

STATE OF TEXAS

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COUNTY OF FORT BEND

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THIRD RENEWAL TO AGREEMENT FOR ONLINE HOMEWORK TUTORING SERVICES

THIS THIRD RENEWAL ("3rd Renewal") is entered into by and between Fort Bend County, ("County"), a body corporate and politic under the laws of the State of Texas, and Brainfuse Inc. ("Brainfuse"), a company authorized to conduct business in the State of Texas.

WHEREAS, the parties have previously executed the Agreement for Online Homework Help/Tutoring Services for Fort Bend County Libraries on September 13, 2016, and then subsequently renewed the Agreement on July 25, 2017, and again on July 24, 2018 (hereinafter collectively referred to as "Agreement") attached hereto and incorporated by reference as Exhibit "I"; and

WHEREAS, County desires Brainfuse to continue providing online homework and tutoring services through the Fort Bend County libraries ("Services") pursuant to RFP 17-002 and terms set forth in the Agreement; and

NOW THEREFORE, County and Brainfuse do mutually agree as follows:

1. **Term.** The Agreement shall be renewed for an additional one (1) year term starting October 1, 2019 and ending September 30, 2020.
2. **Maximum Compensation.** The Maximum Compensation for the performance of Services during the additional one (1) year term shall be seventy-eight thousand dollars and 00/100 (\$78,000.00). In no case shall the amount paid under this 3rd Renewal exceed the Maximum Compensation without an approved amendment.
3. **Applicable Law.** The laws of the State of Texas govern all disputes arising out of or relating to this Agreement. The parties hereto acknowledge that venue is proper in Fort Bend County, Texas, for all legal actions or proceedings arising out of or relating to this Agreement and waive the right to sue or be sued elsewhere. Nothing in the Agreement shall be construed to waive the County's sovereign immunity. By signature below, Brainfuse represents pursuant to Section 2252.152 of the Texas Government Code, that Brainfuse is not listed on the website of the Comptroller of the State of Texas concerning the listing of companies that are identified under Section 806.051, Section 807.051 or Section 2253.153.
4. **Conflict.** In the event there is a conflict between this 3rd Renewal and the Agreement, this 3rd Renewal controls. Except as provided herein, all terms and conditions of the Agreement shall remain unchanged.
5. **Electronic and Digital Signatures.** The parties to the Agreement agree that the electronic and/or digital signatures of the parties included in the Agreement are intended to authenticate this writing and to have the same force and effect as the use of manual signatures.

IN WITNESS WHEREOF, this 3rd Renewal is signed, accepted, and agreed to by all parties by and through the parties or their agents or authorized representatives. All parties hereby acknowledge that they have read and understood this 3rd Renewal and the attachments and exhibits hereto. All parties further acknowledge that they have executed this legal document voluntarily and of their own free will.

FORT BEND COUNTY

BRAINFUSE, INC.

KP George, County Judge



Authorized Agent- Signature

Date

Alex Sztuden

Authorized Agent- Printed Name

ATTEST:

Date: 9/12/19

Laura Richard, County Clerk
(SEAL)

AUDITOR'S CERTIFICATE

I hereby certify that funds in the amount of \$_____ are available to pay the obligation of Fort Bend County within the foregoing Agreement.

Robert Ed Sturdivant, Fort Bend County Auditor

Exhibit I

STATE OF TEXAS

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COUNTY OF FORT BEND

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SECOND RENEWAL TO AGREEMENT FOR ONLINE HOMEWORK TUTORING SERVICES

THIS SECOND RENEWAL ("2nd Renewal") is entered into by and between Fort Bend County, ("County"), a body corporate and politic under the laws of the State of Texas, and Brainfuse Inc. ("Brainfuse"), a company authorized to conduct business in the State of Texas.

WHEREAS, the parties have previously executed the Agreement for Online Homework Help/Tutoring Services for Fort Bend County Libraries on September 13, 2016, and subsequently renewed the Agreement on July 25, 2017 (hereinafter collectively referred to as "Agreement") attached hereto and incorporated by reference as "Exhibit 1"; and

WHEREAS, County desires Brainfuse to continue providing online homework and tutoring services through the Fort Bend County libraries ("Services") pursuant to RFP 17-002 and terms set forth in the Agreement; and

NOW THEREFORE, County and Brainfuse do mutually agree as follows:

1. **Term.** The Agreement shall be renewed for an additional one (1) year term starting October 1, 2018 and ending September 30, 2019.
2. **Maximum Compensation.** The Maximum Compensation for the performance of Services during the additional one (1) year term shall be seventy-eight thousand dollars and 00/100 (\$78,000.00). In no case shall the amount paid under this 2nd Renewal exceed the Maximum Compensation without an approved amendment.
3. **Applicable Law.** The laws of the State of Texas govern all disputes arising out of or relating to this Agreement. The parties hereto acknowledge that venue is proper in Fort Bend County, Texas, for all legal actions or proceedings arising out of or relating to this Agreement and waive the right to sue or be sued elsewhere. Nothing in the Agreement shall be construed to waive the County's sovereign immunity. By signature below, Brainfuse represents pursuant to Section 2252.152 of the Texas Government Code, that Brainfuse is not listed on the website of the Comptroller of the State of Texas concerning the listing of companies that are identified under Section 806.051, Section 807.051 or Section 2253.153. As required by Chapter 2270, Government Code, Brainfuse hereby verifies that it does not boycott Israel and will not boycott Israel through the term of this Agreement. For purposes of this verification, "boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.
4. **Conflict.** In the event there is a conflict between this 2nd Renewal and the Agreement, this 2nd Renewal controls. Except as provided herein, all terms and conditions of the Agreement shall remain unchanged.
5. **Electronic and Digital Signatures.** The parties to the Agreement agree that the electronic and/or digital signatures of the parties included in the Agreement are intended to authenticate this writing and to have the same force and effect as the use of manual signatures.

