

**STATE OF LOUISIANA
DEPARTMENT OF EDUCATION
CONTRACT**

BE IT KNOWN, the Department of Education, Office of Portfolio, of the State of Louisiana (hereinafter sometimes referred to as *State*) and ACE Scholarships Louisiana, LLC, 309 Maple Ridge Drive, Metairie, LA, 70001, (hereinafter sometimes referred to as *Contractor*) do hereby enter into contract with funds provided by the program entitled, Believe and Empower, under the following terms and conditions.

1. SCOPE OF SERVICES

Contractor hereby agrees to furnish services:

Specific goals and objectives:

The goal of this Contract is for the Contractor to serve as a School Tuition Organization as part of the Tuition Donation Rebate Program and award student scholarships to eligible students from Louisiana low-income families to attend the eligible nonpublic school of their choice.

Deliverables:

Under the scope of this Contract, Contractor will provide a diverse set of services to fulfill all requirements for School Tuition Organizations as established in the Louisiana State Board of Elementary and Secondary Education's *Bulletin 134*, et al, and Louisiana R.S. 47:6301, et al.

These services include:

- 1) Submitting a formal Notice of Intent to Participate in the Tuition Donation Rebate Program to the Department.
- 2) Establishing the School Tuition Organization's internal organizational infrastructure, including, but not limited to, hiring staff and establishing sub-contracts with entities that may perform business related services for the School Tuition Organization necessary to fulfill the requirements of *Bulletin 134*, et al, and Louisiana R.S. 47:6301, et al;
- 3) Soliciting donations from eligible taxpayers to fund Tuition Donation Rebate Program scholarships and/or the School Tuition Organization's operations;
- 4) Adequately advertising the availability of scholarships to the public, with an emphasis on notifying parents of students in public schools that received a letter grade of "F" or "D";
- 5) Establishing and maintaining partnerships with eligible nonpublic schools;
- 6) Developing and implementing systems necessary to publish, collect, process, and approve student scholarships;

- 7) Verifying student enrollment at eligible nonpublic schools and issuing scholarship payments;
- 8) Fulfilling all School Tuition Organization reporting requirements; and,
- 9) Complying with all other requirements for School Tuition Organizations as identified in *Bulletin 134*, et al, and Louisiana R.S. 47:6301, et al.

Contractor personnel, including subcontractor personnel, assigned to perform the Services under this Contract shall be determined solely by the Contractor. Such personnel, including subcontractor personnel, shall have the skills and knowledge necessary to perform the Services hereunder.

Contractor may not use funds from this contract to either directly fund student scholarships or cover costs associated with direct-payments for any required state assessment.

Performance Measures:

Contractor's performance should ultimately result in the successful awarding of the below identified student scholarships for the 2015-16 and 2016-17 school years:

School Year of Scholarship Use	Number of Student Scholarships Awarded
2015-16	1,000
2016-17	1,250

Monitoring Plan:

The State will establish on-going check-ins with the Contractor to review contract performance of deliverables.

These on-going check-ins will reflect 12 performance periods that align with each month of the 2015 calendar year. The first performance period will start on Jan. 1, 2015 and end on Jan. 31, 2015. Performance periods will subsequently continue with the same monthly schedule for the remainder of the Contract.

Specifically, during this performance period check-in, the State and Contractor will:

- Establish performance period-specific sub-deliverables that the Contractor should fulfill during the upcoming performance period; and,
- Review performance of expected sub-deliverables that the Contractor should have fulfilled within the current performance period.

The Contractor should submit the State a status report detailing progress towards accomplishing agreed upon performance period-specific sub-deliverables, including any State required evidence, no later than two business days prior to the corresponding performance period check-in.

This agreement will be monitored by the Louisiana Department of Education, Office of Portfolio, Chief of Staff – Brian Darrow.

