

VENDOR AGREEMENT

THIS IS AN AGREEMENT, made this 22nd day of October, 2024, by and between Comet Informatics, LLC, with an address of ~~1080 Pittsford-Victor Road, Suite 302, Pittsford, New York 14534~~, hereinafter referred to as the “Vendor”, and **Onondaga-Cortland-Madison Board of Cooperative Educational Services**, hereinafter referred to as “OCM BOCES”, having the principal office at 110 Elwood Davis Drive, Liverpool, New York and a mailing address of PO BOX 4754, Syracuse, New York 13221. Vendor and OCM BOCES shall be collectively referred to as the “Parties” **NOTE: COMET address as noted on contract: 360 Packetts Landing, Fairport, NY 14450**

RECITALS

WHEREAS, OCM BOCES desires to engage the Vendor to perform the services and/or receive the products as described in Schedule “A”; and

WHEREAS, Vendor desires to provide the services and/or products as described in Schedule “A”; and

NOW, THEREFORE, in consideration of the foregoing recitals, the following covenants and conditions, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, OCM BOCES and the Vendor hereby agree as follows:

AGREEMENT

Section 1. Term

The term of this agreement shall commence on the date set forth above and shall end when the services set forth in Schedule “A” (Scope of the Work) and any Statement of Work (“SOW”) have been completed. Such SOW shall be substantially similar in format and terms and conditions as the one set forth in Schedule “B”. Schedule “A” and “B” are attached hereto and incorporated by reference. In no event shall the term be longer than the one (1) year anniversary date of the commencement of this Agreement.

Section 2. Obligations.

- (a) The Parties shall:
 - 1. provide the services and obligations as set forth herein including any schedules and/or appendices attached hereto;
 - 2. furnish their own materials, equipment, supplies, personnel and other resources necessary to fulfill their obligations under this Agreement; and
 - 3. communicate through their Authorized Agents and in the methods set forth in Section 3 of this Agreement.

Section 3. Authorized Agents.

- (a) The Vendor designates:

Jeanne E. Megali
Manager, Finance and HR
COMET Informatics, LLC
360 Packetts Landing
Fairport, NY 14450
jeanne.megali@cometinformatics.com

- (b)

OCM BOCES designates:

Colleen Viggiano

Deputy Superintendent
OCM BOCES
PO BOX 4754
Syracuse, New York 13221
315-433-2602
cviggiano@ocmboces.org

as the Authorized Agent of the Agency and OCM BOCES for exchange of all communications pursuant to this Agreement. In the event that either party seek to terminate the Agreement written notice shall also be provided to the above-named designee.

Section 4. Fees

The Vendor shall be compensated as set forth in Schedule "A". All fees and compensation for the obligations hereunder are contingent upon:

1. the completion of the services and obligations set forth in this Agreement by Vendor, to the reasonable satisfaction of OCM BOCES;
2. faithful compliance with the terms and conditions of this Agreement; and
3. acceptance of the services by OCM BOCES as set forth in this Agreement.

Section 5. Records.

- (a) In the course of performance of this Agreement with the Vendor, either party may have need and eligibility for access to certain restricted records of the other party, such as student records; or may come into contact with such records by error or inadvertence. Access to student records shall be governed by Family Educational Rights and Privacy Act (FERPA) and NYS Education Law; and access to all Vendor records is subject to all other applicable state and federal laws. In the event that Vendor will come into contact with student and student records, Vendor shall comply with the data privacy provisions contained in New York Education Law Section 2-d, its accompanying regulations and the provisions contained in Schedule "C" attached hereto and incorporated by reference.
- (b) Each party, its officers, employees and agents shall be responsible for maintaining privacy protocols meeting or exceeding all applicable State or federal laws and regulations, including FERPA, with reference to the performance of their duties and the preparation, maintenance and control of records created or used in the performance of the contract; and shall immediately report any inadvertent access and return any such record and all copies thereof to the Vendor.
- (c) The Parties shall not release any personal or confidential information of any student to any third party. This personal or confidential information includes but is not limited to student identification numbers, student social security numbers, psychological or educational records of students, and medical records of students. At the conclusion of the term of this Agreement any personal or confidential information of any student shall be returned.

