

(ATTACHMENT 3) ACTION ON THE AWARD OF EXCEPTION-TO-BID REQUESTS

Contract Requisition Number: CR057564

Contract Number: C031091

Vendor Number: V0000000261

**MILWAUKEE BOARD OF SCHOOL DIRECTORS
PROFESSIONAL SERVICES CONTRACT**

This Contract is being entered into this 1st day of April, 2023, by and between **Human Rights Campaign Foundation** (“Contractor”) and Milwaukee Board of School Directors (“MPS”).

1. SCOPE OF SERVICES

Contractor shall specifically perform the tasks: and duties as outlined in the attached License and Services Agreement which is fully incorporated into this Contract.

Contractor shall provide, at its own expense, all personnel, supplies, and equipment required to perform the services under this Contract.

2. TERM

This Contract shall be in effect from April 1, 2023 through March 31, 2026.

No work shall commence before a Contractor receives a fully executed Contract and has been given approval to proceed. Any work performed by the Contractor prior to obtaining a fully-executed Contract with approval to proceed shall not be compensated pursuant to this Contract. Any continuation of the Contract beyond this term must be set forth in writing and signed by the original signatories to the Contract.

3. COMPENSATION

Total compensation under this Contract shall not exceed \$64,000.00, payable as detailed in Exhibit A of the attached License and Service agreement.

MPS reserves the right to determine in its sole discretion whether services have been adequately and fully delivered; to withhold payment until services are fully and adequately delivered; or to disallow a pro rata share of payments for services not fully and adequately delivered.

Milwaukee Public Schools does not pay in advance for services. No payment shall be made until a properly submitted invoice is approved. Invoices shall be submitted to:

Milwaukee Public Schools
ATTN: Ebony Lewis, Director I – Gender & Identity Inclusion
5225 West Vliet Street
Milwaukee, WI 53208

A properly submitted invoice must include a detailed description of the dates and times worked, and the tasks performed. As a matter of practice, MPS attempts to pay all invoices in 30 days. It is mutually agreed that State Prompt pay law does not apply to this Contract.

Unless otherwise specified, MPS shall not pay invoices submitted more than 60 days after actual work. In the case of grant funding, no payments shall be made after grant close out. Final invoices must be marked as such.

4. NON APPROPRIATION OF FUNDS

This Contract is contingent upon the appropriation of sufficient funds by appropriate MPS officials. If funds are not appropriated, Contractor agrees to take back any commodities furnished under the Contract, terminate any services supplied to MPS under the Contract, and relieve MPS of any further obligations under the Contract.

5. NON-DISCRIMINATION

In the performance of work under this Contract, Contractor shall not discriminate in any way against any employee or applicant for employment on the basis of a person’s sex, race, age, religion, national origin, ancestry, creed, pregnancy, marital or parental status, sexual orientation, disability, or socio-economic status. This prohibition includes but is not limited to employment; promotions, demotions and transfers; recruitment; advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeships. Contractor is required to include a similar provision in all subcontracts to this Contract.

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If MPS determines Contractor has violated this non-discrimination policy, MPS may terminate this Contract without liability for undelivered services or materials. MPS may also deem the Contractor ineligible to participate in future contracts with MPS.

6. INDEMNITY

Notwithstanding any references to the contrary, Contractor assumes full liability for all of its acts or omissions in the performance of this Contract, as well as the acts or omissions of its subcontractors. Contractor shall indemnify and hold harmless MPS, its agents, officers and employees against all liabilities, losses, judgments, decrees, costs, and expenses that may be claimed against MPS as a result of granting of this Contract to said Contractor, or that may result from the carelessness or neglect of said Contractor, its agents, or employees. If judgment is recovered against MPS in suits of law or equity for any reason, including by reason of the carelessness, negligence, or acts or omissions of the Contractor, against such persons, firms or corporations carrying out the provisions of the Contract for the Contractor, the Contractor assumes full liability for such judgment, not only as to any monetary award, but also as to the costs, attorneys' fees or other expenses resulting therefrom.

In accordance with applicable laws, MPS shall be responsible for defending and paying judgments on behalf of its officers, employees and agents while acting within the scope of their employment or agency for any claims that may arise out of MPS's negligence for acts, policies, or directives that affect the activities covered by this Contract.

7. BACKGROUND CHECKS

Contractor will conduct, at Contractor's expense, a criminal information records background check, (hereinafter referred to as "background check"), through the Wisconsin Department of Justice and other appropriate states' agencies, on all current and potential administrators, board members, officers, and employees who have, or who are anticipated to have, "direct, unsupervised contact" with MPS students in the performance of this Contract.

An out of state background check should be completed in the state(s) in which the individual resided for at least six months within the last two years and was eighteen years or older at the time.

Contractor will submit to MPS's Department of Employment Relations (DER), (via mail to Milwaukee Public Schools Background Checks, Attn: Department of Employment Relations, Room 116, 5225 West Vliet Street, Milwaukee, WI 53208, or via email at 564@milwaukee.k12.wi.us), all completed background checks. Such records will be reviewed and MPS will notify Contractor of any individual(s) who, based on MPS standards, are unfit and should not have contact with MPS students. All determinations made by MPS with regards to whether an individual is fit to provide services pursuant to this Contract are made in MPS's sole discretion.

The following will each be a material failure to comply with the terms of this Contract and cause for immediate termination of this Contract by MPS: failure to perform background checks as outlined in this Section 7; failure to submit background checks to MPS as outlined in this Section 7; allowing services to be provided by an individual who has not be subjected to a background check; and allowing services to be performed by an individual who has been determined to be unfit by MPS as outlined in this Section 7.

