

**MASTER INFORMATION TECHNOLOGY
SERVICES AND SUPPORT AGREEMENT**

BETWEEN

THE LOS ANGELES UNIFIED SCHOOL DISTRICT

AND

NETXPERS, INC.

1777 Botelho Dr., Suite 102
Walnut Creek, CA 54596

Period of Performance:	September 21, 2016 (the “ Effective Date ”) through September 20, 2019 (subject to early termination or extension for up to two (2) one-year option renewals as set forth herein)
Contractor Service Area(s):	Pursuant to Schedule A of this Agreement Site Based Technology Support Services
Contract Type:	Bench – Master Services Agreement

MASTER INFORMATION TECHNOLOGY SERVICES AND SUPPORT AGREEMENT

THIS MASTER INFORMATION TECHNOLOGY SERVICE AND SUPPORT AGREEMENT (this “**Agreement**”) is made and entered into as of the 21st of September, 2016 between The Los Angeles Unified School District (“**LAUSD**” or the “**District**”), and the entity named on the cover page to this Agreement and identified as “Contractor” by the parties’ signatures below (“**Contractor**”).

1. BACKGROUND AND OBJECTIVES

1.1 Background

- (a) This Agreement is entered into as part of LAUSD’s “Bench Contract Program,” a program whereby District enters into an indefinite number of contracts for the future provision of information technology services related to LAUSD’s operations. LAUSD anticipates contracting with a variety of potential service providers for such services on a nonexclusive basis.
- (b) The Bench Contract Program covers the following types of services: **Site Based Technology Support Services**.
- (c) This Agreement sets forth the general terms and conditions governing the contractual relationship between LAUSD and Contractor for Contractor’s participation in the Bench Contract Program. Work performed under this Agreement will be pursuant to specific terms and conditions set forth in one or more Work Orders executed by the parties hereunder.
- (d) Contractor is an established provider of services in the Contractor Service Area described below. Contractor represents that it has, and will have, the skills, qualifications, expertise and experience necessary to perform and manage the services described in each Work Order in an efficient, cost-effective manner with a high degree of quality and responsiveness, and that it has performed and continues to perform similar services for other customers in such manner.

1.2 Objectives

LAUSD’s objectives in entering into this Agreement include obtaining:

- (a) high quality services in the Contractor Service Area provided in a cost-effective manner;
- (b) a flexible relationship with Contractor under which Contractor will be highly responsive to LAUSD requirements as LAUSD may establish them from time to time; and
- (c) consistent and effective management of the relationship between Contractor and LAUSD.

2. DEFINITIONS

2.1 Certain Definitions

As used in this Agreement and the Schedules, capitalized terms will have the meanings set forth in this Article 2.

- (a) “**Affiliate**” means any entity controlled by, controlling, or under common control with, a party, where “control” means the possession of the power, directly or indirectly, to direct the management and policies of a party whether through the ownership of voting securities, contract or otherwise.
- (b) “**Charges**” means the amounts payable to Contractor by LAUSD as payment in full for Services provided under each Work Order. All Charges will be in U.S. Dollars.

- (c) **“Change Order”** means an amendment to any Work Order executed by a duly authorized representative of Contractor and by District’s Chief Information Officer (or by a District officer authorized by the Chief Information Officer to execute Change Orders in his or her absence).
- (d) **“Confidential Information”** means any and all confidential information of LAUSD and/or LAUSD’s employees or students and includes, but is not limited to, LAUSD Data, all LAUSD student records and personnel records, and the minutes of any and all meetings between Contractor and LAUSD regarding this Agreement or the Services. Except to the extent that LAUSD is nonetheless required to maintain applicable information or data as confidential, Confidential Information excludes: (i) information independently developed by Contractor for a party other than LAUSD without the use of confidential information of LAUSD; (ii) information that is or becomes publicly known through no wrongful act of Contractor or of any third party; and (iii) any information obtained by Contractor without an obligation of confidentiality from a third party who did not receive it directly or indirectly from LAUSD.
- (e) **“Contractor Commercial Software”** means any software used to provide the Services that is commercially available off-the-shelf software owned by Contractor or a third party, which Contractor makes generally available for licensing by end users and which does not result, in whole or in part, from development or customization efforts under this Agreement.
- (f) **“Contractor Customized Software”** means any software used to provide the Services in which Contractor or third parties have all right, title, and interest (including ownership of copyright), but which is customized or otherwise modified by Contractor pursuant to the terms of an applicable Work Order for use by LAUSD. **“Customizations”** means those features, functions, interfaces or other aspects of the Contractor Customized Software that have been specifically developed or customized for District. Contractor Customized Software will include any and all bug fixes and other nonmaterial revisions to Contractor Customized Software, regardless of whether District has funded such bug fixes or other revisions.
- (g) **“Contractor Personnel”** means Contractor’s employees and subcontractors (as well as any employees or subcontractors of those subcontractors) performing the Services.
- (h) **“Contractor Service Area”** means the contractor service area(s) identified on the cover page attached hereto, as defined more specifically in Schedule A. The Contractor Service Area may also include related consulting services, as described in more detail in an applicable Work Order.
- (i) **“Deliverable”** means a deliverable to be delivered or provided by Contractor under an applicable Work Order as specified therein, and may be Contractor Commercial Software, Contractor Customized Software, Work Product, Documentation, Code Documentation or any other items identified for delivery in the applicable Work Order. **“System Deliverables”** are those software and software-related deliverables that Contractor will deliver to District under this Agreement and that require installation or operation in connection with or following such delivery.
- (j) **“District”** and **“LAUSD”** mean the Los Angeles Unified School District, each and every subdivision or unit thereof constituted now and in the future (including, if applicable, schools and or territories within Los Angeles County, California not currently serviced by the Los Angeles Unified School District, charter schools in Los Angeles County, and other entities with whom the Los Angeles Unified School District contracts to provide educational and education-related services to students resident in Los Angeles County), and each and every entity succeeding in the future to the responsibility of the Los Angeles Unified School District (including, if applicable, such other entities described in this definition) to provide educational services to students resident in Los Angeles County at any level of education.