2. PAYMENT TERMS

In consideration of the services described above, State hereby agrees to pay the Contractor a maximum fee of \$499,750. Payment will be made only on approval of the Office of Portfolio. The Contractor must use the standard Louisiana Department of Education Professional Service Billing Form for invoicing purpose.

Contracts where services are completed by June 30 must submit invoices no later than July 15. Due to funding constraints, funding may be unavailable for payment of services if invoices are not received by this date.

If progress and/or completion to the reasonable satisfaction of the agency is obtained, payments shall be an equal amount of \$41,645.83 scheduled to align with each performance period, totaling 12 performance periods with invoices of \$41,645.83 each. Once the State has verified that the Contract has met a performance period's identified sub-deliverables, the Contractor shall provide the State an invoice for the performance period.

3. TAXES

Contractor hereby agrees that the responsibility for payment of taxes from the funds thus received under this Contract and/or legislative appropriation shall be the Contractor's obligation and identified under Federal tax identification number: XXXXXXXXXX

4. TERMINATION FOR CAUSE

The State may terminate this contract for cause based upon the failure of the Contractor to comply with the terms and/or conditions of the contract, provided that the State shall give the Contractor written notice specifying the Contractor's failure. If within thirty (30) days after receipt of such notice the Contractor shall not have both corrected such failure and thereafter proceeded diligently to complete such correction, then the State may, at its option, place the Contractor in default and the contract shall terminate on the date specified in such notice. The Contractor may exercise any rights available under Louisiana law to terminate for cause upon the failure of the State to comply with the terms and conditions of this contract, provided that the Contractor shall give the State written notice specifying the State's failure. The State has the right to cancel this contract in less than thirty (30) days due to budgetary reductions and changes in funding priorities by the State.

5. TERMINATION FOR CONVENIENCE

The State may terminate the contract at any time by giving thirty (30) days written notice to the Contractor. The Contractor shall be entitled to payment for deliverables in progress, to the extent work has been performed satisfactorily.

6. REMEDIES FOR DEFAULT

Any claim or controversy arising out of this contract shall be resolved by the provisions of LSA - R.S. 39:1524 through 1526.

7. OWNERSHIP

Any records, reports, documents, materials, software, systems, online systems, products, services or other items created or developed by Contractor before the effective date of this contract or any time outside the scope of this Contract including all associated intellectual property rights (the "Pre-Existing Materials") shall be the sole and exclusive property of Contractor.

Any records, reports, documents, materials, software, systems, online systems, products, services or any other deliverables/sub-deliverables and any improvements, modifications, enhancements or customizations to any Pre-Existing Materials created or developed by Contractor (alone or jointly with others) on or after the effective date of this contract and in the performance of its services under this contract and all associated intellectual property rights (the "Work Product") shall be the sole and exclusive property of Contractor.

If the contract is 8(g) funded, all provisions of this ownership clause apply except that upon termination or at the completion of 8(g) funding for a proposal/program, the Louisiana Board of Elementary and Secondary Education (BESE) may approve a Contractor's request to retain equipment purchased with 8(g) funds based on the Contractor's assurance that the equipment will be used for educational enhancement.

8. ASSIGNMENT FOR CONTRACT

No Contractor shall assign any interest in this contract by assignment, transfer, or novation, without prior written consent of the State. This provision shall not be construed to prohibit Contractor from assigning his bank, trust company, or other financial institution any money due or to become due from approved contracts without such prior written consent. Notice of any such assignment or transfer shall be furnished promptly to the State.

9. RIGHT TO AUDIT

It is hereby agreed that the Louisiana Department of Education Internal Auditors, Legislative Auditor of the State of Louisiana and/or the Office of the Governor, Division of Administration auditors and/or other auditors representing State or federal government shall have the option of auditing all accounts or records of Contractor which relate to this contract. All copies of audits must be forwarded to the Louisiana Department of Education's Internal Audit section.