8. INSURANCE AND PROOF OF FINANCIAL RESPONSIBILITY

Contractor understands and agrees that financial responsibility for claims or damages to any person, or to Contractor's employees and agents, shall rest with the Contractor. Contractor and its subcontractors shall effect and maintain any insurance coverage, including, but not limited to, Workers' Compensation, Employers' Liability, General Liability, Contractual Liability, Automobile Liability and Umbrella Liability to support such financial obligations. The indemnification obligation, however, shall not be reduced in any way by existence or non-existence, limitation, amount or type of damages, compensation, or benefits payable under Workers' Compensation laws or other insurance provisions.

The minimum limits of insurance required of the Contractor by MPS shall be:

Workers' Compensation	Statutory Limits
Employers' Liability	\$100,000 per occurrence
General Liability	\$1,000,000 per occurrence/\$2,000,000 aggregate
Auto Liability	\$1,000,000 per occurrence
Umbrella (excess) Liability	\$1,000,000 per occurrence

The Milwaukee Board of School Directors shall be named as an additional insured under Contractor's and subcontractors' general liability insurance and umbrella liability insurance. Evidence of all required insurances of Contractor shall be submitted electronically to MPS via its third party vendor, EXIGIS Risk Management Services. Waivers and exceptions to the above limits will be in the sole discretion of MPS and shall be recorded in the EXIGIS system, which records are incorporated into

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this Contract by reference. The certificate of insurance or policies of insurance evidencing all coverages shall include a statement that MPS shall be afforded a thirty (30) day written notice of cancellation, non-renewal or material change by any of Contractor's insurers providing the coverages required by MPS for the duration of this Contract.

9. SHIPPING /TAXES

If goods are provided pursuant to this Contract, please note that MPS is exempt from Federal Excise and Wisconsin Sales Taxes. All vendor quotes, bids and invoices must include delivery FOB destination to the MPS location receiving the goods and freight must be prepaid. This means any freight, shipping, processing, handling or like charges must be part of a unit price. Any separate line items for freight, shipping, processing, handling or like charges listed on an invoice will be deleted and NOT PAID.

All textbook purchases shall be governed by the terms and conditions in the Milwaukee Board of School Directors' Textbook Contract, which provides that textbooks shipped to MPS or its schools must be done at no additional charge to MPS or its schools.

MPS reserves the right to reject any items that do not conform to the bid, quote or Purchase Order. All return freight charges associated with the rejected materials shall be borne by the vendor.

10. IRREPARABLE HARM

It is mutually agreed the breach of this Contract on Contractor's part shall result in irreparable and continuing damage to MPS for which money damages may not provide adequate relief. Therefore, the breach of this Contract on Contractor's part shall entitle MPS to both preliminary and permanent injunctive relief and money damages insofar as they can be determined under the circumstances.

11. TERMINATION BY CONTRACTOR

Contractor may, at its option, terminate this Contract upon the failure of MPS to pay any amount, which may become due hereunder for a period of sixty (60) days following submission of appropriate billing and supporting documentation. Upon said termination, Contractor shall be paid the compensation due for all services rendered through the date of termination including any retainage.

12. TERMINATION BY MPS - BREACH BY CONTRACTOR

If Contractor fails to fulfill its obligations under this Contract in a timely or proper manner, or violates any of its provisions, MPS shall thereupon have the right to terminate it by giving five (5) days written notice before the effective date of termination of the Contract, specifying the alleged violations, and effective date of termination. The Contract shall not be terminated if, upon receipt of the notice, Contractor promptly cures the alleged violation with five (5) days. In the event of termination, MPS will only be liable for services rendered through the date of termination and not for the uncompleted portion, or for any materials or services purchased or paid for by Contractor for use in completing the Contract.

13. TERMINATION BY MPS

MPS further reserves the right to terminate this Contract at any time for any reason by giving Contractor written notice by Registered or Certified Mail of such termination. MPS will attempt to give Contractor 20 days' notice, but reserves the right to give immediate notice. In the event of said termination, Contractor shall reduce its activities hereunder, as mutually agreed to, upon receipt of said notice. Upon said termination, Contractor shall be paid for all services rendered through the date of termination, including any retainage. This section also applies should the Milwaukee Board of School Directors fail to appropriate additional monies required for the completion of the Contract.

14. INDEPENDENT CONTRACTOR

Contractor agrees and stipulates that in performing this Contract, it is acting as an Independent Contractor, and that no relationship of employer and employee, partnership or joint venture is created by this Contract. Contractor has exclusive control over work hours, location, and other details of such services, and MPS's sole interest is to ensure that said service shall be performed and rendered in a competent, safe, efficient, timely and satisfactory manner in accordance with the terms of this Contract.

Contractor has the sole obligation to provide for and pay any contribution or taxes required by federal, state or local authorities imposed on or measured by income. Contractor specifically covenant not to file any complaint, charge, or claim with any local, state or federal agency or court in which Contractor claims to be or to have been an employee of MPS during the period of time covered by this Contract and that if any such agency or court assumes jurisdiction of any complaint, charge or claim against MPS on Contractor's behalf, Contractor will request such agency or court to dismiss such matter. MPS shall not be charged any

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obligation or responsibility whatsoever of extending any fringe benefits which may be extended to MPS employees, including any insurance, or pension plans.

Contractor further agrees that MPS is not to be charged with the obligation or responsibility of extending any fringe benefits such as hospital, medical and life insurance, or pension plans which may be extended to employees of MPS from time-to-time and further agree to indemnify and hold harmless MPS and all its employees, officers and agents from any liability for personal injuries, including death, or for damage to or loss of personal property, which might occur as a result of the performance of the services provided for under this Contract.

15. ASSIGNMENT LIMITATION

This Contract shall be binding upon and inure to the benefit of the parties and their successors and assigns; provided, however, that neither party shall assign its obligations hereunder without the prior written consent of the other.

