ONLINE HOSTED SOFTWARE SERVICES AGREEMENT
WITH SAN FRANCISCO UNIFIED SCHOOL DISTRICT

This Online Hosted Software Services Agreement ("Agreement") is dated INSERT TODAY'S DATE for convenience and is entered into by and between INSERT LEGAL/OFFICIAL NAME OF CONTRACTOR ("Contractor") and the San Francisco Unified School District ("District"), collectively referred to as the "parties."

RECITALS

WHEREAS, Contractor is the provider of online hosted software services which are made digitally accessible via the Internet, and

WHEREAS, the District wishes to make these online hosted software services available to its Authorized Users;

WHEREAS, Contractor represents itself able and, for a consideration, willing to provide such services to the District;

Now, THEREFORE, the parties hereby enter into this Agreement for Contractor to provide to the District the services as detailed herein. This Agreement attaches and incorporates by reference as though fully set forth herein the following documents: approved Board of Education Resolution, Criminal Background Check/Tuberculosis Clearance Written Certification Form, W-9 Form, Appendix A ("Scope of Work"), Appendix B ("Calculation of Charges"), and the General Terms and Conditions (collectively, the "Agreement"). The following documents shall also be attached to this Agreement: Insurance Certificates and Endorsement (See Section 10 for Insurance and Endorsement requirements).

A. TERM; EFFECTIVE DATE

Subject to Section 1 of the attached General Conditions, the term of this Agreement shall be the term set forth in the approved District Board Resolution for services to be provided by Contractor under this Agreement.

Notwithstanding the foregoing, this Agreement shall become effective only upon approval in writing by the District’s Board of Education, proper execution by the parties and certification by the District’s Chief Financial Officer as to the availability of funds.

B. SERVICES CONTRACTOR AGREES TO PROVIDE

Contractor agrees to provide the District with the services provided for in the attached Appendix A ("Scope of Work").

C. COMPENSATION

Compensation to Contractor shall not exceed INSERT CONTRACT DOLLAR AMOUNT IN WORDS dollars (INSERT CONTRACT DOLLAR AMOUNT IN NUMBERS). The breakdown of costs and payment schedule associated with this Agreement are detailed in the attached Appendix B ("Calculation of Charges"). Contractor shall submit invoices to the District for services rendered and in a form acceptable to the District. All amounts paid by the District to the Contractor shall be subject to audit by the District. Upon receipt of an acceptable invoice for payment, payment shall be made in a reasonable time upon approval by the District Site or Department Head, in his or her sole discretion that the services, set forth in Section B ("Services Contractor Agrees to Perform") of this Agreement, have been rendered satisfactorily, and in a professional and timely manner in accordance with this Agreement. Such payment shall be made to the address specified in Section D ("Notice to the Parties"). If the District and Contractor mutually agree that the scope of work described herein is increased, the Agreement may also be increased provided that there is a prior written modification to the Agreement in accordance with Section 28 ("Modification of Agreement") of the General Terms and Conditions and a Board Resolution authorizing said increases. It shall be the responsibility of the Contractor to ensure that the total approved
amount of the Agreement is not exceeded. Any work performed in excess of said amount shall not be compensated. In no event shall the District be liable for interest or late charges for late payments.

D. NOTICE TO 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. Either party may change the address to which notice is to be sent by giving written notice thereof to the other party. Any notice of default or termination must be sent by certified mail.

NOTICE TO THE DISTRICT:

<table>
<thead>
<tr>
<th>SITE/DEPARTMENT</th>
<th>INSERT NAME OF SCHOOL/DEPARTMENT</th>
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<tr>
<td>HEAD OF SITE/DEPARTMENT</td>
<td></td>
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<tr>
<td>CONTACT PERSON</td>
<td></td>
</tr>
<tr>
<td>STREET ADDRESS</td>
<td></td>
</tr>
<tr>
<td>CITY, STATE, ZIP</td>
<td>San Francisco, CA</td>
</tr>
<tr>
<td>TELEPHONE</td>
<td>( )</td>
</tr>
<tr>
<td>EMAIL ADDRESS</td>
<td></td>
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</tbody>
</table>

NOTICE TO THE DISTRICT CONTRACT OFFICE:

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

NOTICE TO THE CONTRACTOR:

<table>
<thead>
<tr>
<th>CONTRACTOR</th>
<th>INSERT LEGAL/OFFICIAL NAME OF CONTRACTOR</th>
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<tbody>
<tr>
<td>CONTACT NAME</td>
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<td>STREET ADDRESS</td>
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<td>CITY, STATE, ZIP</td>
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<td>TELEPHONE</td>
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<tr>
<td>EMAIL ADDRESS</td>
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</table>
SIGNATURES OF THE PARTIES

IN WITNESS WHEREOF the parties hereto have executed this Agreement pursuant to Board of Education Resolution #_____________ approved on the following date ____________. [See attached ‘Approved K-Resolution’.]

For
INSERT LEGAL/OFFICIAL NAME OF CONTRACTOR
APPROVED:

BY: ______________________________
Authorized Signature

INSERT NAME OF AUTHORIZED SIGNATORY
INSERT TITLE OF AUTHORIZED SIGNATORY

For
SAN FRANCISCO UNIFIED SCHOOL DISTRICT
APPROVED:

BY: ____________________________________
Reeta Madhavan
Chief Financial Officer

APPROVED AS TO FORM:

BY: ______________________________
Senior Deputy General Counsel
(N/A if <= $90,200)

REVIEWED:

BY: ____________________________________
Contracts Office

RECOMMENDED:

BY: ______________________________
Signature of Site/Dept. Administrator

INSERT NAME OF SITE/DEPT ADMINISTRATOR
INSERT TITLE OF SITE/DEPT ADMINISTRATOR
APPENDIX A

SCOPE OF WORK [or DESCRIPTION OF SERVICES]

Part I. Services details:

1. Pursuant to this Agreement, will Contractor perform services on-site at a school site or sites?
   □ NO
   □ YES. If YES, are services to be performed during the school day?
   □ NO
   □ YES

Part II. Pursuant to this Agreement, Contractor shall provide the following services to the District as detailed in this Appendix A ("Scope of Work").

Insert a detailed Scope of Work. Specifically detail the services the online software will perform, as well as any services that Contractor will provide that are not part of the online software, e.g. specialized training.
APPENDIX B

CALCULATION OF CHARGES

Total Cost of the Agreement (Not to Exceed Amount): INSERT CONTRACT DOLLAR AMOUNT IN WORDS dollars ($INSERT CONTRACT DOLLAR AMOUNT IN NUMBERS).