- (k) **“Documentation”** means all operator guides, operating procedures (including any special year-end procedures), user manuals, training aides, installation guides, testing criteria, functional and detailed specifications and other technical documents with respect to a Deliverable or any portion or component thereof. **“Code Documentation”** is a specific type of Documentation (sometimes described as “internal software code”) comprising the written text that accompanies computer software source code, describing the functionality incorporated in the source code, its data structure, algorithms and application program interfaces, and explaining how the computer software performs its functions.
- (l) **“Final Criteria”** has the meaning given in Section 7.1.
- (m) **“Final Deliverable”** means all related Deliverables under a Work Order or a series of related Work Orders, where such Deliverables are intended or required to operate as a system or otherwise to perform interrelated functions.
- (n) **“Initial Acceptance Period”** has the meaning given in Section 7.2.
- (o) **“Key Contractor Personnel”** has the meaning given in Section 9.2(a).
- (p) **“LAUSD Data”** means information (regardless of format) entered into software or equipment by or on behalf of LAUSD, as well as information derived from this information.
- (q) **“LAUSD Information”** means all information, in any form, furnished or made available directly or indirectly to Contractor by LAUSD or otherwise obtained by Contractor from LAUSD, including: (i) all information of LAUSD or any LAUSD Affiliates to which Contractor has had or will have access, whether in oral, written, graphic or machine-readable form; (ii) all Work Product; and (iii) all Confidential Information.
- (r) **“LAUSD Information Security Policies”** means the written security policies and procedures that are in effect during the Term for the security of LAUSD facilities and LAUSD Information; as such policies may be modified, amended or replaced from time to time and provided to Contractor.
- (s) **“LAUSD Software”** means software owned by LAUSD and includes software developed by LAUSD internally and software developed by third parties for ownership by LAUSD.
- (t) **“Pass-Through Expenses”** means reasonable and actual out-of-pocket expenses incurred by Contractor for equipment, materials, supplies or other Services provided to LAUSD, but not including Contractor’s overhead costs, administrative expenses or other mark-ups.
- (u) **“Schedule”** means any schedule, exhibit, agreement or other document either (i) attached to this Agreement; (ii) attached to any Work Order; or (iii) executed by the parties at any time hereafter, if such document states that it is a schedule or exhibit to this Agreement or any Work Order.
- (v) **“Services”** means services within the Contractor Service Area to be performed under a Work Order.
- (w) **“Term”** means the initial term of this Agreement described in Section 4.1 and any and all renewal terms entered into pursuant to Section 4.2.
- (x) **“Term of Nondisclosure”** means, with respect to any Confidential Information, a period of five years from the last date of disclosure of any such Confidential Information, or such longer time as may be required by law. Contractor understands and agrees that, for certain kind of Confidential Information (such as, by way of example only, LAUSD student records and student information

protected by FERPA, HIPAA, and State student data privacy laws), the Term of Nondisclosure may be a period of time with no expiration date.

- (y) “**Virus**” means any computer virus or other “contaminant,” including any codes or instructions that are designed to (or permit or enable anyone to) inappropriately access, modify, delete, damage or disable any aspect of the LAUSD information technology environment.
- (z) “**Work Order**” means a written agreement between LAUSD and Contractor implementing specific services and identifying certain deliverables to be provided by Contractor under the terms of this Agreement. A form of Work Order is attached hereto as Schedule D.
- (aa) “**Work Product**” means any tangible or intangible work product that is a literary or other work of authorship made specifically for and delivered to District by Contractor as part of the Services, either solely or jointly with others, including by independent contractors, Contractor’s employees or agents, during the course of or in relation to the performance of this Agreement. Work Product shall include Documentation, where such Documentation is made specifically for District. Notwithstanding anything herein to the contrary, nothing shall waive or otherwise impair District’s, Contractor’s or a third-party’s ownership of or other rights in any portions of Work Product, data, information or other intellectual capital, developed or acquired prior to or otherwise developed independent of this Agreement or any applicable Work Order, or derivatives thereof (collectively, the “**Pre-Existing Items**”). No party shall gain any ownership rights in the other party’s Pre-Existing Items or any derivative works thereof.

2.2 Other Definitions

To the extent not defined above, other capitalized terms used in this Agreement, the Schedules and the Work Orders will be defined in the context in which they are used and have the meanings there indicated.

3. MASTER AGREEMENT - GENERAL

3.1 Agreement

This Agreement contains general contractual terms for Services to be provided to LAUSD by Contractor under Work Orders to be prepared, negotiated and executed by LAUSD and Contractor pursuant to the terms of this Agreement. Separate Work Orders will be entered into for discrete Services. Each Work Order shall incorporate by reference and be subject to the terms of this Agreement including all of its Schedules, and shall describe the Services covered by the Work Order, the provisions for payment, the terms for performance, applicable service levels, and other provisions that are specific to the Work Order.

3.2 Interpretation and Precedence

This Agreement, the Schedules attached hereto, the Work Orders and any Schedules attached thereto are to be interpreted so that all of the provisions are given as full effect as possible. In the event of a conflict between these documents, the following order of precedence will apply:

- (a) This Agreement;
- (b) any Schedule to this Agreement;
- (c) the Work Order (provided, however, that the Work Order may contain an exception to or deviation from this Agreement with respect to the applicable Work Order only if specifically agreed upon in writing by District’s Chief Information Officer); and
- (d) any Schedule to the Work Order.

3.3 No Implied Agreement; Nonexclusivity

- (a) Nothing in this Agreement obligates LAUSD or Contractor to enter into any Work Order.
- (b) Except as expressly agreed upon under a Work Order, nothing in this Agreement requires LAUSD to purchase products or Services from Contractor. LAUSD may request information, proposals, or competitive bids from third parties on the same or different terms than as provided in this Agreement.
- (c) Contractor may provide products and services to any other parties on terms that are the same as or different than those provided herein, provided that Contractor complies with all of its obligations of confidentiality contained herein.
- (d) Except for express agreement for the purchase of specified amounts of Services set forth in a Work Order, LAUSD may obtain services similar to, identical to, or in addition to or outside the scope of the Services at any time during the Term from a third party or provide them internally. LAUSD shall have no obligation to obtain from Contractor any services that are not included within the definition of Services as described in a specific Work Order. Any Services that are limited to specific locations under a Work Order apply only to such locations.
- (e) Contractor acknowledges that LAUSD may be considering, and may in the future consider, the development and implementation of ideas, products and technologies similar to or the same as those that may be owned or controlled by Contractor. Nothing in this Agreement will prevent LAUSD from pursuing any such ideas or pursuing the development and implementation of products or technologies similar to or related to Contractor's, either internally or through third parties.

4. TERM

4.1 Agreement Term

The initial term of this Agreement shall begin on **September 21, 2016** and shall continue through **September 20, 2019** unless terminated or extended pursuant to the terms of this Agreement.

4.2 Renewal

Provided that this Agreement has not expired or otherwise been terminated, LAUSD shall have the option to renew this Agreement for up to two one-year periods (as specified by LAUSD in any renewal notice delivered hereunder) by delivering written notice of such renewal to Contractor at least thirty (30) calendar days before expiration of the initial term described in Section 4.1. After the initial term, any subsequent renewal of this Agreement shall be by mutual agreement prior to the expiration of the then-current Term. All of the terms of this Agreement and the applicable Work Orders shall continue to apply without change during any renewal period.

4.3 Work Order Term

The term of each Work Order shall be as stated in such Work Order but in no event shall a Work Order term extend beyond the Term unless District has specifically agreed in writing. If this Agreement is terminated for any reason, each Work Order hereunder shall also terminate unless District has specifically directed otherwise in writing.

5. SERVICES - GENERAL

5.1 General

The Services to be provided under this Agreement are limited to those within the Contractor Service Area and will only be performed subject to a Work Order approved by District.

5.2 Resources

Except as otherwise expressly provided in this Agreement or a Work Order, Contractor will be responsible for providing all facilities, personnel and other resources necessary to provide the Services.

5.3 Premier Customer

Contractor will treat LAUSD as a premier customer. As a premier customer of Contractor, LAUSD shall be entitled to:

(a) Disaster Recovery Priority

In the event of a disaster at a Contractor facility used to provide the Services, with respect to resources engaged in recovery efforts stemming from such disaster that Contractor must allocate between or among Contractor's customers, no other Contractor customer will receive higher priority than LAUSD with respect to those resources.

(b) Priority Staffing

Contractor shall make a good faith effort throughout the Term to ensure that Contractor's best qualified personnel resources are assigned to the LAUSD account.