16. PROHIBITED PRACTICES

- A. Contractor during the period of this Contract shall not hire, retain or use for compensation any member, officer, or employee of MPS to perform services under this Contract, or any other person who, to the knowledge of Contractor, has a conflict of interest.
- B. Contractor hereby attests it is familiar with MPS's Code of Ethics, providing in pertinent part, "[a]n employee of Milwaukee Public Schools may not accept any gift or gratuity in excess of \$25.00 annually from any person, persons, group or any firm which does business with or is attempting to do business with MPS."
- C. No person may enter into this Contract for services that the MPS employee would otherwise perform as an employee.
- D. No current or former MPS employee may perform services on a professional services contract without the prior written consent of the MPS Chief Human Capital Officer or his/her designee.
- E. If the Contract is for apparel for \$5,000.00 or more, the Contractor agrees to provide only items manufactured by responsible manufacturers. Contractor is required to include a similar provision in all subcontracts to this Contract.

17. LIVING WAGE REQUIREMENT

Contractor shall comply with, and ensure its subcontractors performing work under this Contract comply with, Milwaukee Board of School Directors' Administrative Policy 3.09(17), which requires that employees be paid a "living wage."

18. NOTICES

Notices to either party provided for in this Contract shall be sufficient if sent by Certified or Registered mail, postage prepaid, addressed to the signatories on this Contract, or to their designees.

19. WAIVER

The waiver or failure of either Party to exercise in any respect any rights provided for in this Contract shall not be deemed a waiver of any further right under this Contract.

20. INTEGRATION / SEVERABILITY

This Contract, the attached License and Services Agreement, and any attached exhibits and addenda, if any, constitute the entire Contract among the Parties with respect to the subject matter hereof and supersede all prior proposals, negotiations, conversations, discussions and Contracts among the Parties concerning the subject matter hereof. No amendment or modification of any provision of this Contract shall be effective unless the same shall be in writing and signed by both Parties.

The District shall not be bound by any terms and conditions included in of Contractor's packaging, service catalog, brochure, technical data sheet or other document which attempts to impose any conditions at variance with or in addition to the terms and conditions contained herein.

If any term or provision of this Contract should be declared invalid by a court of competent jurisdiction or by operation of law, the remaining terms and provisions of this Contract shall be interpreted as if such invalid Contracts or covenants were not contained herein.

21. CHOICE OF LAW & FORUM

The state courts of Wisconsin shall be the sole forum for all disputes arising of this Contract. The validity, construction, enforcement and effect of this Contract shall be governed solely by the laws of the State of Wisconsin.

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22. TIMING

Time is of the essence in this Contract.

23. CERTIFICATION REGARDING DEBARMENT OR SUSPENSION

Contractor certifies that neither Contractor or its principals; its subcontractors or their principals; the sub-recipients (if applicable) or their principals are suspended, debarred, proposed for debarment, voluntarily excluded from covered transactions, or otherwise disqualified by any federal department or agency from doing business with the Federal Government pursuant to Executive Orders 12549 and 12689. Contractor specifically covenants that neither the Contractor or its principals, its sub-contractors or their principals, or the sub-recipients (if applicable) or their principals are included on the Excluded Parties List System (“EPLS”) maintained by the General Services Administration (“GSA”).

24. FORCE MAJEURE

MPS will not be liable to pay Contractor for any work that the Contractor is unable to perform due to act of God, riot, war, civil unrest, flood, earthquake, outbreak of contagious disease or other cause beyond MPS’s reasonable control (including any mechanical, electronic, or communications failure, but excluding failure caused by a party’s financial condition or negligence).

25. STUDENT DATA

Contractor acknowledges that student data is protected by both federal and state law. *See* Wis. Stat. § 118.125; 20 U.S.C. § 1232g(b); 34 C.F.R. § 99.1 *et seq.* If MPS determines that Contractor has disclosed any student record information in violation of either federal or state law, without prejudice to any other rights or remedies the MPS may have, MPS shall be entitled to immediately terminate this and every other existing Contract without further liability. Moreover, MPS may bar Contractor from future MPS contracts for varying periods up to and including permanent debarment.

26. NON-DISCLOSURE

Absent prior written consent of the person listed in Section 3 or his/her designee, Contractor shall not: (1) disclose, publish, or disseminate any information, not a matter of public record, that is received by reason of this Contract, regardless of whether the Contractor is or is not under contract at the time of the disclosure; or (2) disclose, publish, or disseminate any information developed for MPS under this Contract. Contractor agrees to take all reasonable precautions to prevent any unauthorized use, disclosure, publication, or dissemination of the same information.

All information and any derivatives thereof, whether created by MPS or Contractor under this Contract remains the property of MPS and no license or other rights to such information is granted or implied hereby. For purposes of this Contract, “derivatives” shall mean: (i) for copyrightable or copyrighted material, any translation, abridgment, revision, or other form in which an existing work may be recast, transformed, or adapted; and (ii) for patentable or patented material, any improvement thereon.

Within ten business days of the earlier of receipt of MPS’ written or oral request, or final payment, Contractor will return all documents, records, and copies thereof it obtained during the development of the work product covered by this Contract.

27. MPS LOGO/PUBLICITY

No Contractor shall use the MPS Logo in its literature or issue a press release about the subject of this Contract without prior written notice to and written approval of MPS’s Executive Director of Communications & Outreach.

28. ORDER OF PRIORITY

Should Contractor and MPS sign Contractor’s Contract in addition to this Contract, the terms set forth in this Contract shall govern in the event of a conflict.

29. PUBLIC RECORDS

Both parties understand that the Board is bound by the Wisconsin Public Records Law, and as such, all of the terms of this Contract are subject to and conditioned on the provisions of Wis. Stat. § 19.21, *et seq.* Contractor acknowledges that it is obligated to assist the Board in retaining and producing records that are subject to Wisconsin Public Records Law, and that the failure to do so shall constitute a material breach of this Contract, and that the Contractor must defend and hold the Board harmless from liability under the law. Except as otherwise authorized, those records shall be maintained for a period of seven years after receipt of final payment under this Contract.

