



SERVICES CONTRACT
Between
«SCHOOL DISTRICT NAME» DISTRICT
And
«COMPANY NAME»

Contract No. CT-CONTRACT NUMBER

THIS CONTRACT SHALL BE BINDING ON THE DISTRICT ONLY IF IT IS APPROVED BY THE TRUSTEES AND EXECUTED BY THE SUPERINTENDENT OR AUTHORIZED DESIGNEE

[Note: Text that is bracketed, bold red is optional.]

This Services Contract ("Contract") dated «ContractDate» ("Effective Date"), is made by and between «School District Name» School District ("District") and «Company Name» ("Contractor"). This Contract shall govern all provisions for services which are to be delivered by Contractor to District. District and Contractor may be referred to individually herein as a "Party" or collectively as the "Parties." This Contract is based upon the following Recitals and subject to the Terms and Conditions mutually agreed upon by the Parties, and each of them.

RECITALS

Whereas, District, is a «State Entity Type (i.e. Local Educational Agency legally constituted in the State of California)», and is fully empowered to enter into agreements with third parties for the provision of materials, services and related matters.

Whereas, Contractor certifies under penalty of perjury that Contractor is a (check applicable):

- Sole Proprietor Corporation Limited Liability Company Partnership Nonprofit Corporation
- Other [describe: _____];

Whereas, Contractor represents that it is a legally constituted entity fully licensed, empowered and otherwise authorized by law to provide, as well as capable of providing, certain materials, services, or other contracted-for benefits to District.

Whereas, Contractor represents that it is experienced and properly certified/licensed to provide the professional services described herein within applicable standards of care, and is familiar with the objectives of the District.

Whereas, the Parties are prepared to enter into this Contract, whereby District secures from the Contractor, and Contractor covenants and agrees to provide for District, certain defined materials, services or other benefits of the terms and conditions recited.

Now, therefore, in consideration of the Recitals and mutual covenants provided in this Contract, District and Contractor agree as follows:

TERMS AND CONDITIONS

1. Contractor Scope of Work. Contractor agrees to furnish all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply professional services, as more particularly described in Exhibit A (Scope of Work), attached hereto and incorporated herein by reference (collectively "Services"). Services authorized by District are limited to those specific services identified in Exhibit A, and Contractor agrees to undertake no other services for District under the auspices of this Contract, whether directly or indirectly, without the prior written consent of District. No changes to the Exhibit A (Scope of Work) are authorized without the express written consent of District by an executed written addendum to this Contract signed by the Parties. Contractor promises and agrees that all Services shall be subject to, and performed in accordance with, this Contract, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

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2. **Term.** This Contract, shall be effective from the Effective Date set forth above and shall terminate on «ContractEndDate», unless earlier terminated pursuant to the provisions of Section 16 (Early Termination) herein. This Contract shall not be automatically renewed or extended.

3. **Contractor Compensation and Other Payment Issues.**

- a. **Compensation.** Contractor will be paid for all Services subject to the fee and expense schedule and other authorized service charges as set forth in Exhibit B (Fee and Expense Schedule), which is attached hereto and incorporated herein by reference. No changes to Exhibit B (Fee and Expense Schedule) are authorized without the express written consent of District by an executed written addendum to this Contract signed by the Parties.
- b. **Expenses.** Contractor shall furnish at its own expense all necessary overhead, administrative and support services, equipment, clerical personnel, facilities, communications and related facilities and personnel necessary to perform the Services. All fees and expenses for services of Contractor under this Contract, and District's obligations to compensate Contractor for services, shall solely be governed by Exhibit B. Should Contractor incur additional or unanticipated expenses, District shall not be obligated to pay for, or reimburse, said expenses to the extent not included within the compensation specifications set forth in Exhibit B. District shall be entitled, at its sole and unrestricted discretion, to refuse to amend this Contract or to otherwise voluntarily pay such additional and unanticipated expenses.
- c. **W-9:** Contractor acknowledges and agrees that it must submit a completed "Request for Taxpayer Identification Number and Certification" (Form W-9) with this signed Contract and that the District will report payment information to the Internal Revenue Service under the name and TIN or SSN, whichever is applicable, provided by Contractor.
- d. **Invoicing and Method of Payment:** Unless otherwise specified in Exhibit B, Contractor shall invoice District «monthly». Upon work completion and acceptance, invoice approval, and according to this Contract's Terms and Conditions. District shall pay invoices «net 30 days». District reserves the right to withhold payments to Contractor for amounts reasonable and sufficient to cover District's costs in processing invoices more than 60 days late. **[Invoices must include all of the following: invoice date, contract number, dates of service, detailed description of service, payment rate, total payment due, remit to address, Contractor name, and contact information.]**
- e. **Payment on Early Termination:** Upon termination pursuant to Section 16 (Early Termination), District shall pay Contractor as follows:
 - (i) If District terminates this Contract for its convenience under Section 16(a) or 16(b), then District must pay Contractor for work performed before the termination date if and only if Contractor performed in accordance with this Contract. District shall not be liable for any direct, indirect, or consequential damages. Termination by District shall not constitute a waiver of any other claim District may have against Contractor.
 - (ii) If Contractor terminates this Contract under Section 16(c) due to District's breach, then District shall pay Contractor for work performed before the termination date if and only if Contractor performed in accordance with this Contract.
 - (iii) If District terminates this Contract under Sections 16(c) or 16(d) due to Contractor's breach, then District must pay Contractor for work performed before the termination date less any setoff to which District is entitled and if and only if Contractor performed such work in accordance with this Contract.
- f. **Cost Adjustments.** The Parties agree that contracted prices as set forth in Exhibit B (Fee and Expense Schedule) shall be fixed for the first 12 months of this Contract. Contractor must submit to District any proposed cost adjustments at least 60 days before the proposed effective date of such increases with a detailed explanation for each adjustment. District alone reserves the right to reject any changes to this Contract it deems unacceptable.