The breakdown of charges shall be as follows for the services rendered pursuant to this Agreement:

PROVIDE HERE A BREAKDOWN OF THE COSTS. THE COSTS SHOULD CORRELATE PAYMENT TO CONTRACTOR WITH PROVISION OF SERVICES AND TIMELINES DETAILED IN APPENDIX A. THE BREAKDOWN SHOULD LIST SEPARATELY AND IN DETAIL THE RATE(S) OF PAY, CHARGES, EXPENSES, ETC.]
APPENDIX B

CALCULATION OF CHARGES

(CONTINUED)

To Be Completed by District Staff Recommending this Agreement:

I have reviewed and approve this Calculation of Charges for this Contract.

<table>
<thead>
<tr>
<th>Date</th>
<th>SIGNATURE OF SITE/DEPT. ADMINISTRATOR</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>INSERT NAME OF SITE/DEPT ADMINISTRATOR</td>
</tr>
<tr>
<td></td>
<td>INSERT TITLE OF SITE/DEPT ADMINISTRATOR</td>
</tr>
</tbody>
</table>

Is this Agreement FUNDED by a GRANT or other RESTRICTED FUNDING?

YES / NO (Circle one.)

("Restricted funding" means this contract is supported by funding that comes with spending restrictions or requirements—such as a grant, restricted state or federal funding, Proposition A or H monies… etc.)

- If “NO” is circled, do not fill out the remainder of this page. It is not applicable.
- If “YES” is circled, the District Staff Supporter of this Agreement must also complete the section immediately below.

I have reviewed this Calculation of Charges and the requirements of the GRANT or other RESTRICTED FUNDING SOURCE(S) that fund this contract. I affirm that this Calculation of Charges is consistent with the requirements of the GRANT or other RESTRICTED FUNDING SOURCE(S) that fund this contract.

<table>
<thead>
<tr>
<th>Date</th>
<th>SIGNATURE OF SITE/DEPT. ADMINISTRATOR</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>INSERT NAME OF SITE/DEPT ADMINISTRATOR</td>
</tr>
<tr>
<td></td>
<td>INSERT TITLE OF SITE/DEPT ADMINISTRATOR</td>
</tr>
</tbody>
</table>
Certification Instructions

abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and future developments.

Section references are to the Internal Revenue Code unless otherwise noted.

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. Information about any future developments affecting Form W-9 (such as legislation enacted after we release it) is at www.irs.gov/fw9.

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN) or employers identification number (EIN) to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following:

- Form 1098 (home mortgage interest)
- Form 1098-E (student loan interest)
- Form 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)
- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes awards, or gross proceeds)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions).

Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):

- Exempt payee Code (if any) __________
- Exemption from FATCA reporting code (if any) __________

(Refers to accounts maintained outside the U.S.)

Please print or type

Name is required on this line; do not leave this line blank.

Name (As shown on your income tax return)

Business name /disregarded entity name, if different from above

INSERT LEGAL/OFFICIAL NAME OF CONTRACTOR

Check appropriate box for federal tax classification : check only one of the following seven boxes:

☐ Individual/sole proprietor or ☐ C Corporation ☐ S Corporation ☐ Partnership ☐ Trust/estate single-member LLC

☐ Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) __________

☐ Other (see instructions) __________

City, state, and ZIP code

Address (number, street, and apt. or suite no.)

List account number(s) here (optional)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on the “Name” line to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see How to get a TIN on page 3.

Note. If the account is in more than one name, see the instructions for line 1 and the chart on page 4 for guidelines on whose number to enter

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. citizen or other U.S. person (defined below).
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting, is correct.

Certification Instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 3.

Sign Here

Signature of

U.S. person __________

Date __________

Page 7 of 26
**San Francisco Unified School District**

**Criminal Background Check/Tuberculosis Clearance Written Certification Form**

*To be completed by Contractor:*

<table>
<thead>
<tr>
<th>Name of Independent Contractor *:</th>
<th>INSERT LEGAL/OFFICIAL NAME OF CONTRACTOR</th>
</tr>
</thead>
<tbody>
<tr>
<td>Services to be performed under the Agreement*:</td>
<td>ONLINE HOSTED SOFTWARE SERVICES</td>
</tr>
<tr>
<td>Schools/Locations where services are being performed*:</td>
<td>INSERT NAME OF SCHOOL/DEPARTMENT</td>
</tr>
<tr>
<td>Total amount to be paid by the District Under this Agreement not to exceed*:</td>
<td>$INSERT CONTRACT DOLLAR AMOUNT IN NUMBERS</td>
</tr>
<tr>
<td>Term of Agreement*:</td>
<td>FY 20-20</td>
</tr>
</tbody>
</table>

*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.

<table>
<thead>
<tr>
<th>CRIMINAL BACKGROUND CHECK</th>
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<tbody>
<tr>
<td>1.</td>
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</table>
| 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. |

<table>
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<tr>
<th>TUBERCULOSIS CLEARANCE</th>
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<td>3.</td>
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</table>
| 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."*

<table>
<thead>
<tr>
<th>Contractor Signature</th>
<th>Date</th>
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<tbody>
<tr>
<td>INSERT NAME OF AUTHORIZED SIGNATORY</td>
<td>Print name of Signatory</td>
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</table>

<table>
<thead>
<tr>
<th>Administrator Signature</th>
<th>Date</th>
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<tbody>
<tr>
<td>INSERT NAME OF SITE/DEPT ADMINISTRATOR</td>
<td>Print name of Administrator</td>
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<tr>
<th>SLT Member Signature</th>
<th>Date</th>
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<tbody>
<tr>
<td>INSERT NAME OF SLT MEMBER</td>
<td>Print name of Superintendent’s Leadership Team Member</td>
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</table>
## San Francisco Unified School District  
### Contractor’s Disclosure Form Regarding SFUSD Officials

**To be completed by Contractor:**

<table>
<thead>
<tr>
<th>Name of Contractor*</th>
<th>INSERT LEGAL/OFFICIAL NAME OF CONTRACTOR</th>
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</thead>
<tbody>
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<td>Services to be performed under the Agreement*</td>
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</tr>
<tr>
<td>Schools/Locations where services are being performed*</td>
<td>INSERT NAME OF SCHOOL/DEPARTMENT</td>
</tr>
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<td>Total amount to be paid by the District Under this Agreement not to exceed*</td>
<td>$INSERT CONTRACT DOLLAR AMOUNT IN NUMBERS</td>
</tr>
<tr>
<td>Term of Agreement*</td>
<td>FY 20 -20</td>
</tr>
</tbody>
</table>

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

1. Are any of Contractor’s employees (or owners) ALSO current SFUSD employees/Board members, or former SFUSD employees/Board members within the last one (1) year?  
   (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 one (1) year.
   - [ ] 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 one (1) year.  
     (Complete the table below. The list may be continued on an additional page as needed.)