IN WITNESS WHEREOF, this 2nd Renewal is signed, accepted, and agreed to by all parties by and through the parties or their agents or authorized representatives. All parties hereby acknowledge that they have read and understood this 2nd Renewal and the attachments and exhibits hereto. All parties further acknowledge that they have executed this legal document voluntarily and of their own free will.

FORT BEND COUNTY

Robert E. Hebert, County Judge

7-24-2018
Date

BRAINFUSE, INC.

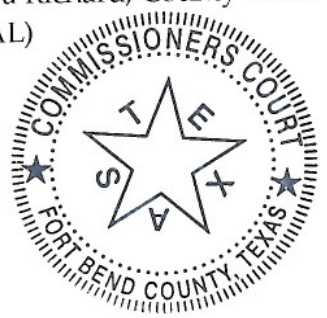
Authorized Agent- Signature

TROY WEIMAN, DIRECTOR OF ACCOUNTS
Authorized Agent- Printed Name

ATTEST:

Laura Richard, County Clerk
(SEAL)

Date: 7/13/2018



AUDITOR'S CERTIFICATE

I hereby certify that funds in the amount of \$ 78,000 are available to pay the obligation of Fort Bend County within the foregoing Agreement.

Robert Ed Sturdivant, Fort Bend County Auditor

Exhibit 1

STATE OF TEXAS

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COUNTY OF FORT BEND

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**FIRST RENEWAL TO AGREEMENT FOR
ONLINE HOMEWORK HELP/TUTORING SERVICES FOR FORT BEND COUNTY LIBRARIES**

THIS RENEWAL is entered into by and between Fort Bend County, Texas, (hereinafter "County"), a body corporate and politic under the laws of the State of Texas, and Brainfuse Inc. (hereinafter "Contractor"), a company authorized to conduct business in the State of Texas.

THAT WHEREAS, County desires that Contractor provide online homework and tutoring services through the Fort Bend County libraries (hereinafter "Services") pursuant to RFP 17-002; and terms set forth in this Agreement; and

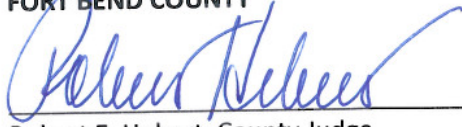
WHEREAS, the parties desire to renew the Agreement for an additional one (1) year term;

NOW THEREFORE, County and Contractor do mutually agree as follows:

1. The Agreement shall be renewed for an additional one (1) year term starting October 1, 2017 and ending September 30, 2018.
2. The Maximum Compensation for the performance of Services during the additional one (1) year term shall be seventy thousand dollars and no/100 (\$70,000.00). In no case shall the amount paid under this Extension exceed the Maximum Compensation without an approved amendment.

Except as provided herein, all terms and conditions of the Agreement shall remain unchanged.


FORT BEND COUNTY



Robert E. Hebert, County Judge

Date: July 25, 2017

BRAINFUSE, INC.



Authorized Agent- Signature

Alex Sztuden
Authorized Agent- Printed Name

ATTEST:



Laura Richard, County Clerk
(SEAL)

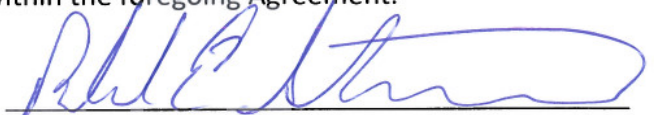
Date: 6/19/2017



Red 7/25/2017

AUDITOR'S CERTIFICATE 70,000⁰⁰

I hereby certify that funds in the amount of \$ 63000.00 are available to pay the obligation of Fort Bend County within the foregoing Agreement.



Robert Edward Sturdivant, Fort Bend County Auditor

EXHIBIT A

STATE OF TEXAS

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COUNTY OF FORT BEND

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AGREEMENT FOR ONLINE HOMEWORK HELP/TUTORING SERVICES FOR FORT BEND COUNTY LIBRARIES

THIS AGREEMENT is made and entered into by and between Fort Bend County, (hereinafter "County"), a body corporate and politic under the laws of the State of Texas, and Brainfuse, Inc. (hereinafter "Contractor"), a corporation organized and existing under the laws of the State of New York.

WITNESSETH

WHEREAS, Contractor is engaged in the development and provision of educational services and content; and

WHEREAS, County desires that Contractor provide online homework and tutoring services through the Fort Bend County libraries (hereinafter "Services") pursuant to RFP 17-002; and terms set forth in this Agreement; and

WHEREAS, Contractor represents that it is qualified and desires to perform such services.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth below, the parties agree as follows:

AGREEMENT

Section 1. Scope of Services

Contractor shall render Services to County as defined in the Scope of Services (attached hereto as Exhibit A) at the rates provided in Exhibit A.

Section 2. Personnel

2.1 Contractor represents that it presently has, or is able to obtain, adequate qualified personnel in its employment for the timely performance of the Scope of Services required under this Agreement and that Contractor shall furnish and maintain, at its own expense, adequate and sufficient personnel, in the opinion of County, to perform the Scope of Services when and as required and without delays.

2.2 All employees of Contractor shall have such knowledge and experience as will enable them to perform the duties assigned to them. Any employee of Contractor who, in the

opinion of County, is incompetent or by his conduct becomes detrimental to the project shall, upon request of County, immediately be removed from association with the project.

Section 3. Compensation and Payment

3.1 Contractor's fees shall be calculated at the rates set forth in the attached Exhibit A. The Maximum Compensation for the performance of Services within the Scope of Services described in Exhibit A is sixty-three thousand dollars and no/100 (\$63,000.00). In no case shall the amount paid by County under this Agreement exceed the Maximum Compensation without an approved change order.

3.2 All performance of the Scope of Services by Contractor including any changes in the Scope of Services and revision of work satisfactorily performed will be performed only when approved in advance and authorized by County.

3.3 County will pay Contractor based on the following procedures: Upon completion of the tasks identified in the Scope of Services, Contractor shall submit to County two (2) original copies of invoices showing the amounts due for services performed in a form acceptable to County. County shall review such invoices and approve them within 30 calendar days with such modifications as are consistent with this Agreement and forward same to the Auditor for processing. County shall pay each such approved invoice within thirty (30) calendar days. County reserves the right to withhold payment pending verification of satisfactory work performed.