4. **Independent Contractor Status.** By its signature on this Contract, Contractor acknowledges and agrees that the Services to be performed under this Contract are those of an independent contractor, and that Contractor is solely responsible for the Services and any other work performed as a result of this Contract. Contractor represents and warrants that Contractor, its subcontractors, and their employees, and agents are not officers, agents, or employees of District. Contractor acknowledges and agrees any personnel performing the Services under this Contract shall at all times be under Contractor's exclusive direction and control, and that Contractor is solely responsible for payment of all compensation, wages, salaries, benefits, and other amounts due to such personnel. Contractor further acknowledges

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and agrees that Contractor shall be solely responsible for all federal, state, and local taxes and any and all fees applicable to any Services performed under this Contract, including, but not limited to, social security taxes, income tax withholding, unemployment insurance, and workers' compensation insurance.

5. Prevailing Wage Requirements. Contractor acknowledges and agrees that, if applicable, Contractor shall be responsible for payment of prevailing wage rates in accordance with Labor Code sections 1720 et seq. and 1770 et seq. to all personnel performing Services under this Contract. Contractor shall obtain a copy of the prevailing rates of per diem wages applicable to the work to be performed under this Contract from the website of the Division of Labor Statistics and Research of the Department of Industrial Relations located at www.dir.ca.gov/dlsr/. In the alternative, the District shall provide Contractor with a copy of the prevailing rates of per diem wages. If the District is using State funds for the project and is required to enforce a Labor Compliance Program ("LCP"), then Contractor will be required to enforce the District's Labor Compliance Program ("LCP"), as applicable. If applicable, Certified Payroll records shall be maintained by the Contractor and copies of the certified payroll shall be electronically sent to the Department of Industrial Relations and be delivered to the District at the end of each month during the entire duration of the Contract. If the Contract is subject to compliance monitoring and enforcement by the Department of Industrial Relations. Subject to exceptions as set forth in Labor Code section 1771.1, Contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any Contract for public work, as defined by statute, unless it is currently registered and qualified to perform public work pursuant to Labor Code Section 1725.5. District may not accept a bid nor any contract or subcontract entered into without proof of the Contractor or subcontractor's current registration to perform public work pursuant to Section 1725.5. For more information, go to <http://www.dir.ca.gov/Public-Works/Certified-Payroll-Reporting.html>

6. Compliance with Applicable Law. For the Services provided under this Contract, Contractor shall comply with all federal, state, and local laws, applicable to public contracts and to the Services performed under this Contract, and with all regulations and administrative rules established pursuant to such laws. Contractor shall also comply with all District policies and procedures applicable to the Services performed under this Contract.

7. Licenses and Authority to Do Business. Contractor warrants that it is a duly authorized entity fully empowered and legally entitled to enter into this Contract and to agree to undertake and to perform the Services. Contractor covenants and agrees to maintain, during the term of this Contract, all necessary government and professional licenses, certifications and incidents of authority required for the legal performance of the Services. This includes but is not limited to, that Contractor shall ensure that all persons or entities hired or retained by Contractor shall hold and maintain current licenses and certifications required by law and standards and care. District maintains the right to request and immediately receive evidence of proper licensure and certificates at any time, upon request.

8. Student, Staff, and Facility Safety. Contractor shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out the Services, the Contractor shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, District policies and procedures, and shall exercise all necessary precautions for the safety of the employees and agents of Contractor and any subcontractors, District employees and students, and visitors to District properties, as may be appropriate to the nature of the Services and the conditions under which the Services are to be performed. Safety precautions, as applicable, include but are not limited to: (1) implementation of adequate life protection and life-saving equipment and procedures (i.e. safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel); (2) instructions in accident prevention for all employees and agents of Contractor and any subcontractors, as may be appropriate or lawfully required to prevent accidents or injuries; and (3) adequate facilities for the proper inspection and maintenance of all safety measures. Contractor further agrees to comply with all of the following:

- a. **Identification:** When performing work on District property, Contractor shall be in appropriate work attire (or uniform, if applicable) at all times. If Contractor does not have a specific uniform, then Contractor shall provide identification tags and/or any other mechanism the District in its sole discretion determines is required to easily identify Contractor, as opposed to faculty, staff, parents, students or other members of the public. Contractor and its employees shall (i) display on their clothes the above-mentioned identifying information and (ii) carry photo identification and present it to any District personnel upon request. If Contractor cannot produce such identification or if the identification is unacceptable to District, District may provide at its sole discretion, District-produced identification tags to Contractor, costs to be borne by Contractor.

