RFP ADDENDUM NO. 2

Smart Meal Technology Request for Proposal
RFP No. SMT2016

TO: ALL RFP PARTICIPANTS

Participants are advised that the following provisions of RFP No. SMT2016, Smart Meal Technology, have been amended by this Addendum No. 2, and will supersede the corresponding terms and/or conditions of the RFP, as set forth in this Addendum No. 2.

(a) Appendixes, Page 21, 1-37, has been amended. Updated version is available following the 2nd page of this addendum.

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All terms and conditions of the RFP No. SMT2016 that are not amended by this Addendum No. 2 shall remain the same as set forth in the RFP.

A signed and dated copy of this RFP Addendum No. 2 must accompany your proposal.

If you have already submitted a proposal, you are required to submit your proposal amendment before the bid due date, if you determine that any such amendment to your proposal is called for in order to comply with the changes indicated in this Addendum No. 2. You must submit your proposal amendment, if any, together with this RFP Addendum No. 2, signed and dated in a separate sealed envelope stating the RFP proposal number and due date.

This RFP Addendum No. 2 must be signed and submitted as required, otherwise the proposal offer shall be deemed unresponsive. As with the proposal, any proposal amendments and proposal addenda received after the proposal due date will not be considered.

Contractor/Participant Acknowledgment of Receipt and Agreement:

_____ _____
Authorized Signature Date

_____
Print Name and Title of Authorized Signatory

_____
Print Company Name

Sincerely,

Rod Sarmiento
Director of Purchasing
San Francisco Unified School District
135 Van Ness Avenue, Room 123
San Francisco, CA 94102

Appendix

SOFTWARE DEVELOPMENT, ONLINE HOSTING AND MAINTENANCE AGREEMENT

BETWEEN COMMUNITY INITIATIVES AND

[CONTRACTOR]

FOR THE BENEFIT OF THE SAN FRANCISCO UNIFIED SCHOOL DISTRICT

This SOFTWARE DEVELOPMENT, ONLINE HOSTING AND MAINTENANCE AGREEMENT ("Agreement"), dated for convenience _____, is entered into in the City and County of San Francisco, California, by and between **Community Initiatives** ("Community Initiatives") and _____ ("Contractor") for the benefit of the **San Francisco Unified School District** ("District" or "SFUSD") as the intended third party beneficiary of this Agreement.

Recitals

WHEREAS, Community Initiatives and the District desire Contractor to provide to the District the Software and services as set forth in this Agreement; and,

WHEREAS, the Contractor represents that it is qualified to provide the services required to deliver to the District and maintain the Software and services as set forth in this Agreement, and in exchange for a consideration to be paid by Community Initiatives to Contractor as set forth herein; and,

WHEREAS, the Contractor will deliver the Software, services and all updates and improvements to the Software directly via download, without transfer of any tangible personal property;

Now, THEREFORE, in consideration of the mutual promises set forth herein, Community Initiatives, Contractor and District agree as follows:

1. Definitions. Where any word or phrase defined below, or a pronoun used in place thereof, is used in any part of this Agreement, it shall have the meaning herein set forth.

a. Acceptance. Means written notice from the District to the Contractor that the Software Application meets the Design Specifications, as detailed in Section 1(b) ("Acceptance Testing") herein.

b. Acceptance Testing. After Contractor has made the Software Application available to the District, and/or any further revision, iteration or configuration of the Software Application in the performance of this Agreement, the District shall have a period of thirty (30) days ("Acceptance Testing Period") from the date of availability to verify that the Software Application, and/or any such further revision, iteration or configuration of the Software Application, substantially performs to Design Specifications, as detailed in this Agreement. In the event that the District determines that the Software Application, and/or any such further revision, iteration or configuration of the Software Application, does not meet the Design Specifications, the District shall notify the Contractor in writing, and Contractor shall modify or correct the Software Application, any such further revision, iteration or configuration of the Software Application, so that it meets the Design Specifications. The date of acceptance will be that date upon which District provides Contractor with written notice of satisfactory completion of Acceptance Testing ("Acceptance"). District will not be deemed to have Accepted any Software until Contractor

receives written notice of Acceptance from District. Contractor will furnish all services, deliverables, materials and technical assistance necessary to conduct the Acceptance Testing.

c. Acceptance Testing Period. Shall have the meaning provided in Section 1(b) ("Acceptance Testing") herein.

d. Agreement. This Agreement and all appendices expressly referred to and incorporated herein.

e. Application, App, Mobile Application or Mobile App. Means the parts of the Software Application to be developed and delivered to the District by the Contractor hereunder, which will (i) operate on End User mobile devices such as Apple mobile iPhones and Android-compatible mobile phones, as detailed herein; (ii) be provided by Contractor hereunder to the Mobile App Stores for End Users to download and use, as detailed herein; (iii) reside on Contractor's (or its Subcontractor(s)'s) servers which will host the Software and services described in Appendix A ("Scope of Work") and elsewhere in this Agreement; and (v) may be accessed by End Users through the Internet, as detailed herein.

f. Application Programming Interfaces or APIs. "Application Programming Interfaces" or "API's" means the software application programming interfaces that Contractor will develop and deliver to the District pursuant to this Agreement which are necessary to enable the Software Application to interface, communicate data and information, and operate effectively, securely and efficiently ("interface") with the other District software applications and systems that will interface with the Software, as detailed herein.

g. Authorized Users. "Authorized Users" means all persons holding a valid ID and password issued by the District, as detailed herein.

h. Critical Milestones. Shall have the meaning provided in Section 9(a)(2) ("Critical Milestones") of this Agreement.

i. Deliverables. Those items described and itemized in Appendix A ("Scope oif Work") and elsewhere in this Agreement, which items Contractor shall provide to District in accordance with the schedule specified herein.

j. Design Specifications. Based upon the Functional Specifications, the Design Specifications for the Software Application will be developed by the Contractor pursuant to the design services to be provided to the District by Contractor as detailed in Appendix A ("Scope of Work"). The Design Specifications will refine, through said design process, the Functional Specifications, and the District will utilize the Design Specifications as the basis upon which the District will determine whether the Software Application satisfies Acceptance Testing. Upon completion of the design process detailed in this Agreement, Contractor shall deliver proposed written Design Specifications to the District for the District's review and written approval (as detailed below), which shall not be unreasonably withheld or delayed. Once the Design Specifications are accepted by the District in writing ("Design Specifications Approval Notice") by the District's Executive Director for Policy & Operations, Contractor will use the Design Specifications as the basis for its programming and other Software Application development activities hereunder. The Design Specifications shall also include, at a minimum, detailed descriptions of the hardware and software environment(s), as applicable, in which such Software Application will operate.

k. Documentation. Technical publications relating to use of the Software Application, such as reference, instructional, administrative, maintenance, and programmer materials and manuals, provided by Contractor, as more fully described in Appendix C ("Documentation").

l. End Users. A person who accesses the Software pursuant the District-provided and authorized log-in issued to that person.

m. Functional Specifications. The baseline specifications and requirements for the Software Application as detailed in Appendix A ("Scope of Work"), from which the Contractor shall develop the Design Specifications, as detailed in Section 1(j) ("Design Specifications") of this Agreement.

n. Internet. "Internet" shall mean that certain global network of computers and devices commonly referred to as the "Internet," including without limitation the World Wide Web.

o. Mobile App Store(s). Mean an online service which allows End Users to browse and download an App to the End User's device. Examples of Mobile App Stores include Apple's "iTunes App Store," Google's "Android Marketplace".

p. Mobile App Store Owner. Means the owner and operator of a Mobile App Store. Mobile App Store Owners set guidelines and grant approval to list Applications on their respective Mobile App Stores. Examples of Mobile App Store Owners include Apple, the owner of the "iTunes App Store" and Google, the owner of the "Android Marketplace."

q. Object Code. The machine-readable form of the Software.

r. Online. "Online" and "online" shall mean that the item so described is accessible and available via the Internet.

s. Project Schedule. The schedule for Contractor's completion of all phases of Work, and the Critical Milestones associated with such completion, as specified in Appendix A ("Scope of Work").

t. Scope of Work. "Scope of Work" means the services to be provided by Contractor to the District as detailed in Appendix A ("Scope of Work") of this Agreement.

u. Software or Software Application. "Software" or "Software Application" means the online-hosted Software Application as detailed in Appendix A ("Scope of Work") and elsewhere in this Agreement, which includes without limitation the , Mobile Application, Database, CMS Website, Application Programming Interfaces, Source Code, Object Code, and Documentation to be designed, developed and delivered by Contractor to District as detailed in this Agreement, which Contractor will make digitally accessible to the District, Authorized Users and/or End Users, as applicable, via the Internet.

v. Source Code. The human-readable form of the Software.

w. Web. "Web" shall have the same meaning as "Internet" as defined herein.

x. Website. "Website" shall mean a specific site on the Internet.

y. Work. The planning, design, drafting, development, implementation, optimization, and integration as required by this Agreement, whether completed or partially completed, including all labor, deliverables and services provided, or to be provided, by Contractor to fulfill its obligations hereunder. The Work, therefore, constitutes all of the requirements for providing the Software Application to the District.

z. Whenever the words "as directed", "as required", "as permitted" or words of like effect are used, it shall be understood as the direction, requirement, or permission of the District, unless otherwise indicated by the context. The words "sufficient", "necessary", or "proper", and

the like, mean sufficient, necessary or proper in the judgment of the District, unless otherwise indicated by the context.

2. Term of the Agreement. The term of this Agreement shall be from **[insert start date]** to **[insert end date]**.

3. Effective Date of the Agreement. This Agreement shall become effective upon authorization by the District's Board of Education and full execution by the authorized representatives of Community Initiatives, Contractor and District.