Section 4. Limit of Appropriation

4.1 Contractor clearly understands and agrees, such understanding and agreement being of the absolute essence of this Agreement, that County shall have available the total maximum sum of sixty-three thousand dollars and no/100 (\$63,000.00), specifically allocated to fully discharge any and all liabilities County may incur.

4.2 Contractor does further understand and agree, said understanding and agreement also being of the absolute essence of this Agreement, that the total maximum compensation that Contractor may become entitled to and the total maximum sum that County may become liable to pay to Contractor shall not under any conditions, circumstances, or interpretations thereof exceed sixty-three thousand dollars and no/100 (\$63,000.00).

Section 5. Time of Performance

The term of this contract is October 1, 2016 through September 30, 2017, renewable annually for four (4) years (through September 30, 2021) by the parties upon the written consent of both County and Contractor. Such mutual consent to renew shall take place at least 15 days prior to the expiration of the Agreement ("Renewal Period."). Any renewals will follow the pricing structure attached as Exhibit B, "Brainfuse Pricing for Fort Bend County Libraries".

Contractor shall complete the tasks described in the Scope of Services within this time or within such additional time as may be extended by the County.

Section 6. Modifications and Waivers

6.1 The parties may not amend or waive this Agreement, except by a written agreement executed by both parties.

6.2 No failure or delay in exercising any right or remedy or requiring the satisfaction of any condition under this Agreement, and no course of dealing between the parties, operates as a waiver or estoppel of any right, remedy, or condition.

6.3 The rights and remedies of the parties set forth in this Agreement are not exclusive of, but are cumulative to, any rights or remedies now or subsequently existing at law, in equity, or by statute.

Section 7. Termination

7.1 Termination for Convenience

7.1.1 County may terminate this Agreement at any time upon thirty (30) days written notice.

7.2 Termination for Default

7.2.1 County may terminate the whole or any part of this Agreement for cause in the following circumstances:

7.2.1.1 If Contractor fails to perform services within the time specified in the Scope of Services or any extension thereof granted by the County in writing;

7.2.1.2 If Contractor materially breaches any of the covenants or terms and conditions set forth in this Agreement or fails to perform any of the other provisions of this Agreement or so fails to make progress as to endanger performance of this Agreement in accordance with its terms, and in any of these circumstances does not cure such breach or failure to County's reasonable satisfaction within a period of ten (10) calendar days after receipt of notice from County specifying such breach or failure.

7.2.2 If, after termination, it is determined for any reason whatsoever that Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the County in accordance with Section 7.1 above.

7.3 Upon termination of this Agreement, County shall compensate Contractor in accordance with Section 3, above, for those services which were provided under this Agreement prior to its termination and which have not been previously invoiced to County.

Contractor's final invoice for said services will be presented to and paid by County in the same manner set forth in Section 3 above.

7.4 If County terminates this Agreement as provided in this Section, no fees of any type, other than fees due and payable at the Termination Date, shall thereafter be paid to Contractor.

Section 8. Ownership and Reuse of Documents

All documents, data, reports, research, graphic presentation materials, etc., developed by Contractor as a part of its work under this Agreement, shall become the property of County upon completion of this Agreement, or in the event of termination or cancellation thereof, at the time of payment under Section 3 for work performed. Contractor shall promptly furnish all such data and material to County on request.

Section 9. Inspection of Books and Records

Contractor will permit County, or any duly authorized agent of County, to inspect and examine the books and records of Contractor for the purpose of verifying the amount of work performed under the Scope of Services. County's right to inspect survives the termination of this Agreement for a period of four years.

Section 10. Insurance

10.1 Prior to commencement of the Services, Contractor shall furnish County with properly executed certificates of insurance which shall evidence all insurance required and provide that such insurance shall not be canceled, except on 30 days' prior written notice to County. Contractor shall provide certified copies of insurance endorsements and/or policies if requested by County. Contractor shall maintain such insurance coverage from the time Services commence until Services are completed and provide replacement certificates, policies and/or endorsements for any such insurance expiring prior to completion of Services. Contractor shall obtain such insurance written on an Occurrence form from such companies having Bests rating of A/VII or better, licensed or approved to transact business in the State of Texas, and shall obtain such insurance of the following types and minimum limits:

10.1.1 Workers' Compensation insurance. Substitutes to genuine Workers' Compensation Insurance will not be allowed. Employers' Liability insurance with limits of not less than \$1,000,000 per injury by accident, \$1,000,000 per injury by disease, and \$1,000,000 per bodily injury by disease.

10.1.2 Commercial general liability insurance with a limit of not less than \$1,000,000 each occurrence and \$2,000,000 in the annual aggregate. Policy shall cover liability for bodily injury, personal injury, and property damage and products/completed operations arising out of the business operations of the policyholder.

10.1.3 Business Automobile Liability insurance with a combined Bodily Injury/Property Damage limit of not less than \$1,000,000 each accident. The policy shall cover liability arising from the operation of licensed vehicles by policyholder.

10.1.4 Professional Liability insurance with limits not less than \$1,000,000.

10.2 County and the members of Commissioners Court shall be named as additional insured to all required coverage except for Workers' Compensation. All Liability policies including Workers' Compensation written on behalf of Contractor shall contain a waiver of subrogation in favor of County and members of Commissioners Court.

10.3 If required coverage is written on a claims-made basis, Contractor warrants that any retroactive date applicable to coverage under the policy precedes the effective date of the contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of 2 years beginning from the time that work under the Agreement is completed.

Section 11. Indemnity

CONTRACTOR SHALL INDEMNIFY AND DEFEND COUNTY AGAINST ALL LOSSES, LIABILITIES, CLAIMS, CAUSES OF ACTION, AND OTHER EXPENSES, INCLUDING REASONABLE ATTORNEYS FEES, ARISING FROM ACTIVITIES OF CONTRACTOR, ITS AGENTS, SERVANTS OR EMPLOYEES, PERFORMED UNDER THIS AGREEMENT THAT RESULT FROM THE NEGLIGENT ACT, ERROR, OR OMISSION OF CONTRACTOR OR ANY OF CONTRACTOR'S AGENTS, SERVANTS OR EMPLOYEES.