<table>
<thead>
<tr>
<th>NAME of current SFUSD employee/Board member, or former SFUSD employee/Board member within the last one (1) year, who is ALSO Contractor’s employee (or owner):</th>
<th>JOB TITLE(S) AT SFUSD of current SFUSD employee/Board member, or former SFUSD employee/Board member within the last one (1) year, who is ALSO Contractor’s employee (or owner):</th>
<th>DATE on which individual left SFUSD employment/Board. Or, if the individual is currently an SFUSD employee/Board member, write “current.”</th>
</tr>
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</table>

2. Are any of Contractor’s employees (or owners) ALSO retirees from California State Teachers Retirement Services (CAL STRS)?  
   (Check “Yes” or “No” as applicable.)
   - [ ] NO. None of Contractor’s employees (or owners) are retirees from CAL STRS
   - [ ] YES. Contractor’s employees (or owners) listed in the table below are retirees from CAL STRS. By checking YES, I am also certifying that I have informed the employees/owners listed in the table immediately below that the CAL STRS Postretirement Earnings Limit for FY 2018-2019 is $45,022.  
     (Per California Education Code Sections 22714, 24114, 24116, 24214, 24214.5 and 24215.)  
     (List may be continued on added page as needed.)

<table>
<thead>
<tr>
<th>NAME of Contractor’s employees (or owners) that are retirees from CAL STRS:</th>
<th>DATE on which the individual retired under CAL STRS:</th>
</tr>
</thead>
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</tr>
</tbody>
</table>

**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, and 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 within the past one (1) year, Contractor will promptly update this form with the District.

**For SFUSD Office Use Only:**

Received by:  
(SFUSD staff initials)

Date received:

<table>
<thead>
<tr>
<th>Contractor’s Signature</th>
<th>DATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>INSERT NAME OF AUTHORIZED SIGNATORY</td>
<td></td>
</tr>
</tbody>
</table>

Print Name of Signatory
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. “Acceptance” means written notice from the District to the Contractor that the Software Application, and any customization and/or configuration, meets the specifications contained in the Documentation and/or Appendix A ("Scope of Work") of this Agreement. District's Acceptance of the Software Application shall be governed by the procedures set forth in Section 18(e) (“Acceptance Testing”).

b. Authorized Users. "Authorized Users" means all persons holding a valid ID and password issued by the District.

c. 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.

d. Documentation. The technical publications relating to the use of the Software Application, such as reference, installation, administrative and programmer manuals, provided by Contractor to District.

e. Software Application. "Software Application" means the online hosted computer software application residing on Contractor’s servers that Contractor uses to provide to District services described in Appendix A (Scope of Work), and that Contractor makes digitally accessible to the District and its Authorized Users via the Internet.

f. 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.

g. Online. “Online” and “online” shall mean that the item so described is accessible and available via the Internet.

h. Unless otherwise stated, whenever the words “as directed,” “as required,” “as permitted,” shall be understood as the direction, requirement, or permission of the District. 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. AVAILABILITY OF FUNDS AND BUDGET AND FISCAL PROVISION AND TERMINATION IN THE EVENT OF NON-APPROPRIATION

a. This Agreement is subject to the budget and fiscal policies, regulations, and practices of the District.

b. The amount of the District's obligation hereunder shall not at any time exceed the amount herein stated.

c. The District has no obligation to renew this Agreement after expiration of its term. If funds are appropriated for a portion of a fiscal year, this Agreement will terminate, without penalty, at the end of the term for which funds are appropriated.

d. Contractor's assumption of the risk of possible non-appropriation is part of the consideration for this Agreement.

e. This section controls against any and all other provisions of this Agreement.

3. DISALLOWANCE

a. If Contractor claims or receives payment from the District for a service, reimbursement for which is later disallowed by the State of California or United States Government, Contractor shall promptly refund the disallowed amount to the District upon the District’s request. At its option, the District may offset the amount disallowed from any payment due or to become due to Contractor under this Agreement or any other Agreement.

b. By executing this Agreement, Contractor certifies that Contractor is not suspended, debarred or otherwise excluded from participation in federal or state programs. Contractor acknowledges that this certification of eligibility to receive state or federal funds is a material term of this Agreement.

4. SUBMITTING FALSE CLAIMS; MONETARY PENALTIES

Pursuant to Government Code §12650 et. seq., any person, including a contractor, subcontractor or a Contractor, who submits a false claim shall be liable to the District for three times the amount of damages which the District sustains because of the false claim. A person who commits a false claim act shall also be liable to the District for the costs of a civil action brought to recover any of those penalties or damages, and may be liable to the District for a civil penalty of up to ten thousand dollars ($10,000) for each false claim. A person will be deemed to have submitted a false claim to the District if the person: 

---
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 paid or approved by the District;
c. conspires to defraud the District by getting a false claim allowed or paid 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.

5. PAYMENT DOES NOT IMPLY ACCEPTANCE OF WORK
No payment shall in any way lessen the liability of Contractor to remedy or replace unsatisfactory work, service, equipment, or materials, if the unsatisfactory character of such work, service, equipment or materials was not detected at the time of payment. Service, materials, equipment, components, or workmanship that do not conform to the requirements of this Agreement may be rejected by the District and in such case must be remedied or replaced by Contractor without delay at no additional cost to the District.

6. QUALIFIED PERSONNEL
Work under this Agreement shall be performed only by competent personnel under the supervision of and in the employment of Contractor. 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 Contractor. Contractor shall commit adequate resources to complete the project schedule specified in this Agreement.

7. RESPONSIBILITY FOR EQUIPMENT
The District shall not be responsible for any damages to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or by any of its employees, even though such equipment may be furnished, rented or loaned to Contractor by the District.

8. TAXES
Contractor shall pay all taxes levied in connection with this Agreement or the services delivered pursuant to this Agreement.

9. INDEPENDENT CONTRACTOR
a. Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and not an employee of the District. Contractor shall be wholly responsible for the manner in which it performs the services required of it under this Agreement. Nothing contained in this Agreement shall be construed as creating an employment or agency relationship between the District and Contractor or its agents and employees. If any governmental authority should, nevertheless, determine that Contractor is an employee, then the District’s payment obligations hereunder shall be reduced so that the aggregate amount of payments directly to Contractor and to the applicable governmental authority does not exceed the maximum amount specified in this Agreement under Section C (“Compensation”). Contractor shall refund any amounts necessary to effect such reduction.
b. Contractor shall also complete and file with the District the attached W-9 form.