4. Software Application Development

a. Software Application Development. Subject to the terms and conditions of this Agreement, and in consideration for the payments to be made, Contractor will plan, design, develop, and deliver the Software Application and other deliverables and services as detailed in this Agreement.

b. Interpretation of the Specifications. The District hereby acknowledges that the Functional Specifications will provide the basis for the Design Specifications, and that the Design Specifications will, upon provision of provision of Design Specifications Approval Notice by the District, provide the basis for the coding and installation of the Software Application as detailed in this Agreement. In the event of a variance between the Functional Specifications and the Design Specifications, the Design Specifications shall be determinative.

c. Interpretive Differences. In the event the District and the Contractor differ in their interpretations of the Proposal, Functional Specifications, Design Specifications, or Acceptance Testing, the District's interpretation, if reasonable, shall be determinative.

5. Qualified Personnel. Contractor's performance obligations under this Agreement shall be performed only by competent personnel under the supervision and employment of Contractor or via subcontract with Contractor pursuant to Section 32 ("Subcontracting") of this Agreement. Contractor will comply with the District's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at the District's request, must be supervised by or otherwise under the control of Contractor. Contractor shall commit adequate resources to complete the project according to the schedule specified in this Agreement.

6. Failure to Pass Acceptance Tests. In the event that District determines that the Software Application fails to meet the standards set forth in the Acceptance Test Plan, District shall promptly report to Contractor each deficiency, and Contractor will correct the reproducible aspects of the problem or failure within **[insert number]** days from date of Contractor's receipt of notice of the problem or failure. Problems or failures that do not re-occur or cannot be repeated by Contractor, or by the District in Contractor's presence, shall not be considered a failure. In the event that Contractor cannot achieve Software Application Acceptance within **[insert number]** days following the commencement of Acceptance Testing, Contractor shall be in default under this Agreement and, in addition to those remedies set forth in Section 10 ("Termination; Survival"), Community Initiatives is further entitled to a refund of all payments made to Contractor under this Agreement.

7. Online Hosting; Support

a. Support Services. Contractor will provide activation support for the Software, including assisting with the implementation of any other software as detailed herein. Contractor will provide reasonable levels of continuing support to assist the District and Authorized Users in use of the Software Application in accordance with the terms and conditions of this Agreement. Contractor will make its personnel available by email, phone or fax for feedback, problem-solving, or general questions. Such support services will be provided by Contractor Monday through Friday from 8am to 5pm PST. Support requests will be processed within 24hrs. In addition, Contractor will provide tutorials for End Users within the Software Application as required in this Agreement.

b. Online Hosting. Contractor shall provide online hosting for the Software Application at a hosting Website as described in Appendix A ("Scope of Work") and elsewhere in this Agreement (and any applicable disaster recovery site pursuant to Contractor's Disaster Recovery Plan, as detailed below) as necessary to host and deliver the Software Application. Contractor shall use reasonable efforts to provide continuous service in its provision of online hosting of the Software Application and any derivative works on Contractor's website. Permissible down-time includes periodic unavailability due to maintenance of the server(s), installation or testing of software, loading of additional software, features, or materials as they become available, and downtime related to the failure of equipment or services outside the control of Contractor, including but not limited to public or private telecommunications services or internet nodes or facilities. Scheduled down-time will be performed at a time to minimize inconvenience to users of the online hosted Software Application. If the online hosted Software Application on Contractor's website fails to operate in conformity with the terms of this Agreement, District shall immediately notify Contractor, and Contractor shall promptly use reasonable efforts to restore access to and full use of the online hosted Software Application as soon as possible.

c. Online Hosting Security Specifications. Contractor will ensure that any website on which the Software is hosted online will meet or exceed the following minimum standards:

(1) Data Centers:

i. N+1 Uninterrupted Power Supply and backup power generator architecture

ii. N+1 redundant data center HVAC (heating, ventilation, air conditioning) systems

iii. Advanced fire suppression systems to keep any fires localized

iv. Preventive maintenance meets or exceeds manufacturers recommended practices, and is performed regularly by highly trained personnel

(2) Network Security:

i. Fully redundant network architecture with no single points of failure

ii. Industry-leading network bandwidth capacity: 120+ gigabits/second

iii. Multiple layers of firewalled network security

iv. 24x7 centralized network monitoring in the Network Operations Center (NOC)

v. Multiple concurrent, high-capacity Tier 1 bandwidth providers

vi. Industry-leading utilities to provide defense against known common unauthorized network activity such as Port Scans, Denial of Service Attacks, Spoofing attacks, Man in the Middle attacks, ARP Poisoning, and other common methods for attacking the network.

d. Data Security. Contractor shall at all times during the Term provide and maintain up to-date security with respect to (a) the Software, (b) Contractor's (and/or its subcontractor(s)'s) physical facilities, and (c) Contractor's (and/or its subcontractor(s)'s) networks, to prevent unauthorized access or "hacking" of District's Confidential Information. Contractor shall ensure that the Software is protected by security for the networks and all internet connections consistent with best practices, and Contractor shall ensure that all patches, fixes, upgrades, updates and new versions of all security software, tools and methodologies employed in the performance of this Agreement are promptly installed. Contractor shall a.) maintain appropriate safeguards to restrict access to the District's Confidential Information to those employees and agents of Contractor who need the information to carry out the purposes for which such information was disclosed to Contractor, subject to a reasonable nondisclosure agreement, and b.) shall not intentionally grant any third party access to District's Confidential Information, including without limitation Contractor's other customers. For such information disclosed in electronic form, Contractor agrees that appropriate safeguards include electronic barriers (e.g., "firewalls" or similar barriers) and password protected access to the District's Confidential Information. For information disclosed in written form, Contractor agrees that appropriate safeguards include secured storage of District Confidential Information. Contractor also will establish and maintain any additional physical, electronic and procedural controls and safeguards to protect the District's Confidential Information from unwarranted disclosure as may be required for District to comply with all applicable federal and state laws and regulations regarding the confidentiality and security of student information that are now in effect or hereafter imposed, passed or promulgated. Given that risks and threats to online security are constantly evolving, Contractor will, on an ongoing basis, develop and implement security measures designed to protect against the latest risks and threats, consistent with current industry standards for online hosted software applications holding confidential data.

e. Security Certificate. Contractor will ensure that any website hosting the Software Application has attached to it a Secure Sockets Layer (SSL), and that such website will include issuance of a SSL certificate, or other equivalent security certificate, to verify such website's identity and to enable secure and encrypted communications between Authorized Users and/or End Users (as applicable) and the Software.

f. Information Backup. Contractor shall design and develop the Software Application such that its functionalities include daily backups of District data, either incremental or full, and full weekly backups.

g. No Disabling Code. Contractor represents and warrants that the Software, including any future enhancements and modifications thereto, shall be free of any Disabling Code at the time of delivery of any Software under this Agreement. "Disabling Code" means computer instructions or programs, subroutines, code, instructions, data or functions, (including but not limited to viruses, worms, date bombs or time bombs), including but not limited to other

programs, data storage, computer libraries and programs that self-replicate without manual intervention, instructions programmed to activate at a predetermined time or upon a specified event, and/or programs purporting to do a meaningful function but designed for a different function, that alter, destroy, inhibit, damage, interrupt, interfere with or hinder the operation of the Software.

h. Disaster Recovery. In the event of a disaster, as defined below, Contractor will be responsible for providing to the District prior to the final Acceptance of the Software Application, a plan for disaster recovery services (a "Disaster Recovery Plan") to restore the Hosting Services for the Software Application, and all data and content contained therein, for implementation in the event of a disaster, as defined below. For purposes of this Agreement, a "disaster" shall mean an interruption in the Online Hosting services or the inability of Contractor to provide District with the Hosting Services for any reason that could be remedied by relocating the Online Hosting services to a different physical location outside the proximity of the primary data center.

i. Force Majeure. Contractor shall not be liable under this Agreement for failure or delay of performance if caused by an act of God or public enemy, an act of civil or military authorities, or a catastrophe such as an earthquake, pandemic, or national emergency, which is beyond the reasonable control of the Contractor and which temporarily renders impossible the performance of the Contractor's contractual obligations, either totally or in part (a "Force Majeure Event"), excluding in all cases claims of financial hardship by the Contractor, and such nonperformance will not be a default hereunder or a ground for termination of the Agreement, provided that the Contractor, as soon as reasonably possible, provides the District with notice of the claim of a Force Majeure Event, provides detailed documentation of such Force Majeure Event, and works diligently to meet its contractual obligations. The obligations and rights of the parties, and the intended third party beneficiary hereto, shall be extended on a day-to-day basis for the time period equal to the period of the nonperformance by Contractor due to a Force Majeure Event. Notwithstanding the above provisions of this Section, in the event of a period of nonperformance by Contractor lasting more than thirty (30) days due to a Force Majeure Event, Community Initiatives shall have the option to terminate this Agreement for cause pursuant to Section 10 ("Termination; Survival") herein, and be refunded on a pro-rata basis the fees paid to Contractor under this Agreement, measured as of the date of the Force Majeure Event through the remainder of the Agreement term.

j. End User Notifications. Contractor shall design, develop and implement End User notifications on the Software (the content of which will be developed collaboratively with and approved by the District), including for example and without limitation, terms of use, privacy policy, parent or guardian informed consent interface(s) in accordance with applicable state and federal laws and regulations. Contractor shall post or link any such End User notification on the software conspicuously and accessible to End Users potential End Users, and, if requested by the District, shall post or link any such notification on the Software platform page so that End Users and potential End Users are required to act upon such notification (for example and without limitation by scrolling to the bottom of the provided content, and clicking on an "I accept" icon) before the Software can be downloaded or made accessible for continued use by such users.

k. Approval and Acceptance of Application by Mobile App Store. Contractor shall submit the mobile application developed hereunder to the appropriate Mobile App Stores for review and approval by such stores. Contractor guarantees acceptance of the mobile application

by the Mobile App Store Owners, and Community Initiatives shall be fully reimbursed if the mobile application is rejected by the Mobile App Store Owners.

l. Permissible Downtime. Permissible down-time includes periodic unavailability due to maintenance of the server(s), the installation or testing of software, the loading of additional materials as they become available, and downtime related to the failure of equipment or services outside the control of Contractor, including but not limited to public or private telecommunications services or internet nodes or facilities. Scheduled down-time will be performed at a time to minimize inconvenience to District and End Users.**l**. **Usage Data.** Contractor shall ensure that the Software Application provides the District with statistical data regarding the usage of the Software by District, Authorized Users and/or End Users.

m. Password Issuance. Contractor shall design and develop the Software to work with District-assigned Passwords.

n. Training and Updates. Contractor shall provide District staff with initial training and support in the use of the Software Application. Contractor will provide additional training to District staff made necessary by any updates or modifications to the Software Application.