30. CONTRACT COMPLIANCE REQUIREMENT

The HUB requirement on this Contract is 0%. The student engagement requirement of this Contract is 0 hours. The Career Education requirement for this Contract is 0 hours. Failure to achieve these requirements may result in the application of some

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or all of the sanctions set forth in Administrative Policy 3.10, which is hereby incorporated by reference.

IN WITNESS WHEREOF, the parties here to have executed this Contract on the day, month and year first above written.

CONTRACTOR (Vendor #: V0000000261)

MILWAUKEE BOARD OF SCHOOL DIRECTORS

By: _____
Authorized Representative

By: _____
Janine Adamczyk
Director of Procurement & Risk Management

Date: _____

Date: _____

Human Rights Campaign Foundation
1640 Rhode Island Ave NW
Washington, DC 20036
(414) 202-791-8679

By: _____
Keith P. Posley, Ed.D.
Superintendent of Schools

Date: _____

SSN / FEIN: XXXXXXXXXX

Budget Code: DTI-0-S-8K3-BZ-ECTS

By: _____
Robert E. Peterson, President
Milwaukee Board of School Directors

Date: _____

By: _____
Insurance Compliance

Date: _____

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LICENSE AND SERVICES AGREEMENT

This License and Services Agreement (“Agreement”) is entered into on **April 1, 2023** (“Effective Date”), between The Human Rights Campaign Foundation, with an address located at 1640 Rhode Island Avenue, NW, Washington DC 20036 (“HRCF”), and **Milwaukee Board of School Directors**, with an address located at **5225 W. Vliet Street Milwaukee, WI 53208** (“Customer”). HRCF and Customer are referred to in this Agreement individually as a “Party” and collectively as the “Parties.”

WHEREAS, HRCF wishes to provide to Customer the HRCF Assets (defined in Section 1) and Services (defined in Section 1), and Customer wishes to accept the same, on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. **Certain Definitions**. In addition to terms defined elsewhere in this Agreement, the following terms will have the following meanings when used in this Agreement:

(a) “**Accredited Educational Institution**” has the meaning set forth in 32 C.F.R. § 67.3.

(b) “**Classroom Materials**” means the Welcoming Schools™ training materials designed for Student instruction (including any subsequent versions, updates or upgrades thereto).

(c) “**Educational Materials**” means the Classroom Materials and Training Materials.

(d) “**Educators**” means educators employed by Accredited Educational Institutions that have successfully completed and are up to date with the training criteria.

(e) “**HRCF Assets**” means the Classroom Materials, Training Materials, Portal and HRCF Works.

(f) “**HRCF Works**” means any works of authorship, trade secrets or other intellectual property developed by or on behalf of HRCF in connection with customizing the Educational Materials or Portal for Customer.

(g) “**Portal**” means the web-based portal that HRCF makes available to Customer Facilitators (as defined in Section 2(b) below) in connection with the Services that includes electronically stored versions of the Educational Materials.

(h) “**Services**” means the training services set forth in **Exhibit A** to be provided to Educators by or on behalf of HRCF.

(i) “**Students**” means early childhood and elementary level students of Accredited Educational Institutions.

(j) “**Territory**” means the geographic territory set forth in **Exhibit A**.

(k) “**Training Materials**” means the Welcoming Schools™ training materials designed for Educator instruction (including any subsequent versions, updates or upgrades thereto).

2. **Proprietary Rights**.

(a) **License from HRCF**. Subject to the terms and conditions set forth in this Agreement, HRCF hereby grants to Customer during the Term (defined in Section 6(a)) a non-exclusive, non-transferable (except under Section 9(h)) and non-sublicensable license within the Territory to:

(i) use the Educational Materials, and to allow Educators and Students to use the same as further described below in this Section 2(a), solely for Customer’s educational purposes and solely as necessary to exercise the rights set forth below in this Section 2(a);

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(ii) distribute Training Materials or Classroom Materials that are provided directly to Customer (I) to each Educator solely as necessary to enable each Educator to receive the Services; or (II) to each Educator and each Student solely as necessary to enable such Educators to educate such Students regarding matters of LGBTQ families, gender identity or other diversity issues.

(iii) display the Educational Materials described in Sections 2(a)(i) and (ii) solely as necessary to educate Students regarding matters of LGBTQ families, gender identity or other diversity issues;

(iv) allow Customer Facilitators to access and use the Portal solely to view, download and print hard copies of the Classroom Materials as necessary to exercise the preceding rights granted in this Section 2(a) and solely in accordance with any terms and conditions governing access and use of the Portal ("**Portal Terms**"); and

(v) use and exploit any HRCF Works as incorporated into the Educational Materials or Portal, as applicable, solely to the extent necessary to exercise the rights granted in this Section 2(a).

(b) **Customer Facilitators.** Subject to approval of an application to HRCF and completion of the required training, Customer and HRCF may mutually agree to appoint certain Educators as Customer-level training facilitators ("**Customer Facilitators**"). Customer Facilitators may receive specialized training from HRCF and may use and exploit the Educational Materials to provide the Services directly to other Educators within the Territory. Customer Facilitators must comply with the requirements set forth in **Exhibit C** hereto at all times during the Term, and HRCF reserves the right to revoke an Educator's position as a Customer Facilitator at any time in its sole discretion.

(c) **Co-Branded Materials.** To the extent that any HRCF Works are produced by HRCF for Customer on a customized basis and include any trademarks, logos or other indicators of origin ("**Trademarks**") of either Party, each Party hereby grants the other Party a non-exclusive, non-transferable (except under Section 9(h)) and non-sublicensable license within the Territory to reproduce, distribute, use and otherwise exploit such Trademarks solely as such Trademarks appear within the customized HRCF Works.