10. INSURANCE
a. Without in any way limiting Contractor’s liability pursuant to the “Indemnification” section of this Agreement, Contractor shall procure and maintain during the full term of this Agreement the following insurance amounts and coverage:
1) Comprehensive/Commercial General Liability Insurance with limits not less than $1,000,000 (one million dollars) each occurrence and $2,000,000 (two million dollars) in the aggregate for Bodily Injury, Personal and Advertising Injury, and Property Damage, including Products-Completed Operations and Sexual Abuse and Molestation coverage. The Sexual Abuse and Molestation coverage will be waived, in the District’s sole discretion, if the Contractor will have no contact with, or limited contact with, the District’s students in the performance of this Agreement, and Contractor completes and submits Criminal Background Check/Tuberculosis Clearance Certification Forms Affirming limited or no contact with students. Acceptance of such Forms by the District shall not decrease the liability of Contractor hereunder.

2) Automobile Liability Insurance with limits not less than $1,000,000 (one million dollars) each accident 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 through the District’s Contracts Office provided that Contractor will not use any automobiles in the performance of this Agreement. The parties understand and agree that 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 not less than $1,000,000 (one million dollars) each accident or disease. A waiver of the workers’ compensation insurance requirements may be requested by Contractor through the District’s Contracts Office provided that Contractor is a sole proprietor with no employees. The parties understand and agree that 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 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 the District, a copy of the policy's claims reporting requirement, or any other policy documents, shall be provided to the District.

c. **Comprehensive/Commercial General Liability policy must provide the following:**
   1) Name as Additional Insured 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 Insured, 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, except with respect to the limits of insurance.

d. The contractor shall provide thirty (30) days advance written notice to the District of cancellation, non-renewal or reduction in coverage to the following office:
   - Contracts Office
   - 135 Van Ness Street, Room 102
   - San Francisco, CA 94102

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. **Acceptability of Insurers:** Insurance is to be placed with insurers with a current A.M. Best’s rating of no less than A- VII, unless otherwise acceptable by District and admitted to do business in California, or accepted by the Surplus Lines Association to do business in California. A non-admitted company should have an A.M. Best rating of A- X or higher. Exception may be made for the State Compensation Insurance Fund when not specifically rated.

h. **Waiver of Subrogation.** Contractor agrees to waive subrogation with respect to Workers’ Compensation insurance 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 District of any such express prohibition or condition in any applicable policy which may void coverage.

i. Should any required insurance lapse during the term of this Agreement, requests for payments for services originating after such lapse may not be processed until the District receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the District may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

j. Before commencing any operations under this Agreement, Contractor must provide the District with the certificates of insurance, additional insured endorsement, and waiver of subrogation with insurers satisfactory to the District, evidencing all coverages set forth above, and shall furnish complete copies of policies promptly upon the District's request. Contractor also understands and agrees that the District may withhold payment for services performed for any violations of the insurance provisions of this Agreement.

k. Approval of the insurance by the District shall not relieve Contractor of any of the insurance requirements set forth herein, nor decrease the liabilities and obligations of Contractor hereunder.

11. **WARRANTY AND INDEMNIFICATION**
a. **Warranty of Right to Provide Software Application.** Contractor warrants that it has the right to provide access to the Software Application to District pursuant to this Agreement, that Contractor has obtained any and all necessary permissions from third parties to provide the Software Application, and that use of the Software Application by Authorized Users in accordance with the terms of this Agreement shall not infringe the copyright of any third party.

b. **Warranty of Conformity to Specifications.** Contractor warrants that the Software Application that it will provide to District will conform to the specifications described in Appendix A (Scope of Work), and that any updates and improvements to the Software Application that Contractor may make during the term of this Agreement will conform to or be consistent with the specifications described in Appendix A (Scope of Work).

c. **General Indemnification.** Contractor shall indemnify and hold harmless the District, its Board, officers, employees and agents from, and, if requested, shall defend them against any and all third-party claims, demands, liabilities, obligations, losses, damages, judgments, costs or expenses (including 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. Notwithstanding the foregoing, Contractor shall have no obligation under this Section with respect to any third-party Claim that is caused by the active negligence or willful misconduct of District and which is not contributed to by any act or omission (including any failure to perform any duty imposed by law) by Contractor or Contractor’s agents or employees.

d. **Infringement Indemnification.** Contractor shall indemnify, defend and hold harmless the District, its Board, officers, employees and agents, for any losses, claims, damages, awards, penalties, or injuries incurred (hereafter “Claims”), including but not limited to Claims of reasonable attorney's fees, which arise from any Claim by any third party of an alleged infringement of copyright, patent right, trade secret, trade name, trademark, service mark, or any other right in intellectual property arising out of the use of the Software Application by the District in accordance with the terms of this Agreement. This indemnity shall survive the termination of this Agreement. NO LIMITATION OF LIABILITY SET FORTH ELSEWHERE IN THIS AGREEMENT IS APPLICABLE TO THIS INDEMNIFICATION. Contractor shall have the right to investigate, defend and settle any such claim against the District and the District will reasonably cooperate with Contractor at Contractor's expense.

e. **Indemnity Conditions.** Contractor’s defense and indemnification obligations under this Section 11 (“Warranty and Indemnification”) are conditioned upon the following: (i) District 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 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 (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, and Contractor obtains the full and complete release of District; District shall have the right to have any suit or proceeding monitored by counsel of District’s choice and at its expense; and (iii) District’s reasonable cooperation with Contractor in the defense and settlement of the claim, at Contractor's expense.

f. The provisions of this Section shall survive the termination or expiration of this Agreement.

12. **LIABILITY OF DISTRICT**

DISTRICT’S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT PROVIDED FOR IN SECTION C (“COMPENSATION”) OF THIS AGREEMENT. DISTRICT SHALL NOT BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS, IN CONNECTION WITH THIS AGREEMENT.

13. **DEFAULT: REMEDIES**

a. Each of the following shall constitute an event of default (“Event of Default”) under this Agreement:

1.) Contractor fails or refuses to perform or observe any term, covenant or condition contained in this Agreement.
2.) 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, (E) takes action for the purpose of any of the foregoing, or (F) is the subject of any order of a court or government authority related to the Federal Bankruptcy Act.

b. On and after any Event of Default, the District 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, District 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 the District on demand all costs and expenses incurred by the District in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. The District shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between District and Contractor all damages, losses, costs, or expenses incurred by the District as a result of such Event of Default due from Contractor pursuant to the terms of this Agreement.

