

Sparq Data Solutions Negotiations SaaS Agreement

This Sparq Negotiations Software as a Service (SaaS) Agreement (“Agreement”) is made this ____ day of _____, 20__ (the “Effective Date”), by and between Sparq Data Solutions, Inc., a Nebraska for-profit corporation (“Sparq”) and the Logan View Public Schools (“Client”), a Nebraska Political Subdivision.

Sparq is the owner of certain hosted services known as Sparq Negotiations which is a web-based online data collection system used to compare settlement information, provide prevalence reports, view negotiated agreements and perform placement calculations (“Hosted Services”).

Client desires to use Sparq’s Hosted Services for Client’s internal business purposes pursuant to the terms and conditions set forth herein.

Sparq is willing to provide access to Sparq’s Hosted Services for Client’s internal business use pursuant to the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the mutual promises, covenants, and conditions contained in this Agreement, the parties agree as follows:

1. Grant of Web-based Hosted Services. Subject to the terms and conditions of the Agreement, Sparq hereby grants to Client and Client accepts from Sparq a limited, non-exclusive, non-transferable right to use Hosted Services, for the subscription fee identified in Exhibit A. The Hosted Services may only be used by an Authorized User, via the Internet solely for Client’s internal business use. Authorized User is defined as the employees of the Client who have registered and paid for the right to use the Hosted Services. The Hosted Services will be hosted by Sparq and accessed used by Client through the use of the Internet.
2. Intellectual Property Rights. Client acknowledges that all right, title, and interest in and to the Hosted Services, together with its codes, sequences, derivative works, organization, structure, interfaces, any documentation, data, or other related materials (collectively, the “Sparq IP”) is, and at all times shall remain, the sole and exclusive property of Sparq. Sparq IP contains trade secrets and proprietary information owned by Sparq and is protected by United States copyright laws (and other laws relating to intellectual property). Except the right to use the Hosted Services, as expressly provided herein, this Agreement does not grant to Client any rights to, or in, patents, copyrights, database rights, trade secrets, trade names, trademarks (whether registered or unregistered) or any other rights or licenses with respect to the Services or the Software. Client shall not license, sublicense, sell, resell, assign, distribute or otherwise commercially exploit or make available to any third party the Hosted Services in any way. Client shall not attempt, or directly or indirectly allow, any Authorized User or other third party to attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, reverse compile, disassemble, reverse engineer, download, transmit or distribute all or any portion of the Hosted Services in any form or media or by any means. The provisions of this paragraph 2 shall survive termination of this Agreement.
3. Fees.
 - a. Subscription Fee. Client shall pay to Sparq an annual subscription fee for the Hosted Services as shown in attached Exhibit A (“Subscription Fee”). Subscription Fees are based on student enrollment size and may be increased, for each Renewal Term with no notice required, based on changes in enrollment. Otherwise, the Subscription Fee may be increased, for each Renewal Term, provided Sparq shall provide Client with notice of any change in Subscription Fee at least thirty (30) days prior to any Renewal Term.
 - b. Payment is due within thirty (30) days of the Effective Date of this Agreement. All fees are exclusive of any applicable taxes. Client shall be responsible for payment of such taxes of any kind.

- c. **Additional Service Fees.** Client shall pay Sparq an hourly rate for any additional services requested by Client and performed by Sparq. The rate shall be Seventy-five and no/100 Dollars (\$75.00) per hour, including travel time, for each Sparq employee providing the services and necessary and actual food, lodging, and mileage expenses for each Sparq employee providing the services. Mileage will be charged at the established Sparq mileage reimbursement rate, based on the distance from Sparq's office to the Client.
4. **Term.** Subject to any Renewal Term(s) and unless sooner terminated as provided below, this Agreement shall commence on the Effective Date and shall be in effective until March 31 of each year ("Initial Term"). This Agreement shall renew automatically for subsequent one (1) year Terms, commencing on April 1st of each year, ("Renewal Term(s)") unless and until terminated as provided herein, or notice of non-renewal is provided in accordance with Paragraph 5 of this Agreement. The Initial Term and any Renewal Term(s) shall be referred to collectively herein as the "Term" or the "Terms".
5. **Notice of Non-Renewal.** Notwithstanding anything herein to the contrary, the Client may preclude the automatic renewal described in Paragraph 4 of this Agreement by providing written notice to Sparq at least thirty (30) days prior to the commencement of the Renewal Term.
6. **Termination.** This Agreement may be terminated during its term (a) by Sparq Data at any time with at least thirty (30) days prior notice to the Client and (b) by either party giving notice in writing if the other is in material breach of the terms of this Agreement and has failed to remedy the breach within thirty (30) days' notice in writing requiring it to do so. Upon termination of this Agreement, all rights and subscriptions granted to Client shall immediately terminate and the Client shall cease using the Hosted Service.
7. **Maintenance and Support.** Sparq shall maintain the Software and provide all patches and fixes to the Software at no additional cost.
8. **Limited Warranty.** Sparq warrants that it has the power and authority to grant the subscription for the Services granted to Client hereunder. EXCEPT FOR THE WARRANTY SET FORTH HEREIN, THE SERVICES ARE PROVIDED "AS IS," AND PROVIDER DISCLAIMS ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

