



CONTRACTUAL SERVICES AGREEMENT
BETWEEN THE CITY OF PEMBROKE PINES
AND REAXIUM, INC.

THIS IS AN AGREEMENT ("Agreement"), dated the _____ day of _____, 2020, by and between:

THE CITY OF PEMBROKE PINES, a municipal corporation of the State of Florida with a business address of **601 City Center Way, Pembroke Pines, Florida 33025** (hereinafter referred to as the "CITY").

and

REAXIUM, INC., a Florida Profit Corporation, as listed with the Florida Division of Corporations, and with a business address of **23123 State Road 7, Suite #200C, Boca Raton, FL 33428** (hereinafter referred to as the "CONTRACTOR"). CITY and CONTRACTOR may hereinafter be referred to collectively as the "Parties".

R E C I T A L S:

WHEREAS, CITY oversees the operation and leadership of the Pembroke Pines Charter School System, which involves four elementary schools, three middle schools, and one high school; and,

WHEREAS, CITY desires to hire CONTRACTOR to provide a **transportation and student rider management system with routing and tracking software** in order to effectively and efficiently collect ridership information for the students utilizing the charter school bus transportation services within the Pembroke Pines Charter School System and to perform the services specified herein; and,

WHEREAS, CONTRACTOR represents that they have the knowledge, skills, abilities, experiences, and expertise to provide the services required pursuant to this Agreement and that they are ready, willing, and able to perform such services

WHEREAS, CITY desires to employ CONSULTANT to perform the services required herein for the CITY.

W I T N E S S E T H:

In consideration of the mutual terms and conditions, promises, covenants and payments hereinafter set forth, CITY and CONTRACTOR agree as follows:



ARTICLE 1

PREAMBLE

The recitations set forth in the above "WHEREAS" clauses are true and correct and incorporated herein by this reference.

1.1 On **February 12, 2019**, the CITY advertised its notice to bidders of the CITY's desire to hire a firm to provide a **transportation and student rider management system with routing and tracking software** as more particularly described in **Exhibit "A"**, attached hereto and by this reference made a part hereof, for the said notice entitled:

RFP # ED-18-02

"Charter School Bus and Student Tracker"

1.2 On **April 9, 2019**, the responses were opened.

1.3 On **July 10, 2019**, the CITY awarded the bid to CONTRACTOR and authorized the proper CITY officials to negotiate and enter into an agreement with CONTRACTOR to render the services more particularly described herein below.

1.4 Negotiations pertaining to the services to be performed by the CONTRACTOR were undertaken and this Agreement incorporates the results of such negotiation.

ARTICLE 2

SERVICES AND RESPONSIBILITIES

2.1 CONTRACTOR hereby agrees to perform the services necessary to provide a **transportation and student rider management system with routing and tracking software**, in accordance with the scope of services outlined in the specifications, "**RFP # ED-18-02**", attached hereto and made a part hereof as **Exhibit "A"**, and CONTRACTOR's response attached hereto and made a part hereof as **Exhibit "B"**, and in accordance with the scope of work identified in **Exhibit "AB"**, attached hereto and made a part hereof. CONTRACTOR agrees to do everything required by this Agreement and exhibits incorporated herein.

2.2 CONTRACTOR shall furnish all services, labor, equipment, and materials necessary and as may be required in the performance of this Agreement, except as otherwise specifically provided for herein, and all work performed under this Agreement shall be done in a professional manner.

2.3 CONTRACTOR shall supervise the work force to ensure that all workers conduct themselves and perform their work in a safe and professional manner. CONTRACTOR shall comply with all OSHA safety rules and regulations in the operation of equipment and in the performance of the work.

2.4 CONTRACTOR shall schedule regular correspondence and/or meetings with CITY representatives at least once a month to discuss the progress of the work and/or maintenance of the



transportation and student rider management system with routing and tracking software, as more specifically described in **Exhibits "AB"**.

2.5 CONTRACTOR hereby represents to CITY, with full knowledge that CITY is relying upon these representations when entering into this Agreement with CONTRACTOR, that CONTRACTOR has the professional expertise, experience and manpower to perform the services to be provided by CONTRACTOR pursuant to the terms of this Agreement.

2.6 CONTRACTOR hereby represents to CITY that CONTRACTOR is properly licensed by the applicable federal, state, and local agencies to provide the services under this Agreement. Furthermore, CONTRACTOR agrees to maintain such licenses during the term of this Agreement. If CONTRACTOR's license is revoked, suspended, or terminated for any reason by any governmental agency, CONTRACTOR shall notify the CITY immediately.

2.7 CONTRACTOR shall comply with any and all Federal, State, and local laws and regulations now in effect, or hereinafter enacted during the term of this Agreement, which are applicable to CONTRACTOR, its employees, agents or subcontractors, if any, with respect to the work and services described herein. A violation of any federal, state, or local law or regulation may be cause for breach, allowing the CITY to terminate this Agreement.

2.8 In recognition of the relationship between the Parties, as stipulated in **Exhibits "A", "B", "AB" and "C"**, attached hereto and made part hereof, the CITY will:

2.8.1 reasonably assist CONTRACTOR with gaining authorization and consent from each student's parent/guardian or student age 18 or older, whose education records are to be shared with CONTRACTOR **prior** to CITY disclosing or allowing CONTRACTOR to gain access to any student records as required by Section 22.2 herein; and,

2.8.2 assist with promoting the Reaxium Mobile Application, by utilizing CITY communication and media sources, in an attempt to maximize the number of Pembroke Pines Charter School System parents and guardians utilizing CONTRACTOR's Application. This may include, but not be limited to, the following:

2.8.2.1 utilizing CITY's communication mediums including newsletter, emails, social media, and CITY websites to inform Pembroke Pines Charter School System parents and guardians of the CONTRACTOR's service and the benefits of utilizing the Reaxium Mobile Application;

2.8.2.2 requesting and recommending that Pembroke Pines Charter Schools utilize communication mediums which include email, student folders, school websites, and parent portals to inform parents and guardians of the CONTRACTOR's service and the benefits of utilizing the Reaxium Mobile Application; and,

2.8.2.3 working with and assisting CONTRACTOR's team to develop



marketing materials, handouts, and information resources to be used for promoting the Reaxium Mobile Application.

ARTICLE 3

TERM AND TERMINATION

3.1 CONTRACTOR shall perform the services as identified in **Exhibit "A"**, **"B"**, and **Exhibit "AB"**, attached hereto and made a part hereof, for an initial three (3) year period commencing on the date of execution of this Agreement.

