



BEFORE/AFTER SCHOOL PROGRAM FACILITIES USE 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 Before/After School Program Facilities Use Contract (“Contract”) dated «ContractDate» (“Effective Date”), is made by and between «School District Name» School District (“District”) and «Company Name» (“Licensee”). This Contract shall govern all use and occupancy of District premises by Licensee. 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)».

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

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

Whereas, Licensee desires to operate before and after school programs for District students at certain District-owned facilities, including [FULLY DESCRIBE TYPE AND NATURE OF PROGRAM] (“the Program”).

Whereas, Licensee represents that Licensee is a legally constituted entity fully licensed, empowered and otherwise authorized by law to provide, as well as capable of providing, the Program.

Whereas, the District is interested in providing Licensee with use of its facilities in order that Licensee may provide the Program to District students.

Whereas, the Parties are prepared to enter into this Contract, whereby District grants Licensee access to its facilities, and Licensee covenants and agrees to provide the Program to District students.

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

TERMS AND CONDITIONS

1. **Grant of License.** Subject to the terms and conditions set forth in this Contract, the District hereby grants Licensee a non-exclusive revocable license to occupy and use, its programs and facilities located at [DESIGNATE ADDRESS (AND/OR SPECIFIC DIAGRAM/DESCRIPTION WITHIN AN ADDRESS) OF DISTRICT PROPERTY WHERE FACILITY USE IS PERMITTED] (the “District Facilities”).
2. **Limitation to Described Purpose.** Licensee may occupy and use the District Facilities for the sole purpose of providing the designated Program to District students within the designated location. . No other purpose is permitted unless agreed to in writing by the District.
3. **Limitation to Pre-Approved Dates and Times.** The license granted herein shall be limited to [DESIGNATE SPECIFIC DATES AND TIMES ACCESS TO FACILITIES IS PERMITTED]. Licensee acknowledges and agrees the

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District at all times retains its right and ability to also use and occupy the entirety of the District Facilities at any time, including the dates and times that Licensee is authorized to occupy and use the District Facilities pursuant to this Contract.

4. **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 15 (Early Termination) herein. This Contract shall not be automatically renewed or extended.

5. **License Fee.**

a. Licensee agrees to pay an license fee [SPECIFY, I.E.: IN THE AMOUNT OF \$600 PER SCHOOL YEAR/ IN THE AMOUNT EQUIVALENT TO XX% OF CLASS ENROLLMENT AS OF [DATE] OF EACH CALENDAR YEAR] for its use of the District Facilities (the "License Fee") under this Agreement. The License fee is due and payable to the District annually on [DATE].

[ALTERNATIVE Licensee is not required to pay the School a License Fee under this Agreement but, instead, has agreed to provide the School with in-kind services on an as-needed basis, including but not limited to [DESCRIBE]]

b. Licensee is not responsible for payment of typical utility costs incurred by the District. However, at the discretion of the District, any extraordinary utility costs reasonably deemed to be over and above the District's normal use as a result of Licensee's use of the Property may be charged as an additional fee to the Licensee.

c. Licensee shall furnish, at its own expense, all overhead, administrative and support services, equipment, clerical personnel, facilities, communications and related facilities and personnel necessary for Licensee's business operations.

d. Licensee shall be responsible for and promptly pay or cause to be paid all taxes upon personal property and improvements belonging to Licensee upon its possessory interests, if any, and all sales and other taxes, assessments, charges, other governmental impositions levied or assessed on Licensee upon its business or due to its use of the Property.

6. **Relationship of Parties.** The parties intend that this Contract does not create an independent Licensee or joint employer relationship between them. Nothing contained herein shall be construed as making either Licensee, or its employees, an employee, joint venture, partner, or agent of the District. Licensee represents and warrants that Licensee and its employees, and agents are not officers, agents, or employees of the District. Licensee shall be responsible for all federal, state, and local taxes and any and all fees applicable to its business operations, including payments received by Licensee for services performed by Licensee for students of the District. Any personnel performing services under this Agreement on behalf of Licensee shall at all times be under Licensee's exclusive direction and control. Licensee shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of services for Licensee and as required by law.

7. **Compliance with Applicable Law.** At all times when operating the Program Licensee shall comply with all federal, state, and local laws, applicable to the Program, obtain all necessary permits and certifications, and comply with all regulations and administrative rules established pursuant to such laws. Licensee shall also comply with all District policies and procedures applicable to the Services performed under this Contract.

