

**CONTRACT BETWEEN THE CITY OF AUSTIN ("City")
AND
Brainfuse Inc.
For
HelpNow Electronic Publication Database**

This Contract is between Brainfuse, Inc. having offices at 271 Madison Ave., 3rd Floor, New Your, NY 10016, and the City, a home-rule municipality incorporated by the State of Texas.

This Contract is composed of the following documents:

- 1.1.1 This Contract
- 1.1.2 Exhibit A, Supplemental Terms
- 1.1.3 Exhibit B, Brainfuse, Inc.'s Offer, dated March 31, 2017, including subsequent clarifications
- 1.1.4 Exhibit C, Non-Discrimination Certification (fed0800)
- 1.2 Exhibit D, **Order of Precedence**. Any inconsistency or conflict in the Contract documents shall be resolved by giving precedence in the following order:
 - 1.2.1 This Contract
 - 1.2.2 Supplemental Terms as referenced in Section 1.1.3
 - 1.2.3 The Contractor's Offer as referenced in Section 1.1.4, including subsequent clarifications
 - 1.2.4 Support Agreement as referenced in Section 1.1.5
- 1.3 **Quantity**. Quantity of goods or services as described in Exhibit B.
- 1.4 **Term of Contract**. The Contract will be in effect on the date executed by the City (Effective Date) and shall remain in effect for 24 months..
- 1.5 **Compensation**. The Contractor shall be paid as indicated in Exhibit B upon successful completion of the Scope of Work, a total Not-to-Exceed amount of \$24,000.00, including all fees and expenses.

This Contract (including any Exhibits) constitutes the entire agreement of the parties regarding the subject matter of this Contract and supersedes all prior and contemporaneous agreements and understandings, whether written or oral, relating to such subject matter. This Contract may be altered, amended, or modified only by a written instrument signed by the duly authorized representatives of both parties.

In witness whereof, the City has caused a duly authorized representative to execute this Contract on the date set forth below.

Brainfuse, Inc.

Alex Szudren

Printed Name of Authorized Person

[Signature]

Signature

Managing Director

Title:

5/9/2017

Date:

CITY OF AUSTIN

Bartley Tyler

Printed Name of Authorized Person

[Signature]

Signature

Procurement Specialist I

Title:

5/10/17

Date:

Exhibit A – Supplemental Terms

Exhibit B – Brainfuse, Inc.'s Offer, dated March 31, 2017

Exhibit C – Non-Discrimination Certification (fed0800)

Exhibit A

Supplemental Terms

1. **Designation of Key Personnel.** The Contractor's Contract Manager for this engagement shall be Alex Sztuden, Phone: (866) 272-4638, Email: requests@brainfuse.com. The City's Contract Manager for the engagement shall be Jorge Valle, Phone: (512) 974-7432, Email: Jorge.valle@austintexas.gov.

2. **Invoices.**

Invoices shall be mailed to the below address:

| | |
|-----------------------|--|
| | City of Austin |
| Department | Communication Technology Management or (CTM) |
| Attn: | Accounts Payable |
| Address: | PO Box 1088 |
| City, State, Zip Code | Austin, TX 78767 |
| Email Address | CTMAPInvoices@austintexas.gov |

3. **Travel Expenses.** No travel expenses are authorized under this Contract.

4. **Equal Opportunity**

5.1.1 **Equal Employment Opportunity:** No Contractor or Contractor's agent, shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Bid submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Contractor has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. The Contractor shall sign and return the Non-Discrimination Certification attached hereto as Exhibit D. Non-compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the contract and the Contractor's suspension or debarment from participation on future City contracts until deemed compliant with Chapter 5-4.

5.1.2 **Americans With Disabilities Act (ADA) Compliance:** No Contractor, or Contractor's agent shall engage in any discriminatory employment practice against individuals with disabilities as defined in the ADA.

5. **Right To Audit**

- i. The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records of the Contractor related to the performance under this Contract. The Contractor shall retain all such records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer. The Contractor agrees to refund to the City any overpayments disclosed by any such audit.
- ii. The Contractor shall include this provision in all subcontractor agreements entered into in connection with this Contract.