Section 6. Termination.

Except as otherwise provided herein, each party has the right to terminate this Agreement upon sixty (60) days prior written notice of same sent to the other party by U.S. Postal Service certified mail, return receipt requested, at the address indicated above. In the event of termination, BOCES shall pay for services pro-rata through the termination date.

Section 7. Status as Independent Contractor.

Each party represents and warrants that it is an independent contractor and shall neither hold itself

out as, nor claim to be, an officer or employee of the other, and further shall not make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the other.

Section 8. Tax.

OCM BOCES is exempt from paying excise or sales taxes of any jurisdiction, neither will it accept or pay any invoices or vouchers for such taxes. Vendor does and will pay all contributions, taxes, and other payments or charges required to be paid by an employer in accordance with the provisions of all applicable state unemployment insurance, disability benefits, and withholding tax laws, the Federal Insurance Contributions Act and Federal Unemployment Tax Act and Federal Internal Revenue Code, and does and will comply with all other local, state, and federal laws, regulations, and requirements applicable to its employees or affecting their compensation or conditions of employment applicable to the Vendor or the performance of its services hereunder. Each party understands and agrees that (A) neither party nor its employees, contractors, or agents will be treated as the other party's employees for federal tax purposes, (B) neither party will withhold on the other party's or its employees' behalf any sums for income, FICA or any other taxes; workers' compensation and/or unemployment insurance premiums; and/or social security or any other withholding (collectively, "**Employer Obligations**") pursuant to any federal or state laws or government requirements or make available any of the employment benefits afforded to its own employees ("**Benefits**"), (C) all such Employer Obligations and Benefits, if any, are the sole responsibility of the party incurring the liability and (D) each party will indemnify and hold the other party harmless from and against any and all costs, losses, damages or any other liability arising from or related to the employing party's Employer Obligations and/or Benefits, if any. Should the Internal Revenue Service ("**IRS**") or any other government agency question or challenge the parties' herein described independent contractor status, the party first learning thereof promptly shall notify the other party hereto, verbally and in writing, and afford the other party the opportunity to participate in any discussions and/or negotiations with the IRS or with the other government agency, to the extent that the IRS and/or the other government agency permits.

Section 9. Equal Employment Opportunity.

Each party agrees that it will not discriminate against its employees (if any) with respect to terms and conditions of employment because of race, color, religion, gender, age, disability, national origin, sexual orientation, or marital or veteran status, in violation of any federal or state Civil Rights Acts or the Americans with Disabilities Act. Each party also agrees to make a good faith effort to employ minority group persons and females in the hiring of employees for performance of services under this Agreement.

Section 10. Workers' Compensation.

Each party shall secure compensation for the benefit of, and keep insured during the life of this Agreement, any and all employees as are required to be insured under the provisions of the Workers' Compensation Law of the State of New York. Upon request, each party shall provide to the other proof such insurance, duly subscribed by an insurance carrier, that such Workers' Compensation coverage has been secured.

Section 11. Compliance with All Laws.

Both Parties agree that, during the term of this Agreement, it and all employees (if any) working under its direction shall strictly comply with all local, state or federal laws, ordinances, rules or regulations controlling or limiting in any way its actions during such performance of the services required by this Agreement.

Section 12. Defense & Indemnification.

- (a) Except as provided for herein and subject to applicable law and lawful appropriations, OCM BOCES hereby agrees to defend and indemnify the Vendor against any and all claims, suits and liability, including but not limited to all reasonable attorneys' fees, which the Vendor may incur in consequence of OCM BOCES' breach of this Agreement or its negligent acts or omissions.
- (b) Vendor hereby agrees to defend and indemnify the OCM BOCES, its Board of Education, officers, employees and administrators against any and all claims, suits and liability, including but not limited to all reasonable attorneys' fees, which OCM BOCES may incur in consequence of Vendor's breach of this Agreement or its negligent acts or omissions.

