

Purchase Requisition Number: CR046447
Contract Number: C028813
Vendor Number: V024928

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

On August 1, 2019, the Milwaukee Board of School Directors (“MPS” or “Board”) and Qualtrics, LLC entered into Professional Services Contract number C028813 (“Contract”), with a term of August 1, 2019 through July 31, 2020.

In accordance with ¶ 20 of the Contract, the parties modify those terms and conditions identified below.

MODIFIED TERMS:

1. In Paragraph 1 of the Contract, “Software is for academic teaching or research purposes only, and explicitly excludes any use of the software for commercial use, including commercial and government-sponsored research. Software may not be assigned to or used by any commercial entity or user” shall be added.
2. In Paragraph 2 of the Contract, “the original signatories” shall be deleted and replaced with “the parties”.
3. The second sentence of Paragraph 3 of the Contract shall be deleted in its entirety.
4. Paragraph 6 of the Contract is deleted in its entirety and replaced with the following:

“Contractor shall indemnify, defend and hold harmless MPS, its agents, officers and employees harmless from and against any and all claims, costs, damages, losses, liabilities, and expenses (including reasonable attorneys’ fees and costs) arising out of or in connection with: “(a) a Security Breach due to Contractor’s negligence or willful misconduct; or (b) an infringement or alleged infringement of the software as delivered to MPS of any third party’s intellectual property right (together with sub clause (a), “Indemnified Acts”). For purposes of this clause, “Security Breach” means (i) any loss, unauthorized disclosure, or unauthorized use of the confidential information; or (ii) any access, acquisition or misappropriation of confidential information by third parties (or attempted access, acquisition or misappropriation), including any intrusion into the computer system(s) used to access or store confidential information; or (iii) any other disclosure of confidential information in violation of this Contract; provided that MPS: (i) promptly gives written notice of the claim to Contractor’ (ii) gives Contractor sole control of the defense and settlement of the claim; (iii) provides to Contractor all available information and assistance; and (iv) has not compromised or settled such claim.

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.”

5. In Paragraph 10 of the Contract:
 - a. The word “shall”, wherever it appears, shall be replaced with “may”.
 - b. Each use of the words “Contractor” or “Contractor’s” shall be replaced with the words “a party” or a “a party’s”.
 - c. Each use of the word "MPS" shall be replaced with the words "the other party".
6. In Paragraph 12 of the Contract:
 - a. In the first sentence, “five (5)” shall be deleted and replaced with “thirty (30)”.

- b. In the third sentence, “under this Section 12” should be added immediately after the words “In the event of termination”.
- 7. In Paragraph 13 of the Contract:
 - a. In the first sentence “and without refund” shall be added between “for any reason” and “by giving Contractor”.
 - b. The fourth sentence shall be deleted in its entirety.
- 8. In Paragraph 15 of the Contract, the following shall be added after the first sentence: “provided, however, that either party may assign this Contract without written consent to its successor in a merger, acquisition or other change of control, including without limitation the sale of all or substantially all of its assets, stock or business to which this Contract relates other than to a direct competitor of the non-assigning party.”
- 9. Paragraph 22 of the Contract shall be deleted and replaced with the words “Intentionally removed”.
- 10. Paragraph 24 of the Contract shall be deleted in its entirety and replaced with the following:

“Neither party will be liable to pay the other party for any delays or failure to perform work that a party is unable to perform due to act of God, riot, war, civil unrest, flood, earthquake, outbreak of contagious disease or other cause beyond that party’s reasonable control (including any mechanical, electronic, or communications failure, but excluding failure caused by a party’s financial condition or negligence).”

- 11. The following shall be added to the Contract as Paragraph 31:

31. MPS OBLIGATIONS.

MPS agrees that (a) it will comply with the applicable laws, rules, and regulations related to the services; (b) it will not knowingly: (i) utilize (or allow utilization of) the services in any manner prohibited by this Contract or terms of use; (ii) reverse engineer the Services; (iii) tamper with the security of the software; or (iv) interfere with or disrupt the integrity or performance of the services; (b) it will use commercially reasonable efforts to prevent its employees and other third parties from (i) gaining unauthorized access to the Services; and (ii) making unauthorized copies of the software, and if any such unauthorized duplication or use is discovered, it will promptly notify Contractor and take prompt actions to resolve the issue; (c) it will not knowingly utilize the services to (i) send irrelevant or inappropriate messages to third parties (e.g., “spam”); (ii) send or store malicious software; or (iii) upload content that aggravates, harasses, threatens, defames or abuses others; (d) it will not unlawfully or maliciously disrupt the Services; and (e) it will not upload infringing or allegedly infringing content into the services that violate a third party’s intellectual property right. If made aware of a violation of these restrictions in this MPS obligations section, Contractor reserves the right to suspend user accounts or remove any restricted content as it deems appropriate upon prior notice to MPS, and will provide MPS an opportunity to cure the violation.”

- 12. The following shall be added to the Contract as paragraph 32:

32. LIMITATION OF LIABILITY.

IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER OR ANY THIRD PARTY FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY TYPE OR KIND (INCLUDING LOSS OF DATA, REVENUE, PROFITS, USE, OR OTHER ECONOMIC ADVANTAGE) ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THE SOFTWARE, SERVICES, OR THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THE USE OR INABILITY TO USE THE SERVICES,

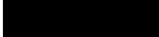
OR FOR ANY CONTENT OBTAINED FROM OR THROUGH THE SERVICES, ANY INTERRUPTION, INACCURACY, ERRORS, OR OMISSIONS, EVEN IF A PARTY HAS BEEN SPECIFICALLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE TOTAL AGGREGATE LIABILITY OF EITHER PARTY SHALL NOT EXCEED THE FEES ACTUALLY PAID BY MPS TO CONTRACTOR IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM. THIS LIMITATION OF LIABILITY DOES NOT APPLY TO SECTION 6 AND 26 (INDEMNITY AND NON-DISCLOSURE).”

CONTRACTOR

By: 
Mark Creer, Managing Counsel

Date: November 1, 2019


Qualtrics, LLC
400 W. Qualtrics Drive, Suite 100
Provo, UT 84064
800-340-9194

Tax ID: 

Budget code(s): OSC-0-0-INT-OI-ECTS

Reviewed By: 
Risk Management

MILWAUKEE BOARD OF SCHOOL DIRECTORS

By: 
Adria D. Maddaleni, J.D., Director
Procurement and Risk Management

Date: 1/8/2020

By: Not Required
Keith P. Posley, Ed.D.
Superintendent of Schools

Date: _____

By: Not Required
Larry Miller, President
Milwaukee Board of School Directors

Date: _____

Date: 1-10-20