3.2 This Agreement may be renewed for two (2) additional three (3) year terms upon mutual consent, evidenced by a written Amendment to this Agreement extending the term thereof.

3.3 In the event that the term of this Agreement expires, the CONTRACTOR agrees to continue providing services, at the current rates, on a month to month basis until the Parties hereto establish a new contract for services executed with equal dignity hereto.

3.4 **Termination for Convenience.** This Agreement may be terminated by CITY for convenience, upon sixty (60) days of written notice by CITY to CONTRACTOR. In the event CONTRACTOR abandons this Agreement or causes it to be terminated, CONTRACTOR shall indemnify CITY against loss pertaining to this termination.

3.5 **Termination for Convenience by CONTRACTOR.** This Agreement may be terminated by CONTRACTOR for convenience, upon sixty (60) days of written notice by the CONTRACTOR to the CITY for such termination.

3.6 **Default by CONTRACTOR.** In addition to all other remedies available to CITY, this Agreement shall be subject to cancellation by CITY for cause, should CONTRACTOR neglect or fail to perform or observe any of the terms, provisions, conditions, or requirements herein contained, if such neglect or failure shall continue for a period of thirty (30) days after receipt by CONTRACTOR of written notice of such neglect or failure.

ARTICLE 4

COMPENSATION AND METHOD OF PAYMENT

4.1 The CONTRACTOR hereby agrees to assume all costs of services performed and materials provided in accordance with **Exhibit "A"**, **"B"**, **"AB"** and **"C"**, attached hereto and incorporated herein.

4.2 CONTRACTOR shall share the revenue derived from Reaxium Mobile Application subscription sales with CITY once the Minimum Market Share is achieved by CONTRACTOR. The "Minimum Market Share" ("MMS") pursuant to this Agreement, is the minimum level of subscribers required by the CONTRACTOR to reach its operational break-even point related to the services to be



provided herein. The MMS is 20% of the assumed Reaxium Mobile Application subscription population. The Reaxium Mobile Application subscription population is estimated to be two-thousand five hundred (2,500) users, assuming one (1) parent/legal guardian per student rider.

4.3 Once the MMS is reached by CONTRACTOR, the CITY shall receive 10% of the Reaxium Mobile Application subscription gross revenue. CITY's share of Reaxium Mobile Application subscription gross revenue shall increase by 1% annually thereafter, in accordance with the terms of this Agreement. Upon reaching the MMS as defined above, CONTRACTOR shall pay revenues to the CITY utilizing the revenue sharing model described herein and illustrated by "**Exhibit C**", attached hereto and incorporated herein by this reference.

4.4 Payment by CONTRACTOR once the MMS has been reached, will be made to CITY on the thirtieth (30th) day of each month. All payments made to the CITY shall include a financial report detailing CONTRACTOR's revenue, costs, and sales as more particularly described in the sample monthly operational report, attached hereto as "**Exhibit D**", and by this reference made a part hereof. CONTRACTOR shall not be responsible for payment to CITY if the Reaxium Mobile Application subscription rates fail to meet the MMS for a monthly period pursuant to Section 4.3 herein and CITY shall not receive its subscription gross revenue until the MMS is reached during a subsequent billing period thereafter.

4.5 All payments shall be governed by the Local Government Prompt Payment Act, as set forth in Part VII, Chapter 218, Florida Statutes.

ARTICLE 5

CHANGES IN SCOPE OF WORK

5.1 CITY or CONTRACTOR may request changes that would increase, decrease, or otherwise modify the scope of services, as described in **Exhibits "A"**, **"B"**, and **"AB"** and in Article 2 of this Agreement. These changes may affect the monthly compensation accordingly. Such changes or additional services must be in accordance with the provisions of the Code of Ordinances of the CITY, and must be contained in a written amendment, executed by the Parties hereto, with the same formality, equality and dignity herewith prior to any deviation from the terms of this Agreement, including the initiation of any additional or extra work.

5.2 CONTRACTOR has provided **Exhibit "AB"**, as an addendum to **Exhibits "A"** and **"B"** in order to specifically define scope and to outline expected responsibilities and deliverables for the Parties hereto.

5.3 In no event will the CONTRACTOR be compensated for any work which has not been described either herein or in a separate written agreement executed by the Parties hereto.



ARTICLE 6

INDEMNIFICATION

6.1 CONTRACTOR shall indemnify and hold harmless the CITY, its trustees, elected and appointed officers, agents, servants, assigns, employees, consultants, separate contractors, any of their subcontractors, sub-subcontractors, agents and employees from and against claims, demands, or causes of action whatsoever, and the resulting losses, damages, costs and expenses, including but not limited to attorneys' fees, including paralegal expenses, liabilities, damages, orders, judgments, or decrees, sustained by the CITY arising out of or resulting from performance of the services pursuant to this Agreement or the failure of the CONTRACTOR to take out and maintain insurance as required under this Agreement.

6.2 CONSULTANT's aggregate liability shall not exceed the proceeds of insurance required to be placed pursuant to this Agreement plus the compensation received by CONSULTANT. The CITY's rights and remedies and CONSULTANT's liabilities as set forth in this Agreement, are exclusive, and the CITY hereby releases CONSULTANT from all further or subsequent liability, whether based in contract or tort and irrespective of fault, negligence, or strict liability.

6.3 Upon completion of all services, obligations and duties provided for in this Agreement, or in the event of termination of this Agreement for any reason, the terms and conditions of this Article shall survive indefinitely.

6.4 CITY reserves the right to select its own legal counsel to conduct any defense in any such proceeding and all costs and fees associated therewith shall be the responsibility of CONTRACTOR.

6.5 Nothing contained herein is intended nor shall be construed to waive CITY's rights and immunities under the common law or Section 768.28, Florida Statutes, as may be amended from time to time.

ARTICLE 7

INSURANCE

7.1 The CONTRACTOR shall indemnify and hold harmless the CITY and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the CITY or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by the CONTRACTOR or its employees, agents, servants, partners, principals or subcontractors. The CONTRACTOR shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the CITY, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorneys' fees which may issue thereon. The CONTRACTOR expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the CONTRACTOR



shall in no way limit the responsibility to indemnify, keep and save harmless and defend the CITY or its officers, employees, agents and instrumentalities as herein provided.