8. **Licenses and Authority to Do Business.** Licensee 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. Licensee covenants and agrees to obtain and maintain, during the term of this Contract, all necessary government and professional licenses, permits, certifications and incidents of authority required for the legal performance of the Services. This includes but is not limited to, that Licensee shall ensure that all persons or entities hired or retained by Licensee shall hold and maintain current licenses and certifications required by law and standards and care. Licensee shall immediately notify District in the event any license, permit or certification denial, suspension, revocation, or non-renewal. Licensee shall not operate any Service unless all required permits, licenses or certifications have been obtained. District maintains the right to request and immediately receive evidence of proper licensure and certificates at any time, upon request.

9. **Student, Staff, and Facility Safety.** Licensee shall perform all Services so as to avoid injury or damage to any person or property. In carrying out the Services, the Licensee 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 Licensee, District employees and students, and visitors to

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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; (2) instructions in accident prevention for all employees and agents of Licensee and any sublicenses, as may be appropriate or lawfully required to prevent accidents or injuries; and (3) the proper inspection and maintenance of all District Facilities while in the possession and control of Licensee. Licensee further agrees to comply with all of the following:

- a. **Identification:** When performing work on District property, Licensee shall be in appropriate work attire (or uniform, if applicable) at all times. If Licensee does not have a specific uniform, then Licensee shall provide identification tags and/or any other mechanism the District in its sole discretion determines is required to easily identify Licensee, as opposed to faculty, staff, parents, students or other members of the public. Licensee 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 Licensee cannot produce such identification or if the identification is unacceptable to District, District may provide at its sole discretion, District-produced identification tags to Licensee, costs to be borne by Licensee.
- b. **Sign-in Required:** As required by schools and other District locations, each day employees and agents of Licensee and any sublicensee 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 Licensee and any sublicensee 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 Licensee and any sublicensee 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, Licensee shall immediately remove any agent or employee of Licensee or any sublicensee 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:** Licensee acknowledges and understands that, pursuant to California Penal Code Section 11165.7, employees and agents of Licensee and any sublicensee 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. Licensee will ensure that employees or agents of Licensee and any sublicensee 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. Licensee agrees to make this training available to each mandatory reporter. Licensee will ensure that each employee or agent of Licensee and any sublicensee who is a mandatory reporter will execute an Employee Acknowledgement Form and a Suspected Child Abuse Reporting Acknowledgement Form. Licensee will provide copies of each of these signed forms for each employee or agent of Licensee or any sublicensee 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:** Licensee, 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, Licensee must provide for the completion of a Fingerprint Certification form, in the District's required format, prior to any of the Licensee's employees, or those of any other sublicensees, who are anticipated to come into contact with the District's students. Licensee further acknowledges that other fingerprinting requirements may apply, as set forth in Education Code section 45125 et seq., and Licensee will comply with any such requirements. Licensee further acknowledges and agrees that no Licensee or sublicensee 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 Licensee 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, Licensee shall ensure that Licensee, any sublicensees [of all tiers], and their officers,

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employees, and agents will have no direct, unsupervised contact with students while on District property. Licensee will work with District to ensure compliance with this requirement. If Licensee is unable to ensure through a security plan that none of its officers, employees, or agents, or those of its sublicensees, will have direct, unsupervised contact with students in a particular circumstance or circumstances, then Licensee 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, Licensee authorizes District, at its discretion, to obtain information about Licensee and its history and to independently conduct its own criminal background check, including fingerprinting, of any Licensee officers, employees, or agents who may have unsupervised contact with students. Licensee shall cause its employees and/or sublicensees, if any, to authorize District to conduct these background checks. Unless otherwise required by law, Licensee shall pay all fees for processing the background check. District may deduct the cost of such fees from a progress or final payment to Licensee under this Agreement, unless Licensee elects to pay such fees directly.

- j. **Responsibility for Equipment.** The District shall not be responsible for any damages to persons or property as a result of the use, misuse or failure of any equipment used by Licensee, or by any of its employees, even though such equipment may be furnished, rented or loaned to Licensee by the District.

10. **Conflict of Interest.** Licensee 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. Licensee understands that the services contemplated under this Contract could create a conflict of interest wherein the Licensee 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, Licensee 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, Licensee 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.