Section 13. Applicable Law, Venue & Dispute Resolution.

This Agreement shall be governed by and under the laws of the State of New York without reference to its conflict of laws principles. In the event that a dispute arises between the parties, the exclusive venue for the resolution of such dispute shall be a New York State or Federal court of competent jurisdiction sitting in Onondaga County, New York. Nothing in this section shall preclude the parties from mutually agreeing to mediation, arbitration or other alternative dispute resolution device.

Section 14. Non-Waiver.

In the event that the terms and conditions of this Agreement are not strictly enforced, such non-enforcement shall not act as or be deemed to act as a waiver or modification of this Agreement, nor shall such non-enforcement prevent the parties from enforcing each and every term of this Agreement thereafter.

Section 15. Severability.

If any provision of this Agreement is held invalid by a court of law, the remainder of this Agreement shall not be affected thereby if such remainder would then continue to conform to the laws of the State of New York.

Section 16. Execution of Contract.

This Agreement may be signed in counterparts by each party; and versions of this Agreement transmitted by fax machine, including signatures transmitted by fax shall be deemed to be originals for all purposes.

Section 17. Insurance.

Vendor shall comply with the insurance requirements set forth in Schedule "D", attached hereto and incorporated by reference.

Section 18. Assignment.

Except as otherwise provided for herein, neither party shall assign or transfer its obligations under this Agreement, or any part thereof, or any interest therein, without first receiving prior written approval from the other party. Any unauthorized assignment or transfer shall be null and void.

Section 19. Users

Vendor acknowledges OCM BOCES is a public corporation established under the laws of the State of New York in order to provide cost effective shared services to school districts, other BOCES and/or select municipalities under contract with OCM BOCES. Vendor acknowledges and agrees each BOCES, school district and/or municipality shall be considered an authorized "User" and collectively referred to as "Users" of Vendor's services under this Agreement so long as an applicable SOW is fully executed by OCM BOCES and Vendor.

Section 20. Subcontracting

Vendor may not use subcontractors in fulfilling its responsibilities to OCM BOCES, its employees or agents, and/or educational agencies which contract with OCM BOCES for the provision of Vendor's services.

Section 21. Miscellaneous.

- (a) Except as otherwise set forth herein, neither party shall make any representations or commitments on behalf of the other party.
- (b) The Parties shall comply with all federal, state and local laws, rules and regulations that apply to its obligations under this Agreement.
- (c) This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the respective parties.
- (d) Each party represents and warrants it:
 - 1. possess all licenses, certifications and permits necessary to perform its respective obligations under this Agreement;
 - 2. shall fulfill its obligations under this Agreement in a professional and competent manner consistent with generally accepted industry standards; and
 - 3. is fully qualified by training and experience to perform its obligations under this Agreement.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

Section 22. Extent of Agreement.

This Agreement contains the entire agreement between the parties with respect to its subject matter, and this Agreement supersedes all prior negotiations, understandings and agreements whether oral or written between the parties with respect to its subject matter. This Agreement may not be amended, terminated (except as provided above) or modified orally or by any course of conduct or usage of trade but only by the mutual written agreement of the parties.

Section 23. Force Majeure.

If the event is canceled or BOCES is closed due to unforeseen circumstances including but not limited to illness, weather, acts of God, strikes, slow downs, act of war, terrorism, national or state of emergency, flight cancellation or delays, Agency facility closes, BOCES facility closes, epidemic or the like, natural disaster, civil disturbance, explosion, order of any government authority, act of public enemy, shortage of labor or supplies, technology failure, or any other cause not reasonably in control of the Parties, or the like, BOCES shall not be responsible for any fees or expenses that occur due to such cancellation.

IN WITNESS WHEREOF, the parties have duly executed this Agreement on the day and year first above written.

OCM BOCES

VENDOR

Suzanne Slack

Jeanne E. Megali

By: Suzanne Slack
Its: Assistant Superintendent for Administration

By: Jeanne E. Megali

Date: 10 / 28 / 2024

Date: 10.31.2024