

**ASBURY PARK BOARD OF EDUCATION
INFORMATION TECHNOLOGY CENTER
Service Participation Agreement**

THIS SERVICE PARTICIPATION AGREEMENT ("Agreement") is made in accordance with *N.J.S.A. 18A:18A-14.2 et seq.*, by and between the Asbury Park Board of Education Information Technology Center ("ITC"), which maintains offices at 1506 Park Avenue, Asbury Park, New Jersey, 07712, and the Springfield Board of Education ("Participant"), which maintains offices at 2146 Jacksonville Road, Jobstown, NJ 08041.

1. Term. ITC agrees to provide Budgetary Accounting System ("BAS") and Payroll/Personnel System ("PPS") services (collectively, "Service") to the Participant from July 1, 2019 through June 30, 2020.

2. Service Fees. The Participant shall pay to ITC, a total annual license fee of \$ 7,760.00 (\$ 3,880.00 for the BAS and \$ 3,880.00 for the PPS) for use of the Program ("Annual License Fee"). Any failure to pay upfront charges and/or the Annual License Fee in a timely fashion may result in immediate suspension of the Service.

A. Upfront Charges. The following charges shall be due and payable prior to ITC completing the initial setup of the Service:

Conversion Completed, Existing Customer

B. Annual License Fee. The Annual License Fee shall be paid in equal installments, due in accordance with the following payment schedule:

September 30, 2019	\$ 1,940.00
December 31, 2019	\$ 1,940.00
March 31, 2020	\$ 1,940.00
June 30, 2020	\$ 1,940.00

C. Additional Fees. Fees for the following services shall be billed by the ITC on a semi-annual basis, and are due and payable within 30 days of the invoice date:

Printed Payroll & Budget Checks (per check)	\$ 0.25
Printed W-2, 1095 & 1099 Forms (per form)	\$ 0.35
Digital Signature Changes (per signature)	\$ 100.00
Budget Account Changes (per account)	\$ 100.00
Payroll Account Changes (per account)	\$ 200.00
New User License, (per user)	\$ 75.00
UPS Delivery Charge (average cost)	\$ 25.00

3. ITC Manuals & Materials; Confidentiality.

A. ITC Property. All manuals and materials relating to the Service that are provided to the Springfield Board shall remain the property of the ITC. The Participant agrees that it (or its employees, consultants and/or representatives) will not copy, download, translate, decompile or create by reverse engineering or otherwise, the Source Code from any object code supplied hereunder, or use the Service in any way to create a derivative work product.

B. Confidentiality. The Participant acknowledges that the Service and any and all materials and other information that are, at any time, relayed to the Participant in the course of performance of this Agreement contains confidential and proprietary information owned by the ITC. The Participant agrees that it (or its employees, consultants and/or representatives) will not make the Service available or disclose identification numbers/passwords to anyone other than employees or authorized students of the Participant.

4. Information Transfer. Upon execution of this Agreement by the Participant, the ITC shall make the necessary programs and computer time available to perform the Service as set forth in Paragraph 1 above. Any necessary training for the operation of the BAS and/or PPS will be provided by the ITC.

5. Print Requests; Submission Deadline; Delivery Time; Extensions.

A. Submission Deadline. All print requests must be submitted to the ITC no later than 2:00PM for next business day service as provided in Paragraph 5(B), below. Requests submitted after the 2:00PM deadline will be ready for shipment the following business day, Saturdays, Sundays and Holidays excepted.

B. Delivery Time. Provided that a request is submitted to the ITC by 2:00PM, printed checks will be delivered by 4:00PM on the next business day, estimated. Delivery fees will be billed semi-annually with all shipping documentation included. The Participant may request expedited or special delivery; however, such requests shall be subject to charges based on standard carrier rates for that particular service.

C. Extensions. In the event that the ITC is prevented or delayed in fulfilling any obligation required under this agreement due to delays caused by fire, catastrophe, strikes or labor interruptions, civil commotion, acts of God, the public enemy, governmental prohibitions or regulations, inability or difficulty to obtain materials or other causes beyond the ITC's control, the ITC's time for performance shall be extended by up to 180 days, and the ITC shall incur no liability by reason thereof. If, after 180 days from the initiation of the period of delay, the cause for delay has not ended, then either party shall have the right to cancel this Agreement, and the Participant shall receive a *pro rata* reduction in any fees paid to the ITC. If this Agreement is cancelled, all manuals and materials shall be returned to the ITC within 15 days of the cancellation date.

6. Cancellation; Automatic Renewal; Continued Use After Cancellation.

A. Cancellation. The BAS is operated on a school year basis (*i.e.*, July 1 to June 30), and the PPS is operated on a calendar year basis (January 1 to December 31). This Agreement may be cancelled only upon providing advance written notice to the ITC at least 180 days prior to the end of the school year or calendar year, as applicable. In particular, the cancellation notice of Agreement shall be no later than 180 days prior to June 30, 2020 for the BAS and no later than 180 days prior to December 31, 2019 for the PPS. If the Participant elects to cancel this Agreement prior to June 30, 2020, it shall be required to pay any remaining balance on the Annual License Fee, as well as any and all other charges incurred under the terms of this Agreement. Additionally, the Participant shall pay a fee of \$1,000 for the ITC Standard Exit File. If the Participant requests that the Exit File be customized, the cost of customizing the file shall be billed at a rate \$350 per hour. All user access to the system will be terminated as of the effective date of the cancellation.