Section 12. Confidential and Proprietary Information

12.1 Contractor acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire information that is confidential to County. Any and all information of any form obtained by Contractor or its employees or agents from County in the performance of this Agreement shall be deemed to be confidential information of County ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by Contractor shall be treated with respect to confidentiality in the same manner as the Confidential Information. Confidential Information shall be deemed not to include information that (a) is or becomes (other than by disclosure by Contractor) publicly known or is contained in a publicly available document; (b) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Agreement; or (c) is independently developed by employees or agents of Contractor who can be shown to have had no access to the Confidential Information.

12.2 Contractor agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Contractor uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market,

transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than the provision of Services to County hereunder, and to advise each of its employees and agents of their obligations to keep Confidential Information confidential. Contractor shall use its best efforts to assist County in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limitation of the foregoing, Contractor shall advise County immediately in the event Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement and Contractor will at its expense cooperate with County in seeking injunctive or other equitable relief in the name of County or Contractor against any such person. Contractor agrees that, except as directed by County, Contractor will not at any time during or after the term of this Agreement disclose, directly or indirectly, any Confidential Information to any person, and that upon termination of this Agreement or at County's request, Contractor will promptly turn over to County all documents, papers, and other matter in Contractor's possession which embody Confidential Information.

12.3 Contractor acknowledges that a breach of this Section, including disclosure of any Confidential Information, or disclosure of other information that, at law or in equity, ought to remain confidential, will give rise to irreparable injury to County that is inadequately compensable in damages. Accordingly, County may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interest of County and are reasonable in scope and content.

12.4 Contractor in providing all services hereunder agrees to abide by the provisions of any applicable Federal or State Data Privacy Act.

12.5 Contractor expressly acknowledges that County is subject to the Texas Public Information Act, TEX. GOV'T CODE ANN. §§ 552.001 *et seq.*, as amended, and notwithstanding any provision in the Agreement to the contrary, County will make any information related to the Agreement, or otherwise, available to third parties in accordance with the Texas Public Information Act. Any proprietary or confidential information marked as such provided to County by Consultant shall not be disclosed to any third party, except as directed by the Texas Attorney General in response to a request for such under the Texas Public Information Act, which provides for notice to the owner of such marked information and the opportunity for the owner of such information to notify the Attorney General of the reasons why such information should not be disclosed. The terms and conditions of the Agreement are not proprietary or confidential information.

Section 13. Independent Contractor

13.1 In the performance of work or services hereunder, Contractor shall be deemed an independent contractor, and any of its agents, employees, officers, or volunteers performing

work required hereunder shall be deemed solely as employees of contractor or, where permitted, of its subcontractors.

13.2 Contractor and its agents, employees, officers, or volunteers shall not, by performing work pursuant to this Agreement, be deemed to be employees, agents, or servants of County and shall not be entitled to any of the privileges or benefits of County employment.

Section 14. Notices

14.1 Each party giving any notice or making any request, demand, or other communication (each, a "Notice") pursuant to this Agreement shall do so in writing and shall use one of the following methods of delivery, each of which, for purposes of this Agreement, is a writing: personal delivery, registered or certified mail (in each case, return receipt requested and postage prepaid), or nationally recognized overnight courier (with all fees prepaid).

14.2 Each party giving a Notice shall address the Notice to the receiving party at the address listed below or to another address designated by a party in a Notice pursuant to this Section:

County: Fort Bend County Libraries
1001 Golfview
Richmond, Texas 77469
Telephone: (281) 342-4455

With a copy to: Fort Bend County
Attn: County Judge
401 Jackson Street
Richmond, Texas 77469

Contractor: Brainfuse, Inc.
271 Madison Avenue
Third Floor
New York, New York 10016
Telephone: (212) 481-4870

14.3 A Notice is effective only if the party giving or making the Notice has complied with subsections 14.1 and 14.2 and if the addressee has received the Notice. A Notice is deemed received as follows:

14.3.1 If the Notice is delivered in person, or sent by registered or certified mail or a nationally recognized overnight courier, upon receipt as indicated by the date on the signed receipt.

14.3.2 If the addressee rejects or otherwise refuses to accept the Notice, or if the Notice cannot be delivered because of a change in address for which no Notice was given, then upon the rejection, refusal, or inability to deliver.

Section 15. 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 courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement, including, without limitation, Worker's Compensation laws, minimum and maximum salary and wage statutes and regulations, licensing laws and regulations. When required by County, Contractor shall furnish County with certification of compliance with said laws, statutes, ordinances, rules, regulations, orders, and decrees above specified.

Section 16. Performance Warranty

16.1 Contractor warrants to County that Contractor has the skill and knowledge ordinarily possessed by well-informed members of its trade or profession practicing in the greater Houston metropolitan area and Contractor will apply that skill and knowledge with care and diligence to ensure that the Services provided hereunder will be performed and delivered in accordance with the highest professional standards.

16.2 Contractor warrants to County that the Services will be free from material errors and will materially conform to all requirements and specifications contained in the attached Exhibit A.

Section 17. Assignment and Delegation

17.1 Neither party may assign any of its rights under this Agreement, except with the prior written consent of the other party. That party shall not unreasonably withhold its consent. All assignments of rights are prohibited under this subsection, whether they are voluntarily or involuntarily, by merger, consolidation, dissolution, operation of law, or any other manner.

17.2 Neither party may delegate any performance under this Agreement.

17.3 Any purported assignment of rights or delegation of performance in violation of this Section is void.

Section 18. Applicable Law

The laws of the State of Texas govern all disputes arising out of or relating to this Agreement. The parties hereto acknowledge that venue is proper in Fort Bend County, Texas, for all legal actions or proceedings arising out of or relating to this Agreement and waive the right to sue or be sued elsewhere. Nothing in the Agreement shall be construed to waive the County's sovereign immunity.

