

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT, effective on the date last executed by the parties hereto (“Effective Date”), and between the **Rochester City School District**, having its principal office at 131 West Broad Street, Rochester, New York 14614, (hereinafter referred to as the “District”) and **Akoban, LLC**, (hereinafter referred to as “Consultant”) having its principal office at 364 E. Main Street, Suite 1405, Middleton, DE 19709.

WHEREAS, the District requires at various times and for various purposes, **coaching** services, and desires to enter into this Agreement with the Consultant for the provision of **coaching** services to the District; and

WHEREAS, the Consultant desires to enter into this Agreement with respect to its services to the District, upon the terms and conditions hereinafter set forth; and

WHEREAS, the Consultant represents itself able, specially trained and possessing the necessary skills, experience, education, competency, and licenses or credentials to perform the required services;

NOW, THEREFORE, the District and the Consultant agree as follows:

Section 1. TERM

The term of this Agreement shall commence on the later of February 22, 2020 or the Effective Date and shall end on June 30, 2020. Either party may terminate this Agreement at any time upon twenty (20) days written notice.

CONSULTANT IS NOT AUTHORIZED TO PROVIDE ANY SERVICES, OR INCUR ANY EXPENSES, UNTIL THIS AGREEMENT HAS BEEN FULLY EXECUTED.

Section 2. SCOPE OF SERVICES

Consultant shall perform the following services in a manner satisfactory to the District’s Authorized Agent:

- Facilitate a one (1) day Board Retreat on February 22, 2020 to focus on communication and development.

To perform these services, the District shall provide the Consultant access to the following facilities: Rochester City School District central office.

Section 3. EVALUATION OF CONSULTANT’S SERVICES

Consultant understands that the District’s representative is required to provide an evaluation of the Consultant’s services. The District’s representative reserves the right to monitor and/or evaluate the services provided by conducting on-site visits and observations, surveys and/or interviews with participants and stakeholders, document and artifact collection and review, and any other applicable means. The District’s representative will evaluate the Consultant’s services using the following measures:

- **Participant feed back**

Section 4. FEE

The total fee payable to the Consultant shall not exceed **Six Thousand Five Hundred Dollars (\$6,500.00)**. **Travel and all other related expenses shall be the Consultant's sole responsibility. If this fee is contingent upon the receipt of a grant and the grant funds are not received, this Agreement shall be null and void.**

Consultant shall prepare and submit a detailed invoice to the District for services performed. The District's obligation to pay for services shall be limited to the actual work performed hereunder which may be less than, but may not exceed the funds encumbered by the District. **No payment shall be owed or made to Consultant for services commenced, or expenses incurred, prior to the Effective Date of this Agreement.**

The District shall be entitled to offset any payment due the Consultant for approved services by the amount of any and all unapproved services. The District shall be entitled to recoupment from the Consultant of any payments made to the Consultant for unapproved services, or for failure to deliver approved services set forth in this Agreement.

Please submit invoices with identifying Purchase Order number electronically to accountspayable@rcsdk12.org. If this option is not feasible, invoices may be mailed to RCSD Accounts Payable Department, 131 W. Broad Street, Rochester, NY 14614-1103. Invoices without a valid Purchase Order number will delay payment. All invoices must be submitted to the District's Accounts Payable Department no later than **June 30, 2020**. The District shall not be responsible to pay for invoices received after the above-referenced date.

Section 5. STUDENT DATA

Consultant agrees that it has not and will not request any data from the District containing personally identifiable student information as that term is defined under 20 U.S.C. §1232g, the Family Educational Rights and Privacy Act ("FERPA"). To the extent that the Consultant in the execution of its services under the Agreement requests data, they must have a legitimate reason in requesting said data, and any data so obtained will not contain any personally identifiable information, but may include aggregate publically available information.

Should Consultant request and receive any data which it has reason to believe contains personally identifiable information, Consultant will take all reasonable measures to safeguard said data and will promptly notify the District. Consultant will not share the data with third parties or subcontractors, and upon investigation by the District, may be directed to return and/or securely destroy same. The Consultant will also promptly notify the District when they or their subcontractors become aware of any actual or potential security or data breach relating to the information shared under this Agreement. All steps to mitigate and rectify the consequences of such a breach, including notification to impacted parties, shall be undertaken by the Consultant at its sole expense. The District will be entitled as a matter of right to seek injunctive relief to prevent a continuing breach of security, or data protection violation, without having to post a bond or other security and without having to prove the inadequacy of any other available remedies. Nothing will be deemed to limit or abridge any other remedy available to the District at law or in equity.