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

14. TERMINATION
a. It is expressly understood and agreed that in an event of Default by the Contractor fails to perform its obligations under this Agreement, the District may terminate this Agreement and Contractor’s rights hereunder shall be ended. Termination shall be upon ten (10) days written notice to the Contractor, and no work will be undertaken by Contractor after receipt of the notice. In the event this Agreement is terminated by the District pursuant to this Section; the Contractor shall be paid for services performed up to the date of termination, as provided for herein.

b. It is further understood and agreed that the District may terminate this Agreement for the District's convenience and without cause at any time by giving the Contractor thirty (30) days written notice of such termination. In such an instance, the Contractor shall be entitled to compensation for services performed up to the effective date of termination, as provided for herein.

c. Upon receipt of any notice of termination of this Agreement, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to effect the termination of this Agreement on the date specified by District in a manner that minimizes the liability of Contractor and District to third parties as a result of termination. Such actions shall include, as applicable and without limitation: canceling orders, assigning interests to the District, settling outstanding liabilities and claims, securing and safe-guarding District property, and halting or completing services in the manner specified by the District.

d. In no event shall District be liable for costs incurred by Contractor or any of its subcontractors after the effective date of termination, except for those costs specifically approved in writing by the District as necessary to effect the termination in a manner acceptable to the District. Such non-recoverable costs include, but are not limited to, anticipated profits on this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys’ fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest.

e. Within thirty (30) days after the effective date of termination, the Contractor will submit an itemized invoice detailing all unpaid services rendered or other permissible costs under this Agreement, up to the effective date of termination. The District’s payment obligation under this Section shall survive termination of this Agreement. Upon payment of approved charges under such invoice by the District, the District shall be under no further obligation to the Contractor, monetarily or otherwise.

f. The following Sections of this Agreement shall survive termination or expiration of this Agreement:

<table>
<thead>
<tr>
<th>4. Submitting False Claims; Monetary Penalties</th>
<th>20. Ownership of Data; Ownership of the Results</th>
</tr>
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<tbody>
<tr>
<td>8. Taxes</td>
<td>21. Audit and Inspection of Records</td>
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15. **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 $470 per source per calendar year (effective January 1, 2017 through December 31, 2018) CABI (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,” aids 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:
      i. 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
      ii. 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.

16. PROPRIETARY OR CONFIDENTIAL INFORMATION OF DISTRICT
Contractor understands and agrees that, in connection with this Agreement, the Contractor may have access to proprietary and/or confidential information which may be owned or controlled by the District, the disclosure of which to third parties may be damaging to the District, its employees or students. Contractor also understands and agrees that the disclosure of such information may violate state and/or federal law and may subject the Contractor to civil liability. Consequently, Contractor agrees that all information disclosed by the District to the Contractor shall be held in strict confidence and used only in performance of the Agreement, unless disclosure is required by law or court order. Contractor shall exercise the same standard of care to protect such information as is used to protect its own proprietary and/or confidential information and in no case less than a reasonable standard of care.

17. PROVISION OF SERVICES VIA SOFTWARE APPLICATION; INTELLECTUAL PROPERTY

a. Provision of Services Via Software Application. Contractor shall provide the services described in Appendix A (Scope of Work) to District and its Authorized Users, in whole or in part, via Contractor’s Software Application. Contractor will provide the Software Application in the following manner: the Software Application will be stored at one or more of Contractor’s U.S. locations, residing on one or more of Contractor’s servers in digital form, made accessible to the District and Authorized Users via the Internet.

b. Grant of License. Contractor hereby grants to District a limited, non-exclusive, non-transferable term license to use, access and benefit from the Software in fulfilling the District’s public education mission during the term of this Agreement. The license hereby granted to District includes the right to provide to the District’s Authorized Users access to the Software in accordance with this Agreement.

c. Copyright and Title. The District acknowledges that the copyright and title to the Software Application and any trademarks or service marks relating thereto remain with Contractor and/or its suppliers. Neither the District nor its Authorized Users shall have right, title or interest in the Software Application.

d. Authorized Uses. Notwithstanding anything to the contrary in this Agreement, no term or provision of this Agreement shall be interpreted to limit or restrict the rights of the District and its Authorized Users, including Fair Use Rights, as provided by U.S. Copyright Act Sections 107 and 108 and other applicable intellectual property law. Notwithstanding anything to the contrary in this Agreement, Authorized Users shall not be restricted from extracting or using information (not including source code or object code) contained in the Software Application for the District’s educational or research purposes, including extraction and manipulation of information for the purpose of illustration, explanation, example, comment, criticism, teaching, research, or analysis, if not engaged in for the purposes of commercial competition.

e. Access by and Authentications of Authorized Users. Authorized Users shall be identified and then authenticated by the use of an ID and password assigned by the District after consultation with Contractor.

f. Specific Restrictions on Use of Software Application.
   i. Unauthorized Use. Except as specifically provided elsewhere in this Agreement, District shall not knowingly permit anyone other than Authorized Users to use the Software Application.
   ii. Removal of Copyright Notice. District may not remove, obscure or modify any copyright or other notices included in the Software Application or included, if any, on the materials produced by the Software Application.
   iii. Commercial Purposes. Other than as specifically permitted in this Agreement, District may not use the Software Application for commercial purposes, including but not limited to the sale of
18. CONTRACTOR PERFORMANCE OBLIGATIONS

a. **Provision of Documentation.** Contractor will provide and maintain help files and other appropriate user documentation.

b. **Support Services.** Contractor will offer activation support, including assisting with the implementation of any other software as needed. Contractor will offer reasonable levels of continuing support to assist the District and Authorized Users in use of the Software Application. Contractor will make its personnel available by email, phone or fax for feedback, problem-solving, or general questions. User support services will be provided by Contractor to District Monday through Friday from 8am to 5pm PST. Support requests will be processed within 24hrs.

c. **Customization.** Any customization by Contractor of the Software Application to meet the District’s functional specifications shall be specifically detailed in the Scope of Work (Appendix A) and shall be subject to Acceptance Testing by the district pursuant to Section 18(e) (“Acceptance Testing”) of this Agreement.

d. **Configuration.** Any configuration by Contractor of the Software Application to meet the District’s functional specifications shall be specifically detailed in the Scope of Work (Appendix A) and shall be subject to Acceptance Testing by the district pursuant to Section 18(e) (“Acceptance Testing”) of this Agreement.

e. **Acceptance Testing.** After Contractor has made the Software Application available to the District, and/or any customization and/or configuration of the Software Application, 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 customization and/or configuration of the Software Application, substantially performs to the specifications contained in the Documentation and/or Statement of Work (Appendix A) of this Agreement. In the event that the District determines that the Software Application, and/or any customization and/or configuration of the Software Application, does not meet such specifications, the District shall notify the Contractor in writing, and Contractor shall modify or correct the Software Application, and/or any customization and/or configuration of the Software Application, so that it meets these specifications. The date of Acceptance will be that date upon which District provides Contractor with written notice of satisfactory completion of Acceptance Testing.

f. **Online Hosting.** 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.