5.4 Licenses and Permits

Contractor will be responsible for obtaining, at Contractor's cost, all applicable licenses, authorizations and permits required of Contractor to perform this Agreement. Contractor will pay all fees and taxes associated with such licenses, authorizations and permits.

5.5 RESERVED

5.6 RESERVED

5.7 Equal Employment Opportunity

It is the policy of District that, in connection with all work performed under District agreements, there shall be no discrimination against any employee or applicant for employment because of race, color, religious creed, national origin, ancestry, marital status, sex, sexual orientation, age, disability or medical condition and therefore Contractor agrees to comply with applicable federal and state laws. In addition, Contractor agrees to require like compliance by all subcontractors performing Services.

5.8 *Certification Regarding Debarment, Suspension, Ineligibility, or Voluntary Exclusion for Award*

(a) By signing this Agreement, Contractor certifies that Contractor and any of its principals:

- (i) **Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded for the award of contracts by any Federal agency; and**

- (ii) **Have not, within the three-year period preceding the Effective Date, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a Federal, state or local government contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; and are not presently indicted for, or otherwise criminally or civilly charged by a Government entity with, commission of any of these offenses.**
- (b) It shall be a material breach of this Agreement if, at any time during the Term hereof, Contractor shall be: debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency; or, convicted of or have a civil judgment rendered against it for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a Federal, state or local government contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property.

5.9 *Conflict of Interest*

Contractor agrees to comply with, and cause all Contractor Personnel to comply with, the Contractors' Code of Conduct attached hereto as Schedule C, as such Code of Conduct may be amended by LAUSD from time to time and provided to Contractor. Contractor will take all necessary steps to avoid the appearance of a conflict of interest and will have an ongoing duty to disclose to District any and all circumstances that pose a potential conflict of interest. Should a conflict of interest issue arise, Contractor agrees to fully cooperate in any inquiry and to provide District with all documents or other information reasonably necessary to enable District to determine whether or not a conflict of interest existed or exists. Any breach of this section shall constitute grounds for immediate termination of this Agreement, in addition to any other remedies District may have.

5.10 *Fingerprinting*

- (a) For those Contractor Personnel who will have contact with District pupils, Contractor will comply with this Section 5.10, pursuant to California Education Code Section 45125.1.
 - (i) **Contractor will provide District with a list, by school site, of the names of Contractor Personnel who may have contact with District pupils (collectively, the "Affected Persons"), and will update this list for changes in Contractor Personnel.**
 - (ii) **Contractor will require the Affected Persons to submit to fingerprinting in accordance with Education Code Section 45125.1.**
 - (iii) **Contractor will prohibit each Affected Person from having contact with District pupils until the California Department of Justice has ascertained that such Affected Person has not been convicted of any violent or serious offense which, if committed in California, would have been punishable as a violent or serious felony (under California Penal Code Sections 667.5(c) and 1192.7(c), respectively).**
 - (iv) **Contractor hereby certifies and confirms, and upon request will separately certify in writing to District, that neither Contractor nor any Affected Persons have been convicted of any violent or serious offense described in Section 5.10(a)(iii) above.**

- (b) In addition to the foregoing, District may require Contractor and Affected Persons to submit to tuberculosis testing and additional background checks and testing at District's sole and absolute discretion.

6. SERVICES – RESPONSE TO WORK ORDER REQUESTS

6.1 Work Order Requests

- (a) Should LAUSD desire to obtain Services from Contractor, LAUSD will initiate a request for Services by providing such request in writing (a “**Work Order Request**”) to Contractor. Subject to Section 3.3, Contractor may elect, within the time frame specified in a Work Order Request, to prepare and deliver to LAUSD a proposal in response to such Work Order Request (a “**Services Proposal**”). Contractor will prepare all Services Proposals in good faith. Contractor will be under no obligation to prepare any Services Proposal hereunder; provided, however, that if Contractor determines not to prepare a Services Proposal for any Work Order Request, Contractor will promptly notify LAUSD that Contractor will not respond to the applicable Work Order Request.
- (b) Once submitted to LAUSD, a Services Proposal shall constitute an offer by Contractor to provide the Services described therein on the terms set forth therein, and shall be irrevocable for a period of sixty (60) calendar days. LAUSD may provide Contractor with comments regarding a Services Proposal, and Contractor shall respond to such comments, if any. A Services Proposal will become effective only when a detailed Work Order has been drafted by the parties and accepted and executed by LAUSD, subject to any required approvals within LAUSD. LAUSD is under no obligation to accept any Services Proposal.
- (c) Contractor's failure to respond to a Work Order Request as required under Section 6.1(a) above will initially be without prejudice to Contractor's ability to respond to subsequent Work Order Requests; provided, however, that if LAUSD should receive no response from Contractor to three separate Work Order Requests, and Contractor is not performing Services under any Work Order then in effect, LAUSD will be entitled to terminate this Agreement immediately upon written notice to Contractor.

6.2 Changes to Work Orders

Any change to a Work Order shall be made by Change Order executed pursuant to the change control procedures described in Section 11.6.

6.3 Work Order Service Levels

Each Work Order will, if required by LAUSD, include service levels applicable to certain specified Services under the Work Order.

7. SERVICES – APPLICATION MAINTENANCE AND ENHANCEMENT

The provisions of this Article 7 shall only apply to the extent that Contractor is required under a Work Order to deliver a Deliverable to District.

7.1 Development of Acceptance Testing Criteria

Unless otherwise specified in a Work Order, at least sixty (60) calendar days prior to the date on which Contractor is scheduled to deliver a System Deliverable, Contractor shall deliver to District its specifications and proposed acceptance test criteria for such System Deliverable. The specifications and proposed acceptance

test criteria, once approved by the parties in writing, shall be the criteria used in acceptance testing of a System Deliverable (the “**Final Criteria**”). Contractor will not commence development of any System Deliverable hereunder until the parties have approved acceptance test criteria in writing, or, in the absence of such approval, District has specifically authorized Contractor in writing to commence development.

7.2 Acceptance Testing

- (a) Following delivery to District of a System Deliverable and the installation or other implementation thereof, the System Deliverable shall be subject to acceptance testing by District. If District notifies Contractor that a System Deliverable does not satisfy or conform to the Final Criteria within the time period prescribed in the applicable Work Order (the “**Initial Acceptance Period**”), Contractor shall, at no cost to District, take whatever action is necessary to correct any deficiencies within thirty (30) calendar days after District’s notification to Contractor.
- (b) Upon completion of corrective action by Contractor, District will subject the revised System Deliverable to acceptance testing. If, upon the expiration of the sixty (60) day period after the end of the Initial Acceptance Period, the System Deliverable still does not conform to the Final Criteria, District may: (i) immediately terminate, under Article 20 herein (but without any requirement of a 30-day cure period), the applicable Work Order, along with, in District’s discretion, any related Work Order(s); or (ii) require Contractor, at no cost to District, to continue (even beyond this sixty (60) day period) to correct the deficiencies and to take whatever action is necessary so that the System Deliverable shall conform to the Final Criteria, while reserving the right to terminate (as specified in (i) above) at any time so long as the System Deliverable fails to conform to the Final Criteria.
- (c) Notwithstanding the foregoing, if Contractor fails to cure a deficiency within one hundred twenty (120) calendar days after receipt of notification thereof from District, Contractor may elect to cease curing the deficiency if Contractor (a) notifies District that it will cease curing the deficiency and (b) promptly refunds District for all amounts paid under the Work Order and any related Work Order(s) for the System Deliverable(s). However, in the event that District has accepted a portion or component of the System Deliverable(s) in accordance with this Article 6.3, and District desires to retain such portion or component, the refund owed to District shall be equitably reduced by the amount that such portion or component represents of the System Deliverable(s) taken as a whole.

