

1 **AGREEMENT**

2
3 **ALJP2019-025**

4 **Product Line: ByteSpeed**

5 **Vendor Company Name: ByteSpeed LLC**

6 **Vendor's State of Incorporation: Minnesota**

7 I. General Stipulations

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9 For mutual consideration, the Alabama State Department of Education and **ByteSpeed LLC**, do fully
10 understand and agree to the below rendition of facts and law that support the need for the following
11 agreement. **ByteSpeed LLC**, recognizes, accepts, and agrees with the Alabama State Department of Education
12 to the following:

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14 Section 16-61E-2 Code of Alabama (1975) permits school districts to enter joint purchasing agreements
15 for the lease or purchase of "information technology" defined as "equipment, supplies, and other tangible
16 personal property, software, services, or any combination of the foregoing, used to provide data processing,
17 networking, or communications services." As a result, the Montgomery County Public School System and
18 other educational institutions across the State of Alabama have entered into as many separate joint
19 purchasing agreements where each agree with one another to purchase or lease information technology for
20 their respective schools. These schools, to-wit: the Local Education Agencies (LEAs) listed on the contract
21 administrator website, and hereinafter referred to as LEA Group Members, have entered into the aforesaid
22 joint purchasing agreements for the purpose of competitive bidding and purchasing and/or leasing of
23 information technology and in each respective joint purchasing agreement have expressly authorized the
24 ALSDE as its Joint Purchasing Administrator. Additionally, state law allows the Administrator, ALSDE, to be
25 responsible for issuing the Invitation to Bid, evaluating the bids received, and awarding the contract.

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27 This document is the resulting contract by and between **ByteSpeed LLC**, 3131 24th Avenue S,
28 Moorhead, MN 56560 hereinafter referred to as "Vendor" and the State of Alabama, acting for purposes of
29 this Contract through its State Department of Education (ALSDE) with its offices at Montgomery, AL. This
30 contract is in complete accord with Section 16-61E-2 Code of Alabama (1975) and Invitation to Bid (ITB)
31 ALJP2019 and vendor's response to ITB ALJP2019. Inasmuch as the correct and proper invitation and
32 evaluation of bids have been followed by all parties, the Vendor has been awarded this contract by the ALSDE.
33 This agreement between ALSDE and Vendor will facilitate and administer the purchasing or leasing of
34 information technology. This contract is effective **July 1, 2019** and continues until **June 30, 2022**. The ALSDE, at
35 its own discretion, will extend the length of this contract for various periods not to exceed a period of 60
36 months for the total life of the contract. The resulting contract will, without written notification, automatically
37 renew on an annual basis unless the ALSDE declines to renew the resulting contract for the additional periods.
38 In the event that an annual full or partial renewal is not offered, the ALSDE will notify the Contract Holder in
39 writing 60 days prior to the renewal expiration date.

40 In consideration of the various sums and rates listed in the attachments made part of this agreement,
41 the Vendor agrees to provide the product line of ByteSpeed for the purchasing of the aforesaid LEA Group

42 Members in accordance to Section 16-61E-2 Code of Alabama (1975). Additionally, the Vendor agrees to
 43 abide by the terms and conditions expressed below by the ALSDE, Administrator of these joint purchasing
 44 agreements.

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46 II. Conditions of Administration