7.2 CONTRACTOR shall not commence work under this Agreement until it has obtained all insurance required under this paragraph and such insurance has been approved by the Risk Manager of the CITY nor shall the CONTRACTOR allow any subcontractor to commence work on any subcontract until all similar such insurance required of the subcontractor has been obtained and similarly approved.

7.3 Certificates of Insurance, reflecting evidence of the required insurance, shall be filed with the CITY's Risk Manager prior to the commencement of this Agreement. Policies shall be issued by companies authorized to do business under the laws of the State of Florida. The insurance company shall be rated no less than "A" as to management, and no less than "Class VI" as to financial strength according to the latest edition of Best's Insurance Guide published by A.M. Best Company.

7.4 Certificates of Insurance shall provide for thirty (30) days' prior written notice to the CITY in case of cancellation or material changes in the policy limits or coverage states. If the carrier cannot provide thirty (30) days' notice of cancellation, either the CONTRACTOR or their Insurance Broker must agree to provide notice.

7.5 Insurance shall be in force until all obligations required to be fulfilled under the terms of the Agreement are satisfactorily completed as evidenced by the formal acceptance by the CITY. In the event the insurance certificate provided indicates that the insurance shall terminate and lapse during the period of this Agreement, the CONTRACTOR shall furnish, at least forty-five (45) days prior to the expiration of the date of such insurance, a renewed certificate of insurance as proof that equal and like coverage for the balance of the period of the Agreement and extension thereunder is in effect. The CONTRACTOR shall neither commence nor continue to provide any services pursuant to this Agreement unless all required insurance remains in full force and effect. CONTRACTOR shall be liable to CITY for any lapses in service resulting from a gap in insurance coverage.

7.6 REQUIRED INSURANCE

CONTRACTOR shall be required to obtain all applicable insurance coverage, as indicated below, prior to commencing any work pursuant to this Agreement:

Yes No

- ✓ ☐ 7.6.1 Comprehensive General Liability Insurance written on an occurrence basis including, but not limited to: coverage for bodily injury and property damage, personal & advertising injury, products & completed operations, and contractual liability. Coverage must be written on an occurrence basis, with limits of liability no less than:

1. Each Occurrence Limit - \$1,000,000
2. Fire Damage Limit (Damage to rented premises) - \$100,000
3. Personal & Advertising Injury Limit - \$1,000,000
4. General Aggregate Limit - \$2,000,000



5. Products & Completed Operations Aggregate Limit - \$2,000,000

Products & Completed Operations Coverage shall be maintained for the later of three (3) years after the delivery of goods/services or final payment under the Agreement. *(For Construction projects: Increase to ten (10) years and include a Designated Construction Project(s) General Aggregate Limit)*

The City of Pembroke Pines must be shown as an additional insured with respect to this coverage. The CITY's additional insured status shall extend to any coverage beyond the minimum limits of liability found herein.

Yes No

- ✓ ☐ 7.6.2 Workers' Compensation and Employers' Liability Insurance covering all employees, and/or volunteers of the CONTRACTOR engaged in the performance of the scope of work associated with this Agreement. In the case any work is sublet, the CONTRACTOR shall require the subcontractors similarly to provide Workers' Compensation Insurance for all the latter's employees unless such employees are covered by the protection afforded by the CONTRACTOR. Coverage for the CONTRACTOR and all subcontractors shall be in accordance with applicable state and/or federal laws that may apply to Workers' Compensation Insurance with limits of liability no less than:

1. Workers' Compensation: Coverage A – Statutory
2. Employers Liability: Coverage B \$500,000 Each Accident
\$500,000 Disease – Policy Limit
\$500,000 Disease – Each Employee

If CONTRACTOR claims to be exempt from this requirement, CONTRACTOR shall provide CITY proof of such exemption for CITY to exempt CONTRACTOR.

Yes No

- ☐ ✕ 7.6.3 Comprehensive Auto Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the performance of work under this Agreement, with a combined single limit of liability for bodily injury and property damage no less than:

1. Any Auto (Symbol 1)
Combined Single Limit (Each Accident) - \$1,000,000
2. Hired Autos (Symbol 8)
Combined Single Limit (Each Accident) - \$1,000,000
3. Non-Owned Autos (Symbol 9)
Combined Single Limit (Each Accident) - \$1,000,000

If work under this Agreement includes transportation of hazardous materials, policy shall include pollution liability coverage equivalent to that provided by the latest version of the ISO



pollution liability broadened endorsement for auto and the latest version of the ISO Motor Carrier Act endorsement, equivalents or broader language.

Yes No

- ☐ ✕ 7.6.3.1 If CONTRACTOR requests reduced limits under a Personal Auto Liability Policy and it is agreed to by the CITY, coverage shall include Bodily Injury limits of \$100,000 per person/\$300,000 per occurrence and Property Damage limits of \$300,000 per occurrence

Yes No

- ☐ ✕ 7.6.4 Umbrella/Excess Liability Insurance in the amount of \$_____ as determined appropriate by the CITY depending on the type of job and exposures contemplated. Coverage must be follow form of the General Liability, Auto Liability and Employer's Liability. This coverage shall be maintained for a period of no less than the later of three (3) years after the delivery of goods/services or final payment pursuant to this Agreement.

The City of Pembroke Pines must be shown as an additional insured with respect to this coverage. The CITY's additional insured status shall extend to any coverage beyond the minimum limits of liability found herein.

Yes No

- ☐ ✕ 7.6.5 Professional Liability/Errors & Omissions Insurance with a limit of liability no less than \$1,000,000 per wrongful or negligent act. This coverage shall be maintained for a period of no less than three (3) years after the delivery of goods/services final payment pursuant to this Agreement. Retroactive date, if any, to be no later than the first day of service to the CITY. *(Limit to align with size and scope of the Agreement and exposure inherent with operation/services being performed. For Construction projects: Increase to ten (10) years.)*

Yes No

- ☐ ✕ 7.6.6 Environmental/Pollution Liability insurance shall be required with a limit of no less than \$1,000,000 per wrongful act. Coverage shall include: CONTRACTOR's completed operations, sudden, accidental and gradual pollution conditions. This coverage shall be maintained for a period of no less than the later of three (3) years after the delivery of goods/services or final payment pursuant to this Agreement. Retroactive date, if any, to be no later than the first day of service to the CITY. *(Limit to align with size and scope of the Agreement and exposure inherent with operation/services being performed. For Construction projects: Increase to ten (10) years)*

The City of Pembroke Pines must be shown as an additional insured with respect to this coverage. The CITY's additional insured status shall extend to any coverage beyond the minimum limits of liability found herein.