(d) **Restrictions.** Customer will not, and will not allow any third party (including, without limitation, any Educator, Student or Customer Facilitator) to: (i) except as expressly permitted in Section 2(a), use, copy, reproduce or distribute any portion of the HRCF Assets; (ii) modify, alter, adapt, create derivative works of or publicly display or perform any portion of the HRCF Assets; (iii) lend, lease, offer for sale or sell any portion of the HRCF Assets to any third party; (iv) remove, alter or obscure in any way any Trademarks, copyright notices or other proprietary rights notices of HRCF or its suppliers on or within any portion of the HRCF Assets; and (v) use any portion of the HRCF Assets in any way that violates any third party rights or any laws, rules or regulations. Customer is solely responsible for ensuring that Educators, Students and Customer Facilitators comply with the terms set forth in this Agreement, and any breach of this Agreement by an Educator, Student or Customer Facilitator will be deemed a breach by Customer.

(e) **Ownership.** As between HRCF and Customer, HRCF solely owns the HRCF Assets, subject to the limited licenses granted in Section 2(a). HRCF hereby reserves all rights that are not expressly granted to Customer in this Agreement. HRCF does not grant any implied licenses in this Agreement under any theory.

(f) **Feedback.** From time-to-time, Customer may make available (or cause to be made available) to HRCF, input, ideas, analysis, suggestions or comments about any aspect of the HRCF Assets or the Services, including, without limitation, in connection with Customer's obligations under Section 3(b)(iv) (collectively, "**Feedback**"). Customer hereby grants to HRCF a perpetual, irrevocable, transferable, sublicensable, royalty-free and worldwide right to use and exploit Feedback without restriction, credit, payment to Customer or any other limitation whatsoever.

3. **Services.**

(a) **General.** HRCF will perform the Services substantially in accordance with any specifications set forth in **Exhibit A**, and the Services will be deemed accepted upon Customer's receipt of written notice from HRCF of such performance. Each Party's contact person in connection with the Services and this Agreement is listed in **Exhibit A**.

(b) **Cooperation.** Customer will reasonably cooperate with HRCF in the provision of the Services. This cooperation will include, without limitation: (i) performing any tasks reasonably necessary for HRCF to provide the Services according to any schedule set forth in **Exhibit A**; (ii) delivering any materials or fulfilling any obligations

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described in **Exhibit A** in a timely manner; (iii) responding to HRCF's reasonable requests for information related to the Services in a timely manner; (iv) performing the obligations set forth in **Exhibit A** to help HRCF ensure the continued quality of the Services; and (v) obtaining the signature of each Educator that receives Services under this Agreement to the waiver form set forth in **Exhibit D** hereto. For clarity, HRCF will not be liable for any delays in completing any task set forth in **Exhibit A** that results in whole or in part from Customer's failure to comply with this Section. Customer acknowledges that it is responsible for the performance under this Agreement and satisfaction of the training criteria set forth on **Exhibit A** by its Educators, and any breach by an Educator will be deemed to be a breach by Customer. If HRCF terminates this Agreement for breach by Customer or an Educator, Customer will not be entitled to receive a refund of any prepaid Fees (as defined below).

4. **Fees.**

(a) **General.** Customer will pay HRCF the fees set forth in **Exhibit A** ("**Fees**"). All Fees will be due and payable within the timeframes set forth in **Exhibit A**. All Fees are non-cancellable and non-refundable.

(b) **Taxes.** The Fees exclude any taxes, levies, duties or similar governmental assessments of any nature ("**Taxes**"). HRCF is solely responsible for Taxes assessable against HRCF based on its income, property or employees.

5. **Confidential Information.**

(a) **Definition.** "**Confidential Information**" means all confidential information disclosed by a Party ("**Disclosing Party**") to the other Party ("**Receiving Party**") that is marked in writing as "confidential" or by a similar designation or information the Receiving Party should reasonably consider confidential based on the nature of the information and circumstances of disclosure. Any HRCF Assets that consist of non-public samples or prototypes shall be HRCF's Confidential Information. Confidential Information will not include any information that: (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party; (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party; (iii) is received from a third party without breach of any obligation owed to the Disclosing Party; or (iv) was independently developed by the Receiving Party.

(b) **Protection of Confidential Information.** The Receiving Party will use at least reasonable efforts to protect the Disclosing Party's Confidential Information from unauthorized access, use or disclosure. The Receiving Party may only use the Disclosing Party's Confidential Information to perform its obligations or exercise its rights under this Agreement. Except as expressly permitted in this Agreement, the Receiving Party will limit access to the Disclosing Party's Confidential Information to those of its and its affiliates' employees, contractors or agents who need such access to perform obligations under this Agreement and who agree to abide by the terms set forth in this Section 5. Neither party will disclose the terms of this Agreement to any third party (other than legal counsel or accountants or those of any of its affiliates) without the other Party's prior written consent.

(c) **Compelled Disclosure.** The Receiving Party may disclose the Disclosing Party's Confidential Information if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure.

6. **Term; Termination.**

(a) **Term.** This Agreement will commence on the Effective Date and run for a period of twelve (12) months or until the completion of the Services, whichever occurs first, unless earlier terminated under this Section 6 ("**Term**").

(b) **Termination of Agreement.** Either Party may terminate this Agreement if the other Party breaches this Agreement and fails to cure within ten (10) days after receiving written notice describing the breach.

(c) **Termination of Access to Portal.** HRCF may terminate any Customer Facilitator's access to the Portal at any time in HRCF's sole reasonable discretion.