Section 6. WORK PRODUCT

All materials produced by Consultant and delivered to the District shall become and remain the property of the District for all purposes (including copyright). The District shall have the right to modify any work product of Consultant other than factual or statistical information or analyses, or opinions or recommendations. With respect to any work product of Consultant that is creative (which term shall be interpreted liberally), Consultant represents and warrants that it is original, has not been previously published, is not in the public domain, does not violate any right of privacy, and is not libelous, obscene or unlawful; Consultant shall be given credit for any creative work product in a manner the District deems appropriate.

Section 7. EQUIPMENT, MATERIALS AND SUPPLIES

Unless specified elsewhere in this Agreement, all equipment, materials and supplies necessary to perform the services required by this Agreement shall be furnished by Consultant at its own expense.

Section 8. CONFIDENTIALITY AND NON-DISCLOSURE

Consultant acknowledges and agrees that, in the course of providing services to the District, the Consultant will obtain confidential information and records about the District, including, but not limited to, information about students, employees, District practices and procedures and financial information. The Consultant agrees that it shall comply with all applicable laws, including, but not limited to, the Family Educational Rights and Privacy Act ("FERPA"), the Individuals with Disabilities Education Act ("IDEA"), the New York State Education Law and the Health Insurance Portability and Accountability Act ("HIPAA"). The Parties to this Agreement shall agree to use and disclose Protected Health Information in compliance with the Standards for Privacy of Individually Identifiable Health Information ("Privacy Rule") (45 C.F.R. Parts 160 and 164) under the Health Insurance Portability and Accountability Act of 1996. The definitions set forth in the Privacy Rule are incorporated by reference into this Agreement (45 C.F.R. §§ 160.103 and 164.501). The Consultant further agrees to maintain the confidentiality of all such information, and not to disclose any such information, at any time, to any individual or party not bound by this Agreement.

Section 9. FINGERPRINTING

Pursuant to NYS Department of Education, Consultant and/or employees/subcontractors providing services under this Agreement, who will have direct student contact, for 5 days or more, shall obtain fingerprinting clearance. Consultant must submit a list of all employees/subcontractors who will be providing services to the District under this Agreement, and proof to the District of such fingerprinting clearance, prior to the commencement of services. Consultant shall not permit any individual who has not satisfied these requirements to provide any services under this Agreement. The District may, in its sole discretion, terminate this Agreement where Consultant has failed to meet the requirements of this Paragraph. Consultant shall make no demand for, nor be entitled to receive, any additional compensation of any kind for any and all fees and costs for fingerprinting clearance procedures. Consultant shall immediately notify the District in a manner consistent with this Agreement if any individual subject to fingerprinting clearance has been arrested and/or charged with a felony or misdemeanor in any jurisdiction.

Section 10. RIGHT TO CURE

In the event Consultant defaults in the performance of this Agreement in whole, or in part, the District may take over the work to be performed and complete the same by contract or otherwise, and Consultant shall be liable to the District for any excess cost occasioned thereby. The total fee payable to

Consultant under this Agreement, upon such termination, shall be such proportionate part of the total fee as the value of the work satisfactorily completed and delivered to the District bears to the value of the work contemplated by this Agreement.

Section 11. NOTICES

All notices required or permitted to be provided herein shall be furnished by hand delivery, overnight mail or certified mail return receipt requested and shall be effective upon receipt.

Notices shall be provided to the Parties at the following addresses:

To: Rochester City School District
131 West Broad Street
Rochester, New York 14614
Attention: General Counsel

To: Akoben, LLC
364 E. Main Street, Suite 1405
Middleton, DE 19709
Attention: Abdul-Malik Muhammad

Section 12. INDEPENDENT CONTRACTOR

Consultant for the purposes of carrying out its respective duties and responsibilities under this Agreement, shall be and perform at all times as an independent contractor. Neither Party will be under the direction or supervision of the other in the performance of its duties under this Agreement. Nothing herein shall be construed to create an employer/employee relationship between the Parties or between either Party and the employees or contractors of the other Party. Neither Party nor its employees or contractors shall be eligible for any employee benefits programs of the other Party nor shall they have any claim under this Agreement or otherwise against the other Party for vacation pay, sick leave, retirement benefits, Social Security, Workers' Compensation, disability or unemployment benefits, or any other employee benefits of any kind.