8. Use of Name; Marketing. Excluding a simple statement or acknowledgement of this Agreement between Community Initiatives and Contractor for the benefit of the District, none of the above-listed parties shall use the name, marks or logo of any other above-listed party in any planned advertisement, press release, or other planned publicity or marketing materials, in any form or media, without the prior written approval of the above-listed parties. Notwithstanding the foregoing provisions of this Section, nothing in this Section shall infringe upon the First Amendment rights of any above-listed party.

9. Project Schedule; Progress Reports.

a. Project Schedule. The Project Schedule is set forth in Appendix A ("Scope of Work") and may be amended in writing by mutual agreement between Community Initiatives, Contractor and the District, as the intended third party beneficiary hereto.

(1) Time of the Essence. To prevent slippage in the completion of the project, Community Initiatives, Contractor and District agree that time is of the essence, and that the Software will be developed and implemented in accordance with the Project Schedule.

(2) Critical Milestones. Contractor acknowledges and understands that the Project Schedule contains certain time-sensitive milestones (Critical Milestones) to be attained by certain dates. Milestones that are Critical Milestones are so indicated in Appendix A ("Scope of Work").

b. Progress Reports. Contractor will provide Community Initiatives and District with monthly written status reports advising Community Initiatives and District of its progress, which reports will be delivered within 10 (ten) days following the month to which it relates.

10. Termination; Survival.

a. Termination for Cause. In the event Contractor fails to perform any of its obligations under this Agreement, this Agreement may be terminated and all of Contractor's rights hereunder ended. Termination will be effective after ten days written notice to Contractor.

No new work will be undertaken after the date of receipt of any notice of termination, or five days after the date of the notice, whichever is earlier. In the event of such termination, Contractor will be paid for those services performed under this Agreement to the satisfaction of the District, up to the date of termination. However, Community Initiatives may offset from any such amounts due Contractor or other costs that Community Initiatives has or will incur due to Contractor's non-performance. Any such offset by Community Initiatives will not constitute a waiver of any other remedies Community Initiatives or District may have against Contractor for financial injury or otherwise.

b. Termination for Convenience. Community Initiatives may terminate this Agreement for convenience and without cause at any time by giving Contractor thirty days written notice of such termination. In the event of such termination, Contractor will be paid for those services performed, pursuant to this Agreement, to the satisfaction of Community Initiatives up to the date of termination. In no event will Community Initiatives be liable for costs incurred by Contractor after receipt of a notice of termination. Such non-recoverable costs include, but are not limited to, anticipated profits on this Agreement, post-termination employee salaries, post-termination administrative expenses, or any other cost which is not reasonable or authorized under this Section. This Section shall not prevent Contractor from recovering costs necessarily incurred in discontinuing further work under the Agreement after receipt of the termination notice.

c. Obligations upon Termination. Upon termination of this Agreement, Contractor will submit an invoice to Community Initiatives for an amount which represents the value of its work or services actually performed prior to the effective date of termination for which Contractor has not previously been compensated, except that with respect to reimbursement for Contractor's services, in no event will the compensation paid for the month in which termination occurs be greater than the scheduled monthly fee multiplied by a fraction, the numerator of which will be the days in the month elapsed prior to the termination and the denominator of which shall be 31. Upon approval and payment of this invoice by Community Initiatives, Community Initiatives shall be under no further obligation to Contractor monetarily or otherwise.

d. Survival. The following sections of this Agreement shall survive termination or expiration of this Agreement:

10(d)	Survival	24	Indemnity
12(b)	Payment Does Not Imply Acceptance of Work	25	Incidental and Consequential Damages
12(c)	Taxes	26	Liability of Community Initiatives
15	Submitting False Claims	31	Audits; Records
16	Independent Contractor	36	Dispute Resolution
20	Intellectual Property Rights	37	Non-waiver of Rights

21	Warranty	38	Agreement Made in California; Venue
22	Confidentiality	39	Construction
23	Insurance	40	Entire Agreement; Severability

11. Default; Remedies. Each of the following shall constitute an event of default ("Event of Default") under this Agreement:

a. Contractor fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement:

12(c)	Taxes	23	Insurance
15	Submitting False Claims	32	Subcontracting
22	Confidentiality	43	Compliance with Laws

b. Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, and such default continues for a period of ten (10) days after written notice thereof from District to Contractor.

c. Contractor (a) is generally not paying its debts as they become due, (b) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, (c) makes an assignment for the benefit of its creditors, (d) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Contractor or of any substantial part of Contractor's property or (e) takes action for the purpose of any of the foregoing.

d. A court or government authority enters an order (a) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with respect to any substantial part of Contractor's property, (b) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (c) ordering the dissolution, winding-up or liquidation of Contractor. On and after any Event of Default, Community Initiatives shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, Community Initiatives shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to Community Initiatives on demand all costs and expenses incurred by Community Initiatives in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. Community Initiatives shall have the right to offset from any amounts due to Contractor under this Agreement all damages, losses, costs or expenses incurred by Community Initiatives or District as a result of such Event of

Default. All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

12. Compensation; Payment; Taxes.

a. Compensation. Community Initiatives shall pay Contractor compensation due for services rendered under this Agreement. Compensation shall be made in monthly payments on or before the **[insert day]** day of each month for Work provided hereunder, as set forth in this Agreement, that the Community Initiatives concludes has been performed as of the **[insert day]** day of the immediately preceding month. In no event shall the amount of this Agreement exceed **[insert whole dollar amount in numbers and words -- no pennies and no ".00"]**, unless pursuant to a written modification to this Agreement as provided for herein. The breakdown of costs associated with this Agreement appears in Appendix B ("Calculation of Charges") attached and incorporated into this Agreement by reference as though fully set forth herein. No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until deliverables, services and/or reports required under this Agreement are received from Contractor and approved by District as being in accordance with this Agreement. Community Initiatives may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement. In no event shall Community Initiatives be liable for interest or late charges for any late payments. District has no payment obligations hereunder.

b. Payment Does Not Imply Acceptance of Work. The granting of any payment by Community Initiatives, or the receipt thereof by Contractor, shall in no way lessen the liability of Contractor to replace unsatisfactory work, deliverables or materials although the unsatisfactory character of such work, deliverables or materials may not have been apparent or detected at the time such payment was made. Work, deliverables, materials, components, or workmanship that does not conform to the requirements of this Agreement may be rejected as provided for in this Agreement and in such case must be replaced by Contractor without delay as provided for herein.

c. Taxes. It is the understanding of Community Initiatives, Contractor, and the District, as the intended third party beneficiary hereto, that under California law no taxes are imposed on the online and other services to be provided pursuant to this Agreement. Should this understanding prove to be incorrect, Contractor shall notify Community Initiatives and the District of the levying of such taxes, and Contractor will, unless an exemption applies, pay the taxing authority directly any applicable taxes (excluding payroll, property, or any other taxes that are the responsibility of Contractor as an employer and company in its own right) levied in connection with the online and other services provided hereunder. Contractor will provide documentation of any such taxes paid, and Community Initiatives, Contractor, and the District, as the intended third party beneficiary hereto, will amend this Agreement pursuant to Section 41 ("Modification of Agreement") to provide for the payment to Contractor for any such taxes so levied, paid and documented. If Community Initiatives or District will claim any exemption from such taxes, fees or charges, Community Initiatives or District, as applicable, will provide Contractor with any necessary supporting documentation.

13. Guaranteed Maximum Costs. Neither Community Initiatives nor District shall be obligated hereunder at any time to Contractor for any amount exceeding the amount to be paid to Contractor as provided for herein. Neither Community Initiatives nor District, nor the employees or officers of either, are authorized to request Contractor to perform services or to provide materials, equipment and supplies that would result in Contractor performing services or providing materials, equipment and supplies that are beyond the scope of the services, materials, equipment and supplies agreed upon in this Agreement unless the Agreement is modified in writing as provided for herein. Neither Community Initiatives nor District are required to reimburse Contractor for any services, materials, equipment or supplies that are provided by Contractor which are beyond the scope of the services, materials, equipment and supplies agreed upon herein and which were not approved by a written modification to this Agreement as provided for herein. Neither Community Initiatives nor District, nor the employees or officers of either, are authorized to offer or promise to Contractor additional funding for this Agreement which would exceed the maximum amount of funding provided for in this Agreement for Contractor's performance under this Agreement. Any additional funding for this Agreement in excess of the maximum provided in this Agreement shall require written modification to this Agreement as provided for herein. Neither Community Initiatives nor District are required to honor any offered or promised additional funding for a contract which exceeds the maximum provided in the contract which requires lawful approval of the District's Board of Education when such lawful approval has not been obtained.

14. Payment; Invoice Format. Invoices furnished by Contractor under this Agreement must be in a form acceptable to Community Initiatives. Each invoice must contain a unique identifying number. All amounts paid by Community Initiatives to Contractor shall be subject to audit hereunder. Payment shall be made by Community Initiatives to Contractor at the address specified in Section 30 ("Notice to the Parties").