7.3 Acceptance Notice

When, in District’s reasonable judgment, a System Deliverable has satisfied the Final Criteria, District shall give Contractor written notice thereof. At the completion of installation of any Final Deliverable, the Final Deliverable shall operate for a period of sixty (60) consecutive calendar days in conformity with its Documentation (which shall include, if applicable and without limitation, Final Criteria). If a Final Deliverable does not operate for a period of at least sixty (60) consecutive days in conformity with its Documentation, District may (i) immediately terminate, under Article 20 herein (but without any requirement of a 30-day cure period), the applicable Work Order, along with, in District’s discretion, any related Work Order(s), and, at District’s request, Contractor shall promptly reimburse District any amounts paid for the non-conforming Final Deliverable; or (ii) if the parties agree in writing that it is commercially reasonable under the circumstances, Contractor shall, at no cost to District, continue correction of deficiencies for a period of time agreed to by the parties so that the Final Deliverable shall conform to its Documentation, while reserving the right to terminate (as specified in (i) above) at any time so long as the Final Deliverable fails to conform to its Documentation. Acknowledgement in writing by District of such operation for said sixty (60) day period shall constitute final acceptance of the Final Deliverable involved.

7.4 Other Deliverables

For any Deliverable that is not a System Deliverable, the applicable Work Order will set forth the acceptance criteria and other testing required for District to evaluate and accept (or, where necessary, reject) such Deliverable; provided, however, that in no case will a Deliverable be accepted by District until District has provided Contractor with District's written acceptance thereof.

8. SERVICE LEVELS; PERFORMANCE STANDARDS; EQUIPMENT AND FACILITIES

8.1 Service Levels

Work Orders may include quantitative service levels to be met by Contractor. Unless otherwise agreed, Contractor's performance of the Services against applicable service levels will be measured on a monthly basis. With respect to each Service that has an associated service level, Contractor shall provide such Service throughout the Term in a manner that meets or exceeds the associated service level. Regardless of whether a Work Order includes service levels, Contractor shall perform all Services and obligations promptly, diligently and in a workmanlike and professional manner, using qualified individuals.

8.2 Performance Standards

Regardless of whether there exists an associated Service Level, Contractor shall perform all Services and obligations promptly, diligently and in a workmanlike and professional manner, using qualified individuals.

8.3 Measurement and Monitoring Tools

Contractor shall implement measurement and monitoring tools and procedures reasonably designed to measure its performance of the Services and assess such performance against any applicable service levels. Contractor shall provide LAUSD with a monthly report of service level performance under any applicable Work Order. Upon LAUSD's request, Contractor shall provide LAUSD with access to the measurement and monitoring tools described herein, and to any information that they generate.

8.4 Failure to Meet Service Levels

Contractor acknowledges that its failure to meet one or more service levels may have a material adverse effect on the business and operations of LAUSD and that the actual amount of damage sustained by LAUSD because of such failure may be impossible or extremely difficult to determine. Accordingly, any Work Order may provide that if Contractor fails to meet a service level, LAUSD shall have the option, but not the obligation, to recover the amounts specified in such Work Order as service level credits against amounts owed to Contractor by LAUSD.

8.5 Equipment

- (a) The terms of this Section 8.5 shall only apply to the extent that Contractor provides or maintains equipment and tools in order to provide the Services under a Work Order.
- (b) Except as otherwise specified in a Work Order, each party will be responsible for providing and maintaining its own equipment and tools, and Contractor will be responsible for providing all equipment and tools necessary to provide the Services.
- (c) If LAUSD shall make available to Contractor any computer, communications or other equipment owned or leased by LAUSD, Contractor shall: (i) use such equipment for the sole purpose of providing the Services and shall not use such equipment to provide services to or for the benefit of

any third party; (ii) comply with any directions from LAUSD concerning the use and location of such equipment; and (iii) return such equipment to LAUSD, upon termination of the applicable Work Order, in the same condition it was in when delivered or provided to Contractor, ordinary wear and tear excepted.

8.6 Facilities

- (a) The terms of this Section 8.6 shall only apply to the extent that Contractor is responsible for providing (i) a facility in order to provide or perform Services, or (ii) a data center for the hosting of applications or the storage of LAUSD Data.
- (b) Except as specifically set forth in a Work Order, Contractor will be responsible for providing all space and equipment necessary to provide the Services at its own or other facilities. Contractor will seek LAUSD's prior approval for any relocation of the facilities at and from which the Services are provided and will manage any such changes in accordance with the change control procedures described in Section 11.6.
- (c) With respect to any Contractor data center from which applications are hosted by Contractor on LAUSD's behalf or at which LAUSD Data is stored, Contractor shall establish and maintain proper and adequate facilities, equipment and supplies, and a properly trained and adequate staff, including necessary management and support staff. Such data center shall operate twenty-four (24) hours per day, seven (7) days per week.
- (d) Throughout the Term, Contractor shall maintain adequate physical and logistical security measures and safeguards at Contractor facilities (including security measures and safeguards specific to those areas of the facilities that are partitioned from the rest of the facilities and dedicated to the provision of the Services) to guard against the destruction, loss or alteration of any LAUSD property or LAUSD Data that is maintained or stored at such facilities.
- (e) The security measures and safeguards maintained at Contractor facilities shall be no less rigorous than those maintained by LAUSD as of the Effective Date at similar LAUSD facilities and shall be no less rigorous than those maintained by Contractor for its other facilities. Such security measures shall include at a minimum:
 - (i) **With respect to any Contractor data center at which LAUSD Data is stored, providing security guards and technical support engineers on a 24x7 basis and maintaining access controls which include, at a minimum (1) restricting access to the data center and any portions of the data center containing LAUSD Data, and (2) monitoring and logging access to the data center.**
 - (ii) **With respect to any Contractor facilities at which the Services are performed, maintaining access controls to such facilities (particularly with respect to the areas of such facilities from which the Services are performed or Confidential Information is stored), which controls will include, at a minimum (1) inspecting identification and allowing only authorized personnel to enter such facilities, (2) monitoring and logging access to such facilities, (3) utilizing equipment that does not allow for the physical download of Confidential Information (e.g., computers with disabled CD burners and disk drives without removable disks), and (4) printing hard copy only as necessary to perform the Services, providing LAUSD with reasonable access to print logs maintained by Contractor, and maintaining policies requiring the shredding of documents and prohibiting the removal of hard copies from the applicable secured areas of Contractor's facilities.**

8.7 Use of LAUSD Property and Facilities

- (a) If LAUSD shall make space in any LAUSD facility available to Contractor, Contractor shall: (i) use such space for the sole purpose of providing the Services to LAUSD and not for the benefit of or the provision of services to any third party; (ii) comply with all policies and procedures governing access to and use of LAUSD facilities; and (iv) return such space to LAUSD in the same condition it was in when provided to Contractor, ordinary wear and tear excepted. Except as otherwise provided in an applicable Work Order, LAUSD shall provide LAUSD facilities and access to normal office resources (e.g., fax, telephone and copier support) at no charge to Contractor. LAUSD facilities are made available to Contractor on an "as is, where is" basis, with no warranties whatsoever.
- (b) Contractor shall be responsible and liable for any damage to LAUSD property caused by Contractor or any Contractor Personnel in connection with performance of this Agreement. Contractor shall, at Contractor's own expense, replace or repair all damaged property to its original condition.