Section 13. CONSULTANT'S LIABILITY

Consultant hereby agrees to defend and indemnify the District against any and all claims, suits and liability, including attorney fees, which the District may incur in consequences of the intentional wrongful act or negligent act or omission of Consultant, or its officers, employees, subcontractors, agents, volunteers, or representatives. If a claim or suit is brought against the District for which Consultant may be responsible, in whole or in part, then Consultant shall be notified and shall handle or participate in the handling of the defense of such matter.

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Section 14. CONTRACT SUBJECT TO NEW YORK STATE RETIREMENT SYSTEM APPROVAL/CONTRACT DEEMED EXECUTORY

If Consultant, or any individual working for the Consultant under this Agreement, is a NYS Retiree, this Agreement shall be contingent upon approval by the applicable New York State Retirement System. Should the applicable New York State Retirement System approval not be obtained, this Agreement shall be null and void. This Agreement shall be deemed executory only to the extent of funds appropriated by the District, and available for the purpose of this Agreement, and no liability on account thereof shall be incurred by the District beyond the amount of such funds. It is understood and agreed that neither this Agreement, nor any representation by any public officer or employee creates any legal, moral or equitable obligation on the part of the District to request, appropriate or make additional funds available for the purpose of this Agreement.

Section 15. TAX

As the District is exempt from paying excise or sales taxes of any jurisdiction, the District will not accept or pay any invoices or vouchers for such taxes.

Section 16. EQUAL EMPLOYMENT OPPORTUNITY

Consultant agrees that it will not discriminate against its employees (if any) with respect to terms and conditions of employment because of race, color, religion, gender, age, disability, national origin, sexual orientation, or marital or veteran status, in violation of any federal or state Civil Rights Acts or the Americans with Disabilities Act. Consultant also agrees to make a good faith effort to employ minority group persons and females in the hiring of employees for performance of services under this Agreement.

Section 17. GENERAL LIABILITY INSURANCE

The Consultant shall provide proof of General Liability Insurance, naming the District as an additional insured, acceptable to the District, duly subscribed by an insurance carrier, in the following amounts required by the District:

- \$1,000,000 – Per Incident
- \$2,000,000 – Aggregate

Primary, non-contributory: For any claims related to this agreement, the Consultant's insurance coverage shall be primary insurance with respect to the District, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the District, its officers, officials, employees or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

If required: Sexual Abuse and Molestation insurance, either under the General Liability Insurance or in a separate policy, with coverage not less than one million dollars (\$1,000,000). Any insurance coverage for sexual abuse and molestation insurance written on a claims made basis shall remain in effect for a minimum of one (1) year following the expiration of the agreement.

If the Consultant elects not to obtain General Liability insurance under this agreement, the Consultant must complete and submit for approval to the Office of the General Counsel, a "Waiver Application for General or Professional Liability Insurance" form. If waiver of general liability insurance is approved, it does not release the Consultant from responsibility for any claim or demand.

Section 18. PROFESSIONAL OR EDUCATORS PROFESSIONAL LIABILITY INSURANCE

The Consultant shall procure at its own expense professional liability insurance for services to be performed pursuant to this Agreement, insuring the Consultant against malpractice or errors and omissions of the Consultant, in the amount of One Million Dollars. The Consultant shall provide the District with a certificate of insurance from an authorized representative of a financially responsible insurance company evidencing that such an insurance policy is in force. The certificate shall contain a thirty (30) day cancellation clause which shall provide that the District shall be notified not less than thirty (30) days prior to the cancellation, assignment or change of the insurance policy. The Consultant shall also give at least thirty (30) days' notice to the District of such cancellation, amendment or change, and of any lapse of insurance coverage under this Agreement.

If the Consultant elects not to obtain Professional Liability insurance under this agreement, the Consultant must complete and submit for approval to the Office of the General Counsel, a "Waiver Application for General or Professional Liability Insurance" form. If waiver of professional liability insurance is approved, it does not release the Consultant from responsibility for any claim or demand.