B. Automatic Renewal. A failure to provide timely notice of cancellation in accordance with Paragraph 6(A) above, shall result in automatic renewal of the Service for an additional 12-month term, at a rate equal to the Annual License Fee plus 5%. Upon cancellation of this Agreement, all manuals and materials shall be returned to the ITC within 15 days of the cancellation date.

C. Continued Use After Cancellation. Continued use of the Service by the Participant after cancellation of this Agreement for any reason, shall be billed based on a full quarterly payment plus a 10% premium.

7. Warranty. The ITC warrants that the Service will be available by the agreed time as provided herein. The ITC does not warrant the accuracy or completeness of any factual information that is under the control of the Participant. In the event of any failure resulting in breach of this Paragraph, the ITC shall remedy that failure at no charge, unless the failure resulted in whole or part from the abuse, negligence or other fault of the Participant (or its employees, consultants and/or representatives). The Participant acknowledges that the Service may not operate properly if modified by any person or party other than ITC. The ITC does not warrant that operation of the Service will be uninterrupted or error-free.

THE WARRANTIES CONTAINED IN THIS AGREEMENT ARE IN PLACE OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. THE PARTICIPANT EXPRESSLY DISCLAIMS AND WAIVES ALL OTHER WARRANTY RIGHTS IT MAY NOW OR IN THE FUTURE HAVE IN RESPECT OF THE LICENSED PROGRAM.

8. Limitation of Liability. The ITC's liability for any breach of this Agreement shall not, under any circumstance, exceed the fee for the specific service provided.

THE ITC SHALL NOT BE LIABLE FOR ANY DAMAGES CAUSED BY RELATED TO OR ARISING FROM PARTICIPANT'S ABUSIVE AND/OR NEGLIGENT USE OF THE SERVICE. THE ITC SHALL NOT BE LIABLE FOR ANY LOSS OF PROFITS OR DATA, OR ANY DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL

OR PUNITIVE DAMAGES OTHER THAN AS SET FORTH ABOVE, EVEN IF THE ITC IS NOTIFIED OF THE POSSIBILITY OF SUCH DAMAGES. THE ITC SHALL NOT BE LIABLE FOR ANY DAMAGES CLAIMED BY THE PARTICIPANT BASED ON ANY THIRD-PARTY CLAIMS.

9. **Notice.** All notices hereunder shall be in writing and shall be served by personal service or by registered or certified mail at the receiving party's address as set forth in this Agreement. All notices shall be deemed complete upon receipt.

10. **Attorney Review.** The parties acknowledge that they have been informed of their right to consult with an attorney regarding the review and approval of this Agreement.

11. **Waiver; Severability.** No waiver of any breach of this Agreement will be deemed to constitute a waiver of any subsequent breach of the same or any other provision.

If any of the provisions of this Agreement are determined to be invalid by a court of competent jurisdiction, such invalidity shall not affect or impair the validity of the other provisions, which shall be considered severable and shall remain in full force and effect.

12. **Entire Agreement; Amendments.** This Agreement constitutes the entire Agreement between the parties and supersedes all oral and written Agreements, if any, between the parties. No amendment or modification changing the Agreement's scope or terms shall be binding upon the parties unless made in writing and signed by both parties.


13. **Dispute Resolution; Applicable Law; Venue.** This Agreement will be governed by and construed in accordance with the laws of the State of New Jersey. In the event of any dispute regarding the interpretation of this Agreement, the parties hereto shall meet, through representatives, with a view toward amicably adjusting any differences in a manner which is equitable and in accordance with the stated intent and purpose of this Agreement. If the parties fail to amicably resolve such dispute, any and all claims, disputes or other matters in question between the ITC and the Participant arising out of or relating to this Agreement or alleged breach thereof, shall be subject to and determined by a court of competent jurisdiction venued in Monmouth County, New Jersey.

THE PARTIES KNOWINGLY, INTENTIONALLY, VOLUNTARILY AND IRREVOCABLY WAIVE THEIR RESPECTIVE RIGHTS TO TRIAL BY JURY IN ANY ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT. THIS WAIVER DOES NOT APPLY TO PERSONAL INJURY ACTIONS OR TO ANY ACTION IN WHICH ANOTHER PARTY, NOT BOUND BY SUCH A WAIVER, DEMANDS TRIAL BY JURY.

IN WITNESS WHEREOF, the following individuals, intending to be legally bound, have executed this Agreement as of the dates set forth below.

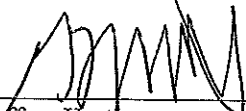
For the ITC:

For the Participant:



Board President
Asbury Park Board of Education

Board President
Springfield Board of Education



Geoffrey Hastings
Business Administrator/Board Secretary

Arlene Biesiada
Business Administrator/Board Secretary

Date: _____

Date: _____