

## **FinalForms Agreement**

This FinalForms Agreement (“Agreement”) is made and entered into on July 29, 2020, by and between BC Technologies Company, doing business as FinalForms (“FinalForms” or “Party”), an Ohio corporation, and the Norton City Schools (“Customer” or “Client” or “Subscriber” or “Party”), (collectively, “the Parties”).

The Support Services (“Services”) contemplated by this Agreement shall be set forth in an Exhibit, which shall be attached to and made a part of this Agreement.

*The Parties hereto agree as follows:*

### **1. Contract Period**

This Agreement is effective when signed by Customer and FinalForms representatives (“Effective Date”). The initial term of this Agreement begins on the Effective Date and ends one calendar year from the Effective Date. The term will renew automatically for additional one (1) year terms at FinalForms’ then-current development, academic and athletic form fee rates, notice of which shall be provided to Customer sixty (60) days prior to the end of the then-current term, unless terminated in writing by either party at least thirty (30) days prior to the end of the then-current term, or upon termination under Section 4 of the Agreement.

### **2. Billing and Payment**

**Payment Dates.** Payments for services rendered between March 16<sup>th</sup> and September 15<sup>th</sup> will be invoiced on September 15<sup>th</sup> in each year of this Agreement. Payments for Services rendered between September 16<sup>th</sup> and December 15<sup>th</sup> will be invoiced on December 15<sup>th</sup> in each year of this Agreement. Payments for Services rendered between December 16<sup>th</sup> and March 15<sup>th</sup> will be invoiced on March 15<sup>th</sup> in each year of this Agreement.

**Payment Terms.** Payment for the Services under this Agreement shall be set forth in an Exhibit, which shall be attached to and made a part of this Agreement. Payment is due within thirty (30) days of Customer’s receipt of an invoice from FinalForms. Services will be suspended for up to seven (7) days if payment is not received when due. Should Customer fail to pay FinalForms the complete agreed upon consideration within the seven (7) day suspension period, FinalForms shall have the right to terminate the Agreement, effective immediately.

### **3. Representations and Warranties**

**Compliance with the Laws.** Each Party shall, at its own expense, comply with all laws, regulations and other legal requirements that apply to it and this Agreement.

**Acceptable Use.** Customer is solely responsible for the content of any postings, data, or transmissions using the Services, or any other use of the Services by Customer or by any person or entity Customer permits to access the Services. Customer represents and warrants that it will not violate or tamper with the security of any FinalForms computer equipment or program. If FinalForms has reasonable grounds to believe that Customer is utilizing the Services for any illegal or disruptive purpose, FinalForms may suspend the Services immediately with or without notice to Customer. FinalForms may terminate the Agreement as contemplated in Section 4 if FinalForms determines that Customer failed to adhere to the foregoing acceptable use standards.

**DISCLAIMER.** THE WARRANTIES SET FORTH IN THIS SECTION 3 ARE THE ONLY WARRANTIES MADE BY FINALFORMS. FINALFORMS MAKES NO OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES, ANY RELATED SERVICE, OR SOFTWARE. FINALFORMS HEREBY EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR IMPLIED WARRANTIES ARISING FROM A COURSE OF DEALING OR COURSE OF PERFORMANCE. NO ORAL OR WRITTEN INFORMATION GIVEN BY FINALFORMS, ITS EMPLOYEES OR LICENSORS WILL CREATE A WARRANTY. FINALFORMS MAKES NO WARRANTY EXPRESSED OR IMPLIED, REGARDING THE ACCURACY, ADEQUACY, COMPLETENESS, LEGALITY, RELIABILITY OR USEFULNESS OF ANY FORM OR DATA THAT IT CONVERTS INTO ELECTRONIC FORMAT FOR CUSTOMER, OR THIRD PARTIES SUCH AS PARENTS OR STUDENTS, AT CUSTOMER'S REQUEST, PURSUANT TO THIS AGREEMENT

**Foreign Language Translations.** FinalForms may provide translations of data it receives from Customer into languages other than English, through a third-party external translation service, which is intended solely as a convenience to the non-English-reading public. Due to the inherent nuances of translating a foreign language, FinalForms cannot guarantee the accuracy, reliability, or performance of the third-party external translation service nor the limitations provided by this service, such as the inability to translate specific files or data. Therefore, FinalForms expressly disclaims liability for any direct, indirect, incidental, special, or consequential damages that may result from or relate to an inaccuracy in the translation of Customer data into a language other than English.