(d) **Effects of Termination.** Upon expiration or termination of this Agreement: (i) the licenses granted in Section 2(a) will automatically terminate and all outstanding Fees owed will become immediately due and payable; (ii) with the exception of any Educational Materials retained in hard copy by Customer, each Party must return to the

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other all tangible embodiments of the other Party's Confidential Information within its possession or control, and certify the same has been completed upon written request by the other Party; (iii) Customer's and its Customer Facilitators' access to the Portal will terminate; and (iv) the provisions of Sections 1, 2(c), 2(d), 2(e), 2(f), 3(b), 4, 5, 6(d), 7, 8, 9 and all defined terms used in those Sections will survive.

7. Representations and Warranties.

(a) Each Party represents and warrants that: (i) it has the right, power and authority to enter into this Agreement and to perform all of its obligations in this Agreement; (ii) the person signing this Agreement on its behalf has the authority to do so; and (iii) this Agreement will constitute the legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms to the fullest extent permitted under applicable law.

(b) EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES SET FORTH UNDER SECTION 7(a) AND TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, HRCF MAKES NO PROMISES, REPRESENTATIONS OR WARRANTIES REGARDING THE SERVICE, HRCF ASSETS OR OTHERWISE IN CONNECTION WITH THIS AGREEMENT, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND HRCF HEREBY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE, AS WELL AS ANY LOCAL JURISDICTIONAL ANALOGUES TO THE FOREGOING.

(c) Limitations on Liability. TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW: (i) IN NO EVENT WILL EITHER PARTY'S TOTAL LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE FEES THAT CUSTOMER HAS PAID TO HRCF DURING THE TERM; AND (ii) IN NO EVENT WILL EITHER PARTY HAVE ANY LIABILITY FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT (INCLUDING, WITHOUT LIMITATION, FOR LOST PROFITS OR OTHER BUSINESS OPPORTUNITIES), HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, WHETHER FOR BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE. NOTWITHSTANDING THE FOREGOING IN THIS SECTION 7(c) AND FOR CLARITY, THIS SECTION 7(c) DOES NOT APPLY TO ANY INFRINGEMENT OR MISAPPROPRIATION OF HRCF'S INTELLECTUAL PROPERTY RIGHTS.

8. Indemnification.

(a) HRCF.

- (i) If a third party asserts a claim (each, a "Third Party Claim") against Customer or any of its officers or employees (each, a "Customer Released Party") alleging that any portion of the HRCF Assets infringe such third party's intellectual property rights (each, an "Infringement Claim"), then HRCF will defend the Customer Released Party from the Infringement Claim and hold such party harmless from any damages finally awarded or settlements entered into with respect to the Infringement Claim. In the event of an Infringement Claim, HRCF, at its sole option and expense, may: (i) procure for Customer the right to continue using the infringing part of the HRCF Assets; (ii) modify the infringing part of the HRCF Assets; (iii) replace the infringing part of the HRCF Assets; or (iv) if the preceding options are not commercially practicable, then terminate this Agreement and repay to Customer a pro-rata portion of the Fees. Notwithstanding the preceding sentences of this Section 8(a), HRCF will have no liability for an Infringement Claim if the actual or alleged infringement relates to: (A) any breach of this Agreement by Customer or any Educator or Student; (B) any modification, alteration or addition made to any portion of the HRCF Assets by Customer or any Educator or Student; (C) any failure by Customer or any Educator or Student to use any subsequent versions or upgrades of any portion of the HRCF Assets made available by HRCF; or (D) any settlements entered into by Customer or costs incurred by Customer for the Infringement Claim that are not pre-approved by HRCF in writing. This Section 8(a) states HRCF's entire liability, and the Customer Released Party's sole remedy, with respect to Infringement Claims.
- (ii) HRCF assumes full liability for all of its acts or omissions in the performance of this Agreement, as well as the acts or omissions of its agents, officers, and employees. HRCF shall indemnify and hold harmless Customer, its agents, officers and employees against all liabilities, losses, judgments, decrees, costs, and expenses that may result from the carelessness or neglect of HRCF, its agents, or employees. If judgment is recovered

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against Customer in suits of law or equity for any reason, including by reason of the carelessness, negligence, or acts or omissions HRCF, against such persons, firms or corporations carrying out the provisions of the Agreement for the HRCF, the HRCF assumes full liability for such judgment

(b) **Customer.** To the fullest extent permitted by applicable law, including but not limited to Wis. Stat. §893.80 and Wis. Stat. §895.46, if any Third Party Claim is asserted against HRCF or any of its affiliates, officers, directors, employees, volunteers, advisors or agents (each, an “**HRCF Released Party**”) arising from or in connection with any negligent act or omission solely of Customer or any Educator or Student (but excluding any Infringement Claim) (each, a “**Covered Claim**”), then Customer will defend the HRCF Released Party from the Covered Claim and hold such HRCF Released Party harmless from any damages finally awarded or settlements entered into with respect to the Covered Claim. This Section 8(b) states Customer’s entire liability, and the HRCF Released Party’s sole remedy, with respect to Covered Claims.

(c) **Procedures.** The Party seeking indemnity under this Section 8 (“**Indemnified Party**”) will use commercially reasonable efforts to provide the other Party (“**Indemnifying Party**”) with prompt written notice of any claim for which the Indemnified Party seeks an indemnity. The Indemnified Party reasonably will cooperate in the defense of any such claim, at the Indemnifying Party’s sole expense. The Indemnifying Party may not settle any claim against the Indemnified Party without the Indemnified Party’s prior express written consent, which consent will not be unreasonably withheld, conditioned or delayed. The Indemnified Party may participate in the defense of a claim through counsel of its own choice at its own expense; provided, however, that if the Indemnified Party reasonably determines that the Indemnifying Party is unwilling or unable to defend the Indemnified Party’s interests, then the Indemnified Party may assume the defense against any claim at the Indemnifying Party’s sole expense.

9. **Miscellaneous.**

(a) **Non-Solicitation.** To the extent not prohibited by law, during the Term and for one (1) year thereafter, each Party will not, directly or indirectly, solicit, employ or contract with any of the other Party’s employees or contractors with whom it comes into contact under this Agreement; provided, however, that this Section will not be construed to prohibit either Party from making general solicitations aimed at the public at large that do not specifically target the other Party’s employees or contractors.