9. PERSONNEL

9.1 Qualifications of Contractor Personnel

- (a) Contractor shall provide all necessary personnel, adjudged by Contractor as qualified to perform the Services. District shall have the right to accept or reject assignment of any Contractor Personnel. Contractor will assign an adequate number of Contractor Personnel to perform the Services. The timing for transfer, reassignment or replacement of Contractor Personnel will be closely coordinated with the requirements for timing and other elements of the Services so as to maintain continuity in the performance of the Services.
- (b) All Contractor Personnel shall be required to comply with the LAUSD Information Security Policies. Contractor Personnel working at LAUSD facilities shall be subject to LAUSD-required verification (which may include, without limitation, background checks and finger printing). In hiring Contractor Personnel for the LAUSD account, Contractor will follow industry standard hiring practices, which will be available for review upon request by LAUSD.
- (c) All Contractor Personnel shall be required to execute a confidentiality agreement with Contractor that includes terms at least as restrictive as the terms in this Agreement and in any confidentiality agreement between Contractor and District, and such other terms as may be imposed by law on District and its contractors.

9.2 Key Contractor Positions

- (a) The key personnel assigned to perform the Services and their respective roles will be identified in each Work Order (the "**Key Contractor Personnel**"). Contractor shall not change any Key Contractor Personnel or reassign any of the Key Contractor Personnel to other projects without District's prior written approval and until a satisfactory replacement has been approved by District. Contractor shall submit to District written documentation of the qualifications for a proposed replacement to any of the Key Contractor Personnel.
- (b) Contractor will designate an individual as its "project executive" for each Work Order, to serve as the onsite manager for the delivery of Services thereunder and have overall responsibility for Contractor's performance of the Services thereunder. For each Work Order, Contractor's project executive will (i) be one of the Key Contractor Personnel, (ii) serve as the single point of accountability for Contractor for the Work Order, (iii) manage and supervise the Contractor

Personnel, and (iv) have such additional roles and responsibilities as may be outlined in the Work Order or designated by Contractor.

9.3 Contractor Employees Assigned to LAUSD Account

In the event that LAUSD determines in good faith that the continued assignment to LAUSD's account of any of the Contractor Personnel is adversely affecting LAUSD, then LAUSD will give Contractor written notice to that effect. Promptly after receipt of such notice, Contractor will use commercially reasonable efforts to resolve any problems with the relevant Contractor Personnel. If, following such efforts, LAUSD requests replacement of the relevant Contractor Personnel, Contractor will replace the relevant Contractor Personnel with Contractor Personnel of equal ability and qualifications as expeditiously as possible. Notwithstanding the foregoing, in the event that LAUSD in good faith requests the immediate removal of any of the Contractor Personnel from the LAUSD account, Contractor shall immediately remove such person from the LAUSD account and at no charge to LAUSD promptly replace such person with another person of equal ability and qualifications.

10. SOFTWARE AND INTELLECTUAL PROPERTY RIGHTS AND OBLIGATIONS

10.1 Software Generally

Except as otherwise specified in a Work Order, each party will be responsible for providing and maintaining its own software, and Contractor will be responsible for providing all software necessary to provide the Services.

10.2 Software Owned or Licensed by LAUSD; Work Product

(a) LAUSD Software

Each Work Order will specify any LAUSD Software that Contractor is authorized to use to perform the Services and shall specify the rights of Contractor regarding use of such LAUSD Software. LAUSD will retain all rights to LAUSD Software. Pursuant to the terms of an applicable Work Order, Contractor will be granted a license during the term of such Work Order to use and access LAUSD Software for the sole purpose of providing the Services. Contractor will cease use of such LAUSD Software upon expiration or termination of the applicable Work Order. Without limiting the foregoing, District shall retain all right, title and interest in and to any other proprietary material that District supplies to Contractor. With respect to any District Pre-Existing Items provided to Contractor hereunder, District hereby grants Contractor only those rights and licenses necessary for Contractor to fulfill its obligations under each Work Order.

(b) Work Product

Except as otherwise agreed in writing by the parties under an applicable Work Order, LAUSD will own all right, title and interest in and to the Work Product, including (but not limited to) ownership of copyright therein, and Contractor hereby assigns and agrees to assign to LAUSD, its successors, assigns or designees, all of Contractor's rights in and to any such Work Product. Contractor will provide to LAUSD all copies of such Work Product (including, if applicable, the source code and Code Documentation for any software that constitutes Work Product), and LAUSD will have the exclusive right to copyright such material. District hereby grants and agrees to grant to Contractor an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, and prepare derivative works based on, Work Product, only for Contractor's internal purposes; provided, however, that Contractor may make further use of the Work Product by complying with the terms of Section 10.6 below. Contractor will be responsible for ensuring that no Contractor Personnel retain rights to any Work Product in contravention to the grant of rights set forth herein.

(c) Third Party Software

Each Work Order will specify any third party software required in order to perform the Services and Contractor will not use in connection with any Work Order or introduce into District any third party software without District's written consent. All licenses to third party software may be retained by LAUSD in LAUSD's discretion. Any consents or agreements necessary to enable Contractor's use or operation of third party software shall be obtained by Contractor with such reasonable assistance from LAUSD as is requested by Contractor. Contractor will comply with the licenses for any third party software licensed by LAUSD and used by Contractor in relation to the Services. The respective financial, operational and other obligations of the parties with respect to any third party software shall be set forth in each applicable Work Order.

10.3 Contractor Software and Other Intellectual Property

- (a) Each Work Order will identify any Contractor Commercial Software that will be used to provide the Services, and Contractor Commercial Software (together with any applicable Documentation) shall be provided under the terms of Contractor's standard license agreement for such software. Contractor shall install, operate and maintain at its expense any Contractor Commercial Software needed to provide the Services.
- (b) Pursuant to the terms of an applicable Work Order, Contractor shall grant to District with respect to all Contractor Customized Software and any Documentation owned by Contractor or a third party, a nonexclusive, worldwide, perpetual, royalty free, fully paid license permitting District internal use of such Contractor Customized Software and Documentation, which license shall, at District's option, be transferable to any Affiliate of District. As used in this Section, "internal use" shall mean use of the Contractor Customized Software on any or all central processing units at any or all locations owned or leased by District, any locations used by independent agents who contract with District, or any locations used by District employees or District subcontractors. Contractor shall also provide District with any nonproprietary software (including Code Documentation therefor) utilized by Contractor to develop any System Deliverable.
- (c) Unless specifically set forth under the terms of an applicable Work Order, District shall not be subject to any upgrade, maintenance, transfer, or other fees based upon District's use of any Contractor Commercial Software or Contractor Customized Software.
- (d) Contractor also grants and agrees to grant to District a nonexclusive, worldwide, perpetual, royalty free, fully paid license to use the source code, Code Documentation, and any software tools necessary to maintain or modify the Contractor Customized Software and, to the extent applicable, the Work Product. To the extent that LAUSD's use of any Contractor Commercial Software, Contractor Customized Software, Contractor Pre-Existing Items or Work Product would constitute an infringement of any patent, know-how, trade secret or other proprietary rights of Contractor or any third-party licensor of Contractor, Contractor further grants and agrees to grant to District a nonexclusive, worldwide, perpetual, royalty free, fully paid license (or, if applicable, sublicense) to such patents, know-how, trade secrets or other proprietary rights, to the extent necessary to permit District to make full use of the Contractor Commercial Software, Contractor Customized Software, Contractor Pre-Existing Items or Work Product as set forth herein.