#### **4. Termination**

Either Party may give notice of termination of the Agreement at least thirty (30) days prior to the expiration of the original term. If Customer terminates this Agreement, all amounts due for use of the Software based on the number of students whose data has been converted into electronic format in accordance with this Agreement, and the Support Services ("Services") actually rendered prior to the termination of this Agreement shall be immediately due and payable by Customer.

If a Party fails to perform or observe any material term or condition of this Agreement, and the failure continues un-remediated for seven (7) days after receipt of written notice of noncompliance, the other Party may terminate this Agreement, or, where the failure is a nonpayment by Customer of any charge when due, FinalForms may, at its option, terminate or suspend Services in accordance with Section 2 of this Agreement.

This Agreement may be terminated immediately upon written notice by FinalForms if it becomes insolvent or involved in a liquidation or termination of business, files a bankruptcy petition, has an involuntary bankruptcy petition filed against it (if not dismissed within thirty days of filing), becomes adjudicated bankrupt, or becomes involved in an assignment for the benefit of its creditors.

## **5. Licenses**

FinalForms hereby grants to Customer a personal, nonexclusive, nontransferable license during the term of this Agreement to use, in object code form, all software and related documentation provided by FinalForms ("Software"), which may be furnished to Customer under this Agreement. Customer agrees to use commercially reasonable efforts to ensure that its employees and users of all Software hereunder comply with this Agreement. Customer also agrees to refrain from taking any steps, such as reverse assembly or reverse compilation, to derive a source code equivalent to the Software. All Software furnished to Customer under this Agreement shall be used by Customer only for Customer's internal business purposes, and shall not be reproduced or copied in whole or in part.

## **6. Customer Data**

Customer is the custodian of all data that it supplies to FinalForms, which is to be strictly held as confidential. FinalForms will not access, delete or alter Customer data within FinalForms or within any other software or application employed by Customer without the express consent of Customer.

Customer hereby consents to the use by FinalForms of Customer's name, logo, and other identifying information in marketing materials that contain a list of representative customers. FinalForms will grant Customer administrators access to the application and data for a minimum of seven (7) years after contract termination. Customer has the option to receive a backup of data prior to deletion, per Section 10 of this Agreement.

All right, title, and interest in and to the Software, and all copyrights, patents, trademarks, service marks, or other intellectual property or proprietary rights relating thereto, belong exclusively to FinalForms. Any modification to the Software performed by Customer directly or indirectly extending the current capabilities shall be the property of FinalForms, and all copyrights and other rights are hereby assigned to FinalForms.

## **7. Limitation of Liability**

As set forth below, under no circumstances will FinalForms, its executives, employees, or designees be liable for any indirect, incidental, special, or consequential, damages that result from Customer's use of or Customer's inability to use the Services, including but not limited to: loss of revenue or lost profits, or damages that result from mistakes, omissions, interruptions, deletion of files or email, errors, defects, viruses, delays in operation or transmission, theft, destruction, or unauthorized access to FinalForms' records, programs or services, even if such Party has been advised of the possibility of such damages. In the event of any breach by FinalForms of this Agreement, FinalForms' liability to Customer will not exceed the amount paid to FinalForms by Customer during the previous three (3) months.

**No Infringement:** FinalForms warrants the Software will not infringe any patents, trademarks, copyright, or any proprietary rights of a third party or constitute a misuse or misappropriation of a trade secret. Customer shall notify FinalForms promptly in writing of any known action brought against Customer based on an allegation that Customer's use of any materials infringes any patent, trademark, copyright, or infringes any right of a third party, or constitutes misuse or misappropriation of a trade secret ("Infringement"). FinalForms may agree to defend, indemnify, and hold Customer harmless from any such action at FinalForms' sole expense, provided that FinalForms shall have the sole control of the defense of any such action, all negotiations and/or its settlement, and Customer reasonably cooperates with FinalForms in such defense, negotiations and/or settlement.

## **8. Customer Responsibility**

For purposes of Section 8 of this Agreement, "communications" shall mean all electronic correspondence generated or received by Customer and its employees and designees, excluding such correspondence between Customer and FinalForms, through the use of any Service provided by FinalForms to Customer under this Agreement.