10. TERM OF CONTRACT

This contract shall begin on October 20, 2014 and shall terminate on June 30, 2016. The effective date of this contract may be extended only if an amendment to that effect is duly executed by the contracting parties and approved by the necessary authorities prior to said

termination date. If either party informs the other that an extension of this contract is deemed necessary, an amendment may be prepared by State and forwarded to the other party for appropriate action by the other party, and said amendment is to be returned to State with appropriate information and signatures not less than fifteen (15) days prior to termination date. Upon receipt of the amendment, it will be forwarded to the necessary authorities for their approval.

Notwithstanding the foregoing, in no event shall the total term of this contract, including extensions hereto, be for a period of more than three (3) years.

11. FISCAL FUNDING

The continuation of this contract is contingent upon the appropriation of funds to fulfill the requirements of the contract by the legislature. If the legislature fails to appropriate sufficient monies to provide for the continuation of the contract, or if such appropriation is reduced by the veto of the governor or by any means provided in the appropriations act to prevent the total appropriation for the year from exceeding revenues for that year, or for any other lawful purpose, and the effect of such reduction is to provide insufficient monies for the continuation of the contract, the contract shall terminate on the date of the beginning of the first fiscal year for which funds are not appropriated.

This contract is not effective until approved by the department or by the Director of the Office of Contractual Review in accordance with La. R.S. 39:1502. It is the responsibility of the Contractor to advise the agency in advance if contract funds or contract terms may be insufficient to complete contract objectives

12. DISCRIMINATION CLAUSE

Contractor agrees to abide by the requirements of the following as applicable: Title VI and VII of the Civil Rights Act of 1964, as amended by the Equal Opportunity Act of 1972; Federal Executive Order 11246; the Federal Rehabilitation Act of 1973, as amended; the Vietnam Era Veteran's Readjustment Assistance Act of 1974; Title IX of the Education Amendments of 1972; the Age Act of 1975. Contractor also agrees to abide by the requirements of the Americans with Disabilities Act of 1990.

Contractor agrees not to discriminate in its employment practices, and will render services under this contract without regard to race, color, religion, sex, sexual orientation, national origin, veteran status, political affiliation, or disabilities.

Any act of discrimination committed by Contractor or failure to comply with these statutory obligations when applicable shall be grounds for termination of this contract.

13. REPORTING INCOME TO STATE-FUNDED RETIREMENT SYSTEMS

If the Contractor is receiving benefits from any State-funded retirement system, the Contractor is responsible for fully disclosing to the State, on or before the effective date of this contract, the existence and amount of such benefits and the date(s) of retirement. Failure by the Contractor to so disclose, or failure to disclose truthfully or accurately, will be grounds for placing the Contractor in default.

If said failure results in the State being liable to any State-funded retirement system for penalties, interest, or repayment of benefits, the Contractor shall be liable to the State for repayment of such amounts.

14. COMPLIANCE STATEMENT

The State's designated contract monitor has reviewed this contractual and/fiscal commitment and certifies that the proposed expenditure complies with all applicable federal and State laws and regulations and the BESE's policies. The designated monitor is aware that he/she is subject to disciplinary or appropriate legal action if their assurance is knowingly in violation of public laws or the BESE's policies.

15. DEBARMENT AND SUSPENSION CLAUSE

Contractor receiving individual awards hereby certifies that the organization and its principals are not suspended or debarred from any Federal or State program.

16. FUND USE

Contractor agrees not to use contract proceeds to urge any elector to vote for or against any candidate or proposition on an election ballot nor shall such funds be used to lobby for or against any proposition or matter having the effect of law being considered by the Louisiana Legislature or any local governing authority. This provision shall not prevent the normal dissemination of factual information relative to a proposition on any election ballot or a proposition or matter having the effect of law being considered by the Louisiana Legislature or any local governing authority.

17. APPLICABLE LAW

This contract shall be governed by and interpreted in accordance with the laws of the State of Louisiana. Venue of any action brought with regard to this contract shall be in the Nineteenth Judicial District Court, parish of East Baton Rouge, State of Louisiana.