Limitation of Remedy and Liability. Client represents that it accepts sole and complete responsibility for: (a) the selection of the Services to achieve Client's intended results; (b) use of the Services; (c) the results obtained from Services; and (d) the terms of any contracts between Client and Authorized Users. Client shall not assert any claims against Sparq based upon theories of negligence, gross negligence, strict liability, fraud, or misrepresentation, and Client shall defend Sparq from any demand or claim, and indemnify and hold Sparq harmless from any and all losses, costs, expenses, or damages, including reasonable attorneys' fees, directly or indirectly resulting from Client's use of the Services, an Authorized User's use of the Services, and/or any agreement between the Client and an Authorized User based on or in any way related to the Services. In any event, under no circumstances shall Sparq be liable for any loss, costs, expenses, or damages to Client in an amount exceeding the subscription fees actually paid to Sparq by Client for the previous twelve (12) months.

THE HOSTED SERVICES AND ALL CONTENT IS PROVIDED TO CLIENT STRICTLY ON AN 'AS IS' BASIS. SPARQ MAKE NO REPRESENTATION, WARRANTY, OR GUARANTY AS TO THE QUALITY, AVAILABILITY,

ACCURACY OR COMPLETENESS OF THE HOSTED SERVICES OR ANY CONTENT INCLUDING USE OF THE HOSTED SERVICES OR CONTENT IN ANY COMMISSION OF INDUSTRIAL RELATIONS DISPUTE, CASE OR HEARING. SPARQ DOES NOT REPRESENT OR WARRANT THAT THE CLIENT'S USE OF THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE OR THE SPARQ SERVICES WILL MEET CLIENT'S REQUIREMENTS OR EXPECTATIONS. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL SPARQ BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR ANY OTHER PECUNIARY LOSS) ARISING OUT OF THE USE OF OR INABILITY TO USE THE SERVICES, WHETHER BASED UPON CONTRACT, WARRANTY, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, EVEN IF PROVIDER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

9. Governing Law. This Agreement shall be governed and interpreted by the laws of the State of Nebraska. Any action under or concerning this Agreement shall be brought exclusively in the District Court of Lancaster County, Nebraska. Both parties hereby consent to such personal and exclusive jurisdiction.
10. Severability. In the event any provision of this Agreement is determined to be illegal, void, or unenforceable, the remainder of this Agreement shall remain in full force and effect.
11. No Partnership or Agency. No agency, partnership, joint venture or employment relationship is created by this Agreement and neither party shall have the authority to act in the name or on behalf of or otherwise bind the other in any way.
12. Force Majeure. Provider will not be held responsible for any delay or failure in performance of any part of this Agreement to the extent that such delay is caused by events or circumstances beyond the Provider's reasonable control, including but not limited to fire, flood, storm, act of God, war, malicious damage, failure of a utility service or transport or telecommunications network.
13. Entire Agreement. This Agreement sets forth the entire understandings between the parties with respect to the Services, and merges and supersedes all prior or contemporaneous understandings or agreements whether written or oral. No amendment or modification of this Agreement will be binding unless reduced to a writing signed by duly authorized representatives of the parties and such writing makes specific reference to this Agreement and its intention as an amendment hereto.

The above provisions are agreed to effective as of the Effective Date written above

Client Name Sparq Data Solutions, Inc.

Signature: _____ Signature: _____

Print Name: _____ Print Name: Craig Caples

Title: _____ Title: Chief Information Officer

Date: _____ Date: _____

EXHIBIT A

SPARQ NEGOTIATIONS SAAS PRICING

STUDENT ENROLLMENT SIZE	CONSECUTIVE SUBSCRIPTION YEAR*	SUBSCRIPTION FEE
564	Year 1	\$2,520

A one-time distance learning training is included in the above Subscription Fee.

* Pricing tiers are determined based on three consecutive subscription years. If subscription of the Sparq Service is interrupted, pricing will revert back to Year One Pricing. Anything after three consecutive years remains at Year Three pricing, but may be increased, per the terms of this Agreement.