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

i. **Data Centers**
1. N+1 Uninterrupted Power Supply and backup power generator architecture
2. N+1 redundant data center HVAC (heating, ventilation, air conditioning) systems
3. Advanced fire suppression systems to keep any fires localized
4. Preventive maintenance meets or exceeds manufacturers recommended practices, and is performed regularly by highly trained personnel

ii. Network Security
1. Fully redundant network architecture with no single points of failure
2. Industry-leading network bandwidth capacity: 120+ gigabits/second
3. Multiple layers of firewalled network security
4. 24x7 centralized network monitoring in the Network Operations Center (NOC)
5. Multiple concurrent, high-capacity Tier 1 bandwidth providers
6. 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.

h. Implementation of Developing Security Protocols. 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.

i. Security Certificate. Contractor will ensure that all of its websites hosting the Software Application have attached to them a Secure Sockets Layer (SSL), and that such websites will include issuance of a SSL certificate, or other equivalent security certificate, to verify such websites’ identity and to enable secure and encrypted communications between Authorized Users and the online hosted Software Application.

j. 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.

k. Compliance with Americans with Disabilities Act. Contractor will provide content in a manner that complies with the Americans with Disabilities Act (ADA).

l. Notice of “Click-Through” Terms or Other Means of Passive Assent. THIS AGREEMENT EXPRESSLY SUPERSEDES ANY CLICK-THROUGH, CLICK-ON, “SCREEN WRAP” OR OTHER USER AGREEMENT APPEARING ON CONTRACTOR’S ONLINE SOFTWARE APPLICATION WEBSITE.

m. Usage Data. Contractor shall provide to District statistics regarding usage of the Software Application by District and its Authorized Users according to the then current standards in the industry.

n. Information Backup. Contractor shall conduct daily backups of District data, either incremental or full, and must conduct full weekly backups.

19. CONTRACTOR RESPONSIBILITIES REGARDING DATA
Contractor and District understand and agree to the following responsibilities regarding maintaining the security and confidentiality of District Data (as defined in Section 20, “Ownership of Data; Ownership of the Results,” herein):

a. Each of Contractor and District represents that it, its officials, employees, agents and subcontractors, as applicable, are familiar with and shall comply at all times with the requirements of the Family Educational Records Privacy Act (“FERPA”) and equivalent California state law provisions, including but not limited to California Education Code sections 49073 and sequential, and shall protect student education records from unauthorized acquisition or release in compliance with applicable law. Contractor shall access and use personally identifiable information from District student education records solely pursuant to Contractor’s legitimate educational interest in performing duties on behalf of the District under this Agreement or as otherwise expressly permitted herein. Contractor shall act as a “school official” as defined by FERPA. Contractor shall not re-disclose personally identifiable student data to any third party except as permitted under this Agreement and in accordance with applicable state and federal law and the regulations promulgated thereunder.

b. Contractor acknowledges that the District Data that will be imported or otherwise inputted, or gathered by, the Software may contain personally identifiable student, parent and/or employee data which are confidential, and Contractor agrees to protect such data from unauthorized disclosures and to comply with all applicable state and federal confidentiality laws including but not limited to the California Education Code and FERPA and the regulations promulgated thereunder.

c. Contractor shall designate [Insert Name and Title of Contractor’s Designee] as the person
responsible for the security and confidentiality of the data and will notify the District immediately in writing of any change in Contractor’s designee.

d. Contractor will use reasonable security safeguards, including but not limited to encryption and other electronic and technological measures, as well as physical security measures, to prevent the use or disclosure of District Data other than as provided by this Agreement.

e. Contractor shall train and instruct all of Contractor’s staff who require access to District Data in order to carry out their professional responsibilities in relation to this Agreement about the requirements for handling such data, and require each such person who will have access to such information and data to sign a non-disclosure agreement to comply with the confidentiality provisions of this Agreement and any other confidentiality requirements of the Contractor.

f. Contractor agrees that the storage and analysis of District’s student data shall be conducted in a manner that does not permit access to personally identifiable student information by individuals, agencies, or organizations other than representatives of the District and/or Contractor who have legitimate educational interests in the information, specifically, who require access to the data stored and analyzed on Contractor’s Software Application in order to be able to carry out their professional responsibilities as those responsibilities relate to this Agreement.

g. Contractor will not contact any individuals included in the data sets without obtaining advance written authorization from the District and consistent with state and federal law.

h. Contractor shall not re-disclose any District Data with personally identifying information, to any other individuals, agencies, or organizations, without first obtaining, in cooperation with the District, prior written consent of the parent or eligible student.

i. Contractor shall not use District Data stored on Contractor’s Software Application in any form, or in any way, for any purpose other than as required or specifically permitted by this Agreement.

j. Contractor shall keep all data and information furnished by the District in a space physically and electronically secure from unauthorized access. Information and data shall be stored and processed in a way that is reasonably designed, consistent with industry standards, to prevent unauthorized persons from retrieving or altering the information by means of a computer, remote terminal, or other means. Contractor shall not store District Data on laptop computers or other portable computing devices or media, e.g., flash drives, etc.

k. Contractor shall permit examination and on-site inspections by the District upon reasonable advance notice for the purpose of ascertaining whether the terms of this Agreement are being met.

l. Within thirty (30) days of the termination or expiration of this Agreement, if no new agreement is in place allowing Contractor to have access to District Data, Contractor shall return all such data. Return of such data shall be provided in a computer-readable format. Once such data are received by District, and District confirms that they are readable, Contractor shall securely destroy any remaining copies of the data that it holds in any form or media within seven (7) days of said confirmation from District. Contractor shall destroy said data utilizing a method of secure destruction that renders the data unreadable, such as shredding or burning, erasure of magnetic media, electronic deletion using file shredding software, or other industry-standard method of secure destruction. Contractor shall provide District with written certification that such destruction has occurred. To the extent that Contractor’s Software permits District student Authorized Users to create student-generated content, as provided for in Section 19(p) (“Student-generated Content”), the data return and destruction provisions of this Section 19(l) shall not apply shall not apply to student-generated content if the student chooses to establish or maintain an account with the Contractor.