Customer is solely responsible for the content of communications transmitted by Customer using the Services. Customer is solely responsible for the content of all documents, data, and student records FinalForms converts into electronic format and makes available to Customer online, at the request of Customer, and shall defend, indemnify, and hold harmless FinalForms from and against any liability and costs (including reasonable attorneys' fees) arising from FinalForms conversion of such documents, data, and student records into electronic format and making such documents, data, and student records available online.

Customer is not permitted to resell the Services.

To the extent deemed necessary by Customer, Customer shall implement security procedures necessary to limit access to the Services to Customer's authorized users and shall maintain a procedure external to the Services for reconstruction of lost or altered files, data, or programs.

Customer is responsible for establishing designated points of contact to interface with FinalForms.

## 9. Confidential Information

**Definition.** For purposes of this Agreement, "Confidential Information" shall mean information including, without limitation, all Customer data, computer programs, code, algorithms, names and expertise of employees and consultants, know-how, formulas, processes, ideas, inventions (whether patentable or not), schematics, and other technical, business, financial, and product development plans, forecasts, strategies and information marked "Confidential," or if disclosed orally, is identified as confidential at the time of disclosure. In addition to the foregoing, Confidential Information shall include third party software, if any, that may be provided to Customer under this Agreement, including any related source or object codes, technical data, data output of such software, documentation, or correspondence owned by the applicable licensor. Confidential Information excludes information that: (i) was or becomes publicly known through no fault of the receiving party; (ii) is independently developed by the receiving party without the participation of individuals who have had access to the Confidential Information; (iii) is approved by the disclosing party for disclosure without restriction in a written document which is signed by a duly authorized representative or designee of such disclosing party; and (iv) the receiving party is legally compelled to disclose, provided, however, that prior to any such compelled disclosure, the receiving party will (a) assert the privileged and confidential nature of the Confidential Information against the third party seeking disclosure, and (b) cooperate fully with the disclosing party in protecting against any such disclosure and/or obtaining a protective order narrowing the scope of such disclosure and/or use of the Confidential Information. In the event that such protection against disclosure is not obtained, the receiving party will be entitled to disclose the Confidential Information, but only as and to the extent necessary to legally comply with such compelled disclosure.

Each Party agrees to use the other Party's Confidential Information solely for the purposes of carrying out its obligations under this Agreement, and to refrain from disclosing that Confidential Information to any third-party, unless and to the extent: (a) any disclosure is necessary or appropriate in connection with the performance of its obligations or exercise of its rights under this Agreement; (b) any disclosure is required by applicable law including public records law (O.R.C. §149.43, *et seq.*) or open meetings law (O.R.C. §121.22, *et seq.*); provided that, if practicable, the party required to make such disclosure uses reasonable efforts to give the party to whom the relevant Confidential Information relates reasonable advance notice thereof (i.e., so as to afford that party an opportunity to intervene and seek an order or other appropriate relief for the protection of its Confidential Information from any unauthorized use or disclosure) and the Confidential Information is only disclosed to the extent required by law; (c) any disclosure is made with the consent of the disclosing party; or (d) to employees, consultants or agents to whom disclosure is necessary to realize the benefit of this Agreement and who agree to be bound by the terms hereof.

FinalForms will disclose any breach of its security system affecting personal information, in accordance with the requirements of R.C. 1349.19, if applicable.

**Nondisclosure.** During the term of this Agreement and for a period of two (2) years thereafter, each Party agrees to maintain all Confidential Information in confidence to the same extent that it protects its own similar Confidential Information, but in no event using less than reasonable care, and to use such Confidential Information only as permitted under this Agreement. Each Party agrees to only disclose the other Party's Confidential Information to its employees: (a) with a need to know to further permitted uses of such information; and (b) who are informed of the nondisclosure/non-use obligations imposed by Section 9 of this Agreement. Both Parties shall take steps each determines appropriate to implement and enforce such non-disclosure/non-use obligations.

#### **10. Back-up of Data**

FinalForms will deliver a full back-up of Customer Data in .BAK format in a CD by US priority mail, if Customer pays a charge of \$100 per back-up copy in advance of receiving the CD(s).

#### **11. General Provisions and Force Majeure**

(a) This Agreement, including any amendments and attachments hereto that are incorporated herein, constitute the entire agreement between the Parties and shall be binding on the Parties. No modification, termination, or waiver of any provisions of this Agreement shall be binding upon a Party unless evidenced in writing signed by authorized representatives of the Parties. No provision of any purchase order or other document issued by Customer, which purports to alter, vary, modify, or add to the provisions of this Agreement, shall be binding upon FinalForms or effective for any purpose, unless expressly accepted by FinalForms in a signed writing by an authorized representative.