15. Submitting False Claims. A contractor, subcontractor or consultant may be deemed to have submitted a false claim if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the District, a false claim for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim approved by the District; (c) conspires to defraud the District by getting a false claim allowed by the District; (d) has possession, custody, or control of public property or money used or to be used by the District and knowingly delivers or causes to be delivered less property than the amount for which the person receives a certificate or receipt; (e) is authorized to make or deliver a document certifying receipt of property used or to be used by the District and knowingly makes or delivers a receipt that falsely represents the property used or to be used; (f) knowingly buys, or receives as a pledge of an obligation or debt, public property from any person who lawfully may not sell or pledge the property; (g) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the District; or (h) is a beneficiary of an inadvertent submission of a false claim to the District, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the District within a reasonable time after discovery of the false claim.

16. Independent Contractor. Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by Community Initiatives and/or District

under this Agreement. Contractor or any agent or employee of Contractor shall not have employee status with Community Initiatives or with District, nor be entitled to participate in any plans, arrangements, or distributions by Community Initiatives or by District pertaining to or in connection with any retirement, health or other benefits that Community Initiatives or District respectively may offer its employees. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between Community Initiatives or District and Contractor or any agent or employee of Contractor. Any terms in this Agreement referring to direction from Community Initiatives or District shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. Neither Community Initiatives nor District retains the right to control the means or the method by which Contractor performs work under this Agreement. Contractor shall also complete and submit the attached **W-9 form** prior to or upon Contractor's execution of this Agreement.

17. Community Initiatives Designated Representative. Community Initiatives will make available to Contractor a designated project manager who will work with Contractor on the implementation of this Agreement with the District, and who will work with the District to promptly: (1) review all specifications, technical materials and other documents submitted by Contractor, request necessary corrections, and, as applicable, approve such documents as provided for under this Agreement; (2) provide, or facilitate the provision of, requested District information and data; and (3) facilitate the provision to Contractor of access to District staff, facility and hardware as needed in the performance of this Agreement.

18. Data Conversion. Contractor shall be responsible for the timely and accurate conversion of District's data to the format required by the Software, and for providing the test data as may be necessary for Acceptance Testing.

19. Contractor Staffing and Support Services

a. Project Manager. Contractor shall designate a Project Manager, who shall be accessible by telephone or email (or other equivalent means) throughout the duration of the Agreement and shall be available **[insert times of days, days of week, and exceptions (e.g., from 9 a.m. to 5 p.m. Monday through Friday, excluding weekends and holidays]**. These hours may be adjusted by mutual agreement of District and Contractor. Contractor shall use its best efforts to maintain the same Project Manager until final Acceptance of the Software. However, if Contractor needs to replace its Project Manager, it shall provide Community Initiatives and District with written notice thereof at least thirty (30) days prior to the date the Project Manager is to be replaced. Notwithstanding the foregoing, Contractor may appoint temporary Project Managers in connection with short term unavailability, sick leave, or reasonable vacations, provided that Contractor gives Community Initiatives and District reasonable notification thereof in advance.

b. Staffing. Work under this Agreement shall be performed only by competent personnel appropriately trained in technical skills to perform their duties under the supervision of, and in the employment of, Contractor. Contractor will comply with Community Initiatives'

or District's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at Community Initiatives' or District's request, must be supervised by Contractor.

c. Maintenance and Support. As detailed in Appendix A ("Scope of Work"), Contractor shall maintain the correct operation of the Software and provide related maintenance and support services to District. Contractor will provide activation support, including assisting with the implementation of the Software. Contractor will offer reasonable levels of continuing support to assist District and End Users in use of the Software. Contractor will make its (or its subcontractor's) personnel available by email, or phone for feedback, problem-solving, or general questions. Additionally, Contractor shall provide telephone support for End Users in the operation of the Software.

d. Consulting Services. Upon request by District, Contractor will provide programming, project management, consulting and other related services outside the Scope of Work and specifications as provided for in Appendix A ("Scope of Work") and elsewhere in this Agreement. The scope and charges for such services shall be specified by Contractor as a separate category in Appendix A ("Scope of Work") entitled "Out-of-Scope Services."

20. Intellectual Property Rights

a. Works for Hire. Contractor, Community Initiatives, and the District, as the intended third party beneficiary hereto, understand and agree that in the performance of this Agreement, Contractor (and/or its subcontractors) will create original works of authorship such as and without limitation the Software Application, updates, upgrades, bug fixes, systems designs, Source Code, Object Code, API's, artwork, copy, photographs, videotapes, audiotapes, reports, diagrams, surveys, blueprints and/or any other original works of authorship, and such works of authorship are works for hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of the District. Contractor shall deliver to the District all such works for hire created in the performance of this Agreement. In addition, and without in any way limiting the foregoing, Contractor, Community Initiatives, and the District, as the intended third party beneficiary hereto, understand and agree that all Intellectual Property Rights (as defined below) in and to such works for hire are the sole property of the District. If necessary, Contractor and, as applicable, Community Initiatives, shall take any additional actions and/or complete any documentation necessary to effectuate the District's Intellectual Property Rights hereunder. "Intellectual Property Rights" shall mean any and all proprietary rights and moral rights in any trademarks, copyrights, trade secrets, patents and patent applications, renewals, extensions, continuations, divisions or reissues, in whole or in part, now or hereafter in force, and any foreign counterparts. If it is ever determined that any works created by Contractor or its subcontractors under this Agreement are not works for hire under U.S. law, Contractor and, as applicable, Community Initiatives, each hereby assigns all copyrights and other Intellectual Property Rights to such works to the District, and each hereby agrees to provide any material and execute any documents necessary to effectuate such assignment.

b. Use by Contractor. Only with the prior written approval of the District may Contractor retain and use copies of any the works-for-hire created pursuant to this Agreement, and solely for reference and as documentation of Contractor's experience and capabilities. Such approval may be later revoked or limited by the District by written notification to the Contractor, in accordance with Section 30 ("Notice to the Parties") of this Agreement, and such revocation

or limitation shall be implemented by Contractor within a commercially reasonable timeframe but in no case later than 30 calendar days from the receipt of such notice.

c. Ownership of the Data. Any data or other materials furnished by the District for use by Contractor under this Agreement shall remain the sole property of the District and will be held in confidence in accordance the terms and conditions of this Agreement.

21. Warranty.

a. Warranty of Authority. Each party hereto, and the intended third party beneficiary hereto, hereby warrants that it is authorized to enter into this Agreement.

b. Warranty of Performance. Contractor hereby warrants that when fully implemented, the Software Application, and any updates and improvements to the Software Application provided pursuant to this Agreement, to be developed and provided under this Agreement shall perform in accordance with the Design Specifications applicable thereto on the Software Acceptance date.

22. Confidentiality.

a. "Confidential Information" means information disclosed by Community Initiatives, Contractor, or the District, as the intended third party beneficiary hereto (each a "Participant" for purposes of this Section 22 ("Confidentiality")), to another Participant, that is marked as confidential or would normally be considered confidential under the circumstances. Confidential Information does not include information that: (a) the receiving Participant of the Confidential Information already knew; (b) becomes public through no fault of the receiving Participant; (c) was independently developed by the receiving Participant; or (d) was rightfully given to the receiving Participant by another party (not a Participant).

b. Obligations. Each Participant (as defined in Section 22(a) ("Confidential Information" above) will: (a) protect the other Participant's Confidential Information with the same standard of care it uses to protect its own Confidential Information; and (b) not disclose the Confidential Information, except to its employees and agents who need to know it and who have agreed in writing to keep it confidential. Each Participant (and its employees and agents to whom it has disclosed Confidential Information) may use Confidential Information only to exercise rights and fulfill its obligations under this Agreement, while using reasonable care to protect it. Each Participant is responsible for any actions of its employees and agents in violation of this Section 22 ("Confidentiality").

c. Compliance with Subpoena or Court Order. Notwithstanding anything to the contrary herein, if and to the extent that any Confidential Information may be subject to disclosure pursuant to a lawful subpoena or a court order, a Participant (as defined in Section 22(a) ("Confidential Information") above, may disclose such Confidential Information to the extent required thereby, and such disclosure shall not be deemed a violation of this Agreement. In the event a Participant receives a subpoena or court order covering the Confidential Information, then prior to disclosing such information, the receiving Participant shall provide written notice to the other Participant or Participants, as applicable, of such subpoena or court order, if legally permissible, as soon as possible and in no event more than seventy-two (72) hours after the receiving Participant has received such subpoena or court order, in order to allow

time for the other Participant or Participants, as applicable, to take legal action to prevent disclosure if such Participant(s) so choose. Nothing herein shall require the receiving Participant to take any action, or to refuse to disclose information, where to do so would violate applicable law.

d. Student Data; "School Official" Under FERPA. "FERPA" means the Family Educational Rights and Privacy Act (20 U.S.C. 1232g), and the FERPA regulations (34 CFR Part 99), as may be amended or otherwise modified from time to time. Contractor and Community Initiatives understand and agree that (a) District data includes personally identifiable information from student education records that are subject to FERPA ("FERPA Records"); and (b) for the purposes of this Agreement, Contractor and Community Initiatives will each be considered a "School Official" (as that term is used in FERPA and its implementing regulations) of the District and will comply with FERPA. Such compliance includes without limitation, use by Contractor and Community Initiatives of such District data provided in the performance of this Agreement that such data shall be used solely for the provision of services to the District hereunder, except to the extent otherwise provided by law. Pursuant to the "School Official" provisions of FERPA, under this Agreement, Contractor and Community Initiatives are each performing a service or function for the District for which the District would otherwise use its own employees, and the District is authorized to share District student data, including without limitation personally identifiable information (as that term is defined in FERPA), solely for the performance of such services or functions on behalf of the District, in this case, the provision of the services as detailed in this Agreement. The "School Official" provisions of FERPA, prior written parent consent, or prior written student consent for a student age 18 or older, is not required for the District to disclose FERPA records to Contractor or Community Initiatives, nor for Contractor or Community Initiatives to disclose FERPA records to the District. Pursuant to this Agreement, student data from education records shall remain the property of and under the control of the District. Notwithstanding the foregoing, to the extent applicable, a student may retain possession and control of his or her student-generated content posted, uploaded, published, submitted, transmitted or generated to the mobile App.