Section 19. Successors and Assigns

County and Contractor bind themselves and their successors, executors, administrators and assigns to the other party of this Agreement and to the successors, executors, administrators and assigns of the other party, in respect to all covenants of this Agreement.

Section 20. Third Party Beneficiaries

This Agreement does not confer any enforceable rights or remedies upon any person other than the parties.

Section 21. Severability

If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, the remaining provisions remain in full force, if the essential terms and conditions of this Agreement for each party remain valid, binding, and enforceable.

Section 22. Publicity

Contact with citizens of Fort Bend County, media outlets, or governmental agencies shall be the sole responsibility of County. Under no circumstances whatsoever, shall Contractor release any material or information developed or received in the performance of the Services hereunder without the express written permission of County, except where required to do so by law.

Section 23. Captions

The section captions used in this Agreement are for convenience of reference only and do not affect the interpretation or construction of this Agreement.

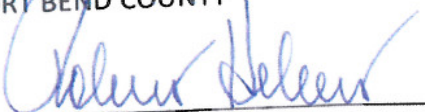
Section 24. Conflict

In the event there is a conflict between this Agreement and the attached exhibit, this Agreement controls.

*{Execution Page Follows}
{Remainder Intentionally Left Blank}*

IN WITNESS WHEREOF, the parties hereto have signed or have caused their respective names to be signed to multiple counterparts to be effective on the 13 day of September, 2016.

FORT BEND COUNTY

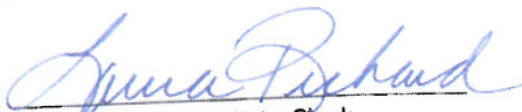


Robert E. Hebert, County Judge

9-13-2016

Date

ATTEST:



Laura Richard, County Clerk



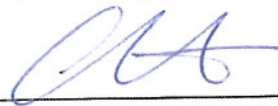
AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$63,000.⁰⁰ to accomplish and pay the obligation of Fort Bend County under this contract.



Robert Ed Sturdivant, County Auditor

BRAINFUSE, INC.



Authorized Agent- Signature

Alex Szudien

Authorized Agent- Printed Name

Managing Director

Title

9/11/2016

Date

EXHIBIT A

SCOPE OF SERVICES

12.0 SERVICE REQUIREMENTS:

12.1 The online homework help service must be live, on-demand and online homework help.

BRAINFUSE MEETS & EXCEEDS THIS REQUIREMENT: Please see our "SUMMARY OF SERVICES" and our "ABOUT OUR ONLINE CLASSROOM & MOBILE APP" sections for details.

12.2 The online homework help service must include all present library locations in the library system and at any future locations added during the course of the contract without additional charge.

BRAINFUSE MEETS THIS REQUIREMENT: It's worth noting that Brainfuse has been providing online homework help to all of Fort Bend's current library locations, and is committed to providing service to any future locations at *no* additional charge.

12.3 The online homework help service must be able to connect a student to a live tutor within a short period of time with a one-to-one ratio of student to tutor.

BRAINFUSE MEETS & EXCEEDS THIS REQUIREMENT: Please see our answer below as well as our "SUMMARY OF SERVICES" section for details.

BRAINFUSE PROVIDES 1:1 TUTORING WITH THE INDUSTRIES SHORTEST WAIT TIMES:

Brainfuse will provide one-to-one tutoring, one session at a time for patrons. Brainfuse will maintain this ratio while still maintaining the shortest wait times among tutoring providers through a proprietary staffing and tutor routing system. While there are multiple reasons for switching to Brainfuse, one of the most frequently mentioned is shorter wait times.

Brainfuse employs a proprietary staffing and routing system to ensure that students get help as quickly as possible. In fact, as our clients who switched can attest, Brainfuse has the shortest average wait time among leading providers (under 30 seconds, with most students getting on instantaneously). *Please note that we calculate wait time when a student receives actual tutoring, not at the time of greeting.*

- Our research has found that students who wait longer than 5 minutes in line without being greeted by a tutor are about 70% more likely to leave the session than students who were greeted within the first minute of logging on.

- Students that give up waiting for a tutor simply leave and do not have the opportunity to fill out a post-session survey, and their dissatisfaction is cannot be reflected in official satisfaction surveys since they exit prior to filling out surveys.
- Students who leave a session because of long wait times are only about 30% likely to ever use that tutoring service again.

By instantly greeting students during periods of overflow, our routing system helps ensure higher usage and greater repeat usage among patrons. In fact, most libraries experience usage increases of 10%-15% after switching to Brainfuse.

12.4 The online homework help service should be geared towards students from elementary through 12th grade.

BRAINFUSE MEETS & EXCEEDS THIS REQUIREMENT: Brainfuse is geared toward patrons of all ages, particularly students in elementary through 12th grade. Please see our "SUMMARY OF SERVICES" section for details.

SERVICES ARE STATE-ALIGNED TO TEXAS' CURRICULUM CONTENT STANDARDS

We have invested considerable resources to ensure that our online homework help and skills building lessons are aligned to Texas Essential Knowledge and Skills (TEKS). Our alignment efforts run deep: all of our lessons, tests, tutor routing logic, and skills mapping are designed to provide students with a seamless transition from classroom to tutoring session.

12.5 The online homework help service should include but not limited to the subjects of math, science, social studies, and English related to the above grade levels. College intro subjects and AP subjects would also be preferred.