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- b. Sign-in Required: As required by schools and other District locations, each day employees and agents of Contractor and any subcontractor are present on District property, those employees must sign into the location's main office to receive an in-school identification/visitors tag. Such individuals must display this tag on their person at all times while on District property.
- c. No Smoking: All District properties are tobacco-free zones. Employees and agents of Contractor and any subcontractor are prohibited from using any tobacco product on or immediately adjacent to District property.
- d. No Drugs: All District properties are drug-free zones.
- e. No Weapons or Firearms: Except as provided by statute and District policy, all District properties are weapons- and firearms-free zones. Employees and agents of Contractor and any subcontractor are strictly prohibited from possessing on their persons or in their vehicles any weapons or firearms while on District property.
- f. Employee Removal. At District's request, Contractor shall immediately remove any agent or employee of Contractor or any subcontractor from all District properties in cases where the District in its sole discretion determines that removal of any such individual is in the District's best interests.
- g. [Mandatory Reporter Requirements: Contractor acknowledges and understands that, pursuant to California Penal Code Section 11165.7, employees and agents of Contractor and any subcontractor whose duties under the Scope of Work include contact and supervision of children are mandatory reporters of known or suspected instances of child abuse or neglect. Contractor will ensure that employees or agents of Contractor and any subcontractor who are mandatory reporters will take the Child Abuse Mandated Reporter Educators Training Module within six weeks of hire and annually thereafter within the first six weeks of each school year. Contractor agrees to make this training available to each mandatory reporter. Contractor will ensure that each employee or agent of Contractor and any subcontractor who is a mandatory reporter will execute an Employee Acknowledgement Form and a Suspected Child Abuse Reporting Acknowledgement Form. Contractor will provide copies of each of these signed forms for each employee or agent of Contractor or any subcontractor who is a mandatory reporters to District within six weeks of the hire of the mandatory reporter and annually.]
- h. [Live Screen Criminal Background Check Requirements: Contractor, at its sole cost and expense, and as necessary to satisfy the requirements of Education Code (EC) section 45125.1 and 45125.2 or District policy, will conduct all required criminal background checks. If required by EC section 45125.1, Contractor must provide for the completion of a Fingerprint Certification form, in the District's required format, prior to any of the Contractor's employees, or those of any other subcontractors, who are anticipated to come into contact with the District's students. Contractor further acknowledges that other fingerprinting requirements may apply, as set forth in Education Code section 45125 et seq., and Contractor will comply with any such requirements. Contractor further acknowledges and agrees that no Contractor or subcontractor employees, agents or representatives shall come into contact with students if they have been convicted of a violent felony listed in Penal Code section 667.5(c) or a serious felony listed in Penal Code section 1192.7(c).] Notwithstanding anything to the contrary herein, if Contractor is an individual operating as a sole proprietor, if required by Education Code section 45125.1(k), it shall be the responsibility of the District to prepare and submit that individual's fingerprints to the Department of Justice.]
- i. [Unsupervised Contact: "Unsupervised contact" with students means contact that provides the person opportunity and probability for personal communication or touch with students when not under direct District supervision. As required by District policy, Contractor shall ensure that Contractor, any subcontractors [of all tiers], and their officers, employees, and agents will have no direct, unsupervised contact with students while on District property. Contractor will work with District to ensure compliance with this requirement. If Contractor is unable to ensure through a security plan that none of its officers, employees, or agents, or those of its subcontractors, will have direct, unsupervised contact with students in a particular circumstance or circumstances, then Contractor shall notify District before beginning any work that could result in such contact. In addition to any Live Screen Criminal Background Check Requirements as set forth above, Contractor authorizes District, at its discretion, to obtain information about Contractor and its history and to independently conduct its own criminal background check, including fingerprinting, of any Contractor officers, employees, or agents who may have unsupervised contact with students. Contractor shall cause its employees and/or subcontractors, if any, to authorize District to conduct these background checks. Contractor shall pay all fees for processing the

background check. District may deduct the cost of such fees from a progress or final payment to Contractor under this Contract, unless Contractor elects to pay such fees directly.]

9. Conflict of Interest. Contractor warrants and covenants that it presently has no interest in, nor shall any interest be hereinafter acquired in, any matter which will render the services required under the provisions of this Contract a violation of any applicable state, local, or federal law, including, but not limited to, Government Code section 1090. If any principal provider of services is a "consultant" for the purposes of the Fair Political Practices Act (Gov. Code § 81000 et seq.), each such person shall comply with Form 721 Statement of Economic Interests filing requirements in accordance with state or City local Conflict of Interest Code. Contractor understands that the services contemplated under this Contract could create a conflict of interest wherein the Contractor is providing consulting and/or inspection services and making recommendations for remedial or training services that they are thereafter, eligible to perform. When such conflicts arise, Contractor will advise District of the conflict prior to performing any remedial or training services and shall obtain written authorization before proceeding with any such services. In addition, if conflict of interest should hereinafter arise, Contractor shall promptly notify District of the existence of such conflict of interest. The existence of a conflict of interest which violates any applicable state, local, or federal law shall be cause for immediate termination of this Contract.