Yes No

- ✓ ☐ 7.6.7 Cyber Liability including Network Security and Privacy Liability with a limit of liability no less than \$1,000,000 per loss. Coverage shall include liability arising from:



theft, dissemination and/or use of confidential information stored or transmitted in electronic form, unauthorized access to, use of, or tampering with computer systems, including hacker attacks or inability of an authorized third party to gain access to your services, including denial of service, and the introduction of a computer virus into, or otherwise causing damage to, a customer's or third person's computer, computer system, network, or similar computer-related property and the data, software and programs thereon. If vendor is collecting credit card information, it shall cover all PCI breach expenses. Coverage is to include the various state monitoring and state required remediation as well as meet the various state notification requirements. This coverage shall be maintained for a period of no less than the later of three (3) years after delivery of goods/services or final payment of the Agreement. Retroactive date, if any, to be no later than the first day of service to the CITY.

The City of Pembroke Pines must be shown as an additional insured with respect to this coverage. The CITY's additional insured status shall extend to any coverage beyond the minimum limits of liability found herein.

Yes No

- ☐ * 7.6.8 Crime Coverage shall include employee dishonesty, forgery or alteration, and computer fraud in an amount of no less than \$1,000,000 per loss. If CONTRACTOR is physically located on CITY's premises, a third-party fidelity coverage extension shall apply.

Yes No

- ☐ * 7.6.9 Garage Liability & Garage-keepers Legal Liability for those that manage parking lots for the CITY or service CITY vehicles. Coverage must be written on an occurrence basis, with limits of liability no less than \$1,000,000 per Occurrence, including products & completed operations. This coverage shall be maintained for a period of no less than the later of three (3) years after the delivery of goods/services or final payment of this Agreement.

The City of Pembroke Pines must be shown as an additional insured with respect to this coverage. The CITY's additional insured status shall extend to any coverage beyond the minimum limits of liability found herein.

Yes No

- ☐ * 7.6.10 Liquor Liability for those in the business of selling, serving or furnishing of any alcoholic beverages, whether licensed or not, shall carry a limit of liability of no less than \$1,000,000 per occurrence. Coverage shall be maintained for the later of three (3) years after the delivery of goods/services or final payment under the Agreement.

The City of Pembroke Pines must be shown as an additional insured with respect to this coverage. The CITY's additional insured status shall extend to any coverage beyond the minimum limits of liability found herein.

Yes No



- ☐ ✕ 7.6.11 Sexual Abuse & Molestation for any agreement involving a vulnerable population. Limits shall be no less than \$500,000 per occurrence. This coverage shall be maintained for a period of no less than the later of three (3) years after the delivery of goods/services or final payment of this Agreement. Retroactive date, if any, to be no later than the first day of service to the CITY. *(Limit to align with size and scope of the Agreement and exposure inherent with operation/services being performed.)*

The City of Pembroke Pines must be shown as an additional insured with respect to this coverage. The CITY's additional insured status shall extend to any coverage beyond the minimum limits of liability found herein.

Yes No

- ☐ ✕ 7.6.12 Builder's Risk Insurance shall be "All Risk" for one hundred percent (100%) of the completed value of the project that is the subject of this Agreement with a deductible of not more than five percent (5%) for Named Windstorm and \$20,000 per claim for all other perils. The Builder's Risk Insurance shall include interests of the CITY, the CONTRACTOR and subcontractors of the project. The CONTRACTOR shall include a separate line item for all costs associated with the Builder's Risk Insurance Coverage for the project. The CITY reserves the right at its sole discretion to utilize the CONTRACTOR's Builder's Risk Insurance or for the CITY to purchase its own Builder's Risk Insurance for the Project. Prior to the CONTRACTOR purchasing the Builder's Risk insurance for the project, the CONTRACTOR shall allow the CITY the opportunity to analyze the CONTRACTOR's coverage and determine who shall purchase the coverage. Should the CITY utilize the CONTRACTOR's Builder's Risk Insurance, the CONTRACTOR shall be responsible for all deductibles. If the CITY chooses to purchase the Builder's Risk Coverage on the project, the CONTRACTOR shall provide the CITY with a change order deduct for all premiums and costs associated with the Builder's Risk insurance in their schedule. Should the CITY choose to utilize the CITY's Builder's Risk Program, the CITY shall be responsible for the Named Windstorm Deductible and the CONTRACTOR shall be responsible for the All Other Perils Deductible.

If and when 100% is not available or reasonable, the CITY Risk Manager is to make the determination as to what limits are appropriate for the given project.

Yes No

- ☐ ✕ 7.6.13 Other Insurance

7.7 REQUIRED ENDORSEMENTS

- 7.7.1 The City of Pembroke Pines shall be named as an Additional Insured on each of the Liability Policies required herein.
- 7.7.2 Waiver of all Rights of Subrogation against the CITY.
- 7.7.3 Thirty (30) Day Notice of Cancellation or Non-Renewal to the CITY.
- 7.7.4 CONTRACTOR's policies shall be Primary & Non-Contributory.
- 7.7.5 All policies shall contain a "severability of interest" or "cross liability" clause



without obligation for premium payment of the CITY.

7.7.6 The City of Pembroke Pines shall be named as a Loss Payee on all Property and/or Inland Marine Policies as their interest may appear.

7.8 Any and all insurance required of the CONTRACTOR pursuant to this Agreement must also be required by any subcontractor in the same limits and with all requirements as provided herein, including naming the CITY as an additional insured, in any work that is subcontracted unless such subcontractor is covered by the protection afforded by the CONTRACTOR and provided proof of such coverage is provided to CITY. The CONTRACTOR and any subcontractors shall maintain such policies during the term of this Agreement.

7.9 The CITY reserves the right to require any other additional types of insurance coverage and/or higher limits of liability it deems necessary based on the nature of work being performed under this Agreement.

7.10 The insurance requirements specified in this Agreement are minimum requirements and in no way reduce any liability the CONTRACTOR has assumed in the indemnification/hold harmless section(s) of this Agreement.

ARTICLE 8

NON-DISCRIMINATION & EQUAL OPPORTUNITY EMPLOYMENT

During the performance of the Agreement, neither the CONTRACTOR nor any subcontractors shall discriminate against any employee or applicant for employment because of race, religion, color, gender, national origin, sex, age, marital status, political affiliation, familial status, sexual orientation, or disability if qualified. CONTRACTOR will take affirmative action to ensure that employees are treated during employment, without regard to their race, religion, color, gender, national origin, sex, age, marital status, political affiliation, familial status, sexual orientation, or disability if qualified. Such actions must include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. CONTRACTOR shall agree to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause. CONTRACTOR further agrees that it will ensure that subcontractors, if any, will be made aware of and will comply with this nondiscrimination clause.