18. CODE OF ETHICS

The Contractor acknowledges that Chapter 15 of Title 42 of the Louisiana Revised Statutes (R.S.

42:1101 et seq., Code of Governmental Ethics) applies to the Contracting Party in the Performance of services called for in this contract. The Contractor agrees to immediately notify the State if potential violations of the Code of Governmental Ethics arise at any time during the term of this contract.

19. SEVERABILITY

If any term or condition of this contract or the application thereof is held invalid, such invalidity shall not affect other terms, conditions, or applications which can be given effect without the invalid term, condition, or application; to this end the terms and conditions of this contract are declared severable.

20. CONFIDENTIALITY

This contract is entered into by Contractor and the Department in accordance with the provisions of the Family Educational Rights and Privacy Act, 20 U.S.C. Section 1231(g), et seq., (FERPA) and the Individuals with Disabilities Education Act, 20 U.S.C. Section 1400, et seq., (IDEA). Contractor hereby acknowledges that all documents which include personally identifiable information contained in or derived from a student's education records are deemed confidential pursuant to FERPA and IDEA. Contractor agrees not to re-disclose any such personally identifiable information without the prior written consent of the student's parent or the student, in the case of students who have reached the age of majority, or unless re-disclosure is otherwise authorized by law. Contractor agrees to return all documents deemed confidential pursuant to FERPA and/or IDEA to the Department at the conclusion of this contract. The State agrees to keep any confidential Pre-Existing Materials or Work Product that it may be provided confidential unless Contractor consents in writing to its disclosure to third parties, or unless otherwise required by law to disclose such Pre-Existing Materials or Work Product.

21. COLLECTION FEES

If Contractor invoices the State, and State pays Contractor, for work not done or for work not done in accordance with this contract, or if the State for any reason pays Contractor any amount not actually owed by State to Contractor pursuant to this contract, or if Contractor owes money to the State for any reason whatsoever as a result of this contract, the State may refer this matter to the Louisiana Attorney General for collection. If the State does refer this matter to the Louisiana Attorney General, Contractor agrees to pay, in addition to the debt owed to the State, the State's reasonable attorney's fees, up to a maximum fee of thirty-three and one-third percent (33 1/3%) of Contractor's debt.

22. JURISDICTION, VENUE AND GOVERNING LAW

Exclusive jurisdiction and venue for any and all suits between the State and Contractor arising out of, or related to, this contract shall be in the 19th Judicial District Court, Parish of East Baton Rouge, State of Louisiana. The laws of the State of Louisiana, without regard to Louisiana law on conflicts of law, shall govern this contract

23. COMPLETE CONTRACT

This is the complete contract between the parties with respect to the subject matter and all prior discussions and negotiations are merged into this contract. This contract is entered into with neither party relying on any Statement or representation made by the other party not embodied in this contract and there are no other agreements or understanding changing or modifying the terms. This contract shall become effective upon final statutory approval.

24. INDEMNIFICATION AND LIMITATION OF LIABILITY

Neither party shall be liable for any delay or failure in performance beyond its control resulting from acts of God or force majeure. The parties shall use reasonable efforts to eliminate or minimize the effect of such events upon performance of their respective duties under Contract.

Contractor shall be fully liable for the actions of its agents, employees, partners or subcontractors and shall fully indemnify and hold harmless the State and its Authorized Users from suits, actions, damages and costs of every name and description relating to personal injury and damage to real or personal tangible property caused by Contractor, its agents, employees, partners or subcontractors, without limitation; provided, however, that the Contractor shall not indemnify for that portion of any claim, loss or damage arising hereunder due to the negligent act or failure to act of the State. If applicable, Contractor will indemnify, defend and hold the State and its Authorized Users harmless, without limitation, from and against any and all damages, expenses (including reasonable attorneys' fees), claims, judgments, liabilities and costs which may be finally assessed against the State in any action for infringement of a United States Letter Patent with respect to the Work Product furnished, or of any copyright, trademark, trade secret or intellectual property right, provided that the State shall give the Contractor: (i) prompt written notice of any action, claim or threat of infringement suit, or other suit, (ii) the opportunity to take over, settle or defend such action, claim or suit at Contractor's sole expense, and (iii) assistance in the defense of any such action at the expense of Contractor. Where a dispute or claim arises relative to a real or anticipated infringement, the State or its Authorized Users may require Contractor, at its sole expense, to submit such information and documentation, including formal patent attorney opinions, as the Commissioner of Administration shall require.