m. In the event of any unauthorized disclosure of District Data, including without limitation personally identifiable information from student education records, the Contractor will promptly notify the District in writing upon discovery of such unauthorized disclosure and, in accordance with applicable law, the Contractor will promptly notify all affected individuals, including without limitation notifying the parents or legal guardians of minor students, or students if at least 18 years of age, as applicable, in writing of such unauthorized disclosure.

n. Contractor shall not use any District Data to engage in or facilitate targeted advertising.

o. A parent, legal guardian or student who has reached 18 years of age may review personally identifiable information in the student’s education records stored in the Software, and seek to correct erroneous information therein, by providing a written request for access or written description of the erroneous information and request for correction to the District, and furnishing the District, upon request, with such information as is reasonably necessary to enable the District to respond to the request. District shall review the request and make a determination, and will be responsible for correcting erroneous information, as applicable, in the Software. Contractor will fully cooperate with
For purposes of this Section 19(p) ("Student-generated Content"), "student-generated content" means materials created by a student, including, but not limited to, essays, research reports, portfolios, creative writing, music or other audio files, photographs, and account information that enables ongoing ownership of student content. "Student-generated content" does not include student responses to a standardized assessment where student possession and control would jeopardize the validity and reliability of that assessment. Contractor shall complete the appropriate check box and fill-in information, below, as applicable, to the services to be provided pursuant to this Agreement:

i. ☐ No. Contractor’s Software does not permit the creation of student-generated content by District student Authorized Users in the performance of this Agreement.

ii. ☑ Yes, Contractor’s Software does permit the creation of student-generated content by District student Authorized Users in the performance of this Agreement. If yes, Contractor shall provide the means by which such users may retain possession and control of such content, including options by which such students may transfer student-generated content to a personal account, and Contractor shall describe such means in this Agreement. The means by which contractor shall permit District student Authorized Users to retain possession and control of student-generated content, including options by which such students may transfer student-generated content to a personal account is as follows: INSERT A DESCRIPTION OF THE MEANS BY WHICH STUDENTS MAY RETAIN POSSESSION AND CONTROL OF STUDENT-GENERATED CONTENT, INCLUDING OPTIONS BY WHICH A STUDENT MAY TRANSFER STUDENT-GENERATED CONTENT TO A PERSONAL ACCOUNT.

20. OWNERSHIP OF DATA; OWNERSHIP OF THE RESULTS

a. Ownership of Data. While the Software Application provided pursuant to this Agreement is the proprietary information and property of Contractor, Contractor acknowledges and agrees that the District owns the District data imported or otherwise inputted into, or gathered by, the Software Application ("District Data"); that the District has a right to control, access and retrieve District Data at any time during the term of the Agreement, in computer-readable format; and that any access to and use of such data by Contractor shall be for the sole purpose of supporting the District’s use of the Software Application pursuant to this Agreement. District Data includes student data, meta data, user content, and pupil records as defined in California Education Code 49073.1(d)(5). Contractor may, however, use and disclose to third parties such District Data that has been anonymized and de-identified ("De-identified Data") in accordance with applicable law. De-identified Data shall have all direct and indirect personal identifiers removed, which includes but is not limited to name, social security number, birth date, demographic information, location information, and student ID number. Contractor shall not attempt to re-identify De-identified Data and not to transfer De-identified Data to any party unless that party agrees not to attempt re-identification of De-identified Data.

b. Ownership of the Results. Any results, reports, data tables, charts, studies, memoranda, computer data files and media, or other documents in electronic or paper format, or in any format or media that may come into existence, which are prepared by Contractor in connection with services to be performed under this Agreement, or produced using the Software Application by Authorized Users of the District, and which contain District student information, shall be the property of the District and available to the District during the term of this Agreement.

21. AUDIT AND INSPECTION OF RECORDS

Contractor agrees to maintain and to permit the District to audit, examine and make copies, excerpts and transcripts of all records including without limitation accurate accounting books and records, invoices, timesheets, documents, reports, student records, payroll and personnel records and other materials and data related to Contractor’s performance of this Agreement, whether funded in whole or in part under this Agreement. The Contractor shall maintain such records and data in an accessible location and condition for a period of not less than five (5) years after a final payment under this Agreement or until after final audit has been completed, whichever is later.

22. SUBCONTRACTING

Contractor may use the services of subcontractors and/or third-party partners ("subcontractors") for the performance of minor portions of this Agreement, including without limitation the use of subcontractor
software and/or subcontractor platform, however, in so doing, Contractor shall remain responsible for the overall performance of this Agreement. In subcontracting, Contractor shall not thereby be relieved from any liability or obligation under this Agreement and, as between District and Contractor, Contractor shall be responsible for the acts, defaults and omissions of any of Contractor’s subcontractors or such subcontractors’ agents or employees as fully as if they were the acts, defaults or omissions of Contractor. Contractor shall ensure that its subcontractors comply with all of the terms of this Agreement insofar as they apply to the subcontracted portion of the Agreement. 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. Upon request, Contractor shall provide to District a list of all subcontractors. In no event shall Contractor subcontract or delegate the majority of, or the whole of, this Agreement without the prior written consent of the District executed pursuant to Section 28 (“Modification of Agreement”). Nothing contained in this Section shall create any contractual relationship between any of Contractor’s subcontractors and 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.

23. ASSIGNMENT
Except to the extent permitted under Section 22 (“Subcontracting”) herein, the parties understand and agree that the services to be performed by the Contractor under this Agreement are personal in character and neither this Agreement, nor any duties or obligations hereunder, shall be assigned or delegated by the Contractor without the prior written consent of the District.

24. NON DISCRIMINATION (Required by SFUSD Board Policies 0410 and 6141)
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 Board Policy 0410, which requires that all District programs, activities, and practices be 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. To the extent that the services Contractor will provide to the District under this Agreement include the provision of services to students, Contractor further understands and agrees that, in providing such services to the District, Contractor shall adhere to Board Policy 6141, which recognizes that students may discuss or be exposed to controversial issues that may arouse strong reactions based on personal values and beliefs, political philosophy, culture, religion, or other influences. In the event that controversial issues are discussed or presented during the course and scope of Contractor’s services under this Agreement, Contractor agrees topics shall be relevant to the student activity and shall be designed to develop students’ critical thinking skills, ability to discriminate between fact and opinion, respect for others, and understanding and tolerance of diverse points of view. Contractor further understands and agrees that it will not disseminate to students any information, in any form, which reflects adversely upon persons because of 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.