BRAINFUSE MEETS & EXCEEDS THIS REQUIREMENT: Brainfuse provides assistance in the following subjects, including AP and entry-level college subjects:

- Math, including Algebra I, Algebra II, Geometry, Trigonometry, Calculus, and Statistics (including AP Levels)
- Science, including General Science, Biology, Chemistry, Physics, and Earth Science (including AP Levels)
- Social Studies, including Political Science, World History, U.S. History, and Geography (Including AP Levels)
- English as a Second Language
- English/Language Arts (Vocabulary, Grammar, Literature, and Reading Comprehension that incorporate our library of reading passages and questions that have been field-tested for years in our school-based programs.)
- Writing Lab, includes help with
 - Term papers
 - Literature and poetry analysis,

- Book Reports and bibliographies
- Speechwriting
- Presentations
- Formatting: APA, Chicago Style, and MLA formatting
- Lab Reports
- College Application Essays
- Foreign Language Assistance: Homework help for students taking a foreign language class (currently offered for Spanish)
- Test Preparation, including:
 - SAT, ACT
 - Tutoring aligned to Texas Tests
 - GRE, GED, ASVAB, USCIS, and College Placement Preparation (COMPASS/ACCUPLACER)
- Digital Literacy
- Skills Review through our Skills Building service

12.6 Please describe other services the online homework help vendor may offer such as skill-building, writing labs, language learning, career and adult education.

Many academic issues require more than homework help. For this reason, we have developed the most comprehensive range of academic services available among online tutoring providers, including skills-building, a premium writing lab, a foreign language lab, an Adult Learning Center, and a robust library of educational content. Please see our “SUMMARY OF SERVICES” section for details.

12.7 The online homework help service must be available seven (7) days a week.

BRAINFUSE MEETS THIS REQUIREMENT.

12.8 The online homework help service must allow for unlimited simultaneous users during hours of operation. Hours of operation must be negotiable and mutually agreed upon by both parties.

BRAINFUSE MEETS THIS REQUIREMENT.

12.9 The online homework help service needs to be available both in English and Spanish during all hours of operation.

BRAINFUSE MEETS THIS REQUIREMENT.

12.10 The online homework help service should deliver high-quality tutoring homework assistance using tutors that are all U.S.-based, possess degrees or qualifications in their subject areas, undergone rigorous background and reference checks, screening, training and professional development and be able to work with all ages of students in an online environment in a positive, professional way.

BRAINFUSE MEETS & EXCEEDS THIS REQUIREMENT: Please see our “ABOUT OUR TUTORS” section for details.

12.11 The library’s patrons should be able to connect to the online homework help service from the library (onsite), home, mobile devices, or any other remote location going through the library website. The use of library card authentication for remote users to enter the online homework help site should be negotiable and mutually agreed upon by both parties.

BRAINFUSE MEETS THIS REQUIREMENT: Please see our “ABOUT OUR ONLINE CLASSROOM & MOBILE APP” section for details.

12.12 The online homework help service should maintain strict COPPA/CIPA compliance with respect to its services. Sessions should be monitored in real-time by the vendor with session transcripts reviewed and archived. All user information should be kept confidential and not distributed to a third party.

BRAINFUSE MEETS & EXCEEDS THIS REQUIREMENT:

BRAINFUSE MAINTAINS STRICT COPPA/CIPA COMPLIANCE:

- There is no requirement to submit personal information in order to use our live tutoring services, and Brainfuse does not solicit any personal information.
- Our proprietary software identifies potentially inappropriate exchanges of information (phone numbers, addresses, etc.) and alerts our monitoring team to determine whether the issue warrants additional action.
- Our secure file sharing feature eliminates the need for emailing and ensures that tutors never have access to a patron’s personal information.
- Our unique live monitoring protocol ensures tutor compliance with our anonymity policy. To this end, our monitoring team observes sessions in real-time, reviews session transcripts and maintains records of past sessions.
- Our tutors undergo the same background check process mandated by our school district clients with respect to any individuals who interact with students.

NO DIRECT OR INDIRECT SOLICITATION OF ADDITIONAL CONSUMER SERVICES TO PATRONS:
Brainfuse is unique among providers in that it does not also offer a for-pay version of its service to consumers. HelpNow is our premium online homework help service to which we devote all of our development efforts and tutor staffing resources. As such, patrons who go to our homepage (www.brainfuse.com) will not be directly or indirectly solicited to subscribe to additional premium services or to submit credit card information to pay for additional tutoring time.

12.13 The online homework help service should have a system of quality control to evaluate tutors, handle complaints and provide feedback to the library.

BRAINFUSE MEETS & EXCEEDS THIS REQUIREMENT:

TUTOR MONITORING AND REVIEW SYSTEM: Our rigorous monitoring and review system is unique among online tutoring providers:

- **Live Monitoring:** We are the only online tutoring company to staff a full-time monitoring team. Monitors provide tutors with real-time assistance with respect to instructional strategies, and can also assist students with special tutoring requests. In addition, our monitors review session transcripts daily and provide management with summary reports of the day's activities.
- **Ongoing Tutor Evaluation:** We evaluate our tutors regularly based on session performance (as determined through live monitoring and review of session transcripts). During periods of low use, monitors log on as students to further evaluate tutor performance. Tutors are rated on a scale of 1-5. This rating serves as a major factor in determining compensation.
- **Ongoing Professional Development Through Tutor Managers:** Our tutor managers serve as both supervisors and mentors to tutors. Their role is to monitor performance and share best practices and constructive comments with tutors through private correspondence and regular conference call meetings.

QUALITY ASSURANCE PROCEDURES: In order to consistently provide high quality instruction, Brainfuse uses a rigorous monitoring and review system that has led to high client retention rates and customer satisfaction ratings:

- **Live Monitoring:** We staff a full-time monitoring team to review sessions, actively evaluate tutors, and provide them with real-time assistance with respect to instructional strategies.

- **Transcript Analysis:** Our mentoring team analyzes transcripts and compiles a daily report on any issues that might require additional attention by our management staff. Transcript analysis is also used to rate tutors.
- **Tutor Rating:** Tutors are rated on a scale of 1-5. Tutors in training begin with a rating of 1. Tutor ratings are used, among other things, to determine staffing and routing priorities (higher rated tutors receive students first).
- **Quality Control Software:** We employ a proprietary algorithm to identify inappropriate language or potentially unacceptable exchanges of personal information (such as phone numbers, addresses, etc.). Our live monitors are then able to view the transcript in greater detail to determine whether the issue warrants additional attention.
- **Mentoring:** Tutor managers serve as mentors and provide tutors with structured feedback and suggestions for improved performance.
- **Post-Session Surveys:** Our tutor managers analyze post-session reviews and take appropriate action when necessary.
- **Client Reviews:** Our Client Support Team maintains regular contact with library staff and solicits comments regarding tutor performance. Issues that require additional attention are communicated to our tutor managers.