The Contractor shall not be obligated to indemnify that portion of a claim or dispute based upon: i) Authorized User's modification or alteration of the Work Product, Material or Service; ii) Authorized User's use of the Work Product in combination with other products not furnished by Contractor; iii) Authorized User's use in other than the specified operating conditions and environment.

In addition to the foregoing, if the use of any item(s) or part(s) thereof of the Work Product shall be enjoined for any reason or if Contractor believes that it may be enjoined, Contractor shall have the right, at its own expense and sole discretion as the Authorized User's exclusive remedy to take action in the following order of precedence: (i) to procure for the State the right to continue using such item(s) or part (s) thereof of the Work Product, as applicable; (ii) to modify the infringing component of the Work Product so that it becomes non-infringing equipment of at least equal quality and performance; or (iii) to replace said item(s) or part(s) thereof of the Work Product, as applicable, with non-infringing components of at least equal quality and

performance, or (iv) if none of the foregoing is commercially reasonable, then provide monetary compensation to the State up to the dollar amount of the Contract.

For all other claims against the Contractor where liability is not otherwise set forth in the Contract as being "without limitation", and regardless of the basis on which the claim is made, Contractor's liability for direct damages, shall be the greater of \$100,000, the dollar amount of the Contract, or two (2) times the charges rendered by the Contractor under the Contract. Unless otherwise specifically enumerated herein or in the work order mutually agreed between the parties, neither party shall be liable to the other for special, indirect or consequential damages, including lost data or records (unless the Contractor is required to back-up the data or records as part of the work plan), even if the party has been advised of the possibility of such damages. Neither party shall be liable for lost profits, lost revenue or lost institutional operating savings.

The State and Authorized User may, in addition to other remedies available to them at law or equity and upon notice to the Contractor, retain such monies from amounts due Contractor, or may proceed against the performance and payment bond, if any, as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against them.

25. INSURANCE

Insurance shall be placed with insurers with an A.M. Best's rating of no less than A-: VI.

This rating requirement shall be waived for Worker's Compensation coverage only.

Contractor's Insurance: The Contractor shall not commence work under this contract until he has obtained all insurance required herein. Certificates of Insurance, fully executed by officers of the Insurance Company written or countersigned by an authorized Louisiana State agency, shall be filed with the State of Louisiana for approval. The Contractor shall not allow any sub-contractor to commence work on his subcontract until all similar insurance required for the subcontractor has been obtained and approved. If so requested, the Contractor shall also submit copies of insurance policies for inspection and approval of the State of Louisiana before work is commenced. Said policies shall not hereafter be canceled, permitted to expire, or be changed without thirty (30) days' notice in advance to the State of Louisiana and consented to by the State of Louisiana in writing and the policies shall so provide.

Compensation Insurance: Before any work is commenced, the Contractor shall maintain during the life of the contract, Workers' Compensation Insurance for all of the Contractor's employees employed at the site of the project. In case any work is sublet, the Contractor shall require the subcontractor similarly to provide Workers' Compensation Insurance for all the latter's employees, unless such employees are covered by the protection afforded by the Contractor. In case any class of employees engaged in work under the contract at the site of the project is not protected under the Workers' Compensation Statute, the Contractor shall provide for any such employees, and shall further provide or cause any and all subcontractors to provide Employer's Liability Insurance for the protection of such employees not protected by the Workers' Compensation Statute.