23. Insurance.

a. Without in any way limiting Contractor's liability pursuant to Section 24 ("Indemnity") of this Agreement, Contractor shall procure and maintain during the full term of this Agreement, at a minimum, insurance amounts and coverage as follows:

(1) Comprehensive General Liability (CGL) Insurance with limits not less than $2,000,000 (two million dollars) each occurrence and $4,000,000 (four million dollars) in the aggregate for Bodily Injury and Property Damage, including coverage for claims of sexual abuse and molestation. A waiver of the requirement that CGL coverage include sexual abuse and molestation coverage may be requested through the District's Contracts Office provided that Contractor will have no contact with District students in the performance of this Agreement as provided for in Section 28 ("Criminal Background Check; Subsequent Arrest Notification") herein. The parties understand and agree that the District shall rely upon the representations that the Contractor shall make in any such waiver.

(2) Automobile Liability Insurance with limits not less than $1,000,000 (one million dollars) each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired automobiles. A waiver of the Automobile liability

insurance requirements may be requested by Contractor provided that Contractor will not use any automobile in the performance of this Agreement. The parties understand and agree that Community Initiatives and the District shall rely upon the representations that the Contractor shall make in any such waiver.

(3) Workers' Compensation Insurance, with Employer's Liability limits in accordance with the applicable state statutory minimum each accident. A waiver of the workers' compensation insurance requirements may be requested by Contractor provided that Contractor is a sole proprietor with no employees. The parties understand and agree that Community Initiatives and the District shall rely upon the representations that the Contractor shall make in any such waiver.

(4) Technology errors and omissions (E&O) liability insurance coverage with limits of one million dollars ($1,000,000) per occurrence/claim. The policy shall, at a minimum, cover failure to render professional services, negligence, professional misconduct and lack of the requisite skill required for the performance of services under this Agreement, and shall also provide coverage for the following risks:

i. Liability arising from theft, dissemination, and/or use of confidential information, including but not limited to, bank and credit card account information or personally identifiable information, such as, without limitation, name, address, social security number, protected health information, security codes, access codes, passwords, or personal identification numbers (PINs) stored or transmitted in electronic form, and shall include coverage for privacy notification costs, credit monitoring and regulatory fines & fees arising from such theft, dissemination and/or use of confidential information.

ii. Network security liability arising from the unauthorized access to, use of, or tampering with computers or computer systems, including hacker attacks.

iii. Liability arising from the introduction of a computer virus into, or otherwise causing damage to the District's or a third party's computer, computer system, network, or similar computer-related property and the data, software, and programs thereon.

iv. Liability arising from the failure of the technology services/product(s) provided pursuant to this Agreement.

(5) Cyber-liability insurance coverage with limits of not less than one million dollars ($1,000,000) per occurrence/claim and an annual aggregate of two million dollars ($2,000,000) covering liability arising from occurrences/claims involving privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion, network security, and failure to render professional services. Such insurance shall provide coverage for liability assumed under a contract.

b. All policies shall be written on an occurrence basis, except as otherwise provided for in this subsection. Coverage may be provided on a claims-made form, provided that the following requirements are met:

(1) The retroactive coverage date shall be shown, and shall commence before the beginning of any Contractor operations and/or performance under this Agreement.

(2) Contractor shall maintain the required coverage throughout the term of this Agreement and, without lapse, and provide Certificates of Insurance to Community Initiatives and the District upon request for a period of three (3) years beyond the expiration or termination of this Agreement, such that should occurrences during the Agreement term give rise to claims made after expiration or termination of the Agreement, such claims shall be covered.

(3) If coverage is cancelled or non-renewed, and not replaced with another claims-made form with a retroactive date prior to the beginning of any Contractor operations and/or performance under this Agreement, Contractor shall purchase an extended reporting period for a minimum of three (3) years after the expiration or termination of the Agreement.

(4) If requested by Community Initiatives or the District, Contractor shall provide a copy of the policy's claims reporting requirement, or any other policy documents.

c. Comprehensive General Liability policy must provide the following:

(1) Name as Additional Insureds Community Initiatives, its Board, officers and employees, and the San Francisco Unified School District, its Board, officers and employees.

(2) That such policy is primary and non-contributory to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement and that such policies apply separately to each insured against who claim is made or suit is brought.

d. Contractor shall provide thirty (30) days advance written notice to Community Initiatives and to the District of any notice of cancellation, non-renewal or reduction in Contractor's coverage that Contractor receives from its insurance provider, in accordance with the Section 30 ("Notice to the Parties") herein. Nothing provided in this subsection "d" of this Section 23 ("Insurance") shall in any way limit Contractor's obligations to maintain Insurance in accordance with the requirements of this Section 23 ("Insurance").

e. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs are included in such general annual aggregate limit, such annual aggregate limit shall be double the occurrence or claims limits specified above.

f. The insurance requirements under this Agreement shall be the greater of (1) the minimum limits and coverage specified in this Agreement, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the Named Insured. It is agreed that these insurance requirements shall not in any way act to reduce coverage that is broader or that includes higher limits. No representation is made that the minimum insurance requirements stated hereinabove are sufficient to cover the obligations of the Contractor under this Agreement.

g. Waiver of Subrogation. Contractor agrees to waive subrogation with respect to each insurance policy maintained under this Agreement. When required by an insurer, or if a policy condition does not permit Contractor to enter into a pre-loss agreement to waive subrogation without an endorsement, then Contractor agrees to notify insurer and obtain such endorsement. This requirement shall not apply to any policy which includes a condition expressly prohibiting waiver of subrogation by the insured or which voids coverage should the Contractor enter into a waiver of subrogation on a pre-loss basis. Contractor shall promptly notify Community Initiatives and the District of any such express prohibition or condition in any applicable policy which may void coverage.

h. Regarding Workers' Compensation, Contractor hereby agrees to waive subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of Community Initiatives and the District for all work performed by the Contractor, its employees and agents (including without limitation its subcontractors).

i. Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until Community Initiatives and the District receive satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, Community Initiatives may, in consultation and agreement with the District, terminate this Agreement effective on the date of such lapse of insurance or such later date as Community Initiatives, in consultation and agreement with the District, may designate.

j. Before commencing any operations under this Agreement, Contractor shall provide Community Initiatives and the District with the certificates of insurance and Additional Insured endorsements, with insurers satisfactory to Community Initiatives and the District, evidencing all coverages set forth above, and shall furnish complete copies of policies promptly upon the request of Community Initiatives or the District. Contractor also understands and agrees that Community Initiatives may withhold payment for services performed for any violations of the insurance provisions of this Agreement until such violations are cured to the reasonable satisfaction of Community Initiatives and the District.

k. Approval of the insurance by Community Initiatives and/or the District shall not relieve or decrease the liability of Contractor hereunder.

24. Indemnity.

a. Indemnification. Contractor shall indemnify and save harmless Community Initiatives and District, and the officers, employees and agents of each, from, and, if requested, shall defend them against, any and all claims, demands, liabilities, obligations, losses, damages, judgments, costs or expenses (including reasonable legal fees and costs of investigation) (collectively "Claim"), whether actual or alleged, arising directly or indirectly from or in any way connected with the performance of this Agreement by Contractor and/or Contractor's agents or employees, including but not limited to any Claim for personal injury, death, property damage, loss of profits, infringement upon intellectual property rights, failure to comply with the criminal background check requirements of Education Code section 45125.1 and/or disclosure of

confidential information which might be obtained by Contractor or Contractor's agents or employees in the performance of this Agreement.

b. Indemnity Conditions. Contractor's defense and indemnification obligations under this Section 24 ("Indemnity") are conditioned upon the following: (i) District or Community Initiatives, as applicable, providing Contractor with prompt written notice of any claim for which indemnification is sought, provided however that no delay on the part of the District or Community Initiatives, as applicable, shall relieve Contractor from any obligation hereunder; (ii) Contractor having sole control of the defense and settlement of such claim, provided, however, that Contractor will not consent to the entry of any judgment or enter into any settlement with respect to the claim without the prior written consent of District or Community Initiatives, as applicable (which consent will not be unreasonably withheld) except where the judgment or proposed settlement involves only the payment of money damages by Contractor, does not impose any obligation upon District or Community Initiatives, as applicable, and Contractor obtains the full and complete release of District or Community Initiatives, as applicable; District or Community Initiatives, as applicable, shall have the right to have any suit or proceeding monitored by counsel of District's choice, or Community Initiatives' choice, as applicable, and at such entity's its expense; and (iii) District's or Community Initiatives', as applicable, reasonable cooperation with Contractor in the defense and settlement of the claim, at Contractor's expense.

25. Incidental and Consequential Damages. CONTRACTOR SHALL BE RESPONSIBLE FOR INCIDENTAL AND CONSEQUENTIAL DAMAGES RESULTING IN WHOLE OR IN PART FROM CONTRACTOR'S ACTS OR OMISSIONS IN THE PERFORMANCE OF THIS AGREEMENT. NOTHING HEREIN SHALL CONSTITUTE A WAIVER OR LIMITATION OF ANY RIGHTS THAT COMMUNITY INITIATIVES OR THE DISTRICT, AS THE INTENDED THIRD PARTY BENEFICIARY HERETO, MAY HAVE UNDER APPLICABLE LAW.