10. Subcontractors. Contractor shall not delegate, by contract, agreement or otherwise, any services or tasks required under this Contract to any other person or entity without the express written permission of District by executed addendum. Consent to any subcontract may be withheld by District at its sole and unrestricted discretion. District shall not be obligated to pay for any services or work performed by an unauthorized person or entity. Contractor shall at all times during the term of this agreement remain fully and independently responsible and liable to District for the full and complete performance of the terms and conditions of this Contract. Contractor shall be responsible for ensuring that all subcontractors independently satisfy all of the requirements of Contractor under this Contract, including but not limited to the insurance and indemnification provisions of this Contract, unless otherwise agreed in writing by the District's Risk Manager or designee. Prior to performance of Services by any subcontractor, the subcontractor shall provide District with evidence of all insurance, certificates, forms, and licenses required by this Contract.

11. Assignment. Contractor shall not assign this Contract or any portion of this Contract without the prior written consent of District by executed addendum, including execution by the authorized assignee. Consent to an assignment may be withheld by District at its sole and unrestricted discretion. District shall not be obligated to pay for any services performed by an unauthorized person or entity. Should District consent to any assignment, the terms and conditions of this Contract shall be binding on Contractor's successors and assigns. Prior to assignment, the assignee shall provide District with evidence of all insurance, certificates, forms, and licenses required by this Contract.

12. Successors in Interest. This Contract shall bind and inure to the benefit of the Parties, their successors, and approved assigns, if any.

13. No Third Party Beneficiaries. District and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract provides any benefit or right, directly or indirectly, to third parties unless they are individually identified by name in this Contract and expressly described as intended beneficiaries of this Contract.

14. Other Contractors. District reserves the right to enter into other agreements for work additional or related to the subject matter of this Contract, and Contractor agrees to cooperate fully with these other contractors and with the District. When requested by District, Contractor shall coordinate its performance under this Contract with such additional or related work. Contractor shall not interfere with the work performance of any other contractor or District employees.

15. Nonperformance. As used in this Contract, "failure to perform" means failure, for whatever reason, to deliver goods and/or perform work as specified and scheduled in this Contract. If Contractor fails to perform under this Contract, then District, after giving seven days' written notice and opportunity to cure to Contractor, has the right to complete the work itself, to obtain the contracted goods and/or services from other contractors, or a combination thereof, as necessary to complete the work. Both Parties agree that Contractor shall bear any reasonable cost difference, as measured against any unpaid balance due Contractor, for these substitute goods or services.

16. Early Termination. This Contract may be terminated as follows unless otherwise specified herein:

- a. Mutual: District and Contractor may terminate this Contract at any time by their written agreement.

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- b. District's Sole Discretion: District in its sole discretion may terminate this Contract for any reason on 30 days' written notice to Contractor.
- c. Breach: Either Party may terminate this Contract in the event of a material breach by the other Party. To be effective, the Party seeking termination must give to the other Party written notice of the breach and its intent to terminate. If the breaching Party does not entirely cure the breach within 15 days of the date of the notice, then the non-breaching Party may terminate this Contract at any time thereafter by giving a written notice of termination.
- d. Contractor Licensing, etc.: Notwithstanding any other provision herein, District may terminate this Contract immediately by written notice to Contractor upon denial, suspension, revocation, or non-renewal of any license, permit, insurance, or certificate that Contractor must hold to provide services under this Contract or in the event of filing for bankruptcy.
- e. Furlough: District reserves the right to terminate or otherwise suspend this Contract if District's Board determines that funding is insufficient to remain fully open. Any temporary closure shall not affect amounts due Contractor under this Contract, subject to a pro-rated adjustment for reduction in services or need for goods during the furlough.

17. Remedies. In case of Contractor breach, and in addition to any other provision of this Contract, District shall be entitled to any other available legal and equitable remedies. In case of District breach, Contractor's remedy shall be limited to termination of the Contract and receipt of Contract payments to which Contractor is entitled.

18. Errors. Contractor shall perform any and all additional work necessary to correct errors in the Services performed under this Contract without undue delays or additional cost to District.

19. Access to Records; Contractor Financial Records. Contractor agrees that District and its authorized representatives are entitled to review all Contractor books, documents, papers, plans, and records, electronic or otherwise ("Records"), directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts. Contractor shall maintain all Records, fiscal and otherwise, directly relating to this Contract in accordance with generally accepted accounting principles so as to document clearly Contractor's performance. Following final payment and termination of this Contract, Contractor shall retain and keep accessible all Records for a minimum of three years, or such longer period as may be required by law, or until the conclusion of any audit, controversy, or litigation arising out of or related to this Contract, whichever date is later.