Commercial General Liability Insurance: The Contractor shall maintain during the life of the contract such Commercial General Liability Insurance which shall protect him, the State, and any subcontractor during the performance of work covered by the contract from claims or damages for personal injury, including accidental death, as well as for claims for property

damages, which may arise from operations under the contract, whether such operations be by himself or by a subcontractor, or by anyone directly or indirectly employed by either or them, or in such a manner as to impose liability to the State. Such insurance shall name the State as additional insured for claims arising from or as the result of the operations of the Contractor or his subcontractors. In the absence of specific regulations, the amount of coverage shall be as follows: Commercial General Liability Insurance, including bodily injury, property damage and contractual liability, with combined single limits of \$1,000,000.

Insurance Covering Special Hazards: Special hazards as determined by the State shall be covered by rider or riders in the Commercial General Liability Insurance Policy or policies herein elsewhere required to be furnished by the Contractor, or by separate policies of insurance in the amounts as defined in any Special Conditions of the contract included therewith.

Licensed and Non-Licensed Motor Vehicles: The Contractor shall maintain during the life of the contract, Automobile Liability Insurance in an amount not less than combined single limits of \$1,000,000 per occurrence for bodily injury/property damage. Such insurance shall cover the use of any non-licensed motor vehicles engaged in operations within the terms of the contract on the site of the work to be performed there under, unless such coverage is included in insurance elsewhere specified.

Subcontractor's Insurance: The Contractor shall require that any and all subcontractors, which are not protected under the Contractor's own insurance policies, take and maintain insurance of the same nature and in the same amounts as required of the Contractor.

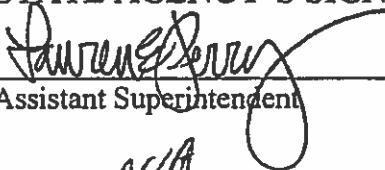
26. ORDER OF PRECEDENCE

This contract shall, to the extent possible, be construed to give effect to all of its provisions; however, where provisions are in conflict, first priority shall be given to the provisions of the contract, excluding the Request for Proposals, its amendments and the Proposal; second priority shall be given to the provisions of the Request for Proposals and its amendments; and third priority shall be given to the provisions of the proposal.

THUS DONE AND SIGNED at Baton Rouge, Louisiana, on the day, month and year first written below.

IN WITNESS WHEREOF, the parties have executed this Agreement as of this 3 day of month, year FEBRUARY, 2015

STATE AGENCY'S SIGNATURES:



Assistant Superintendent

N/A

Deputy Superintendent for
Management and Finance

C F M S
735140

N/A

Deputy Superintendent of Education

John Wright

State Superintendent of Education

Chad E. Ponce *12/31/14 WH*

President, State Board of
Elementary and Secondary Education

WITNESSES' SIGNATURES

CONTRACTOR'S SIGNATURE

By: *JK*

Telephone: *(303) 995 0069*

APPROVED
Office of the Governor
Office of Contractual Review

APR 27 2015

Pamela Barboglio

ATTACHMENT III: SCHEDULE OF DELIVERABLES

This following schedule should detail specific deliverables associated with the proposal narrative and scope of services. Each row should correspond to a specific month. The schedule should indicate all deliverables completed by the 15th day of that month, as well as the evidence that the Proposer will provide to the Department to verify the completion of those deliverables.

This schedule of deliverables will also serve as a proposed schedule of payments. For each row, the schedule should indicate the potential contract invoice amount associated with the successful completion of those deliverables. While not guaranteed in the final contract, for the sake of this schedule, proposers may assume an invoice date of the 15th of each month. The Department reserves the right to revise this schedule of deliverables upon selecting a proposal to receive a Believe and Empower contract.

Month / Year	Deliverable(s) Completed	Evidence	Invoice Amount (\$)