(b) **Injunctive Relief.** Both Parties agree that any violation or threatened violation of this Agreement may cause irreparable injury, entitling the injured party to seek injunctive relief in addition to all legal remedies.

(c) **Independent Contractors.** Each Party will perform its obligations under this Agreement as an independent contractor and will be solely responsible for its own financial obligations. Nothing contained in this Agreement will be construed to imply a joint venture, fiduciary or principal or agent relationship between the Parties and neither Party will have any right, power or authority to create any obligation, express or implied, on behalf of the other in connection with performance of its obligations under this Agreement. As between the Parties, Customer is solely responsible for the payment of any compensation, insurance, benefits and taxes with respect to Educators.

(d) **Entire Agreement; Order of Precedence; Modifications; Waivers.** This Agreement and the Milwaukee Board of School Directors Professional Services Contract (“PSC”), including all Exhibits hereto, constitutes the entire agreement between the Parties with respect to the subject of this Agreement, and supersedes all prior or contemporaneous understandings or agreements. If there is any conflict between the terms of this Agreement and: (i) **Exhibit A**; (ii) the Portal Terms; or (iii) the PSC, then, in each case, the PSC will control solely to the extent of the conflict. This Agreement may be modified or amended only by a writing signed by both Parties. All waivers made under this Agreement must be made in writing by the Party making the waiver.

(e) **Interpretation.** Unless expressly stated otherwise in this Agreement: (i) any term defined in the singular includes the plural when required by the applicable context; (ii) all references in this Agreement to “Sections” or “Exhibits” are intended to refer to Sections or Exhibits to this Agreement; (iii) the headings in this Agreement are for convenience of reference only, will not be deemed to be a part of this Agreement and will not be referred to in order to interpret or construe this Agreement; and (iv) “or” is used in the inclusive sense of “and/or.”

(f) **Dispute Resolution.** This Agreement will be construed and governed by the laws of the state of Wisconsin, without regard to its conflicts of laws principles. If there is any dispute between the Parties arising out of or in any

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way related to this Agreement (each, a “**Dispute**”), then authorized representatives of each Party will negotiate in good faith to resolve the Dispute.

(g) **Severability.** If any provision of this Agreement is held to be unenforceable, then the remaining provisions of this Agreement will remain in full force and effect.

(h) **Assignment.** This Agreement binds and is for the benefit of the successors and permitted assigns of each Party. Neither Party may assign this Agreement or any rights under this Agreement without the other Party’s prior written consent; provided that either Party may assign this Agreement or any rights under this Agreement without prior written consent to (i) a successor in connection with a merger, acquisition or sale of all or substantially all of its assets or the business to which this Agreement relates; or (ii) with respect to a Party, any entity that controls, is controlled by or is under common control with such Party, where “control” means ownership of more than fifty percent (50%) of the outstanding securities representing the right to vote for the election of directors or other managing authority of such Party. Any attempt to assign this Agreement other than as permitted above will be void.

(i) **Notices.** Any notice required or permitted to be given under this Agreement will be effective if it is: (i) in writing and sent by certified or registered mail, or insured courier, return receipt requested, to the appropriate Party at the address set forth above with the appropriate postage affixed; or (ii) sent via electronic mail to the point of contact set forth in **Exhibit A**; provided, however, that any notice alleging breach of this Agreement or threatening litigation must be made pursuant to clause (i) in this Section 9(i). Either Party may change its address for receipt of notice by notice to the other Party in accordance with this Section. Notices are deemed given three (3) business days following the date of mailing, one (1) business day following delivery to a courier or on the same day an electronic mail is sent to the recipient.

(j) **Counterparts.** The Parties do not need to sign the same signature page to this Agreement. Each signature will be deemed an original, and separately signed signature pages together will constitute one agreement.

THE HUMAN RIGHTS CAMPAIGN FOUNDATION CUSTOMER

Signature: _____

Printed Name: _____

Title: _____

Date: _____

By: _____

*Janine Adamczyk
Director of Procurement & Risk Management*

Date: _____

By: _____

*Keith P. Posley, Ed.D.
Superintendent of Schools*

Date: _____

By: _____

*Robert E. Peterson, President
Milwaukee Board of School Directors*

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EXHIBIT A

All capitalized terms used but not otherwise defined in this **Exhibit A** will have the meanings ascribed to them in the body of the Agreement.

Customer:			
Points of Contact:	HRCF Cheryl Greene, Director Welcoming Schools 1640 Rhode Island Avenue NW Washington, DC 20036 (202) 791-8679 cheryl.greene@hrc.org	Customer Milwaukee Board of School Directors Name: Dr. Keith P. Posley Address: 5225 W. Vliet Street Milwaukee, WI 53208 Phone Number: (414) 475-8001 Email Address: posleykp@milwaukee.k12.wi.us	
Territory:	Milwaukee Public Schools		
Services:	Date	Activities	Notes
	4/1/2023 - 4/1/2026	3 years of access to the Welcoming Schools Portal and all facilitator material and instructional intellectual property for use within the Milwaukee Public Schools system only. 3-day virtual Facilitator training session 2.5-day in-person Facilitator training session	After year three, the licensing fee is \$3,000 per year.
HRCF, in its sole discretion, reserves the right to modify the above schedule as necessary upon written notice to Customer based on the availability of any person providing the Services on HRCF's behalf. Any additional services to be provided by or on behalf of HRCF will be mutually agreed upon by the Parties in writing and attached to this <u>Exhibit A</u> as successively numbered Exhibit "A"s (e.g., Exhibit A-1, Exhibit A-2, etc.).			
Fees:	Educational Materials Fee. Customer will pay HRCF \$100 per participant in exchange for the rights to the Educational Materials granted in the Agreement. Customer will pay such fee within thirty (30) days from date of service.		
	Services Fee. Customer will pay HRCF \$62,000 in exchange for the Services. Customer will pay HRCF \$62,000 within thirty (30) days from date of service, and the remainder of such fees will be due within thirty (30) days of when HRCF notifies Customer that HRCF has completed the Services pursuant to Section 3(a).		