11. **Assignment and Sublicensing.** Licensee shall not assign or sublicense this Contract or any portion of this Agreement without the prior written consent of the District by executed addendum, including execution by the authorized assignee or sub-licensee. Consent to an assignment or sublicensing may be withheld by the District at its sole and unrestricted discretion. Should an assignment or sublicense be consented to by the District, the terms and conditions of this Contract shall be binding on the assignee or sub-licensee. Prior to assignment or sublicensing the assignee or sub-licensee shall provide the District with evidence of all insurance and licenses required by this Agreement.

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 Licensee 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 Licensees.** District reserves the right to enter into other agreements for programs additional or related to the subject matter of this Contract, and Licensee agrees to cooperate fully with these other Licensees and with the District. When requested by District, Licensee shall coordinate its performance under this Contract with such additional or related programs. Licensee shall not interfere with the activities of any District contractors, licensees, employees, or students.

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

- a. **Mutual:** District and Licensee may terminate this Contract at any time by their written agreement.
- b. **District's Sole Discretion:** District in its sole discretion may terminate this Contract for any reason on 30 days' written notice to Licensee.
- 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

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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. Licensee Licensing, etc.: Notwithstanding any other provision herein, District may terminate this Contract immediately by written notice to Licensee upon denial, suspension, revocation, or non-renewal of any license, permit, insurance, or certificate that Licensee must hold to lawfully operate the Program.

16. **Remedies.** In case of Licensee 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, Licensee's remedy shall be limited to termination of the Contract.

17. **Errors.** Licensee 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.

18. **Access to Records; Licensee Financial Records.** Licensee agrees that District and its authorized representatives are entitled to review all Licensee 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. Licensee shall maintain all Records, fiscal and otherwise, directly relating to this Contract in accordance with generally accepted accounting principles so as to document clearly Licensee's performance. Following final payment and termination of this Contract, Licensee 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.

19. **Confidentiality.** Under the terms of this Contract, Licensee 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"). Licensee 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 Licensee 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, Licensee shall enter into a separate California Student Data Privacy Agreement with District. Once signed by both Parties. If executed the California Student Data Privacy Agreement shall become incorporated herein. IF LICENSEE BECOMES AWARE OF A POSSIBLE UNAUTHORIZED RELEASE OR DISCLOSURE OF CONFIDENTIAL INFORMATION, LICENSEE SHALL IMMEDIATELY NOTIFY DISTRICT.

20. **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 Licensee or any sub-Licensee 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 LICENSEE BECOMES AWARE OF A POSSIBLE UNAUTHORIZED REMOVAL OR DISCLOSURE OF PRIVILEGED AND CONFIDENTIAL MATERIALS, LICENSEE SHALL IMMEDIATELY NOTIFY DISTRICT.

21. **LIABILITY RELEASE. TO THE FULLEST EXTENT PERMITTED BY LAW, AND AS A MATERIAL PART OF THE CONSIDERATION PROVIDED UNDER THIS AGREEMENT, LICENSEE DOES HEREBY FULLY, FINALLY AND COMPLETELY RELEASE, ACQUIT, REMISE, AND FOREVER DISCHARGE THE DISTRICT AND ITS OFFICIALS, TRUSTEES, OFFICERS, AGENTS, EMPLOYEES, INDEPENDENT CONTRACTORS, STUDENTS, VOLUNTEERS, AND REPRESENTATIVES OF AND FROM RESPONSIBILITY FOR, WAIVES LICENSEE'S ENTIRE CLAIM OF RECOVERY FOR, AND ASSUMES ALL RISK OF ANY AND ALL CLAIMS, EXPENSES, AND DEMANDS FOR COMPENSATION, OF EVERY KIND AND NATURE WHATSOEVER, RELATING TO, ARISING OUT OF, OR IN**

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CONNECTION WITH THIS CONTRACT, INCLUDING BUT NOT LIMITED TO (A) LIABILITY ARISING FROM LICENSEE'S ACCESS TO DISTRICT FACILITIES, (B) DAMAGE TO PROPERTY OR INJURY TO PERSONS (INCLUDING DEATH) IN OR ON THE PROPERTY FROM ANY CAUSE WHATSOEVER; AND (C) BUSINESS INTERRUPTION OR OTHER CONSEQUENTIAL DAMAGES. THIS RELEASE AND DISCHARGE IS INTENDED TO APPLY EVEN THOUGH THE LIABILITY MAY ARISE OUT OF THE NEGLIGENCE OR CARELESSNESS ON THE PART OF THE DISTRICT OR ITS OFFICIALS, TRUSTEES, OFFICERS, AGENTS, EMPLOYEES, INDEPENDENT CONTRACTORS, STUDENTS, VOLUNTEERS, AND REPRESENTATIVES S.