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.

25. CRIMINAL BACKGROUND CHECKS
a. Criminal Background Check
   i. Contractor is required to comply with the criminal background check provisions of Education Code Section 45125.1. Contractor will conduct criminal background checks with the California Department of Justice (CDOJ) for all Contractor employees, agents, and volunteers assigned to the District, and will certify that no employees, agents, or volunteers who have been convicted of serious or violent felonies as specified, will have contact with District pupils 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.
   ii. Contractor will provide the District with a list of all employees, agents and volunteers who have cleared the criminal background check, as detailed above, and who will have contact with District pupils pursuant to this Agreement, and specify to which sites they will be assigned.
   iii. Contractor will be responsible for the costs of the criminal background checks.
   iv. As written certification of its compliance with this Section, Contractor will complete and submit the Criminal Background Check/ Tuberculosis Clearance Certification Form (ATTACHED). Contractor will submit an updated form whenever there are staffing changes.
   v. The criminal background check requirement applies only to Contractor’s employees, agents or volunteers who will have more than limited 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 criminal background check requirements. If Contractor asserts that its employees, agents or volunteers will have no contact or only limited contact with District students, the Superintendent’s Leadership Team-level Administrator supervising this Agreement has the responsibility to make a reasonable determination of whether Contractor, its employees, agents or volunteers will have only limited contact with students.

b. Subsequent Arrest Notification
   i. In addition to the initial criminal background check, Contractor will obtain subsequent arrest notification to monitor future arrests of employees, agents and volunteers who will have contact with District students, and is responsible for all costs associated with these subsequent notifications.
   ii. Upon receipt of notice that any of its employees, agents, or volunteers has been arrested or convicted of a serious or violent felony as described in EC 45125.1 (citing 45122.1), a sexual offense as defined by EC 44010, or a controlled substance offense as described in EC 44011, Contractor will immediately prohibit such employee, agent, or volunteer from having any contact with pupils, and will immediately notify SFUSD.

c. Failure by Contractor to comply with this Section may result in termination of this Agreement at the District’s sole discretion.

26. **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 Superintendent’s Leadership Team-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
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.

27. NON-WAIVER OF RIGHTS
Either party’s failure at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions of this Agreement by the other party, at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

28. MODIFICATION OF AGREEMENT
Any amendment or modification to this Agreement shall be by written instrument and shall only be effective upon execution by the duly authorized representatives of the parties and approval by the Board of Education.

29. USE OF NAME; MARKETING
Excluding a simple statement or acknowledgement that Contractor has a written agreement with the District, Contractor will not use the name, marks or logos of the District 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 District. Notwithstanding the foregoing provisions of this Section, nothing in this Section shall infringe upon the First Amendment rights of either party.

30. DISPUTE RESOLUTION
a. District and Contractor agree to exercise their best efforts and to negotiate in good faith to amicably resolve any dispute that may arise concerning the performance by either party of its obligations under this Agreement, utilizing the process detailed in this Section. If District's and Contractor's Project Managers cannot resolve disputes through such negotiations, then the parties will escalate the dispute to their respective executives who shall have authority to settle the controversy and who are at a higher level of management than the Project Managers. Either District or Contractor may give the other party written notice of any dispute not resolved by good faith negotiations between the parties’ respective Project Managers, as follows.

b. Within fifteen (15) days after delivery of the notice, the receiving party shall submit to the other a written response. The notice and response shall include (a) a statement of that party's position and a summary of arguments supporting that position, and (b) the name and title of the executive who will represent that party and of any other person who will accompany the executive. Within fifteen (15) days the initiating party shall provide the same information to the responding party. Within thirty (30) days after delivery of the initial notice, the executives of both 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 party to the other will be honored. All negotiations pursuant to this Section are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.

c. If the executives cannot resolve the dispute to the satisfaction of both parties, then District and Contractor may attempt to mutually agree on the conditions under which such unresolved disputes can be referred to third-party non-binding mediation. If the parties do not mutually agree to such mediation, or mutually select a mediator for the dispute, or such efforts do not resolve the dispute, then either party may pursue any other remedy available under this Agreement or otherwise available under law. The parties understand and agree that binding arbitration is not a means of dispute resolution under this Agreement for any disputes between the parties arising out of or in relation to this Agreement.

d. Compliance with the dispute resolution process set forth in this Section shall be a condition precedent to either party’s right to pursue any other remedy available under this Agreement or otherwise available under law.

31. COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT
Contractor acknowledges that, pursuant to the Americans 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.

32. **COMPLIANCE WITH LAWS**
Contractor shall keep itself fully informed of the applicable state and federal laws affecting the performance of this Agreement, as they may be amended from time to time, and shall at all times comply with such laws.

33. **GOVERNING LAW; VENUE**
This Agreement shall be governed, construed, and enforced in accordance with the laws of the State of California, without regard to its conflict of laws rules. The venue for all litigation relative to this Agreement shall be San Francisco, California.

34. **SECTION HEADINGS**
The section headings contained herein are for convenience in reference and are not intended to define the scope of any provision of this Agreement.

35. **ENTIRE AGREEMENT**
This Agreement constitutes the entire agreement and understanding between the parties hereto with respect to the subject matter hereof, and supersedes any prior or contemporaneous written or oral understanding or agreement, and may be amended only by written amendment executed by the parties to this Agreement as provided for in Section 28 (“Modification of Agreement”).

36. **EXECUTION OF THE AGREEMENT, EXECUTION IN COUNTERPARTS**
   a. Original copies of this Agreement shall be executed by the respective party’s authorized signatory(ies).
   b. 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 one or more counterparts have been signed by each of the parties and delivered to the other.

37. **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.

38. **MANDATED REPORTING OF SUSPECTED CHILD ABUSE OR NEGLECT**
If Contractor personnel will provide services at a school site or will work directly with District students pursuant to this Agreement, Contractor is a mandated reporter of suspected child abuse or neglect under California Penal Code section 11165.7, and Contractor will submit reports of suspected child abuse or neglect to Child Protective Services (CPS) as required by law. (Cal. Penal Code section 11165.7, e.g. subsections (a)(7) and (a)(8); Sections 11164 and sequential.) Contractor shall maintain copies of such reports. Contractor is requested, but is not required, to notify the District school site administrator when a CPS report has been filed.