26. Liability of Community Initiatives. COMMUNITY INITATIVES'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 12(a) ("COMPENSATION") OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL COMMUNITY INITATIVES BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

27. Conflict of Interest.

a. Conflict of Interest Standards. The following is a brief overview of conflict of interest laws and policies. Contractor is responsible to know, and comply with, the full requirements of the law.

1) Under the California Political Reform Act (CPRA), codified in part as Government Code section 1090 and sequential, and section 87100 and sequential: No public official shall make, participate in making, or in any way attempt to use his or her official position, to influence a contract on

behalf of the public agency when he or she knows, or has reason to know, that he or she has a personal financial interest in that contract.

2) Government Code section 1090 defines "making" a contract broadly to include actions that are preliminary or preparatory to the selection of a contractor such as but not limited to: involvement in the reasoning, planning, and/or drafting of scopes of work, making recommendations, soliciting bids and requests for proposals, and/or participating in preliminary discussions or negotiations. (Cal. Govt. Code § 1090)

3) SFUSD Board Policy 3850 provides: "That no Board Member or employee of the San Francisco Unified School District, except persons engaged in the performance of contracts as early retireants or consultants under the approved federally assisted programs, may participate in bidding or have any interest, direct or indirect, in any contract made by or on behalf of the School District within two (2) years after the termination of a Board Member's term in office or the termination of employment with the School District. Except as herein provided, any contract or other transaction entered into for or on behalf of the School District, in violation of the terms herein provided, shall be void and unenforceable against the School District." (SFUSD Board Policy 3850)

4) State law limits the amount of gifts that may be received by public officials from a single source during a calendar year. The gift limit is $460 per source per calendar year (effective January 1, 2015 through December 31, 2016). (See e.g. Cal. Govt Code 89503; 2 CCR 18940.2. See also www.fppc.ca.gov)

5) State law prohibits, with limited exceptions, certain former local public officials from appearing before their former public agency for the purpose of influencing a governmental decision for 12 months from the date the former employee left that public agency. (Cal. Govt. Code § 87406.3)

6) State law bars a public agency employee from making governmental decisions regarding an organization which is engaged in employment negotiations with that public agency employee. (Cal. Govt. Code § 87407)

7) Contractors and their representatives may be required to disclose economic interests that they hold that could foreseeably be affected by the exercise of their public duties. If applicable, Contractors/representatives must submit a disclosure filing called a Statement of Economic Interests or "Form 700." (Cal. Govt. Code §§ 81000-91015; SFUSD Board Rules and Procedures 9270, "Conflict of Interest Code")

b. Obligations of Contractor. It is the obligation of the Contractor, as well as any subcontractors, to determine whether or not participation in a contract may constitute a conflict of interest. While the District staff maintains records regarding the award and execution of contracts, it does not have access to specific information concerning which entities, partners, subcontractors or team members

perform specific work on these contracts. A conflict of interest or an unfair advantage may exist without any knowledge of the District. The determination of the potential for a conflict must be made by the Contractor. Contractor is responsible to notify the District immediately if it finds that a potential conflict may exist.

c. Consultation with Counsel. The District strongly advises any Contractor, and any proposing/ bidding firm, to consult with its legal counsel to determine whether a conflict of interest may exist. It is the responsibility of a Contractor, or a proposing/bidding firm, to make that determination.

d. Consequences of a Violation. Any contract made in violation of Section 1090 is void and cannot be enforced. When Section 1090 is violated, a government agency is not obligated to pay the Contractor for any goods or services received under the void contract. The government agency can seek repayment from the Contractor of any amounts already paid, and refer the matter to appropriate authorities for prosecution. Additional consequences may also apply.

e. Disclosure Requirement. Contractor will submit to the District a list of all of Contractor's employees (including owners) who are also current SFUSD Board members or employees, or former SFUSD Board members or employees in the last two years. Contractor will submit the attached "Contractor's Disclosure Form Regarding SFUSD Officials." Contractor will update this form with SFUSD, as needed, during the term of this Agreement. Exception: Public agencies that provide contract services to the District are not subject to this disclosure requirement.

f. Compliance with Gift Limits. Contractor will abide by legal gift limits and use good judgment, discretion and moderation when offering gifts, meals or entertainment or other business courtesies to District officials, and in order not to place District officials in conflict with any specific gift restrictions: (1) No Contractor or representative thereof shall offer, give, or promise to offer or give, directly or indirectly, any money, gift or gratuity to any District contracting or procurement official at any time. (2) No Contractor or representative thereof shall offer or give, directly or indirectly, any gifts in a calendar year to a District official which exceed the allowable gift limit. (See e.g. Cal. Govt Code 89503; 2 CCR 18940.2. See also www.fppc.ca.gov)

g. Employment Negotiations. Prior to engaging in employment negotiations with a District employee (e.g. a job interview or discussion of a job offer), Contractor shall notify that District employee's supervisor of Contractor's interest in hiring said employee, so that, if applicable, and if practicable, a full separation may be established between the public employee and any governmental decisions regarding that Contractor.

h. Contractor Certification. In signing this Agreement, Contractor certifies that it will comply with conflict of interest laws and regulations, and SFUSD Board Policies. Contractor acknowledges that it is familiar with these provisions; certifies that it does not know of any facts that constitute a violation of such

provisions; and agrees to promptly notify the District if it becomes aware of any such facts during the term of this Agreement.

i. File Statement of Economic Interests ("Form 700") as Applicable. Contractors and their representatives may be required to disclose any economic interests they hold that could foreseeably be affected by the exercise of their public duties. (Govt. Code §§ 81000-91015; SFUSD Board Rules and Procedures 9270 "Conflict of Interest Code") This filing, called a Statement of Economic Interests or "Form 700," aides public officials to ensure they do not make or participate in making any governmental decision in which they have a financial interest.

1) Applicability. Contractors/representatives are considered public officials and must file a Form 700 only if they qualify as "Consultants." Under SFUSD's Conflict of Interest Code, "Consultant" means any natural person who provides, under contract, information advice, recommendation or counsel to an agency, department, officer, or commission, provided, however, that a "Consultant" shall not include a person whom:

A. Conducts research and arrives at conclusions with respect to his or her rendition of information, advice, recommendation or counsel independent of the control and direction of the agency or of any agency official, other than normal contract monitoring; and

B. Possesses no authority with respect to any agency decision beyond the rendition of information, advice, recommendation or counsel.

2) Filing Deadlines. Contractors/representatives required to file a Form 700 shall submit a filing: (a) ten days prior to commencement of work with SFUSD; (b) yearly thereafter by the April 1st annual due date; and (c) upon termination of work with SFUSD.

3) Interests to Be Disclosed. Contractors/representatives required to file a Form 700 shall disclose only income, investments and business positions in: (a) business entities that manufacture or sell supplies, books, machinery or equipment of the type utilized or purchased by SFUSD and for which the Contractor/representative is a manager or director; and/or in (b) business entities that are contractors or subcontractors engaged in the performance of work services of the type utilized or purchased by SFUSD and for which the Contractor/representative is a manager or director.

4) Filing Process. Form 700 must be received by SFUSD's Contracts Office by the timelines provided herein, in order to be considered properly filed.

5) Disqualification. Consultants/Representatives who must file financial disclosure statements, like other public officials under the CPRA, are subject to disqualification when they encounter decision-making that could affect their financial interests. Contractors and their representatives shall be responsible for ensuring that they take the appropriate actions necessary in order not to violate applicable laws and SFUSD policies.

28. Criminal Background Check; Subsequent Arrest Notification.

a. Criminal Background Check

1) Contractor is required to comply with the criminal background check provisions of Education Code Section 45125.1. Contractor will conduct criminal background checks through the California Department of Justice (CDOJ), including both CDOJ and Federal Bureau of Investigation (FBI) background checks, and will obtain subsequent arrest notification (as below), for all Contractor employees, agents, and volunteers who will have more than limited contact with District students pursuant to this Agreement. Contractor shall ensure that no Contractor employee, agent or volunteer shall have contact with District students pursuant to this Agreement if he or she has been convicted of a serious or violent felony as defined by EC 45125.1 (citing EC 45122.1), a sexual offense as defined by EC 44010, or a controlled substance offense as defined by EC 44011. Contractor shall ensure that no Contractor employee, agent or volunteer who has been convicted of a serious or violent felony as defined by EC 45125.1 (citing EC 45122.1), a sexual offense as defined by EC 44010, or a controlled substance offense as defined by EC 44011 will have more than limited contact with District students pursuant to this Agreement. This prohibition does not apply to an employee, agent or volunteer who has obtained a certificate of rehabilitation and pardon pursuant to California Penal Code Section 4852.01 et seq. for a serious or violent felony listed under EC 45122.1.

2) The District will not be responsible for the costs of the criminal background checks.

3) As written certification of its compliance with the criminal background check requirements and subsequent arrest notification requirements (as below) for all Contractor employees, agents, and volunteers who will have more than limited contact with District students pursuant to this Agreement, Contractor shall complete and submit to the District the Criminal Background Check/Tuberculosis Clearance Certification Form ("CBC/TB form") (ATTACHED). Contractor shall list all such employees, agents or volunteers by name and date of criminal background check clearance on the CBC/TB form, or via attachment, as provided for in said CBC/TB form.

4) Throughout the term of this Agreement, for any Contractor employees, agents or volunteers that Contractor hires or assigns subsequent to Contractor's initial submission of the CBC/TB form to District, and who will have more than limited contact with District students pursuant to this Agreement, Contractor will comply with the provisions of this Section including without limitation conducting background checks and obtaining subsequent arrest notification (as below), and submitting additional CBC/TB forms to District.