10.4 Modifications

District shall have the right, in its sole discretion, to independently modify Work Product and Customizations for LAUSD-specific functions, through the services of its own employees or of independent contractors. Subject to any contrary terms in an applicable Work Order, District shall be the owner of any such modifications. Contractor shall not disclose such modifications to any third parties and shall not incorporate any such modifications into Contractor Commercial Software for distribution to third parties (or otherwise

commercially exploit such modifications in any way) unless Contractor first obtains the written consent of District and complies with the terms of Section 10.6 below.

10.5 *Proprietary Notices*

District agrees that any copies of the Contractor Commercial Software, Contractor Customized Software, Contractor Pre-Existing Items, and Documentation shall bear all copyright, trademark, and other proprietary notices properly included therein by Contractor or a third party. District may add its own copyright or other proprietary notice to any copy of the Contractor Customized Software or Documentation that contains permitted modifications made by District.

10.6 *Royalties*

Contractor shall pay to District a royalty of two percent (2%) of all third party fees that are generated, billed or received by Contractor for Contractor's use or sublicensing of the Work Product or any Customizations in connection with any product or service distributed by Contractor or its Affiliates ("**Revenues**"), such royalty to be based upon the usual billing price for such products and services. Royalty payments, if any, shall be due annually on June 30, and, when due, must be accompanied by a statement of accounts setting forth all Revenues received as of May 31 of that same year. Contractor shall keep accurate books of accounts and shall keep and maintain all records, documents and other instruments relating to Revenues in such detail as shall enable District to ascertain royalties due under this Agreement in accordance with District's audit rights set forth under Section 12.1 below.

10.7 *Invention Assignment*

Contractor shall cause each of Contractor's employees, subcontractors, or subcontractors' employees charged with performance of a Work Order or granted access to confidential information to execute an agreement in a form acceptable to the District recognizing LAUSD's ownership rights and concurring with the obligations of Contractor as set forth herein. Contractor shall ensure that Contractor's employees, subcontractors or subcontractors' employees comply with the provisions of such confidentiality and invention agreement and shall be responsible for enforcing such agreement with respect to such personnel.

10.8 *Registrations*

In the event any intellectual property created under this Agreement and owned by LAUSD shall be determined by LAUSD to be copyrightable or patentable or otherwise registrable, Contractor shall assist LAUSD in obtaining and maintaining registrations and in vesting LAUSD with full title.

10.9 *Residual Knowledge*

Nothing contained in this Agreement shall restrict either party from the use of any general ideas, concepts, know-how, methodologies, processes, technologies, algorithms or techniques retained in the undocumented mental impressions of such party's personnel relating to the Services which either party, individually or jointly, develops or discloses under this Agreement, provided that in doing so such party does not (a) infringe the intellectual property rights of the other party or third parties who have licensed or provided materials to the other party, or (b) breach its confidentiality obligations under this Agreement or under agreements with third parties.

10.10 *Non-Exclusivity*

Contractor acknowledges that LAUSD may be considering, and may in the future consider, the development and implementation of ideas, products and technologies similar to or the same as those that

may be owned or controlled by Contractor. Nothing in this Agreement will prevent LAUSD or any LAUSD Affiliates from pursuing any such ideas or pursuing the development and implementation of products or technologies similar to or related to Contractor's, either internally or through third parties.

11. CONTRACT FEE AND FEE TRACKING

11.1 This is a zero-dollar based contract. The District makes no representation that any minimum amount of Services will be ordered by it (through any school or office) from Contractor during the term of this Agreement. The District does NOT represent or guarantee any minimum numbers of Orders for Services form (Exhibit C) under this Agreement. Further, the District does NOT represent or guarantee any minimum dollar amount of Orders for Services under this Agreement.

11.2 District Payment on Orders for Services shall be contingent upon acceptance of the Services and approval of the corresponding invoice(s) by the appropriate District Administrator or designee. Additional payment-related documentation shall be furnished by Contractor to the District upon request.

11.3 Invoices must (a) reference this Agreement number and the related purchase order number, (b) be signed and submitted by the Contractor to the locations identified below, and (c) shall itemize services date(s), and payment rate(s) consistent with the terms of this agreement.

11.4 Meetings

(a) Meeting Schedule

Each Work Order may include a schedule for regular project management meetings between the parties, and the parties shall hold such meetings as are set forth therein.

(b) Meeting Agenda

Contractor will prepare and circulate an agenda sufficiently in advance of each project management meeting to give participants an opportunity to prepare for the meeting. Contractor will incorporate into such agenda items that LAUSD desires to discuss. At LAUSD's request, Contractor will prepare and circulate minutes promptly after a meeting.

11.5 Performance Reports

A Work Order may require Contractor to provide monthly performance reports, which will be delivered to LAUSD within fifteen (15) calendar days after the end of each month of the term of the Work Order, describing Contractor's performance of the Services in that month. Each monthly performance report will, to the extent applicable: (a) separately address Contractor's performance against any service levels; (b) describe the status of each key project, problem resolution effort and any other initiative; (c) explain deviations from service levels and include for each deviation a plan for corrective action; (d) set forth the utilization of resources for the month and utilization trends; and (e) provide LAUSD a projection of the Charges for the following month. Contractor will also provide such other reports as may be required under an applicable Work Order.

11.6 Change Control Procedures

(a) No changes or additions may be made to any Work Order without the written agreement of LAUSD as evidenced by a duly executed Change Order.

(b) Contractor will not take an action or make a decision which may have a material effect on LAUSD or which adversely affects the function or performance of, or decreases the resource efficiency of,

the Services, including implementing changes in technology or equipment and software configuration, without first obtaining LAUSD's written approval, which approval LAUSD may withhold in its sole discretion as respects any change which may have an adverse effect on LAUSD or the Services.

11.7 Subcontracting

- (a) Contractor will not enter into any subcontract for the provision of the Services without the prior written consent of LAUSD.
- (b) Subcontractors approved by LAUSD shall be set forth in the applicable Work Order. With respect to any subcontract related to the delivery or performance of Services, Contractor will include in such subcontract provisions substantially similar to those provisions of this Agreement material to the subcontractor's performance under such subcontract.
- (c) LAUSD shall have the right to revoke its prior approval of an authorized subcontractor if the subcontractor's performance is deficient, if misrepresentations were made concerning the subcontractor at the time of LAUSD's approval, or for other factors related to any LAUSD experience with the subcontractor.
- (d) Contractor will remain responsible for obligations, services and functions performed by subcontractors to the same extent as if these obligations, services and functions were performed by Contractor's employees. Contractor will be LAUSD's sole point of contact.