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EXHIBIT C

CUSTOMER FACILITATOR REQUIREMENTS

1. Attend the full 3 days virtual and 2.5 days in person District-Wide Facilitator Training.
2. Utilize the online Sign-in Sheets and Evaluation Forms for each training.
3. Participate in required monthly cohort meeting with the Welcoming Schools Designated Liaison and Welcoming Schools Staff.
4. Attend all mandatory webinars.
5. Receive consistently positive evaluations from HRCF and Educators attending training sessions conducted by Customer Facilitator.

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EXHIBIT D

EDUCATOR LICENSE, RELEASE AND WAIVER

This Educator License, Release and Waiver ("**Waiver**") is between Educator and The Human Rights Campaign Foundation ("**HRCF**"). Educator desires to participate in the Welcoming Schools™ program, and HRCF desires to use Educator's name, voice, image or likeness, as well as other materials submitted to HRCF by Educator in connection with the Welcoming Schools™ program, to market, promote and advertise HRCF and the Welcoming Schools™ program. Therefore, in exchange for good and valuable consideration, the receipt and sufficiency of which Educator hereby acknowledges, the Parties agree as follows:

1. License to Record and Capture. Educator hereby grants to HRCF, its Affiliates, employees, agents, contractors and subcontractors the right to film, tape, photograph and otherwise record and capture Educator's physical likeness, name, voice, image and persona (collectively, "**Personal Information**") in videos, audiovisual works, sound recordings and photographs (collectively, "**Recordings**") from time to time during Educator's participation in the Welcoming Schools™ program.
2. License to Use. Educator hereby grants to HRCF and its agents, subsidiaries, Affiliates, licensees, successors and assigns (collectively, "**HRCF Entities**") an unrestricted, perpetual, sublicensable, assignable, irrevocable, royalty-free and fully paid-up license to use (a) the Personal Information as embodied in Recordings; and (b) any materials submitted by Educator to HRCF (including such materials embodying Personal Information, other information about Educator such as city, state and length of membership of the Human Rights Campaign, or letters Educator has sent to HRCF, an HRCF Affiliate, members of Congress or others) ("**Materials**"), in whole or in part (including, but not limited to, in combination with or as a composite of other material, including, without limitation, images, photographs, graphics and audio and video segments of any nature) in digital and print media and by a means of any transmission, distribution or communication technology, method or means, whether now known or hereafter created, including, but not limited to the Internet, audiovisual works, photographs, sound recordings, marketing materials, publications and the like (collectively, "**Promotional Media**"), in order to advertise, market and promote HRCF and the Welcoming Schools™ program.
3. Results and Proceeds; Ownership. All results and proceeds derived from HRCF's use of the Recordings, Personal Information and Materials will be owned exclusively by HRCF, and no portion of such proceeds (if any) will be shared with Educator. HRCF will exclusively own any and all rights, including, without limitation, intellectual property rights, in the Recordings and Promotional Media. Notwithstanding the preceding sentences of this Section 3, Educator will retain all of Educator's rights in and to any Personal Information, subject to the licenses set forth in this Waiver.
4. No Right to Prior Inspection; Privacy and Publicity. Educator waives any right to prior inspection or approval of the Recordings, Materials and any Promotional Media. Educator further waives any and all rights of privacy, publicity or any other rights of a similar nature in connection with the Recordings, Personal Information, Materials or Promotional Media or any portion thereof. Accordingly, and without limiting the foregoing sentence, Educator hereby (a) waives, and releases the HRCF Entities from, any and all claims to compensation or damages based on the HRCF Entities' use of Educator's Personal Information in accordance with the Waiver, including, without limitation, any claim(s) that any of the HRCF Entities have violated Educator's publicity rights ("**Waiver and Release**"); and (b) acknowledges and agrees the foregoing Waiver and Release is binding on Educator's heirs, survivors and assigns.
5. Miscellaneous. The relationship between the Parties is that of independent contractors. HRCF may freely assign this Waiver in whole or in part. Educator may not assign any rights or obligations under this Waiver without HRCF's prior express written consent. This Waiver will be governed by the laws of the District of Columbia without reference to its conflict of law principles. Exclusive jurisdiction of all disputes arising under this Waiver will be in the state and federal courts in the District of Columbia. This Waiver constitutes the entire agreement between the Parties with respect to its subject matter, and supersedes any and all prior or contemporaneous representations, understandings and agreements, whether oral or written, between the Parties. The Parties acknowledge and agree that no representations, warranties or covenants not set forth in this Waiver have been made by one Party to the other. No modification to this Waiver, nor any waiver of any rights under this Waiver, will be effective unless in writing signed by both Parties.

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Educator represents and warrants that Educator has read and understands this Waiver and the rights granted herein, and that **Educator has had the opportunity to consult with independent legal counsel prior to the execution of this Waiver** even if Educator has chosen not to consult with such legal counsel. The headings used in this Waiver are for convenience only and will not be used to limit or interpret the provisions of this Waiver. The Parties agree that this Waiver was negotiated by them and that no provision should be interpreted against a Party as the drafter thereof.

ACCEPTED AND AGREED TO BY:

EDUCATOR

By: _____

Janine Adamczyk
Director of Procurement & Risk Management

Date: _____

By: _____

Keith P. Posley, Ed.D.
Superintendent of Schools

Date: _____

By: _____

Robert E. Peterson, President
Milwaukee Board of School Directors