It is further expressly understood and agreed that, there being no expectations to the contrary between the Parties, no usage of trade or other regular practice or method of dealing, either within the computer software industry, FinalForms' industry, or between the Parties shall be used to modify, interpret, supplement, or alter in any manner the express terms of this Agreement or any part thereof.

(b) Nothing contained in this Agreement shall be construed as creating a joint venture, partnership, or employment relationship between the Parties.

(c) The Software shall not be exported or re-exported in violation of any export provisions of the United States or any other applicable jurisdiction.

(d) This Agreement may not be assigned, sublicensed, or transferred, in whole or in part, by Customer without the prior written consent of FinalForms. Any attempted assignment, subletting or transfer shall be void.

(e) If any provision or provisions of this Agreement shall be held to be invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

(f) No delay or failure of FinalForms or Customer in exercising any right herein, and no partial or single exercise thereof shall be deemed of itself to constitute a waiver of such right or any other rights herein. Any waiver by FinalForms or Customer of any breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent or other breach.

(g) In the event that either Party is unable to perform any of its obligations under this Agreement or to enjoy any of its benefits because of natural disaster, terrorism, fire, explosion, power blackout, earthquake, flood, the elements, strike, embargo, labor disputes, acts of civil or military authority, war, acts of God, acts or omissions of carriers or suppliers, acts of regulatory or governmental agencies, actions or decrees of governmental bodies or communication line failure not the fault of the affected Party, or other causes beyond such Party's reasonable control (a "Force Majeure Event"), the Party who has been so affected shall immediately give notice to the other Party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Agreement shall be immediately suspended. If the period of nonperformance exceeds seven (7) days from the receipt of notice of the Force Majeure Event, the Party whose ability to perform has not been so affected may, by giving written notice, immediately terminate this Agreement as provided in Section 11 of this Agreement.

(h) At FinalForms' request, no more frequently than annually, Customer shall furnish FinalForms with a signed certification verifying that the Software is being used pursuant to the terms of this Agreement and listing the locations where the Software is being used.

(i) This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, and each of which together shall constitute a single instrument.

(j) This Agreement shall be governed by and construed under the laws of the State of Ohio applicable to contracts made in and wholly to be performed in the State of Ohio.

## 12. Signatures

Signature below by an authorized representative confirms a Party's consent to the terms and conditions of this Agreement.

### CUSTOMER

By: \_\_\_\_\_  
Position: \_\_\_\_\_

By: \_\_\_\_\_  
Position: \_\_\_\_\_

Date: \_\_\_\_\_

### FINALFORMS

By: \_\_\_\_\_  
Position: \_\_\_\_\_

Date: \_\_\_\_\_



## FinalForms Agreement - Exhibit A

This Exhibit shall be attached to and made a part of the FinalForms Agreement between FinalForms and Norton City Schools ("Customer").

The following definition shall apply to the FinalForms Agreement:

**Support Services ("Services")** – includes, but is not limited to: conversion of Customer-approved forms and data into electronic format; web hosting for online forms; data storage; provision of access to stored Customer data; access to electronic communication tools using online email system, manual notifications or automatic notifications; access to features that allow filtering, sorting, printing and emailing data; email and phone Customer support; online and in-person training.

### PAYMENT OPTIONS AND PAYMENT PLANS

#### 1. SETUP FEE

*\* Customer will be billed at the rate of noted on the quote.*

The Setup Fee covers the development of the FinalForms system, including customization, for Academics and/or Athletics and/or Staff. The total Setup Fee will be invoiced upon signing the Agreement and will be due within thirty (30) days of signing the Agreement.

#### 2. ANNUAL FEES (per student)

*\* Customer will be billed at the rate of noted on the quote.*

Invoices are automatically send on September 15th, December 15th, and April 15th, and shall be due within thirty (30) days of receipt of such invoice unless otherwise agreed upon, which is noted as:

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### Signatures

Signature below by an authorized representative confirms a Party's consent to the terms set forth above.

#### CUSTOMER

By: \_\_\_\_\_  
Position: \_\_\_\_\_

By: \_\_\_\_\_  
Position: \_\_\_\_\_

Date: \_\_\_\_\_

#### FINALFORMS

By: \_\_\_\_\_  
Position: \_\_\_\_\_

Date: \_\_\_\_\_