11.8 Improvements in Technology

- (a) Prior to using any new software or equipment to provide the Services, Contractor will have verified, to the extent possible in a test environment, that the item has been properly installed, is operating in accordance with its specifications and is performing its intended functions in a reliable manner. Contractor will move programs from development and test environments to production environments in a controlled and documented manner, reasonably calculated to avoid introduction of unauthorized changes into the relevant production environment.
- (b) Contractor will keep the equipment, software and other technologies Contractor provides in performing the Services current, and LAUSD will receive the benefits of upgrades in technology through increases in efficiency and productivity. Contractor will proactively seek out new technologies by surveying key suppliers to identify advances or changes in technology which are appropriate and beneficial to LAUSD. LAUSD is, however, under no obligation to implement any such new technologies.

12. AUDITS

12.1 Audit Rights

- (a) Contractor shall maintain, and District shall have the right to examine and audit, all of the books, records, documents, accounting procedures and practices and other evidence regardless of form (e.g., machine-readable media such as disk, tape, etc.) or type (e.g., databases, applications software, database management software, utilities, etc.), sufficient, at a minimum, to the extent permitted or required by any laws and regulations applicable to LAUSD or Contractor, to (i) with respect to Services or Deliverables supplied on a cost or cost-plus basis, properly reflect all costs claimed to have been incurred or anticipated to be incurred in performing this Agreement; (ii) with respect to Services performed on an hourly basis, properly reflect the hours billed; (iii) to the extent Contractor is performing operations involving LAUSD Data, verify the integrity of LAUSD Data

and examine the systems that process, store, support and transmit that data; (iv) examine and verify Contractor's disaster recovery planning and testing, business resumption and continuity planning and testing, contingency arrangements and insurance coverage; and (v) review other areas of performance as set forth in the this Agreement or any Work Order, including, without limitation, any royalties due under Section 10.6 hereof.

- (b) Contractor shall make said evidence (or to the extent accepted by District, photographs, micro-photographs or other authentic reproductions thereof) available to District at District's or Contractor's offices (to be specified by District) upon reasonable notice and without charge to District. Said evidence shall be provided to District within five (5) working days after a written request from District. Contractor shall, at no cost to District, furnish reasonable assistance for such examination/audit. Contractor and its subcontractors and suppliers shall keep and preserve all such records for a period of at least 3 years from and after final payment or, if this Agreement is terminated in whole or in part, until 3 years after the final Agreement close-out. District's rights under this section shall also include access to Contractor's offices for the purpose of interviewing Contractor's employees who might reasonably have information related to such records.
- (c) Any information provided on machine-readable media shall be provided in a format accessible and readable by District. Contractor's failure to timely provide records or access shall preclude Contractor from receiving any payment due under the terms of this Agreement until such records or access are provided to District. Contractor shall also be responsible for ensuring that it obtains and maintains sufficient information and records to permit District to evaluate the performance of Contractor's subcontractors and suppliers in accordance with the requirements of this section.

12.2 Audit Follow-Up

Contractor shall meet to review each audit report promptly after the issuance thereof at the request of LAUSD to mutually agree upon an appropriate and effective manner in which to respond to the deficiencies identified and changes suggested by the audit report. If an audit reveals an overcharge, Contractor will promptly refund such overcharge (net of any undercharges).

12.3 Records Retention

Until (a) the earlier of three (3) years after the expiration or termination of this Agreement or three (3) years from District's last payment for specific goods or services under this Agreement; or (b) if pending matters relating to this Agreement (e.g., disputes) are open as of such date, the date such pending matters are closed, Contractor will maintain and provide access upon request to the records, documents and other information required to meet LAUSD's audit rights under this Agreement.

13. CHARGES

13.1 General

Subject to the other provisions of this Agreement, LAUSD shall pay to Contractor the Charges. Except as otherwise expressly set forth in this Agreement, LAUSD shall not be obligated to pay any amounts to Contractor for its performance of the Services and its other obligations under this Agreement other than the amounts set forth in the Work Orders. Contractor's rates charged to LAUSD for the Services will not exceed those set forth on Contractor's schedule of rates set forth attached hereto as Schedule B (Contractor's Rates) without LAUSD's prior written approval.

13.2 Pass-Through Expenses

- (a) If a Work Order provides that a Pass-Through Expense is to be paid by LAUSD directly, Contractor will promptly provide LAUSD with the original third-party invoice for the Pass-Through Expense. If a Work Order provides that a Pass-Through Expense is to be paid by Contractor, Contractor will act as payment agent for LAUSD and will pay third-party charges comprising the Pass-Through Expense. For each Pass-Through Expense, Contractor will review the corresponding invoiced charges to determine whether the charges are proper and valid and should be paid, and will provide LAUSD with a statement to that effect. Where Contractor is paying a Pass-Through Expense on LAUSD's behalf, Contractor will provide LAUSD with a reasonable opportunity to review the applicable invoice. Following this review, Contractor will pay the amounts due and will invoice LAUSD for the charges.
- (b) Contractor will use commercially reasonable efforts to minimize Pass-Through Expenses. With respect to services or materials paid for on a Pass-Through Expense basis, LAUSD reserves the right to: (i) obtain these services or materials directly from a third party; (ii) designate the third party source for these services or materials; (iii) designate the particular services or materials (e.g., equipment make and model) that Contractor will obtain, provided that if Contractor demonstrates to LAUSD that this designation will have an adverse impact on Contractor's ability to meet applicable service levels, this designation will be subject to Contractor's approval; (iv) require Contractor to identify and consider multiple sources for these services or materials or to conduct a competitive procurement; and (v) review and approve the Pass-Through Expense for these services or materials before entering into a contract for these services or materials.

13.3 Incidental Expenses

Except as expressly provided in an applicable Work Order, those expenses that Contractor incurs in performing the Services (e.g., travel and lodging, document reproduction and shipping, and long distance telephone) shall be included in Contractor's rates. Accordingly, Contractor's expenses are not separately reimbursable by LAUSD unless, on a case-by-case basis, LAUSD has agreed in advance and in writing to reimburse Contractor for particular expenses.

13.4 Taxes

- (a) Each party shall pay any real property taxes or personal property taxes on property it either owns or leases from a third party or any other taxes, fees or costs related to equipment or the lease of equipment.
- (b) Contractor shall pay any sales, use, excise, transfer, value-added, services, consumption, and other taxes and duties imposed on any goods and services acquired, used or consumed by Contractor in connection with the Services. As part of the Charges, LAUSD shall pay when due any sales, use, excise, value-added, services, consumption and other taxes and duties imposed on its acquisition of goods and Services from Contractor. Such taxes shall be included in the Charges for any applicable Work Order and shall not be charged to LAUSD separately. LAUSD shall withhold taxes as required by law and any such withholding shall reduce the payment otherwise required to be made to Contractor. Contractor shall be responsible for properly calculating and invoicing applicable taxes on the Services. Interest and penalties imposed with regard to taxes shall be borne by the same party who bears the responsibility for remitting the tax.
- (c) The parties shall cooperate to determine accurately their respective tax liabilities and to reduce such liabilities to the extent permitted by law. Contractor invoices to LAUSD shall separately state the amount of any taxes Contractor is collecting from LAUSD. Each party shall provide to the other any resale certificates, exemption certificates, information regarding out-of-state or out-of-country

sales or use of equipment and services, and such other similar information as the other party may reasonably request.