ARTICLE 9

INDEPENDENT CONTRACTOR

This Agreement does not create an employee/employer relationship between the Parties. It is the intent of the Parties that the CONTRACTOR is an independent contractor under this Agreement and not the CITY's employee for all purposes, including but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act,



the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the State Workers' Compensation Act, and the State unemployment insurance law. The CONTRACTOR shall retain sole and absolute discretion in the judgment of the manner and means of carrying out CONTRACTOR's activities and responsibilities hereunder provided, further that administrative procedures applicable to services rendered under this Agreement shall be those of CONTRACTOR, which policies of CONTRACTOR shall not conflict with CITY, State, H.U.D., or United States policies, rules or regulations relating to the use of CONTRACTOR's funds provided for herein. The CONTRACTOR agrees that it is a separate and independent enterprise from the CITY, that it has full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. This Agreement shall not be construed as creating any joint employment relationship between the CONTRACTOR and the CITY and the CITY will not be liable for any obligation incurred by CONTRACTOR, including but not limited to unpaid minimum wages and/or overtime premiums.

ARTICLE 10

UNCONTROLLABLE FORCES

10.1 Neither CITY nor CONTRACTOR shall be considered to be in default of this Agreement if delays in or failure of performance shall be due to Uncontrollable Forces, the effect of which, by the exercise of reasonable diligence, the non-performing party could not avoid. The term "Uncontrollable Forces" shall mean any event which results in the prevention or delay of performance by a party of its obligations under this Agreement and which is beyond the reasonable control of the nonperforming party. It includes, but is not limited to fire, flood, earthquakes, storms, lightning, epidemic, war, riot, civil disturbance, sabotage, and governmental actions.

10.2 Neither party shall, however, be excused from performance if nonperformance is due to forces, which are preventable, removable, or remediable, and which the nonperforming party could have, with the exercise of reasonable diligence, prevented, removed, or remedied with reasonable dispatch. The nonperforming party shall, within a reasonable time of being prevented or delayed from performance by an uncontrollable force, give written notice to the other party describing the circumstances and uncontrollable forces preventing continued performance of the obligations of this Agreement.

ARTICLE 11

GOVERNING LAW AND VENUE

This Agreement shall be governed by and construed in accordance with the laws of the State of Florida as now and hereafter in force. The venue for any and all actions or claims arising out of or related to this Agreement shall be in Broward County, Florida.



ARTICLE 12

SIGNATORY AUTHORITY

CONTRACTOR shall provide CITY with copies of requisite documentation evidencing that the signator for CONTRACTOR has the authority to enter into this Agreement.

ARTICLE 13

MERGER; AMENDMENT

This Agreement constitutes the entire agreement between CONTRACTOR and CITY, and all negotiations and oral understandings between the Parties are merged herein. This Agreement can be supplemented or amended only by a written document executed by both CONTRACTOR and CITY with the same formality and equal dignity herewith.

ARTICLE 14

DEFAULT OF CONTRACT & REMEDIES

14.1.1 **Damages.** CITY reserves the right to recover any ascertainable actual damages incurred as a result of the failure of CONTRACTOR to perform in accordance with the requirements of this Agreement, or for losses sustained by CITY resultant from CONTRACTOR's failure to perform in accordance with the requirements of this Agreement.

14.1.2 **Correction of Work.** If, in the judgment of CITY, work provided by CONTRACTOR does not conform to the requirements of this Agreement, or if the work exhibits poor workmanship, CITY reserves the right to require that CONTRACTOR correct all deficiencies in the work to bring the work into conformance without additional cost to CITY, and/or replace any personnel who fail to perform in accordance with the requirements of this Agreement. CITY shall be the sole judge of non-conformance and the quality of workmanship.

14.2 **Default of Contract.** The occurrence of any one or more of the following events shall constitute a default and breach of this Agreement by CONTRACTOR:

14.2.1. The abandonment of the project that is the subject of this Agreement by CONTRACTOR for a period of at least than seven (7) business days.

14.2.2 The abandonment, unnecessary delay, refusal of, or failure to comply with any of the terms of this Agreement or neglect, or refusal to comply with the instructions of the CITY's Project Manager relative thereto.

14.2.3. The failure by CONTRACTOR to observe or perform any of the terms, covenants, or conditions of this Agreement to be observed or performed by CONTRACTOR, where such failure shall continue for a period of seven (7) days after written notice thereof by CITY to CONTRACTOR; provided, however, that if the nature of CONTRACTOR's default is such that more than seven (7)



days are reasonably required for its cure, then CONTRACTOR shall not be deemed to be in default if CONTRACTOR commences such cure within said seven (7) day period and thereafter diligently prosecutes such cure to completion.

14.2.4. The assignment and/or transfer of this Agreement or execution or attachment thereon by CONTRACTOR or any other party in a manner not expressly permitted hereunder.

14.2.5. The making by CONTRACTOR of any general assignment or general arrangement for the benefit of creditors, or the filing by or against CONTRACTOR of a petition to have CONTRACTOR adjudged a bankruptcy, or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against CONTRACTOR, the same is dismissed within sixty (60) days); or the appointment of a trustee or a receiver to take possession of substantially all of CONTRACTOR's assets, or for CONTRACTOR's interest in this Agreement, where possession is not restored to CONTRACTOR within thirty (30) days; for attachment, execution or other judicial seizure of substantially all of CONTRACTOR's assets, or for CONTRACTOR's interest in this Agreement, where such seizure is not discharged within thirty (30) days.

14.3 **Remedies in Default.** In case of default by CONTRACTOR, CITY shall notify CONTRACTOR, in writing, of such abandonment, delay, refusal, failure, neglect, or default and direct CONTRACTOR to comply with all provisions of this Agreement. If the abandonment, delay, refusal, failure, neglect or default is not cured within seven (7) days of when notice was sent by CITY, CITY may declare a default of the Agreement and notify CONTRACTOR of such declaration of default and terminate the Agreement.

14.3.1. Upon such declaration of default, all sums due CITY for damages suffered, or expenses incurred by reason of default, including but not limited to attorneys' fees and costs, shall be due and payable to CITY.