22. Indemnification and Hold Harmless.

- a. To the fullest extent allowed by law, Licensee shall defend, indemnify and hold District, its officials, trustees, officers, agents, employees, independent contractors, students, 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) Licensee or any sub-licensee'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 Licensee, any sub-licensee, 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"). Licensee'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. Licensee'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 Licensee'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. Licensee 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. Contactor 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 Licensee from responsibility for the work performed. It is further understood and agreed that Licensee is apprised of the scope of the work to be performed under this Contract and Licensee 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 Licensee 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.

23. Insurance.

Licensee (and all sub-licensees) 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 operation of the Program hereunder by the Licensee, Licensee's agents, representatives, officers, employees, or sub-licensees. Licensee 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 Licensee's liability with limits no less than **\$2,000,000** 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 Licensee 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 Licensee's insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10, CG

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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 Licensee'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, Licensee 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 **\$3,000,000** per wrongful act and **\$6,000,000** 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 Licensee'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. 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.
- d. 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. Licensee must also maintain Employer's Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease.
- e. 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 Licensee 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 Licensee.
 - (iii) Licensee's Insurance to be Primary. For any claims related to this Contract, the Licensee'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 Licensee's insurance and shall not contribute with it.
 - (iv) Notice of Cancellation. For all insurance required by this Contract, Licensee shall provide District with no less than 30 days prior written notice of cancellation or nonrenewal, or reduction in coverage.
 - (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. Licensee hereby grants to District, its board of trustees, employees, volunteers, and agents a waiver of any right to subrogation which any insurer of said Licensee 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. Licensee 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 Licensee 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

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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. Licensee 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 Licensee's obligation to 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 Licensee, 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 Licensee'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. Licensee understands and agrees that, notwithstanding any insurance, Licensee'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 Licensee, its officers, agents, sub-licensees, employees, licensees, patrons, or visitors, or the operations conducted by Licensee, or the Licensee'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) Sub-licensees: Licensee shall require and verify that all approved sub-licensees 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 sub-licensees.

(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, Licensee shall amend the insurance coverage as required by District's Risk Manager or designee.

24. **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.

25. **Non-Discrimination.** Licensee 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. Licensee 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. Licensee 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. Licensee must make a good faith effort to contact and utilize DVBE sub-licensees and suppliers in securing bids for performance of the Contract and shall be required to certify its good faith efforts towards retaining DVBE sub-licensees and suppliers and identify DVBE firms utilized in performance of the Contract.

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26. **Conflict of Interest.** Licensee 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 Licensee may be involved with on behalf of the District, or (2) any activity that Licensee may be involved with on behalf of any other firm or agency. In addition, Licensee 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. Licensee 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 service with District, shall have any direct interest in this Contract, or obtain any present or anticipated material benefit arising therefrom.

27. **No Lease. No legal title or leasehold interest in the District Premises or appurtenances thereto shall be construed to have been created or vested in Licensee as a result of this Contract, the License granted hereunder, or the use or occupancy of the District Premises by Licensee. LICENSEE EXPRESSLY WAIVES ANY AND ALL RIGHTS OFFERED TO TENANTS OF COMMERCIAL REAL PROPERTY UNDER FEDERAL, STATE AND LOCAL LAWS AND ORDINANCES, INCLUDING BUT NOT LIMITED TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 1161 AND FOLLOWING.**

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 Licensee 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 Licensee 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.** Licensee 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 Licensee pursuant to this Contract pending the outcome of any claim, dispute or mediation.
- d. **Claims Statute Requirement.** This provision does not relieve Licensee 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 Licensee must be in writing and shall be deemed delivered upon depositing the notice or demand in the United States mail, certified or

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

33. **Survival.** Upon the expiration or other termination of this Contract, the respective rights and obligations of the parties hereto shall survive such expiration or other termination to the extent necessary to carry out the intentions of the parties under this Contract.

34. **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.

LICENSEE

DISTRICT

Signature

Signature

Licensee 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

- Required Certificates of Insurance
- Other Requirements
- [Fingerprint Certification Form**
- Employee Acknowledgement Form**
- Suspected Child Abuse Reporting Acknowledgement Form**
- California Student Data Privacy Agreement]**

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ASCIP Before/After School Program Services Contract Template