12.14 The online homework help service must provide the library with monthly reports that include but not limited to:

- Y Total number of sessions for the month*
- Y Total number of sessions by subject*
- Y Total number of sessions by grade level*
- Y Total number of sessions per branch and per remote users*
- Y Post-session satisfaction surveys*

BRAINFUSE MEETS & EXCEEDS THIS REQUIREMENT: Unless requested otherwise, Brainfuse provides monthly usage reports that provide libraries with a complete snapshot of how HelpNow is used by patrons and their overall satisfaction with our service. Our usage reports are available as an email attachment or embedded in an email that can easily be imported into a standard spreadsheet application. Data collected by our reports include:

- Total number of sessions/logins
- Total number of remote and onsite sessions
- Number of sessions by library location, library type
- Average session length
- Total connection time
- Usage per database
- Number of registered users

- Average number of sessions per hour of the day and day of the week (in order to determine usage trends)
- Total number of sessions by grade level
- Total number of sessions by subject in both English and Spanish
- Post-session satisfaction surveys
- Post-session user comments
- Breakdown of usage by service used (homework help, skills building, test prep, writing lab, adult learning center)
- Total number of sessions by library, IP, zip code, and/or remote usage (according to library preference)

* Please note that additional data may be collected upon request.

12.15 The online homework help service should be available to students without the need for downloads or Shockwave plug-ins. It should be designed to work across multiple platforms (Mac/PC).

BRAINFUSE MEETS & EXCEEDS THIS REQUIREMENT: Our HTML5 whiteboard is accessible from virtually any browser, with no need for downloads or Shockwave plugins. It works on both Macs and PCs and from any tablet (iOS, Android, or Windows). We also have a mobile app that, along with additional features, allows users to access live tutors through any tablet or mobile device. Since cross-platform compatibility is one of our priorities, we also extend it to areas such as the ability for users to review past sessions, review our lesson library, create flashcards, take practice tests, and store/retrieve documents from any desktop or mobile device. It should also be noted that we continue to allow users the option of using our original JAVA whiteboard. For additional details about our platform, please see our "ABOUT OUR ONLINE CLASSROOM & MOBILE APP".

12.16 The online homework help service vendor should provide as part of its contract, technical set-up assistance and provide the library the appropriate URL and/or IP addresses.

BRAINFUSE MEETS THIS REQUIREMENT: Brainfuse technical staff will work with library technical staff to integrate services with each participating library's website and remote authentication system.

12.17 The online homework help service vendor must provide the library email notification of downtime during the online homework help service due to maintenance, upgrades, technical difficulties, etc.

BRAINFUSE MEETS & EXCEEDS THIS REQUIREMENT: Brainfuse services are available 24/7, 365 days a year. While some of our clients request that we close on holidays, Brainfuse is able to provide uninterrupted tutoring services to Fort Bend County Libraries:

- **No Downtime:** System availability has been 99.95%. Scheduled updates are performed on a redundant server farm to avoid any downtime to the user.
- **Uninterrupted Service:** For over a decade, Brainfuse has maintained uninterrupted service during scheduled operating hours, even during extreme circumstances such as Hurricane Sandy where our service continued uninterrupted.
- **Notification:** Brainfuse will notify the library of any system unavailability for periods of one hour or more during scheduled online hours. In the unlikely event that planned downtime was required during service hours, we would inform users and clients at least one month in advance of any service outage. Patrons would be informed from our main webpage and libraries would be informed by email, phone (or by another agreed-upon means).

12.18 The online homework help service vendor should provide as part of its contract customer support such as a helpline/hotline that is available during the online homework help hours to answer technical or other questions that may arise.

BRAINFUSE MEETS & EXCEEDS THIS REQUIREMENT: Brainfuse provides unlimited customer and technical support through a toll free number and email, 24 hours a day, 7 days a week, 365 days a year. Please note that email and web form inquiries are answered within 24 hours.

12.19 The online homework help service vendor should provide as part of its contract onsite and interactive web-based training to the Fort Bend County Library staff and presentations to the community, county officials, etc. as needed.

BRAINFUSE MEETS & EXCEEDS THIS REQUIREMENT:

LIBRARY STAFF TRAINING: Brainfuse provides full onsite training at the beginning of the program and makes available mid-year sessions for staff members who are new to the library or for those who request a training “refresher”. Training focuses on the nature of Brainfuse services, how to use the online classroom, and how to identify that types of patrons who would benefit most from Brainfuse. Brainfuse also provides webinar training and makes recordings of the training webinars available for playback.

- **Onsite Training:** Upon request, Brainfuse will send members of our Client Support Team to conduct onsite training sessions with library staff.
- **Brainfuse’s Webinar Training Program:** Brainfuse provides live training webinars upon request. Each webinar is recorded and archived for library staff to use the entire year. Various webinars are available:

- **Database-Specific Webinars:** Webinars focus on helping staff better understand Brainfuse's offerings so that they can better refer patrons to our services.
- **Marketing-Specific Training:** Brainfuse is committed to working with libraries to increase awareness of our online services and offers webinar training sessions focused on promotion and outreach.
- **Online Manuals:** Our design team has created online manuals, FAQs, and other web-based materials to help train library staff.

12.20 The online homework help service vendor should provide as part of its contract advertising materials such as posters, bookmarks, etc. to publicize the program in the libraries and community.

BRAINFUSE MEETS & EXCEEDS THIS REQUIREMENT:

BRAINFUSE'S PROMOTION AND MARKETING: Brainfuse actively works with all of our clients to promote awareness and use of our services. Our marketing efforts are one of the reasons that usage of tutoring services consistently increases in libraries that have switched to HelpNow from other providers. We believe that marketing must go beyond distributing collateral to helping users understand how our services are designed to support an entire range of academic needs. It has been our experience that most patrons do not know about online tutoring let alone more specific services such as test preparation, a writing lab, or skills building lessons. If users are made aware of such services, particularly during those moments when they would benefit most from them, they are more likely to eventually use other services within the HelpNow suite and to return repeatedly.