5) The criminal background check requirements, and subsequent arrest notification requirements (as below), apply only to Contractor's employees, agents or volunteers will have more than limited contact with District students pursuant to this Agreement. Contractor's employees, agents or volunteers who will have no contact or only limited contact with students are not required to meet criminal background check and subsequent arrest notification requirements. If Contractor asserts that all of its employees, agents or volunteers will have no contact or only limited contact with District students by checking the "no contact" box on the CBC/TB form, the District's Cabinet-level Administrator supervising this Agreement will have the responsibility to make a reasonable determination of whether Contractor, its employees, agents or volunteers will have only limited contact with students. The District's determination shall control.

b. Subsequent Arrest Notification

1) In addition to the initial criminal background check, Contractor will obtain from CDOJ subsequent arrest notification to monitor future arrests of employees, agents and volunteers who will have more than limited contact with District students pursuant to this Agreement. District shall not be responsible for the costs associated with the subsequent arrest notifications.

2) Upon receipt of notice that any of its employees, agents, or volunteers who will have more than limited contact with District students pursuant to this Agreement has been arrested or convicted of a serious or violent felony as defined by EC 45125.1 (citing EC 45122.1), a sexual offense as defined by EC 44010, or a controlled substance offense as defined by EC 44011, Contractor will immediately prohibit such employee, agent, or volunteer from having any contact with District students pursuant to this Agreement, and Contractor will immediately notify the District of such arrest.

c. Without limiting any other available legal remedies, Failure by Contractor to comply with this Section may result in termination of this Agreement at the District's sole discretion.

29. Tuberculosis Testing.

a. Contractor shall ensure that all of its employees, agents or volunteers whose functions require frequent or prolonged contact with students will complete tuberculosis examination the same as the examination that is described in California Education Code section 49406. Contractor shall ensure that all of its employees, agents or volunteers who have a written clearance certification have undergone the foregoing examination at least once every four (4) years if the Contractor is still rendering services to the District.

b. The District shall not be responsible for the costs of the examination.

c. Contractor shall submit written certification to the District, using the attached Criminal Background Check/Tuberculosis Clearance Written Certification Form ("CBC/TB form"), that its employees, agents or volunteers who will have frequent or prolonged contact with students have passed the tuberculosis test requirements. Contractor shall list such employees, agents or volunteers by name and date of clearance on the CBC/TB form (ATTACHED).

d. The tuberculosis clearance requirement applies only to Contractor's employees, agents or volunteers will have frequent or prolonged contact with students. Contractor's employees, agents or volunteers who will have no contact or only limited contact with students are not required to meet tuberculosis clearance requirements. If Contractor asserts that all of its employees, agents or volunteers will have no contact or only limited contact with District students by checking the "no contact" box on the CBC/TB form, the District's Cabinet-level Administrator supervising this Agreement will have the responsibility to make a reasonable determination of whether Contractor, its employees, agents or volunteers will have no contact or only limited contact with students. The District's determination shall control.

e. Contractor shall ensure that only its employees, agents or volunteers who have submitted to and passed a tuberculosis clearance, and for whom a CBC/TB form has been submitted to the District, shall have frequent or prolonged contact with students under this Agreement. Contractor will maintain on file in Contractor's offices current documentation that each of its employees, agents or volunteers who will have frequent or prolonged contact with students hereunder meets tuberculosis clearance requirements.

30. Notice to the Parties. All notices to be given by the parties hereto shall be in writing and served by depositing the same in the United States Post Office as listed below. For any notice sent to Community Initiatives by Contractor, or by Contractor to Community Initiatives, a copy of such notice, the sender shall also send a copy of such notice to the District. Any notice of default must be sent by registered mail, overnight delivery by a national delivery company, or courier. Community Initiatives, Contractor and District may change the address to which notice is to be sent by giving written notice thereof to the others.

NOTICE TO COMMUNITY INITIATIVES:

COMMUNITY INITIATIVES	
CONTACT PERSON NAME	
STREET ADDRESS	
CITY, STATE, ZIP	
TELEPHONE	( )
EMAIL ADDRESS	

NOTICE TO THE CONTRACTOR:

CONTRACTOR	
CONTACT PERSON NAME	
STREET ADDRESS	
CITY, STATE, ZIP	
TELEPHONE	( )
EMAIL ADDRESS	

NOTICE TO THE DISTRICT:

	SAN FRANCISCO UNIFIED SCHOOL DISTRICT
SITE/DEPARTMENT	INSERT NAME OF SITE/DEPARTMENT
HEAD OF SITE/DEPT.	
CONTACT PERSON NAME	
STREET ADDRESS	
CITY, STATE, ZIP	San Francisco, CA
TELEPHONE	( )
EMAIL ADDRESS	

WITH NOTICE ALSO TO THE DISTRICT CONTRACT OFFICE:

SFUSD Contracts Office
135 Van Ness Street, Room 102
San Francisco, CA 94102
Tel. 415-355-6963
contract@sfusd.edu

31. Audits; Records.

a. Audit and Inspection of Records. To the extent not otherwise prohibited by law, Contractor, Community Initiatives and District agrees to maintain and make available to each other, during regular business hours, accurate books and accounting records relating to the party's work under this Agreement. To the extent not otherwise prohibited by law, Contractor, Community Initiatives and District will permit each other to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. To the extent not otherwise prohibited by law, Contractor, Community Initiatives and District shall maintain such data and records in an accessible location and condition for a period of not less than five (5) years after final payment under this Agreement or until after final audit has been resolved, whichever is later.

b. SAS 70 Audit. During the Term of the Agreement, Contractor will provide to District, on a semi-annual basis, the SAS 70 Type II Audit report ("Audit Reports") that Contractor receives from its hosting service provider as follows: (a) the Audit Reports will include a 180 day (six month) testing period; and (b) the Audit Reports will be provided to

District no later than 30 days after they are received by Contractor. Upon District's written request, Contractor will provide a so-called "negative assurance opinion" to District as soon as said opinion is received from Contractor's hosting service provider. Contractor shall on a semi-annual basis, and otherwise as reasonably requested by District: (i) provide the foregoing Audit Reports to District and (ii) request such "negative assurance opinions" on District's behalf.

32. Subcontracting. Contractor may use the services of subcontractors in the performance of services under this Agreement, including the use of third-party providers of platform as a service and/or infrastructure as a service, however, in so doing, Contractor shall remain responsible for the overall performance of this Agreement. In no event shall Contractor subcontract or delegate the whole of this Agreement. In subcontracting, Contractor shall not thereby be relieved from any liability or obligation under this Agreement and, as between Community Initiatives and District and compared to Contractor, Contractor shall be responsible for the acts, defaults and omissions of any subcontractor of Contractor in the performance of this Agreement as fully as if they were the acts, defaults or omissions of Contractor. All references herein to duties and obligations of Contractor shall be deemed to pertain also to all Contractor subcontractors to the extent applicable to the subcontracted portion of the Agreement. Nothing contained in this Agreement shall create any contractual relationship between any of Contractor's subcontractors and Community Initiatives or District. No party on the basis of this Agreement shall in any way contract on behalf of or in the name of the other party to this Agreement, and violation of this provision shall confer no rights on any party and shall be void.

33. Assignment. Except to the extent expressly permitted under Section 32 ("Subcontracting") herein, the services to be performed by Contractor hereunder are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by the Contractor without the written consent of Community Initiatives and the District, as the intended third party beneficiary, by written instrument executed and approved in the same manner as this Agreement.

34. Nondiscrimination. (Required by District Board of Education Policy 0410)

a. The District is committed to providing equal opportunity for all individuals in education. Contractor understands and agrees that in providing services to the District, it is Contractor's obligation to comply with District Board of Education Policy 0410, which requires that all District programs, activities, and practices be free from discrimination based race, color, ancestry, national origin, ethnic group identification, age, religion, marital or parental status, physical or mental disability, sex, sexual orientation, gender, gender identity or expression, or genetic information; the perception of one or more of such characteristics; or association with a person or group with one or more of these actual or perceived characteristics.

b. Contractor hereby represents and affirms that it is Contractor's policy that its programs, activities, and practices are free from discrimination based on race, color, ancestry, national origin, ethnic group identification, age, religion, marital or parental status, physical or mental disability, sex, sexual orientation, gender, gender identity or expression, or genetic information; the perception of one or more of such characteristics; or association with a person or group with one or more of these actual or perceived characteristics.

c. Contractor agrees that it will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color,

ancestry, national origin, ethnic group identification, age, religion, marital or parental status, physical or mental disability, sex, sexual orientation, gender, gender identity or expression, or genetic information; the perception of one or more of such characteristics; or association with a person or group with one or more of these actual or perceived characteristics.

35. Compliance with Americans with Disabilities Act. Contractor acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Contractor shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Agreement.

36. Dispute Resolution.

a. Prior to any action or resort to any legal remedy, Community Initiatives, Contractor and District agree to exercise reasonable efforts, and to negotiate in good faith, to amicably resolve any dispute that may arise concerning the performance by Community Initiatives, Contractor and District of its obligations under this Agreement. If the project managers for Community Initiatives, the District and the Contractor cannot resolve a dispute through such negotiations, then such project managers will escalate the dispute to their respective executives who are at a higher level of management than the project managers.

b. In such event, Community Initiatives, Contractor or District shall give the other above-listed parties written notice of any dispute not resolved by good faith negotiations between the respective project managers (the "initial notice"). Within fifteen (15) days after delivery of such initial notice, the receiving parties shall submit to the sending party a written response. Both the initial notice, and the responses, shall include (i) a statement of that party's position, (ii) a summary of arguments supporting that position, and (iii) the name and title of the executive who will represent that party and of any other person who will accompany the executive.

c. Within thirty (30) days after delivery of the initial notice, the executives of the three parties shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to attempt to resolve the dispute. All reasonable requests for information made by one of the above-listed parties to the others shall be honored. All negotiations pursuant to this clause are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.

d. If the executives cannot resolve the dispute to the satisfaction of Community Initiatives, Contractor and District, then these parties may attempt to mutually agree on the conditions under which such unresolved disputes can be referred to mediation or non-binding arbitration. If such parties do not mutually agree to mediation or non-binding arbitration, or mutually select a mediator or arbitrator for the dispute, or such efforts do not resolve the dispute, then Community Initiatives, Contractor and District may pursue any remedy available under California law.