Exhibit C
City of Austin, Texas
EQUAL EMPLOYMENT/FAIR HOUSING OFFICE
NON-DISCRIMINATION CERTIFICATION

City of Austin, Texas
Human Rights Commission

To: City of Austin, Texas, ("OWNER")

I hereby certify that our firm conforms to the Code of the City of Austin, Section 5-4-2 as reiterated below:

Chapter 5-4. Discrimination in Employment by City Contractors.

Sec. 4-2 Discriminatory Employment Practices Prohibited. As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations and agrees:

- (B) (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter. Such affirmative action shall include, but not be limited to: all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising; selection for training and apprenticeship, rates of pay or other form of compensation, and layoff or termination.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by OWNER setting forth the provisions of this chapter.
- (4) To state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, veteran status, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with OWNER's Human Rights Commission in connection with any investigation or conciliation effort of said Human Rights Commission to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require compliance with provisions of this chapter by all subcontractors having fifteen or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with OWNER subject to the terms of this chapter.

For the purposes of this Offer and any resulting Contract, Contractor adopts the provisions of the City's Minimum Standard Nondiscrimination Policy set forth below.

City of Austin
Minimum Standard Non-Discrimination in Employment Policy:

As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.

The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment

advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.

Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their complaint, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.

Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination employment policy, the Contractor has expressly adopted the provisions of the City's Minimum Non-Discrimination Policy contained in Section 5-4-2 of the City Code and set forth above, as the Contractor's Non-Discrimination Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Contractor's policy, but will also supersede the Contractor's policy to the extent of any conflict.

UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE A COPY TO THE CITY OF THE CONTRACTOR'S NON-DISCRIMINATION POLICY ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION POLICY, AS SET FORTH HEREIN, **OR** THIS NON-DISCRIMINATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES (THE FORM OF WHICH HAS BEEN APPROVED BY THE CITY'S EQUAL EMPLOYMENT/FAIR HOUSING OFFICE), WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.

Sanctions:

Our firm understands that non-compliance with Chapter 5-4 may result in sanctions, including termination of the contract and suspension or debarment from participation in future City contracts until deemed compliant with the requirements of Chapter 5-4.

Term:

The Contractor agrees that this Section 0800 Non-Discrimination Certificate or the Contractor's separate conforming policy, which the Contractor has executed and filed with the Owner, will remain in force and effect for one year from the date of filing. The Contractor further agrees that, in consideration of the receipt of continued Contract payments, the Contractor's Non-Discrimination Policy will automatically renew from year-to-year for the term of the underlying Contract.

Dated this 9 day of May, 2017

CONTRACTOR

Brzinfuse Inc

Authorized Signature

Alex Szuden

Title

Managing Director



City of Austin FSD Purchasing Office

Certificate of Exemption

DATE: 02/15/2017

DEPT: Austin Public Library

TO: Purchasing Officer or Designee

FROM: Victoria Rieger, Finance Manager

BUYER: Claudia Rodriguez

PHONE: (512) 974-7446

Chapter 252 of the Local Government Code requires that municipalities comply with the procedures established for competitive sealed bids or proposals before entering into a contract requiring an expenditure of \$50,000 or more, unless the expenditure falls within an exemption listed in Section 252.022.

Senate Bill 7 amended Chapter 252 of the Local Government Code to exempt from the requirements of such Chapter expenditures made by a municipally owned electric utility for any purchases made by the municipally owned electric utility in accordance with procurement procedures adopted by a resolution of its governing body that sets out the public purpose to be achieved by those procedures. The Austin City Council has adopted Resolution No. 040610-02 to establish circumstances which could give rise to a finding of critical business need for Austin Energy.