TARGETED OUTREACH: The Brainfuse Client Care Team will work with individual libraries to integrate and simplify access to our services. Our outreach efforts begin with a complete inventory of access points to our service, including:

- **Optimizing Placement on Library Website:** If the library desires, Brainfuse will assist library staff in determining optimal placement (in terms of visibility and ease-of-entry) of HelpNow links on the library's website.
- **Evaluation Of Which Components Should Include Direct URL Access:** Brainfuse will work with each library to determine whether they want to provide direct access to HelpNow services. Libraries have the option of letting users directly access some or all components of HelpNow without having to go through the HelpNow homepage. For instance, Spanish speakers could enter the Spanish version of HelpNow directly from the Library's Spanish language page.
- **Evaluation of Timely Promotion of Particular Service Components:** Libraries may decide to promote certain HelpNow services at different times of the year ("Study

for finals”, or “Prepare for the SAT”). Brainfuse will work with libraries to set a schedule for such seasonal promotions and provide collateral, banners, and direct links to the appropriate service.

- **Integration with Library Catalogs/Search Engines:** Our Technical Support Team will work with each library that desires to integrate Brainfuse into its online search engines and catalogue index.
- **Brainfuse’s Marketing and Promotional Materials:** Our Client Support Team offer libraries a range of advertising collateral, including posters, bookmarks, and flyers of a mutually agreed-upon design and function – all at no additional cost. Such collateral is available in customizable, print-ready formats. In addition, we have prepared video demos of our service for community outreach and training purposes. Brainfuse will also work closely with libraries to develop strategies for maximizing community awareness of HelpNow, including:
 - **Print Collateral:** Print collateral is available readymade or customizable by our in-house graphic design team. Print collateral includes:
 - Posters
 - Brochures
 - Flyers,
 - Bookmarks,
 - Promotional Business Cards
 - Computer Monitor Banners
 - Table Tents
 - **Web Graphics:** Brainfuse provides graphics (including banners and logos) in multiple sizes in the form of wallpaper, desktop icons, mobile-friendly graphics, and graphics in other formats. Some libraries, for instance, have used our web graphics to promote individual components of HelpNow, such as GED prep or resume assistance.
 - **Social Media Promotional Assistance:** Brainfuse assists libraries that wish to promote their services via major social media outlets, such as Facebook, Twitter, parenting blogs, and education industry sites.
 - **Promotional Presentations:** As part of our commitment to working with libraries to increase awareness of our online services, we offer live presentations and webinar training sessions focused on raising awareness and promoting our services. Past webinars have been provided to parent groups, student organizations, and school districts. Each webinar is recorded and archived for library staff to use the entire year. Additional webinars will be made available upon request.

- **PSA Creation and General Announcements:** Our Client Support Team can help libraries prepare and disseminate public service announcements, press releases, outreach to schools, and other organizations.
- **Availability in Other Languages:** All materials, outreach efforts, and presentations are available in Spanish and other languages upon request.

12.21 Pricing for the online homework help service should be based on the below historical data of past usage of this library system, hours of service, and the actual cost of the tutors. This contract is intended to extend four (4) years past the initial 12 month term.

BRAINFUSE MEETS THIS REQUIREMENT: Please see our “BRAINFUSE PRICING” section for details.

12.22 The online homework help service vendor should provide a list of current public library clients as references.

BRAINFUSE MEETS & EXCEEDS THIS REQUIREMENT: Please see our “BRAINFUSE REFERENCES & LETTERS OF REFERENCE” sections for details.

EXHIBIT B

BRAINFUSE PRICING

FOR FORT BEND COUNTY LIBRARIES

Brainfuse proposes to continue offering Fort Bend County Libraries unlimited use of its HelpNow Complete Tutoring System (as described in our proposal) at the following rates:

DATABASE	YEAR	COST PER YEAR
Brainfuse's HelpNow (as described in our proposal)	YEAR ONE	\$63,000
Brainfuse's HelpNow (as described in our proposal)	YEAR TWO	\$70,000
Brainfuse's HelpNow (as described in our proposal)	YEAR THREE	\$78,000
Brainfuse's HelpNow (as described in our proposal)	YEAR FOUR	\$78,000
Brainfuse's HelpNow (as described in our proposal)	YEAR FIVE	\$78,000

PLEASE NOTE THE FOLLOWING REGARDING OUR PRICING:

Please note that based on an average of 11,000 sessions per year, market rates would result in estimated fees of over \$95,000 (at \$9-\$10 per session). In addition, please note that Brainfuse has not increased its fees to Fort Bend County Libraries for the past 8 years, despite robust annual use. In light of our history with Fort Bend, and its importance to us as a long-standing customer, we propose: 1) to cap our fees for unlimited access at \$78,000 for the length of this contract and its renewable years, resulting in an estimated, average per session price of \$7.10 (at 11,000 sessions per year, for illustrative purposes only, as there would be no cap on the number of sessions allowed); and 2) in light of the difficulties that would be encountered by a library when it is asked to increase its budget dramatically in one year, we propose to gradually build in the increase, such that the Year 1 fee would be \$63,000, the Year 2 fee would be \$70,000; and the Years 3-5 fees would be \$78,000 per year.

We hope that the pricing structure above is sensitive to your budgetary concerns, while at the same time will provide both parties with a sustainable fee structure moving forward.

ADDITIONAL NOTES REGARDING OUR PRICING:

- All services outlined in this proposal are included in this quote (including any future set-up, full technical support, training, and outreach).
- There are *no* administrative or startup costs with Brainfuse.
- All upcoming services and enhancements will be included at *no* additional charge.
- All software upgrades are provided at *no* additional charge.
- HelpNow is designed as a student-initiated service and may not be used as part of a school or class-wide mandated assignment.
- Other pricing options and service combinations are available upon request.