents, reports, manuals, and other data prepared during and/or resulting from the performance of Services under this Agreement shall include the following statement: "The preparation of this (report or document) was funded through an agreement with the Local Partnership with funds provided by the State Office of First Steps."

d. Vendor may not publish or copyright any data without prior approval of the Local Partnership, unless otherwise stated herein. Local Partnership shall have the right to publish, duplicate, use and disclose all such data in any manner, and for any purpose whatsoever, and may authorize others to do so.

13. **Insurance.** During the term of this Agreement, Vendor shall maintain insurance in the following amounts: _____

14. **Subcontracting.** Vendor shall not engage a subcontractor to perform the Services under this Agreement without express written consent of Local Partnership.

15. **Additional Vendor Responsibilities.** Vendor shall:

a. Ensure that no funds provided under this Agreement will be used for any partisan political activity, lobbying any federal or state governmental entity or official, or to further the election or defeat of any candidate for public office.

b. Fully participate, as requested, in the Local Partnership's evaluation process, including collecting and providing to the Local Partnership any and all data and/or other information that may be required for such evaluation.

c. Submit to the Local Partnership or its representative any other plans, reports, documents, or other products that the Local Partnership or its representative may specify.

d. Comply fully and in a timely manner with all financial procedures established by the Local Partnership or its duly authorized representatives.

e. As required, maximize the use of in-kind contributions as appropriate (volunteers, goods, services, facilities) and agree to assist the Local Partnership in accurately quantifying those contributions and any other direct or indirect funding the Local Partnership funds have leveraged.

f. As required, use or expend the funds provided by this Agreement only for the purposes for which they were appropriated. A copy of any required audit must be filed with the Local Partnership or its representative within one month of receipt of the final audit.

g. Promptly notify Local Partnership or its representatives if Vendor's tax status is changed, revoked, or modified in any way.

h. Receive written approval from the Local Partnership prior to implementation of any changes by the Vendor in Services funded in whole or in part by the Local Partnership and of any changes in budget for the Services.

i. If required by the Local Partnership, secure, maintain, and provide evidence of an Honesty Surety Bond in a form satisfactory to the Local Partnership covering staff involved in handling of funds allocated to the Vendor by the Local Partnership when the total amount under this Agreement exceeds or is expected to exceed, \$100,000.

16. **Miscellaneous.**

a. Further Assurances. Vendor shall, upon the reasonable request, and at its sole cost and expense, promptly execute such documents and perform such acts as may be necessary to give full effect to the terms of this Agreement.

b. Independent Contractors. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, Local Partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the parties and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

c. No Public Statements or Use of Trademarks. Neither party shall issue or release any announcement, statement, press release, or other publicity or marketing materials relating to this Agreement, or, otherwise use the other party's trademarks, service marks, trade names, logos, domain names, or other indicia of source, association, or sponsorship, in each case, without the prior written consent of the other party.

d. Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder shall be in writing and sent to the applicable addresses as listed on the signature page. Notices sent in accordance with this Section shall be deemed effectively given: (i) when received, if delivered by hand (with written confirmation of receipt); (ii) when received, if sent by a nationally recognized overnight courier (receipt requested); (iii) when received, if mailed, by certified or registered mail; or (iv) if delivery is refused at the address for such notice.

e. Headings. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

f. Entire Agreement. This Agreement, together with all SOWs and any other documents incorporated herein by reference, constitutes the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter.

g. Assignment. Neither party shall assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this Agreement, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without the other party's prior written consent. Any purported assignment, delegation, or transfer in violation of this Section is void. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective permitted successors and assigns and each party's obligations hereunder shall survive any change in control or ownership of such party.

h. No Third-Party Beneficiaries. Except as set forth in Section 5 (Indemnification), this Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person any legal or equitable right, benefit, or remedy of any nature whatsoever, under or by reason of this Agreement.

i. Amendment; Modification; Waiver. This Agreement may only be amended, modified, or supplemented by an agreement in writing signed by each party hereto. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the waiving party. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

j. Severability. Any term or provision of this Agreement that is held invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provisions in any other situation or in any other jurisdiction.

k. Governing Law; Submission to Jurisdiction.

(i) This Agreement and all related documents, and all disputes and other matters arising out of or relating to this Agreement, are governed by, and construed in accordance with, the laws of the State of South Carolina without regard to the conflict of laws provisions thereof or of any other jurisdiction to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of South Carolina.

(ii) Any dispute for which a party is permitted to bring a court proceeding shall be instituted exclusively in the United States for this District of South Carolina or the courts of the State of South Carolina located in the county of Local Partnership's principal place of business and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding; provided that an action to enforce a judgment or order of any such court may be enforced in any court having competent jurisdiction.

(iii) Counterparts. This Agreement may be executed in two or more counterparts, each of which when executed shall be deemed an original, but all of which taken together shall constitute one and the same agreement. Facsimile and electronic transmission (including the email delivery of documents in Adobe PDF format) of any signed original counterpart or retransmission of any signed facsimile transmission shall be deemed the same as delivery of the original.

l. Flow Down Provisions. In performing this Agreement, Vendor shall comply with the terms and conditions set forth on Exhibit B attached hereto.

IN WITNESS WHEREOF, the parties hereby agree to this Agreement by affixing their signatures below.

[Signature page to follow]

LOCAL PARTNERSHIP:

_____ County First Steps to School Readiness
Local Partnership

By: _____

Name: _____

Title: _____

Address:

VENDOR:

By: _____

Name: _____

Title: _____

Address:

Exhibit A
Sample Statement of Work

This Statement of Work (“SOW”) is made by and between _____ County First Steps Board Local Partnership (“Local Partnership”) and _____ (“Vendor”) effective as of _____, 20____ (the “SOW Effective Date”) pursuant to the Agreement for Purchase of Services entered into by and between Local Partnership and Vendor on or about _____ (the “Agreement”).

1. Services Overview
 - a. [Insert high level description of services]

2. SOW Term.
 - a. This SOW shall begin as of the SOW Effective Date and continue until _____, unless terminated earlier pursuant to the terms of the Agreement.

3. Description of Services

4. Implementation Plan and Schedule

5. Budget, Fees, Costs, and Expenses and any additional payment terms.
 - a. Cost to implement this program shall not exceed \$_____.

6. Any required reporting.

IN WITNESS WHEREOF, the parties hereby agree to this SOW by affixing their signatures below.

LOCAL PARTNERSHIP:

_____ County First Steps to School Readiness
Local Partnership

By: _____

Name: _____

Title: _____

VENDOR:

By: _____

Name: _____

Title: _____

Exhibit B
Flow Down Provisions