20. Ownership of Work Products. Contractor agrees that all work products created or developed for District by Contractor pursuant to this Contract are intended as "works made for hire" and shall be the exclusive property of the District. If any such work products contain Contractor's intellectual property that is or could be protected by federal copyright, patent, or trademark laws, Contractor hereby grants District a perpetual, royalty-free, fully-paid, non-exclusive, and irrevocable license to copy, reproduce, deliver, publish, perform, dispose of, and use or re-use, in whole or in part, and to authorize others to do so, all such work products. District claims no right to any pre-existing work product of Contractor provided to District by Contractor in the performance of this Contract, except to copy, use, or re-use any such work product for District use only.

21. Confidentiality. Under the terms of this Contract, Contractor may receive or obtain access to student data, pupil records, or other information that is privileged, confidential, not publically available, which is covered by federal or state privacy laws, rules, and regulations, including but not limited to the Family Educational Rights and Privacy Act of 1974 (FERPA) 20 U.S. § 1232g; the Protection of Pupil Rights Amendment (PPRA) 20 U.S.C. 1232h, the Health Insurance Portability and Accountability Act of 1996 (HIPAA) 42 U.S.C. § 300gg and 29 U.S.C § 1181 et seq. and 42 USC 1320d et seq., AB 1584, found at California Education Code § 49073.1, the Children's Online Privacy Protection Act of 1998 (COPPA) 15 U.S. Code §§ 6501 et seq., the Student Online Personal Information Privacy Act (SOPIPA) Cal. Bus. & Prof. Code § 22586 et seq., the Early Learning Personal Information Protection Act (ELPIPA) Cal. Bus. & Prof. Code § 22586 et seq., or which is otherwise considered confidential and protected from disclosure by the policies and procedures of District ("Confidential Information"). Contractor understands and agrees that all Confidential Information shall be preserved and protected as privileged or confidential, that Confidential Information shall be held strictly in accordance with the District's policies and procedures, that Confidential Information shall be preserved and held in compliance with all applicable state or federal laws, rules, or regulations, and that Confidential Information shall not be shared with any third party without the expressed written authorization of District. If Contractor is a provider of digital education services (i.e. an operator of an internet web site, online service, online application, or mobile application, a provider of digital education software, etc.), at any time upon the request of District, Contractor shall enter into a separate California Student Data Privacy Agreement with District. Once signed by both Parties. If executed the California Student

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Data Privacy Agreement shall become incorporated herein. IF CONTRACTOR BECOMES AWARE OF A POSSIBLE UNAUTHORIZED RELEASE OR DISCLOSURE OF CONFIDENTIAL INFORMATION, CONTRACTOR SHALL IMMEDIATELY NOTIFY DISTRICT. Contractor's obligations under this Section, and under the California Student Data Privacy Agreement, if executed, shall survive the termination of this Contract.

22. Security. District hereby deems all information, documents, and property contained in or on District property privileged and confidential. Any removal or disclosure of any privileged and confidential materials by employees or agents of Contractor or any subcontractor without express written consent of District shall be considered a material breach of this Contract and shall be cause for immediate termination of this Contract. IF CONTRACTOR BECOMES AWARE OF A POSSIBLE UNAUTHORIZED REMOVAL OR DISCLOSURE OF PRIVILEGED AND CONFIDENTIAL MATERIALS, CONTRACTOR SHALL IMMEDIATELY NOTIFY DISTRICT.

23. Indemnification and Hold Harmless.

- a. To the fullest extent allowed by law, Contractor shall defend, indemnify and hold District, its officials, trustees, officers, agents, employees, volunteers, and representatives ("Indemnitees") free and harmless from any and all claims, demands, negligence (including the active or passive negligence of Indemnitees as allowed by law), causes of action, costs, expenses, liabilities, losses, damages or injuries, fines, penalties in law or equity, regardless of whether the allegations are false, fraudulent, or groundless, to property or persons, including wrongful death, (collectively "Loss") to the extent arising out of or incident to: 1) Contractor or any subcontractor's failure to fully comply with or breach of any of the terms and conditions of this Contract, or 2) any acts, omissions, negligence or willful misconduct of Contractor, any subcontractor, and their officials, officers, employees, and agents arising out of or in connection with the performance of Services or otherwise arising from this Contract ("Indemnification"). **[Contractor's Indemnification includes any Loss sustained by Indemnitees, and each of them, whether resulting from claims brought by third parties or sustained directly by any of the Indemnitees, as a result of 1) Contractor or any subcontractor's failure to implement and maintain appropriate data security or cybersecurity measures; 2) any data breach in which the District's Confidential Information or privileged and confidential information is released, exposed, lost, or stolen as a result of Contractor's performance of Services or otherwise arising from this Contract; 3) computer viruses, denial of service attacks, and other technologically harmful materials that harm or infect any of the Indemnitee's electronic equipment, software, data, or other proprietary material as a result of Contractor's performance of Services or otherwise arising from this Contract, and 4) infringement of copyright, trademark, trade dress, invasion of privacy violations as a result of Contractor's performance of Services or otherwise arising from this Contract, and 5) any breach by Contractor or any subcontractor of the California Student Data Privacy Agreement, if executed.]** Contractor's Indemnification includes, but is not limited to, the payment of all damages and attorney's fees, fines, penalties and other related costs and expenses. The only limitations on this provision shall be those imposed by Civil Code § 2782, as may be applicable, or other applicable provisions of law.
- b. Contractor's defense obligations (with counsel approved by District), shall arise immediately upon tender of any of the Indemnitees, and the defense shall be paid at Contractor's own cost, expense and risk, for any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against any of the Indemnitees, notwithstanding whether liability is, can be or has yet been established.
- c. Contractor shall pay and satisfy any judgment, award or decree that may be rendered against any of the Indemnitees, in any such suit, action or other legal proceeding. Contractor shall reimburse Indemnitees, and each of them, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Acceptance by District of the Services performed under this Contract does not operate to release Contractor from responsibility for the work performed. It is further understood and agreed that Contractor is apprised of the scope of the work to be performed under this Contract and Contractor agrees that said work can and shall be performed in a fully competent manner.
- d. Acceptance of insurance certificates and endorsements required under this Contract does not relieve Contractor from liability under this indemnification and hold harmless clause. This requirements of this Section 23 (Indemnification and Hold Harmless) shall apply whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.
- e. Contractor's obligations under this Section 23 (Indemnification and Hold Harmless) shall survive the termination of this Contract.