Section 19. WORKERS' COMPENSATION

Consultant shall secure workers compensation for the benefit of, and keep insured during the life of this Agreement, any and all employees as are required to be insured under the provisions of the Workers' Compensation Law of the State of New York or the State of Consultant's residence, whichever may apply. Consultant shall provide proof acceptable to the District, duly subscribed by an insurance carrier, that such Workers' Compensation coverage has been secured or provide a Certificate of Attestation of Exemption, Form CE-200, from the New York State Worker's Compensation Board.

http://www.wcb.ny.gov/content/ebiz/wc_db_exemptions/requestExemptionOverview.jsp

Section 20. CERTIFICATION, DISCLOSURE, AND COMPLIANCE WITH ALL LAWS

By entering into this Agreement, the Consultant certifies and affirms that the/she/it is a valid legal entity (or authorized individual), currently in good standing, and possesses all licenses, credentials or authorizations required by law to conduct the services contracted for herein. In addition, Consultant certifies and affirms that all disclosures to the District required by law have been made, including any known or potential conflict of interest as a result of this Agreement involving any District employee or family member. Consultant also certifies that he/she/it is not on the prohibited entities list pursuant to the New York State Iran Divestment Act of 2012, nor on the NYS debarred or ineligible list, and that no subcontractor that is identified on the prohibited, debarred, or ineligible lists will be utilized hereunder.

Consultant further agrees that, during the performance of the services required pursuant to this Agreement, it and all employees (if any) working under its direction shall strictly comply with all local, state or federal laws, ordinances, rules or regulations controlling or limiting in any way its actions during such performance of the services required by this Agreement. Furthermore, each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein, and this Agreement shall be read and enforced as though it were included herein.

Section 21. AUDIT

Consultant shall provide to District, immediately upon District's demand without prior notice during normal business hours, access to and copies of any books, records and papers, including computer tapes, disks, or other electronic media, pertinent to performance of the services under this Agreement up to three (3) years after termination of agreement without cost to the District.

Section 22. PROHIBITION AGAINST ASSIGNMENT

Consultant shall be prohibited from assigning, transferring, conveying, or otherwise disposing of this Agreement or any of its contents, or its right, title or interest therein, or of its power to perform the services required by this Agreement to any other person or corporation without the previous consent, in writing, of the District.

Section 23. DISPUTE RESOLUTION

This Agreement will be governed by the laws of the State of New York without regard for conflict of law principles. The State and Federal Courts located in Monroe County, New York shall be the exclusive forums for resolving all disputes arising from or relating to this Agreement. Without limiting the foregoing, the Parties agree to attempt to resolve any disputes through discussion and negotiation prior to commencing any legal action, but no liability will attach and action shall be dismissed for failure to comply with this subdivision.

Section 24. EXTENT OF AGREEMENT

This Agreement constitutes the entire and integrated agreement between and among the parties hereto and supersedes any and all prior negotiations, agreements and conditions, whether written or oral. Any modification or amendment to this Agreement shall be void unless it is in writing and signed by the parties.

Section 25. NON-WAIVER

In the event that the terms and conditions of this Agreement are not strictly enforced by the District, such non-enforcement shall not act as or be deemed to act as a waiver or modification of this Agreement, nor shall such non-enforcement prevent the District from enforcing each and every term of this Agreement thereafter.

Section 26. SEVERABILITY

If any provision of this Agreement is held invalid by a court of law, the remainder of this Agreement shall not be affected thereby if such remainder would then continue to conform to the laws of the State of New York.

Section 27. GOVERNING LAW

This Agreement shall be governed by and under the laws of the State of New York. In the event that a dispute arises between the parties, venue for the resolution of such dispute shall be the County of Monroe, State of New York.

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IN WITNESS WHEREOF, the parties have duly executed this Agreement on the day and year last written below.

AKOBEN, LLC

By: Abdul-Malik Muhammad
Print name: Malik Muhammad
Title: Owner + Lead Trainer
Date: 2.20.20

ROCHESTER CITY SCHOOL DISTRICT

By: Terry Dade (cd)
Terry Dade, Superintendent
Date: 2/20/20