This Certification of Exemption is executed and filed with the Purchasing Office as follows:

1. The undersigned is authorized to submit this certification.
2. The undersigned certifies that the following exemption is applicable to this purchase. (Please check which exemption you are certifying)

- ☐ a procurement made because of a public calamity that requires the immediate appropriation of money to relieve the necessity of the municipality's residents or to preserve the property of the municipality
- ☐ a procurement necessary to preserve or protect the public health or safety of municipality's residents
- ☐ a procurement necessary because of unforeseen damage to public machinery, equipment, or other property
- ☐ a procurement for personal, professional, or planning services
- ☐ a procurement for work that is performed and paid for by the day as the work progresses
- ☐ a purchase of land or right-of-way
- ☒ a procurement of items available from only one source, including: items that are available from only one source because of patents, copyrights, secret processes, or natural monopolies; films, manuscripts, or books; gas, water, and other utility services; captive replacement parts or components for

equipment; books, papers, and other library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials; and management services provided by a nonprofit organization to a municipal museum, park, zoo, or other facility to which the organization has provided significant financial or other benefits

- ☐ a purchase of rare books, papers, and other library materials for a public library
- ☐ paving, drainage, street widening and other public improvements, or related matters, if at least one-third of the cost is to be paid by or through special assessments levied on property that will benefit from the improvements
- ☐ a public improvement project, already in progress, authorized by voters of the municipality, for which there is a deficiency of funds for completing the project in accordance with the plans and purposes as authorized by the voters

- ☐ a payment under a contract by which a developer participates in the construction of a public improvement as provided by Subchapter C, Chapter 212
- ☐ personal property sold: at an auction by a state licensed auctioneer; at a going out of business sale held in compliance with Subchapter F, Chapter 17, Business & Commerce Code; by a political subdivision of this state, a state agency of this state, or an entity of the federal government; or under an interlocal contract for
 - cooperative purchasing administered by a regional planning commission established under Chapter 391
 - ☐ services performed by blind or severely disabled persons
 - ☐ goods purchased by a municipality for subsequent retail sale by the municipality
 - ☐ electricity
 - ☐ advertising, other than legal notices
 - ☐ Critical Business Need (Austin Energy Only)

3. The following facts as detailed below support an exemption according to Section 252.022 of the Local Government Code for this purchase. Please verify the steps taken to confirm these facts. If you are citing the following exemptions, please provide the additional information requested below. A more detailed explanation of these exemptions is attached.

- **Preserve and Protect the Public Health and Safety** – Describe how this purchase will preserve and protect the public safety of residents.
- **Sole Source** – Describe what patents, copyrights, secret processes, or natural monopolies exist. Attach a letter from vendor supporting the sole source. The letter must be on company letterhead and be signed by an authorized person in company management.
- **Personal Services** – Describe those services to be performed personally by the individual contracted to perform them.
- **Professional Services** – Describe what mainly mental or intellectual rather than physical or manual and/or disciplines requiring special knowledge or attainment and a high order of learning, skill, and intelligence are required to perform this service.
- **Planning Services** – Describe the services primarily intended to guide governmental policy to ensure the orderly and coordinated development of the state or of municipal, county, metropolitan, or regional land areas.
- **Critical Business Need** – Describe the procurement necessary to protect the competitive interests or position of Austin Energy.

See attached Sole Source letter from vendor.

4. Please attach any documentation that supports this exemption.
5. Please provide any evaluation conducted to support the recommendation. Include the efforts taken to ensure the selected vendor is responsible and will provide the best value to the City (Ex: evaluation of other firms, knowledge of market, etc).

We have contracted with Brainfuse since 2014. Brainfuse is the only real-time tutoring online help available. It is available 24-hours and interactive.

6. Because the above facts and documentation support the requested exemption, the City of Austin intends to contract with Brainfuse, Inc.
which will cost approximately \$ 22,000.00 (Provide estimate and/or breakdown of cost).