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24. Insurance.

Contractor (and all subcontractors) shall, at its sole cost and expense, procure and maintain, during the term of this Contract, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Services hereunder by the Contractor, Contractor's agents, representatives, officers, employees, or subcontractors (of all tiers). Payment for insurance shall be considered as included in the fee and expense schedule and other authorized service charges **as set forth in Exhibit B (Fee and Expense Schedule)**, and no additional payment will be made. Contractor agrees to maintain insurance coverage as follows:

- a. **Commercial General Liability Insurance:** Coverage must be equivalent in scope or at least as broad as Insurance Services Office ("ISO") Form CG 00 01 covering CGL on an "occurrence" basis, and must include coverage for property damage, bodily injury, personal & advertising injury, products and completed operations, liability assumed under an insured Contract (including tort of another assumed in a business contract), and independent contractor's liability with limits no less than **\$1,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to work performed under this Contract (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit. District, its board of trustees, officials, employees, agents, and volunteers must be named as additional insureds with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 forms if later revisions used). The policy shall contain a severability of interests/cross liability clause or language stating that Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- b. **Sexual Abuse and Molestation Insurance:** In any Scope of Work where direct or incidental contact with students in or out of the classroom setting is likely to take place, Contractor must provide Coverage for sexual abuse and molestation which covers bodily injury, emotional distress or mental anguish related to any claim, cause of action or liability associated with child molestation or sexual abuse, with limits no less than **\$1,000,000** per wrongful act and **\$2,000,000** aggregate. This coverage may be provided as an endorsement to the Commercial General Liability policy or under a separate policy and must be written on an "occurrence" and not on a claims made or claims made and reported basis. Coverage for such claims must not be subject to any exclusion, restriction, or sub-limit. District, its board of trustees, employees, agents, and volunteers must be named as additional insureds with respect to sexual abuse and molestation claims. The coverage must contain a severability of interests/cross liability clause or language stating that Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- c. **[Cyber Liability: Cyber Liability Insurance, with limits not less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Contractor in this Contract and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations. District, its board of trustees, employees, agents, and volunteers must be named as additional insureds with respect to liability arising out of work or operations performed by or on behalf of Contractor under this Contract.]**
- d. **[Technology Professional Liability (Errors and Omissions) Insurance: Technology Professional Liability (Errors and Omissions) Insurance appropriate to Contractor's profession, with limits not less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Contractor in this agreement and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations. District, its board of trustees, employees, agents, and volunteers must be**

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named as additional insureds with respect to liability arising out of work or operations performed by or on behalf of Contractor under this Contract.]