14.3.2. CITY may complete the Agreement, or any part thereof, either by day labor or re-letting a contract for the same, and procure the equipment and the facilities necessary for the completion of the Agreement, and charge the cost of same to CONTRACTOR and/or the surety together with the costs incident thereto to such default.

14.3.3. In the event CITY completes the Agreement at a lesser cost than would have been payable to CONTRACTOR under this Agreement, if the same had been fulfilled by CONTRACTOR, CITY shall retain such differences. Should such cost to CITY be greater, CONTRACTOR shall pay the amount of such excess to the CITY.

14.3.4. Notwithstanding the other provisions in this Article, CITY reserves the right to terminate the Agreement at any time, whenever the service provided by CONTRACTOR fails to meet reasonable standards of the trade after CITY gives written notice to the CONTRACTOR of the deficiencies as set forth in the written notice within fourteen calendar (14) days of the receipt by CONTRACTOR of such notice from CITY.



ARTICLE 15 **BANKRUPTCY**

It is agreed that if CONTRACTOR is adjudged bankrupt, either voluntarily or involuntarily, then this Agreement shall terminate effective on the date and at the time the bankruptcy petition is filed.

ARTICLE 16 **DISPUTE RESOLUTION**

16.1 **Arbitration.** In addition to any other remedy provided for hereunder, CITY, at its option, may use arbitration to resolve any controversy or claim arising out of or relating to this Agreement if arbitration is elected by CITY. Any controversy or claim arising out of or relating to this Agreement, or breach thereof, may be settled by arbitration in accordance with the rules of the American Arbitration Association and judgment upon the award rendered by the arbitrators may be entered into by any court having jurisdiction thereof. In the event arbitration is elected by CITY, such controversy or claim shall be submitted to one arbitrator selected from the National Panel of The American Arbitration Association.

16.2 **Operations During Dispute.**

16.2.1 In the event that a dispute, if any, arises between CITY and CONTRACTOR relating to this Agreement, performance or compensation hereunder, CONTRACTOR shall continue to render service in full compliance with all terms and conditions of this Agreement as interpreted by CITY regardless of such dispute.

16.2.2 CONTRACTOR expressly recognizes the paramount right and duty of CITY to provide adequate maintenance of CITY's property, and further agrees, in consideration for the execution of this Agreement, that in the event of such a dispute, if any, it will not seek injunctive relief in any court, but will negotiate with CITY for an adjustment on the matter or matters in dispute and, upon failure of said negotiations to resolve the dispute, may present the matter to a court of competent jurisdiction in an appropriate suit therefore instituted by it or by CITY.

ARTICLE 17 **PUBLIC RECORDS**

17.1 The City of Pembroke Pines is public agency subject to Chapter 119, Florida Statutes. The CONTRACTOR shall comply with Florida's Public Records Law. Specifically, the CONTRACTOR shall:

17.1.1 Keep and maintain public records required by the CITY to perform the service;

17.1.2 Upon request from the CITY's custodian of public records, provide the CITY with a copy of the requested records or allow the records to be inspected or copied within a



reasonable time at a cost that does not exceed the cost provided in Chapter 119, Fla. Stat., or as otherwise provided by law;

17.1.3 Ensure that public records that are exempt or that are confidential and exempt from public record disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and, following completion of the Agreement, CONTRACTOR shall destroy all copies of such confidential and exempt records remaining in its possession after the CONTRACTOR transfers the records in its possession to the CITY; and

17.1.4 Upon completion of the contract, CONTRACTOR shall transfer to the CITY, at no cost to the CITY, all public records in CONTRACTOR's possession. All records stored electronically by the CONTRACTOR must be provided to the CITY, upon request from the CITY's custodian of public records, in a format that is compatible with the information technology systems of the CITY.

17.2 The failure of CONTRACTOR to comply with the provisions set forth in this Article shall constitute a Default and Breach of this Agreement and the CITY shall enforce the Default and Breach in accordance with the provisions set forth herein.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

**CITY CLERK
601 CITY CENTER WAY, 4th FLOOR
PEMBROKE PINES, FL 33025
(954) 450-1050
mgraham@ppines.com**

**ARTICLE 18
MISCELLANEOUS**

18.1 **Ownership of Documents.** Reports, surveys, studies, and other data provided in connection with this Agreement are and shall remain the property of CITY, whether or not the project for which they are made is completed.

18.2 **Legal Representation.** It is acknowledged that each party to this Agreement had the opportunity to be represented by counsel in the preparation of this Agreement, and accordingly, the



rule that a contract shall be interpreted strictly against the party preparing same shall not apply herein due to the joint contributions of both Parties.

18.3 **Assignments; Amendments.** This Agreement, and any interests herein, shall not be assigned, transferred or otherwise encumbered, under any circumstances, by CONTRACTOR without the prior written consent of CITY. For purposes of this Agreement, any change of ownership of CONTRACTOR shall constitute an assignment which requires CITY approval. However, this Agreement shall run to the benefit of CITY and its successors and assigns. It is further agreed that no modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

18.4 **No Contingent Fees.** CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONTRACTOR to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for CONTRACTOR any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this provision, CITY shall have the right to terminate the Agreement without liability at its discretion, to deduct from the contract price, or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.

18.5 **Notice.** Whenever any party desires to give notice unto any other party, it must be given by written notice, sent by certified United States mail, with return receipt requested, addressed to the party for whom it is intended and the remaining party, at the places last specified, and the places for giving of notice shall remain such until they shall have been changed by written notice in compliance with the provisions of this section. For the present, CONTRACTOR and CITY designate the following as the respective places for giving of notice:

CITY: Charles F. Dodge, City Manager
City of Pembroke Pines, 4th Floor
601 City Center Way
Pembroke Pines, Florida 33025
Telephone No. (954) 450-1040

Copy To: Samuel S. Goren, City Attorney
Goren, Cherof, Doody & Ezrol, P.A.
3099 East Commercial Boulevard, Suite 200
Fort Lauderdale, Florida 33308
Telephone No. (954) 771-4500
Facsimile No. (954) 771-4923

CONTRACTOR: ReaXium, Inc.
23123 State Road 7, Suite #200C
Boca Raton, FL 33428
Telephone No: (561) 717-8042



E-Mail : mriquezes@reaxium.com

18.6 **Binding Authority.** Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

18.7 **Headings.** Headings herein are for the convenience of reference only and shall not be considered on any interpretation of this Agreement.