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- 48 (1) The Vendor will be required to provide current price listing, sales contacts, and ISO
 49 certification.
- 50 (2) The Vendor will combine base pricing from the Product Line Product Offering & Base Pricing
 51 source and the awarded discount information to maintain the ALJP Price List. The Vendor will
 52 provide this list to the ALSDE for posting to the ALJP website via email to
 53 dbarnes1@ALSDE.edu and rcutts@alsde.edu. ALSDE requires that only the awarded branded
 54 products be included on the ALJP Price Listing.
- 55 (3) The ALSDE will use the awarded Product Line Product Offering & Base Pricing source and
 56 Discount(s) to verify the ALJP Pricing submitted and the prices quoted by listed Sales Contacts
 57 and/or an online ordering website (if applicable).
- 58 (4) The Vendor is responsible for keeping the ALSDE informed of any changes to the Ordering
 59 Instructions.
- 60 (5) The LEA Group Members, Vendor or the Vendor assigned Authorized Resellers will be required
 61 to reference any quotes, purchase orders or other documentation issued as a result of the
 62 contract by identifying the same with "Contract #ALJP2019-025" for audit purposes.
- 63 (6) The Vendor and its Authorized Resellers (if applicable) will provide purchase order information
 64 from all sales activity as directed by the ALSDE.
- 65 (7) In accordance with Section 16-61E-2 Code of Alabama (1975), each LEA Group Members shall
 66 pay its share of expenditures for purchases under this agreement in the manner as it pays
 67 other expenses of the LEA.
- 68 (8) The ALSDE will not issue purchase orders for the LEA Group Members but will only administer
 69 the program for the LEA Group Members. Purchase orders will be initiated by the individual
 70 LEA Group Member and Vendor or Reseller (per Vendor's instructions).
- 71 (9) The ALSDE in addition to monitoring and oversight, may also purchase, with the consent of the
 72 Director of Finance or his or her designee, from ALJP contracts when purchases are necessary
 73 to maintain statewide application and compatibility.
- 74 (10) By signing this agreement, the Vendor agrees to the terms set forth within the "Alabama State
 75 Department of Education Invitation to Bid ALJP2019" to provide **ByteSpeed** branded products.
 76 Further, after signature of an authorized **ByteSpeed LLC** official and return of the Agreement
 77 to ALSDE at the address provided in ITB #ALJP2019, this agreement shall be considered in force
 78 and effect.
- 79 (11) The Vendor acknowledges and understands that this contract is not effective until it has
 80 received all requisite state government approvals and Vendor shall not begin performing work
 81 under this contract until notified to do so by the contacting state department [or LEA as may
 82 be the case]. The Vendor is entitled to no compensation for work performed prior to the
 83 effective date of this contract.

84 III. Contract Disputes.

- 85 (1) Dispute Resolution. The parties shall attempt, in good faith, for a period of not less
 86 than thirty (30) days to resolve any controversy, claim, or dispute arising out of this
 87 Agreement through negotiations. Furthermore, should the parties be unable to resolve
 88 any disputes arising under the terms of this Contract, the parties hereto agree, in
 89 compliance with the recommendations of the Governor and Attorney General, when
 90 considering settlement of such disputes, to utilize appropriate forms of non-binding
 91 alternative dispute resolution including, but not limited to, mediation by and through the
 92 Attorney General's Office of Administrative Hearings or where appropriate, private
 93 mediators.
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- 95 (2) Termination by the State. This Contract may be terminated by the State for Default, as
 96 follows:
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- 98 a. Termination for Default. The State shall have the right to terminate this
 99 Contract for Default by (Vendor) upon thirty (30) day written notice. A
 100 Default shall be deemed to have occurred if (Vendor) breaches any
 101 primary obligations, terms or conditions of this Contract and fails to cure
 102 such breach within thirty (30) days after receipt of written notice from
 103 the State concerning such breach.
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- 105 b. Termination for Vendor Bankruptcy. To the extent permitted by
 106 applicable law, in the event of the filing of a petition in bankruptcy by or
 107 against Vendor, which is not dismissed within thirty (30) days, the State
 108 shall have the right to terminate this Contract upon ten (10) days advance
 109 written notice.

110 IV. Miscellaneous.

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- 113 (1) If any provision of this Contract is invalid or unenforceable under any applicable statute
 114 or rule of law, this Contract shall be enforced to the maximum extent possible to
 115 effectuate the original express intent of the parties.
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- 117 (2) The person executing this Contract on behalf of a party represents that he/she is
 118 authorized to sign this Contract on behalf of such party and warrants that he/she has full
 119 power to enter into this Contract on behalf of such party.
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- 121 (3) Any and all notices shall be sent by United States First Class or Certified Mail or by a
 122 courier service furnishing proof of delivery (postage and delivery prepaid) to the
 123 addresses for the parties set forth below. Either party may change its notice address by
 124 notifying the other in like manner.
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- 126 (4) This agreement shall not be subject to modification or amendment except by written
 127 agreement with the appropriate authorized signatures.
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If to Vendor:

ByteSpeed LLC
3131 24th Avenue S
Moorhead, MN. 56560

If to ALSDE:

Mr. Andy Craig
ALJP2019
5119 Gordon Persons Building
50 North Ripley St.
Montgomery, AL 36102

- (5) This Contract shall be governed by and construed in accordance with the laws of the State of Alabama.
- (6) This Contract shall be administered on behalf of the State by the ALSDE.
- (7) Neither party shall use the name of the other for any commercial purpose without the prior written consent of the other, except that Vendor may, without prior written consent, identify the State in reference listings as a client of Vendor, if such identification does not include the State's endorsement of the services of Vendor.
- (8) This Contract, together with the bid response hereto, constitutes the complete and entire agreement between the parties. This Contract supersedes all prior discussions, understandings, arrangements and negotiations between the parties with respect to the subject matter of this Contract. The terms and conditions of this Contract shall prevail notwithstanding any variance with the terms and conditions of any order submitted with respect to the Support Services, equipment, supplies or any related services provided in this Contract. This Contract shall not be modified, amended, rescinded, canceled or waived in whole or in part without the written agreement signed by both parties.