- e. Commercial Automobile Liability Insurance: Coverage must be equivalent in scope or at least as broad as ISO Form Number CA 00 01 covering any auto (Code 1) that includes all vehicles that are owned, non-owned, and hired and personal injury protection, with limit no less than \$1,000,000 per accident for bodily injury and property damage. The policy must provide Contractual Liability coverage equivalent to that provided in the 1990 and later editions of ISO form CA 00 01.
- f. Workers' Compensation Insurance: This coverage is required unless Consultant provides written verification it has no employees. Coverage must be at least as broad as that which is required by the State of California, with Statutory Limits. Contractor must also maintain Employer's Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease.
- g. Other Insurance Requirements:
 - (i) Umbrella/Excess Liability Policy. An Umbrella Liability policy (or Excess Liability) may be used to provide additional Commercial General Liability, Automobile Liability, and Employers' Liability limits to meet District's minimum coverage requirements provided all requirements set forth herein are fully satisfied with respect to such policy.
 - (ii) Broader Coverage/Higher Limits Applies. If Contractor maintains broader coverage and/or higher limits than the minimums required herein, the District requires and shall be entitled to the broader coverage and/or higher limits maintained by the Contractor.
 - (iii) Contractor's Insurance to be Primary. For any claims related to this Contract, the Contractor's insurance coverage shall be primary insurance coverage, at least as broad as ISO CG 20 01 04 13, as respects the District, its board of trustees, officials, employees, volunteers, and agents. Any insurance or self-insurance maintained by the District, its board of trustees, officials, employees, volunteers, and agents shall be excess of the Contractor's insurance and shall not contribute with it.
 - (iv) Notice of Cancellation. Each insurance policy required by this Contract must provide or be endorsed to provide that the District is entitled to 30 days prior written notice of cancellation or nonrenewal of the policy, or reduction in coverage, by certified mail, return receipt requested
 - (v) Additional Insured Coverage Not Affected By Named Insured's Duties after Accident or Loss. If any of the insurance required herein requires reporting of accidents or other covered losses, all such policies must be endorsed to provide that any failure to comply with the reporting provisions of the policy shall not affect coverage provided to the District, its board of trustees, officials, employees, volunteers, or agents.
 - (vi) Waiver of Subrogation. Contractor hereby grants to District, its board of trustees, employees, volunteers, and agents a waiver of any right to subrogation which any insurer of said Contractor may acquire against the District, its board of trustees, officials, employees, volunteers, and agents by virtue of the payment of any loss under such insurance. Contractor shall obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the District, its board of trustees, officials, employees, volunteers, and agents have received a waiver of subrogation endorsement from the insurer.
 - (vii) Self-Insured Retentions. Any self-insurance program or self-insured retentions must be declared to and approved separately in writing by the District's Risk Manager or designee and shall protect the District, its board of trustees, officials, employees, volunteers, and agents in the same manner and to the same extent as they would have been protected had the policy or policies not contained such self-insurance or self-insured retention provisions. The District may require the Contractor to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. In addition, the policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the Named Insured or by the District, its board of trustees, officials, employees, volunteers, and agents.
 - (viii) Acceptability of Insurers. All insurance required herein is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable by District, and must be authorized to conduct business in the state of California, or approved by the Surplus Lines Association to do business in California. The current List of Approved Surplus Line Insurers ("LASLI") is maintained by the California Department of Insurance at <http://www.insurance.ca.gov/01-consumers/120-company/07-lasli/>.
 - (ix) Verification of Coverage. Contractor shall furnish the District with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this Contract. The endorsements are to be signed by the person authorized by that Insurer to bind coverage on its behalf. All certificates and endorsements are to be received and approved by District before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to

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provide them. District reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time. Failure to maintain insurance and furnish the required certificates may be considered a breach of this Contract by the Contractor, and District may terminate this Contract without waiver of any remedy it may have.

(x) No Limitation on Liability. Such insurance as required herein shall not be deemed to limit Contractor's liability relating to performance under this Contract. District reserves the right to require complete certified copies of all said policies at any time. The procuring of insurance shall not be construed as a limitation on liability or as full performance of the indemnification and hold harmless provisions of this Contract. Contractor understands and agrees that, notwithstanding any insurance, Contractor's obligation to defend, indemnify, and hold District, its trustees, officials, agents, volunteers, and employees harmless hereunder is for the full and total amount of any damage, injuries, loss, expense, costs, or liabilities caused by or in any manner connected with or attributed to the acts or omissions of Contractor, its officers, agents, subcontractors (of all tiers), employees, licensees, patrons, or visitors, or the operations conducted by Contractor, or the Contractor's use, misuse, or neglect of the District's premises.

(xi) Waivers and Modifications. Any modification or waiver of the insurance requirements herein shall be made only with the written approval of the District's Risk Manager or designee.

(xii) Claims-Made Policies: If any of the required policies provide coverage on a claims-made basis: 1. The Retroactive Date must be shown and must be before the date of the Contract or the beginning of any Services performed under this Contract. 2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, Consultant must purchase "extended reporting" coverage.

(xiii) Subcontractors: Contractor shall require and verify that all approved subcontractors maintain insurance meeting all the requirements stated herein, and Consultant shall ensure that District, its board of trustees, officials, employees, agents, and volunteers are named additional insureds on insurance required from subcontractors.

(xiv) Changes in Insurance Requirements. Not more frequently than annually, if in the opinion of District the amount of the foregoing insurance coverages is not adequate or the type of insurance or its coverage adequacy is deemed insufficient, Contractor shall amend the insurance coverage as required by District's Risk Manager or designee.

25. Waiver; Severability. Waiver of any default or breach under this Contract by District does not constitute a waiver of any subsequent default or a modification of any other provisions of this Contract. If any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held invalid.

26. Non-Discrimination. Contractor represents that it is an equal opportunity employer and acknowledges that it shall not subject any person to unlawful discrimination based on race, color, gender, age, religion, national origin, U.S. military veteran status, marital status, sexual orientation, disability, source of income, or political affiliation in programs, activities, services, benefits, or employment in connection with this Contract. Contractor agrees not to discriminate on any of these bases in its employment or personnel policies, including but not limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Contractor shall also comply with all relevant provisions of District's Minority Business Enterprise program, if any, or other related programs or guidelines currently in effect or hereinafter enacted. Contractor must make a good faith effort to contact and utilize DVBE subcontractors or subconsultants and suppliers in securing bids for performance of the Contract and shall be required to certify its good faith efforts towards retaining DVBE subcontractors or subconsultants and suppliers and identify DVBE firms utilized in performance of the Contract.