Recommended
Certification

Victoria K. Riney 2/17/17
Originator Date

Approved
Certification

Toni Lambert 2/17/17
Department Director or designee Date

Assistant City Manager / General Manager Date
or designee (if applicable)

Purchasing Review
(if applicable)

Betty J. [Signature] 5/8/17
Buyer Date Manager Initials

Exemption Authorized
(if applicable)

Purchasing Officer or designee Date

02/26/2013

February 15, 2017

Mr. Jorge A. Valle
Austin Public Library
800 Guadalupe St.
Austin, Texas 78701

RE: Sole Source Letter for Brainfuse HelpNow

Dear Mr. Valle:

As many of our features and services are unique, this letter is to provide documentation that no other company provides our combination of mutually reinforcing academic services.

SUMMARY:

HelpNow is a comprehensive product that offers academic content, tests, online meeting rooms, expert online tutoring, and full integration with an institution's existing tutoring program. No other product provides this combination of mutually-reinforcing academic services. Please find below a description of some of HelpNow's unique features:

1. **Skills-Building Lessons:** Tutors help students master key academic skills in live one-to-one sessions through our extensive library of academic lessons. All lessons have been created over the past decade by the Brainfuse Curriculum Team.
2. **Customizable Writing Analysis:** HelpNow also allows an institution to integrate its existing writing lab resources and methodologies into its online writing services. Students can use the HelpNow platform to submit papers to Brainfuse writing experts. The proprietary task management system keeps track of submitted papers, allows instructors to view submissions, and flag students who require further assistance. In addition, an institution can customize the rubric applied to papers to ensure analytical continuity throughout.
3. **Proprietary Test Platform:** Student can take an online assessment test using our proprietary testing platform. Students receive results instantly in the form of an online learning plan that lists, on a skill-by-skill basis, areas requiring additional attention. Students can use the learning plan as a launching point to instantly connect with a live tutor for a live skills building session. This full integration between test and tutor routing is another unique feature of the HelpNow platform. Test offerings include, but are not limited to, the TOEFL, GRE, and the COMPASS/ACCUPLACER college placement tests. In addition to the existing library of test offerings, the HelpNow platform provides authoring tools to allow an institution to import its own tests and link these tests to the tutor routing system.
4. **Virtual Study Room:** HelpNow includes a proprietary online study room for drop-in assistance.
5. **Brainwave:** Ability to record and save animated notes for future playback. Brainwave is particularly useful for subjects, such as math, that involve concepts such as sequence and order.
6. **CloudPack:** Allows users to take notes from any desktop or mobile device (though an online note editor) and store academic documents (including scans of worksheets and photos from our

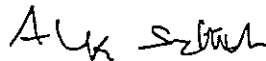
mobile app). Documents can be organized by a student's classes and students can set study reminders for any CloudPack item. In addition, users can import CloudPack items into a Brainfuse tutoring session for more targeted tutoring.

7. **SnapShot:** Snapshot is a feature of the HelpNow Mobile App. It allows a student to take a picture of anything and import it (in real time) to a desktop tutoring session. For instance, a student can freehand draw a math problem on a notebook, use SnapShot to take a picture of the notebook, and instantly import it into the desktop whiteboard, where the tutor and student can mark up the image.
8. **LearnNow Library:** A library of Brainfuse-created lessons and quizzes in a wide range of subjects that students can use to master key academic concepts. Lessons are presented in video and HTML format. A "Get Live Help" button is embedded in each lesson to allow students to connect with a live tutor when they require additional assistance.
9. **Homework Tracker:** HelpNow includes a mobile homework tracker to help students keep track of upcoming assignments, tests, and other school events.
10. **Question Center:** Students who might require a more extended explanation of a concept, or who do not want to meet in real-time with a tutor, can submit their question (along with any supporting documents) and receive a response within 24 hours from one of our tutors.

The Brainfuse platform and its related services are protected under the copyright laws of the United States and the trade secret laws of several states. Brainfuse employs industry-standard measures, both legal and technical in nature, to protect its investment in the Brainfuse platform and services.

We hope that this information assists Austin Public Library as it considers the Brainfuse platform and services. If I can be of further assistance, please do not hesitate to contact me.

Sincerely,



Alex Sztuden
Director
917.494.8638
asztuden@brainfuse.com