V. Required State Provisions.

- (1) It is understood that there is no entitlement to any State Merit System benefits to anyone working under the terms of this Contract.
- (2) Notwithstanding any provision within this Contract to the contrary, no travel is to be paid by the State under this Contract unless approved in advance by the State Superintendent and agreed for reimbursement to the State by the State Finance Director.

- 175 (3) The State Superintendent of Education, through his designated representatives, will
 176 sponsor and approve the purposes, administration, and supervision of all phases of the
 177 services to be provided.
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- 179 (4) The initial duration of this agreement is start date, through with aforementioned
 180 extensions. Either party upon receipt of a 30-day written notification may terminate the
 181 agreement.
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- 183 (5) It is agreed that the terms and commitments contained herein shall not be constituted as
 184 a debt of the State of Alabama in violation of Article II, Section 213 of the Constitution
 185 of Alabama, 1901, as amended by Amendment Number 26. It is further agreed that if
 186 any provision of this Contract shall contravene any statute or Constitutional provision or
 187 amendment, either now in effect or which may, during the course of this Contract, be
 188 enacted, then that conflicting provision in the Contract shall be deemed null and void.
 189 The contractor's sole remedy for the settlement of any and all disputes arising under the
 190 terms of this agreement shall be limited to the filing of a claim with the Board of
 191 Adjustment for the State of Alabama.
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- 193 (6) This agreement is subject to termination in the event of proration of the fund from
 194 which payment under this agreement is to be made.
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- 196 (7) Neither party shall have the right to assign or transfer its rights or obligations under this
 197 contract without the consent of the other party.
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- 199 (8) All funds paid under the terms and conditions of this Contract shall be used for
 200 purposes permitted and consistent with Alabama law.
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- 202 (9) BEASON-HAMMON ALABAMA TAXPAYER AND CITIZEN PROTECTION ACT
 203 (ACT 2011-535) ALABAMA LAW (ACT 2011-535) PROVIDES THAT AS A
 204 CONDITION FOR THE AWARD OF ANY CONTRACT BY THE STATE TO A
 205 BUSINESS ENTITY OR EMPLOYER THAT EMPLOYS ONE OR MORE
 206 EMPLOYEES, THE EMPLOYER SHALL PROVIDE DOCUMENTATION
 207 ESTABLISHING THAT THE BUSINESS DOES NOT KNOWINGLY EMPLOY,
 208 HAS NOT HIRED FOR EMPLOYMENT, NOR WILL IT CONTINUE TO EMPLOY
 209 AN UNAUTHORIZED ALIEN, AS THAT TERM IS DEFINED IN ALABAMA ACT
 210 2011-535. BY SIGNING THIS AGREEMENT AND BY REFERENCE IN
 211 SUBMITTED BID RESPONSE, COMPANY HEREBY CERTIFIES THAT THEY
 212 ARE IN FULL COMPLIANCE WITH ACT 2011-535 AND ACKNOWLEDGES
 213 THAT THE AWARDING AUTHORITY WILL DECLARE THIS AGREEMENT
 214 VOID IF THE CERTIFICATION IS NOT VALID. DOCUMENTATION OF
 215 ENROLLMENT IN THE E-VERIFY PROGRAM WILL BE REQUIRED. FAILURE
 216 TO PROVIDE DOCUMENTATION WITHIN 5 CALENDAR DAYS OF
 217 NOTIFICATION BY THE ALSDE WILL RESULT IN THE VOID OF THIS
 218 AGREEMENT. TO ENROLL IN THE E-VERIFY PROGRAM VISIT
 219 WWW.DHS.GOV/E-VERIFY

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IN WITNESS WHEREOF, the ALSDE and Vendor have executed this Contract

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as of the 7th day of March 2019.

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Brenda Clifton



ByteSpeed LLC

STATE OF ALABAMA
DEPARTMENT OF EDUCATION

Anna Hanson

(Signature)

Andy Craig

Mr. Andy Craig

Anna Hanson

(Printed Name)

Deputy State Superintendent of Education

Administrative and Financial Services

Sales Director

(Printed Title)

This contract has been reviewed for legal form and appears to comply with all applicable laws, rules and regulations of the State of Alabama governing these matters.

J. Jason Swann

J. Jason Swann
General Counsel for the
State Department of Education

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