27. Conflict of Interest. Contractor shall disclose to District any outside activities or interests that conflict or may conflict with the interests of the District. Prompt disclosure is required if the activity or interest is related, directly or indirectly, to: (1) any activity that Contractor may be involved with on behalf of the District, or (2) any activity that Contractor may be involved with on behalf of any other firm or agency. In addition, Contractor shall comply with all provisions of the Political Reform Act and implementing regulations, as applicable, and in accordance with the District's Conflict of Interest Code. Contractor shall be subject to the broadest disclosure category in the District's Conflict of Interest Code during the term of this Contract, except to the extent specifically modified in writing by the Superintendent or designee. For the term of this Contract, no member, officer or employee of District, during the term of his or her

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service with District, shall have any direct interest in this Contract, or obtain any present or anticipated material benefit arising therefrom.

28. Amendments; Renewal. Any amendments, consents to or waivers of the terms of this Contract must be in writing and signed by both Parties. The Parties may renew this Contract by their signed, written instrument.

29. Counterparts. The Parties may execute this Contract in counterparts, each of which constitutes an original and all of which comprise one and the same Contract. Counterparts may be delivered by electronic means.

30. Dispute Resolution.

- a. Negotiation. Any dispute that Contractor may have regarding the performance of this Contract, including, but not limited to, claims for additional compensation, shall be submitted to District within 30 days of its occurrence. District and Contractor shall attempt to negotiate a resolution of such dispute and process an amendment to this Contract to implement the terms of such resolution.
- b. Mediation. If a dispute arises out of or relates to this Contract, or the breach thereof, and if said dispute cannot be resolved through direct discussions, the Parties agree to first endeavor to resolve the dispute in an amicable manner by non-binding mediation under the applicable rules of the Judicial Arbitration and Mediation Service (JAMS), or other similar organization mutually selected by the Parties.. If any unresolved controversy or claim arising out of or relating to this Contract, or breach thereof, remains after mediation, the matter shall be determined in a court of law of proper jurisdiction in the District's place of venue.
- c. Services Pending Outcome. Contractor agrees to proceed with all services pursuant to this Contract pending the outcome of any claim, dispute or mediation.. In accordance with the terms of this Contract, the District agrees to pay for services ordered by it and properly rendered by the Contractor pursuant to this Contract pending the outcome of any claim, dispute or mediation..
- d. Claims Statute Requirement. This provision does not relieve Contractor of its obligation to timely comply with all applicable provisions of the Government Claims Act before initiating any legal proceeding against District.
- e. Controlling Law. The Parties agree that California law will govern any dispute related to this Contract.
- f. **[Attorney's Fees and Costs. In the event of any breach, failure to perform or dispute arising directly or indirectly out of this Contract, including the performance of the terms and conditions recited, the prevailing party at arbitration shall be entitled to recover all reasonable legal fees, costs, experts' fees or other expenses incurred.]**

31. Entire Agreement. When signed by both Parties, this Contract (and any attached exhibits) is their final and entire agreement. As their final and entire expression, this Contract supersedes all prior and contemporaneous oral or written communications between the Parties, their agents, and representatives. There are no representations, promises, terms, conditions, or obligations other than those contained herein.

32. Notices. All notices or demands of any kind required or desired to be given by District or by Contractor must be in writing and shall be deemed delivered upon depositing the notice or demand in the United States mail, certified or registered, postage prepaid, or by acknowledged e-mail or other verified receipt electronic communications, addressed to the respective Party at the addresses shown below:

- a. District Address: «Attn» «Company Name», «Address1», «Address2», «City», «State» «Zip» <<e-mail address>>
- b. Contractor Address: «Attn» «Company Name», «Address1», «Address2», «City», «State» «Zip» <<e-mail address>>

33. Authority. The undersigned warrant that they are duly authorized representatives of the Parties and have been empowered to execute this Contract on behalf of the Party indicated.

I HAVE READ THIS CONTRACT, INCLUDING ALL EXHIBITS. I CERTIFY THAT I HAVE THE AUTHORITY TO SIGN AND ENTER INTO THIS CONTRACT ON BEHALF OF THE PARTY I REPRESENT AND AGREE TO BE BOUND BY ITS TERMS.

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CONTRACTOR

DISTRICT

Signature

Signature

Contractor Printed Name and Title

Director, Purchasing

Date

Date

Number of additional attached pages incorporated in this Contract: («AttachedPages»). This Contract and its integrated exhibits consist of («TotalPages») pages.

ATTACHMENTS

- Exhibit A: Scope of Work
- Exhibit B: Fee and Expense Schedule
- Required Certificates of Insurance
- Other Requirements
- [Fingerprint Certification Form**
- Employee Acknowledgement Form**
- Suspected Child Abuse Reporting Acknowledgement Form**
- California Student Data Privacy Agreement]**

Exhibit A
Scope of Work

Exhibit B
Fee and Expense Schedule