18.8 **Exhibits.** Each exhibit referred to in this Agreement forms an essential part of this Agreement. The exhibits if not physically attached should be treated as part of this Agreement and are incorporated herein by reference.

18.9 **Severability.** If any provision of this Agreement or application thereof to any person or situation shall to any extent, be held invalid or unenforceable, the remainder of this Agreement, and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable shall not be affected thereby, and shall continue in full force and effect, and be enforced to the fullest extent permitted by law.

18.10 **Extent of Agreement.** This Agreement represents the entire and integrated agreement between CITY and CONTRACTOR and supersedes all prior negotiations, representations or agreements, either written or oral.

18.11 **Waiver.** Failure of CITY to insist upon strict performance of any provision or condition of this Agreement, or to execute any right therein contained, shall not be construed as a waiver or relinquishment for the future of any such provision, condition, or right, but the same shall remain in full force and effect.

18.12 **Attorneys' Fees.** In the event that either party brings suit for enforcement of this Agreement, each party shall bear its own attorney's fees and court costs, except as otherwise provided under the indemnification provisions set forth herein above.

18.13 **Protection of City Property.** At all times during the performance of this Agreement, CONTRACTOR shall protect CITY's property from all damage whatsoever on account of the work being carried on under this Agreement.

18.14 **Counterparts and Execution.** This Agreement may be executed in multiple originals or counterparts, each of which shall be deemed to be an original and together shall constitute one and the same agreement. Execution and delivery of this Agreement by the Parties shall be legally binding, valid and effective upon delivery of the executed documents to the other party through facsimile transmission, email, or other electronic delivery.



18.15 **Compliance with Statutes.** It shall be the CONTRACTOR's responsibility to be aware of and comply with all statutes, ordinances, rules, orders, regulations and requirements of all local, city, state, and federal agencies as applicable.

18.16 **Background Screening.** All Parties shall comply with all requirements of §§ 1012.32 and 1012.465, Florida Statutes, and all of its personnel who (1) are to be permitted access to school grounds when students are present, (2) will have direct contact with students, or (3) have access or control of school funds, will successfully complete the background screening required by the referenced statutes and meet the standards established by the statutes. This background screening will be conducted by either party in advance of personnel providing any services under the conditions described in the previous sentence. Both parties respectively shall bear the cost of acquiring the background screening required by Section 1012.32, Florida Statutes, and any fee imposed by the Florida Department of Law Enforcement to maintain the fingerprints. The parties agree that the failure of either Party to perform any of the duties described in this section shall constitute a material breach of this Agreement entitling either Party to terminate immediately with no further responsibilities or duties to perform under this Agreement.

18.17 **Records.** CONTRACTOR shall maintain during the term of this Agreement all books of account, reports, and records customarily used in this type of operation and such records as are necessary to document its activities pursuant to this Agreement. All of CONTRACTOR's records relating to this Agreement shall be considered public records. Upon request from the Contract Administrator, as set forth herein below, the CONTRACTOR shall provide detailed subscription information on all items relating to the CITY's mobile application subscription revenue share this Agreement. Such books, accounts and records will be available to the CITY or its designated agent at all reasonable times for examination and audit and shall be kept for the required retention period of the Florida Public Records Act (Chapter 119, Fla. Stat.) or as may otherwise be required by law. Incomplete or incorrect entries in such books and records will be grounds for disallowance by the other party of any fees or expenses based upon such entries. All such records and related documents subject to the provisions of Chapter 119, Florida Statutes, during the term hereof or any extensions of this Agreement, shall be maintained for a period of not less than three (3) years, subsequent to the termination of this Agreement. Nothing in this paragraph shall be interpreted to include any records regarded as privileged due to characterization as trade secrets as defined in §812.081, F.S., except that customer lists shall be made available to the CITY. Nothing included herein shall preclude CONTRACTOR from being required to provide sufficient records to ensure all payments required of CONTRACTOR herein have been made in an appropriate amount and fashion.

ARTICLE 19

SCRUTINIZED COMPANIES

19.1 CONTRACTOR, its principals or owners, certify that they are not listed on the Scrutinized Companies that Boycott Israel List, Scrutinized Companies with Activities in Sudan List, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or is engaged in business operations with Syria. In accordance with Section 287.135, Florida Statutes, as amended,



a company is ineligible to, and may not, bid on, submit a proposal for, or enter into or renew a contract with any agency or local governmental entity for goods or services if:

19.1.1 Any amount of, at the time bidding on, submitting a proposal for, or entering into or renewing such contract, the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, Florida Statutes or is engaged in a boycott of Israel; or

19.1.2 One million dollars or more if, at the time of bidding on, submitting a proposal for, or entering into or renewing such contract, the company:

19.1.2.1 Is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473, Florida Statutes; or

19.1.2.2 Is engaged in business operations in Syria.

ARTICLE 20

EQUAL OPPORTUNITIES FOR EMPLOYEES

20.1 CONTRACTOR certifies that it is aware of the requirements of Section 35.39 of the CITY's Code of Ordinances and certifies that (**check only one box below**):

☐ CONTRACTOR currently complies with the requirements of Section 35.39 of the CITY's Code of Ordinances; or

☐ CONTRACTOR will comply with the conditions of Section 35.39 of the CITY's Code of Ordinances; or

☐ CONTRACTOR will not comply with the conditions of Section 35.39 of the CITY's Code of Ordinances; or

✓ CONTRACTOR does not comply with the conditions of Section 35.39 of the CITY's Code of Ordinances because of the following allowable exemption (**check only box below**):

✓ CONTRACTOR does not provide benefits to employees' spouses in traditional marriages; or

☐ CONTRACTOR provides an employee the cash equivalent of benefits because CONTRACTOR is unable to provide benefits to employees' Domestic Partners or spouses despite making reasonable efforts to provide them. To meet this exception, CONTRACTOR shall provide a notarized affidavit that it has made reasonable efforts to provide such benefits. The affidavit shall state the efforts taken to provide such benefits and the amount of the cash equivalent. Case equivalent means the amount of money paid to an employee with a Domestic Partner or spouse rather than providing benefits to the employee's Domestic Partner or spouse. The



case equivalent is equal to the employer's direct expense of providing benefits to an employee's spouse; or

- ☐ CONTRACTOR is a religious organization, association, society, or any non-profit charitable or educational institution or organization operated, supervised, or controlled by or in conjunction with a religious organization, association, or society; or
- ☐ CONTRACTOR is a governmental agency.