37. Non-Waiver of Rights. The omission by either party hereto, or the intended third party beneficiary hereto, at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof at the time designated, shall not be a waiver of any such default, right or performance to which the party, or the intended third party beneficiary, is entitled, nor shall it in any way affect the right of the party, or the intended third party beneficiary, to enforce such default, right or performance thereafter.

38. Agreement Made in California; Venue. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California without regard to its conflict of laws rules. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco, California.

39. Construction. All section headings, also referred to as paragraph captions, are for convenience of reference only and are not intended to define the scope of any provision of this Agreement.

40. Entire Agreement; Severability.

a. Entire Agreement. This Agreement sets forth the entire agreement between the parties, and supersedes all other prior or contemporaneous oral or written provisions.

b. Execution of the Agreement; Counterparts.

(1) Original copies of this Agreement shall be executed by the respective party's authorized signatory(ies).

(2) This Agreement may be executed in one or more counterparts, each of which shall be deemed an original agreement, but all of which shall be considered one instrument and shall become a binding agreement when all counterparts have been signed by the parties and delivered to the other.

c. Severability. If any term or provision of this Agreement shall be found illegal or unenforceable, this Agreement shall remain in full force and effect and such term or provision shall be deemed stricken.

41. Modification of Agreement. This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement.

42. Change Orders. Community Initiatives may at any time, in writing, submit a proposed Change Order to Contractor. Within ten (10) working days of receiving such proposed Change Order, Contractor shall submit to Community Initiatives a written cost estimate, which shall include any adjustments to the Project pricing, the Project Schedule, the Functional Specifications, Design Specifications or any other obligations of Contractor hereunder, as applicable. If, upon review of Contractor's response, Community Initiatives and the District wish to proceed with such Change Order, then Community Initiatives, Contractor and District, as the intended third party beneficiary hereto, shall complete a written modification to this Agreement as provided for in Section 41 ("Modification of Agreement") of this Agreement, prior to implementing any such Change Order.

43. Compliance with Laws. Each party, and the intended third party beneficiary hereto, shall keep itself fully informed of all state and federal laws and regulations applicable to the performance of this Agreement, and as such laws and regulations may be amended from time to time, and shall at all times comply with all such laws and regulations.

44. Cooperative Drafting. This Agreement has been drafted through a cooperative effort of the parties, and the intended third party beneficiary hereto, and the parties, and the intended third party beneficiary hereto, have had an opportunity to have the Agreement reviewed and revised by legal counsel. No party, nor the intended third party beneficiary hereto, shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the party, or the intended third party beneficiary hereto, drafting the clause shall apply to the interpretation or enforcement of this Agreement.

IN WITNESS WHEREOF, Community Initiatives, Contractor and District have executed this Agreement.

COMMUNITY INITIATIVES

Approved by:

_____
[name]
[title]

[FILL IN CONTRACTOR NAME]

Approved by:

_____
[name of authorized representative]
[title]

SAN FRANCISCO UNIFIED SCHOOL DISTRICT AS INTENDED THIRD PARTY BENEFICIARY

Approved by:

_____
[name]
[title]
Per SFUSD Board of Education Resolution No._____ approved on _____.

Approved as to Form:

By: _____
Senior Deputy General Counsel

Recommended:

By:_____
[name]
[title]

Appendices:
A: Scope of Work
B: Calculation of Charges
C: Documentation

Appendix A
Scope of Work

The services and deliverables to be provided under this Agreement shall be as detailed below in this Scope of Work.

[*The Scope of Work shall detail all of the services and deliverables to be provided, and the specifications therefore, as well as a proposed project schedule.*]

Appendix B
Calculation of Charges

Total Cost of this Agreement (not-to-exceed amount) is: **[Insert dollar amount in text]** **dollars** (**$[Insert dollar amount in numbers]**).

The breakdown of charges for services and deliverables provided shall be as follows below.

Appendix C
Documentation

The following is a description of all technical publications relating to use of the Software, such as reference, installation, administrative, maintenance, and programmer manuals, to be provided by Contractor in any form or media.

[*This Appendix C shall itemize and describe in detail all the documentation the Contractor will provide to the District in association with the Software. It shall also define the relevant standards, including the nature and extent of coding annotations. For each type of documentation, be sure to indicate how many copies are to be provided, and in what form or media.*]

San Francisco Unified School District
Criminal Background Check/Tuberculosis Clearance Written Certification Form

To be completed by Contractor:

Name of Independent Contractor *:	
Services to be performed under the Agreement*:	ONLINE HOSTED SOFTWARE SERVICES
Schools/Locations where services are being performed*:	INSERT NAME OF SITE/DEPARTMENT
Total amount to be paid by the District Under this Agreement not to exceed*:	$**[INSERT DOLLAR AMOUNT]**
Term of Agreement*:	**FY 20 -20**

**Provided for reference only; the provisions of the Agreement shall control in the event of any conflict with the language of this form.*

Contractor shall check the applicable boxes and fill in any applicable blanks.

CRIMINAL BACKGROUND CHECK		
1.	☐	Contractor/Contractor's employees, agents or volunteers will **ONLY HAVE LIMITED OR NO CONTACT** with District students (as defined by District) in the performance of this Agreement. By checking this box, Contractor certifies that its employees, agents, volunteers will have no contact, or only limited contact, with District students in the performance of this Agreement.
2.	☐	Contractor/Contractor's employees, agents or volunteers, listed here/attached, will have **MORE THAN LIMITED CONTACT** with District students (as defined by District) in the performance of this Agreement. **INSERT NAMES OF EMPLOYEES** (Attach and sign additional pages, as needed.) By checking this box, Contractor certifies that the employees, agents, volunteers noted above/attached have been fingerprinted under procedures established by the California Department of Justice and the FBI, and the results of those fingerprints reveal that none of these individuals has been arrested or convicted of a serious or violent felony, as defined by the California Penal Code, and Contractor certifies that it has requested subsequent arrest notification for these individuals.
TUBERCULOSIS CLEARANCE		
3.	☐	Contractor/Contractor's employees, agents or volunteers will **ONLY HAVE LIMITED OR NO CONTACT** with District students (as defined by District).
4.	☐	Contractor/Contractor's employees, agents or volunteers, listed here/attached, will have **MORE THAN LIMITED OR PROLONGED CONTACT** with District students (as defined by District) in the performance of this Agreement, and have a written TB clearance certification on file with Contractor. **INSERT NAMES OF INDIVIDUALS AND DATES OF T.B. CLEARANCE** (Attach and sign additional pages, as needed.)

Further Certification by Contractor: "***I hereby certify on behalf of Contractor that the information provided herein is true and accurate***. *I further agree that during the term of this Agreement, if Contractor learns of additional information that differs from the responses provided above, including but not limited to hiring new personnel and/or notice of a subsequent arrest, Contractor will immediately forward this information to District. If Contractor receives any subsequent arrest notification, I certify that Contractor will immediately notify District and bar such employee/ agent/ volunteer from performing any services under this Agreement that involve any contact with students*."

Contractor Signature Date	Administrator Signature Date	Cabinet Member Signature Date
Print name of Signatory	Print name of Administrator	Print name of Cabinet Member

San Francisco Unified School District
Contractor's Disclosure Form Regarding SFUSD Officials

To be completed by Contractor:

Name of Independent Contractor *:	
Services to be performed under the Agreement*:	ONLINE HOSTED SOFTWARE SERVICES
Schools/Locations where services are being performed*:	INSERT NAME OF SITE/DEPARTMENT
Total amount to be paid by the District Under this Agreement not to exceed*:	$**[INSERT DOLLAR AMOUNT]**
Term of Agreement*:	**FY 20 -20**

**Provided for reference only; the provisions of the Agreement shall control in the event of any conflict with the language of this form.*

Are any of Contractor's employees (or owners) *ALSO* current SFUSD employees/Board members, or former SFUSD employees/Board members within the last two years? (*Check "Yes" or "No" as applicable.*)

☐ **NO.** None of Contractor's employees (or owners) are ***ALSO*** current SFUSD employees/Board members, or former SFUSD employees/Board members within the last two years.

☐ **YES.** Contractor's employees (or owners) listed in the table below are ***ALSO*** current SFUSD employees/Board members, or former SFUSD employees/Board members within the last two years. (*Complete the table below. The list may be continued on an additional page as needed.*)

NAME of current SFUSD employee/Board member, or former SFUSD employee/Board member within the last two years, who is ALSO Contractor's employee (or owner):	**JOB TITLE(S) AT SFUSD of current SFUSD employee/Board member, or former SFUSD employee/Board member within the last two years, who is ALSO Contractor's employee (or owner):**	**DATE on which individual left SFUSD employment/Board. Or, if the individual is currently an SFUSD employee/Board member, write "current."**	**If individual is a current SFUSD employee/Board member, how is he/she to be paid? (*I.e.*, through SFUSD Human Resources or Contractor plans to pay directly, etc.)**

Certification by Contractor:

On behalf of Contractor, I hereby certify that, to Contractor's knowledge, the information provided in this form is true, accurate, and complete. I agree that during the term of this Agreement, if Contractor learns of information that differs from that provided above, including but not limited to the hiring of new personnel who are current SFUSD employees or Board members, or former SFUSD employees or Board members or within the last two years, Contractor will promptly update this form with the District.

_____
Contractor's Signature **DATE**

_____
Print Name of Signatory

For SFUSD Office Use Only:

Received by: _____
(SFUSD staff initials)

Date received:_____