20.2 Except where federal or state law mandates to the contrary, a contractor awarded a contract pursuant to a competitive solicitation shall provide benefits to Domestic Partners and spouses of its employees, irrespective of gender, on the same basis as it provides benefits to employees' spouses in traditional marriages.

20.3 CONTRACTOR shall provide the City Manager and his/her designee, access to its records for the purpose of audits and/or investigations to ascertain compliance with the provisions of this Article, and upon request shall provide evidence that the CONTRACTOR is in compliance with the provisions of this Article upon the renewal of this AGREEMENT or when the City Manager or his/her designee receives a complaint or has reason to believe CONTRACTOR may not be in compliance with the provisions of this Article. Records shall include but not be limited to providing the City Manager and his/her designee with certified copies of CONTRACTOR's records pertaining to its benefits policies and its employment policies and practices.

20.4 CONTRACTOR must conspicuously make available to all employees and applicants for employment the following statement:

"During the performance of a contract with the City of Pembroke Pines, Florida, the CONTRACTOR will provide Equal Benefits to its employees with spouses, as defined by Section 35.39 of the City of Pembroke Pines Code of Ordinances, and its employees with Domestic Partners and all Married Couples."

20.5 By executing this Agreement, CONTRACTOR certifies that it agrees to comply with the above and Section 35.39 of the City of Pembroke Pines Code of Ordinances, as may be amended from time to time.

ARTICLE 21

FLORIDA INFORMATION PROTECTION ACT

CONTRACTOR agrees and understands that the services and/or goods provided under this Agreement consist, at least in part, of "customer records" that contain "personal information," as



defined in the Florida Information Protection Act, Section 501.171, Florida Statutes (the “Act”). Accordingly, as required by the Act, CONTRACTOR agrees to implement safeguards to protect customer records containing personal information, in whatever form retained and stored, from a breach of security. If customer records in CONTRACTOR’s possession are breached in the manner set forth in the Act, CONTRACTOR shall immediately notify CITY as required by law, and CONTRACTOR shall work with CITY as required by the Act to assist in any of the following actions:

21.1 Investigate the alleged breach and determine if an actual breach has occurred, which may include the use of law enforcement officials as needed and as determined by CITY;

21.2 Provide notice to any and all consumers whose personal information has been breached;

21.3 Provide any and all other notices to governmental agencies that may be applicable under the Act, if a breach has reached a particular threshold, as defined in the Act, which may include but is not limited to: credit reporting agencies and the Florida Department of Legal Affairs;

21.4 Ensure that CONTRACTOR’s third-party agents are made aware of the Act and any requirement to comply with the Act, and require that those third-party agents that store customer records of CITY who experience a breach notify CITY immediately, and work with CONTRACTOR and CITY as outlined in this section of the Addendum.

The procedures specified herein shall not supersede any requirement specified by the Act. The provisions of the Act, as may be amended from time to time, shall prevail in the event of any conflict.

ARTICLE 22

EDUCATION RECORDS

22.1 Education records held CITY may be disclosed to CONTRACTOR for purposes identified **Exhibit “A”, “B”, and “AB”**.

22.2 **Authorization for Disclosure of Education Records.** CONTRACTOR will obtain consent from each student’s parent/guardian or student age 18 or older, whose education records are to be shared prior to CITY disclosing or allowing CONTRACTOR to gain access to the education records required by **Exhibit “A”, “B”, and “AB”**.

22.3 **Confidentiality of Education Records.** Notwithstanding any provision to the contrary within this Agreement, CONTRACTOR shall:

22.3.1 Fully comply with the requirements of Sections 1002.22, 1002.221, and 1002.222, Florida Statutes; the Family Educational Rights and Privacy Act, 20 U.S.C § 1232g (“FERPA”) and its implementing regulations (34 C.F.R. Part 99), and any other state or federal law or regulation regarding the confidentiality of student information and records;

22.3.2 Hold any education records in strict confidence and not use or disclose, except as required by this Agreement or as required or permitted by law unless the parent of each



student or a student age 18 or older whose education records are to be shared provides prior written consent for their release;

22.3.3 Ensure that, at all times, all of its employees who have access to any education records during the term of their employment shall abide strictly by its obligations under this Agreement, and that access to education records is limited only to its employees that require the information to carry out the responsibilities under this Agreement and shall provide said list of employees to CITY upon request;

22.3.4 Safeguard each education record through administrative, physical and technological safety standards to ensure that adequate controls are in place to protect the education records and information in accordance with FERPA's privacy requirements;

22.3.5 Utilize the education records solely for the purposes of providing services as contemplated under this Agreement; and shall not share, publish, sell, distribute, target advertise, or display education records to any third party;

22.3.6 Notify CITY immediately upon discovery of a breach of confidentiality of education records by telephone and email pursuant to Section 18.6 herein, and shall take all necessary notification steps as may be required by federal and Florida law, including, but not limited to, those required by Section 501.171, Florida Statutes;

22.3.7 Fully cooperate with appropriate CITY staff to resolve any privacy investigations and concerns in a timely manner;

22.3.8 Prepare and distribute, at its own cost, any and all required breach notifications, under federal and Florida Law, or reimburse CITY any direct costs incurred by CITY for doing so, including, but not limited to, those required by Section 501.171, Florida Statutes;

22.3.9 Be responsible for any fines or penalties for failure to meet breach notice requirements pursuant to federal and/or Florida law;

22.3.10 Provide CITY with the name and contact information of its employee who shall serve as CONTRACTOR's primary security contact and shall be available to assist CITY in resolving obligations associated with a security breach of confidentiality of education records; and

22.3.11 Securely erase education records from any media once any media equipment is no longer in use or is to be disposed; secure erasure will be deemed the deletion of the education records using a single pass overwrite Secure Erase (Windows) or Wipe (Unix).

THE SIGNATURE PAGE FOLLOWS



IN WITNESS OF THE FOREGOING, the parties have set their hands and seals the day and year first written above.

CITY:

CITY OF PEMBROKE PINES

ATTEST:

MARLENE D. GRAHAM, CITY CLERK

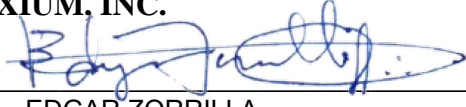
By: _____
CHARLES F. DODGE, CITY MANAGER

APPROVED AS TO FORM

Print Name: _____
OFFICE OF THE CITY ATTORNEY

CONTRACTOR:

REAXIUM, INC.

By: 
Name: EDGAR ZORRILLA
Title: CEO
Date: 05/22/2020