14. INVOICING AND PAYMENT

14.1 Invoices

- (a) Contractor shall issue to LAUSD on a monthly basis, in arrears, one consolidated invoice per Work Order (one paper copy and one electronic version) for all Charges due under that Work Order. Each invoice shall summarize the total Charges payable by LAUSD to Contractor for Services rendered in the previous month, and shall separately state Charges for the Services, Pass-Through Expenses and taxes payable, and shall otherwise be in such detail as LAUSD may reasonably require. Invoices shall be in such form as the parties may mutually agree, or as otherwise required by LAUSD. In addition to providing invoices to the individuals identified on each Work Order as the LAUSD project executives, Contractor will provide paper and electronic copies of each invoice issued hereunder to LAUSD at the following addresses:

Mail Original Invoice(s) and One (1) copy to:

Los Angeles Unified School District
333 South Beaudry Ave. 27th Floor
Los Angeles, CA 90017

Attention: Accounts Payable

Mail One (1) Copy of Invoice(s) to:

Los Angeles Unified School District
School Name/Office
School/Office Address
City, State, Zip

Attention: Principal/Administrator

- (b) For Services provided on a time and materials basis, Contractor will include with each invoice a chronological, itemized listing of the activities performed under the applicable Work Order during the prior month, showing: the date of service; a description of each item of work; the number of hours expended by Contractor Personnel on each item or work; and the hourly rate(s) for Contractor Personnel performing Services.
- (c) For Services provided on a fixed-fee or milestone basis, Contractor will include with each invoice a status report for such Services, and will include therein a copy of LAUSD's written acceptance of any Deliverable(s) for which payment is sought.

14.2 Payment

- (a) Subject to Section 14.5, each invoice delivered pursuant to Section 14.1 shall be due and payable within forty-five (45) calendar days after the date such invoice is received by LAUSD.
- (b) To the extent LAUSD is entitled to a credit (including, without limitation, any service level credit) pursuant to this Agreement or any Work Order, Contractor shall provide LAUSD with such credit on the first invoice delivered after such credit is earned. If the amount of any credit on an invoice exceeds the amount owing to Contractor reflected on such invoice, Contractor shall pay the balance of the credit to LAUSD within forty-five (45) calendar days after the invoice date, unless LAUSD agrees in writing to carry over the balance of the credit to subsequent Contractor invoices.

14.3 Proration

All periodic Charges (excluding those based upon actual usage or consumption of Services) shall be computed on a 30-day calendar month basis and shall be prorated for any partial month.

14.4 Refunds

If either party (a “rebate recipient”) should receive a refund, credit or other rebate for goods or services paid for by the other party, the rebate recipient shall promptly notify the other party and shall pay such amount to the other party (or, if applicable, provide a credit on the next invoice) within thirty (30) calendar days after receipt thereof. Any amount that remains unpaid thirty (30) calendar days after receipt by the rebate recipient will begin to accrue interest at the prime rate of Citibank of New York.

14.5 Set Off and Disputed Charges

- (a) Notwithstanding any other provision of this Agreement, a party who is owed any undisputed amount by the other party may, at its option, set off any such undisputed amount as a credit against any amounts it otherwise owes to the other party.
- (b) If LAUSD disputes in good faith any portion of an invoice, LAUSD shall pay the undisputed amount of such invoice when due and may, at its option, withhold the disputed portion pending resolution of the dispute. If LAUSD withholds any payment pursuant to this Section, LAUSD shall notify Contractor in writing of the basis for such withholding. Upon resolution of the dispute, LAUSD shall pay to Contractor any amount then determined to be owing to Contractor.

15. DATA AND INFORMATION

15.1 Public Records

This Agreement and its Work Orders are subject to the California Public Records Act. Those elements of any document provided to District that are Contractor trade secrets, as defined in Cal. Civil Code §3426.1(d), or otherwise exempt by law from disclosure and which are prominently marked as “TRADE SECRET,” “CONFIDENTIAL” or “PROPRIETARY” may be protected from disclosure; provided, however, that if disclosure is deemed to be required by law or by court order then District shall not in any way be responsible or liable (to Contractor or to any third party) for any disclosure made under the California Public Records Act, including (without limitation) any disclosure of Contractor documents marked as “TRADE SECRET,” “CONFIDENTIAL” or “PROPRIETARY.” In addition, District shall have no obligation to resist any disclosure deemed to be required by law or by court order.

15.2 Ownership and Protection of LAUSD Information

- (a) Confidential Information (and any derivative works thereof or modifications thereto) is and will remain the exclusive property of LAUSD or its licensors, as applicable. Contractor will not possess or assert any lien or other right against or to Confidential Information. No Confidential Information, or any part thereof (including, without limitation, any LAUSD Data), will be sold, assigned, leased, or otherwise disposed of to third parties by Contractor or commercially exploited by or on behalf of Contractor, its employees or agents.
- (b) During the course and scope of its services hereunder, Contractor may gain knowledge of or have access to Confidential Information, or otherwise have Confidential Information disclosed to it. Contractor understands that Confidential Information is made available to it only to the extent necessary to perform its duties within the course and scope of this Agreement, and Contractor and the Contractor Personnel will use Confidential Information for no other purpose. Contractor agrees

that neither it nor the Contractor Personnel shall, directly or indirectly, disclose, use or distribute any Confidential Information to any third party without LAUSD's prior written consent. Contractor will disclose Confidential Information only to Contractor Personnel with a need to access such data as a necessary part of the performance of the Services.

- (c) Contractor acknowledges and agrees that LAUSD Data includes confidential student and employee information that is protected by applicable law, including but not limited to, FERPA, HIPAA and State student data privacy laws. Contractor Personnel may, by nature of the Services, have the ability to defeat security provisions on LAUSD devices and may, by the nature of their work, have access to systems and devices containing Confidential Information, but have no need to actually access such Confidential Information in order to perform Services. Contractor therefore agrees to use its best efforts to avoid unnecessary exposure by Contractor Personnel to Confidential Information.
- (d) In the event a Work Order requires Contractor to have access to Confidential Information of students, Contract agrees to further comply with the requirements of California Education Code section 49073.1 and enter into a **Data Use Agreement**, substantially in the form of **Schedule E**, attached hereto and made a part hereof. Contractor further agrees to comply, and agrees to require Contractor Personnel to comply, with all applicable laws relating to access, use and disclosure of Confidential Information and any LAUSD Data embodied therein. Contractor agrees to inform LAUSD whenever access is sought by Contractor or Contractor Personnel to student or employee data files.
- (e) Upon request, Contractor will propose, for LAUSD review and approval, policies and procedures for informing Contractor Personnel of restrictions regarding access to and use of Confidential Information and for monitoring compliance with such restrictions and with the terms of this Article 15.
- (f) Contractor will cooperate, and will cause Contractor Personnel to cooperate, fully in resolving any actual or suspected acquisition or misuse of Confidential Information.
- (g) Data Privacy

If Contractor is an operator of an Internet website, online service, online application, or mobile application, Contractor shall comply with the requirements of California Business and Professions Code sections 22580 through 22585 (notwithstanding statute operative dates), and LAUSD policy as follows:

(i) Contractor shall not (a) knowingly engage in targeted advertising on the Contractor's site, service or application to District students or their parents or legal guardians; (b) use a student's personally identifiable information ("PII") or other non-public information (e.g., metadata) to amass a profile about a District student; (c) sell information, including PII; or (d) disclose PII without the District's written permission.

ii) Contractor will store and process LAUSD Data in accordance with commercial best practices, including appropriate administrative, physical, and technical safeguards, to secure such data from unauthorized access, disclosure, alteration, and use. Such measures will be no less protective than those used to secure Contractor's own data of a similar type, and in no event less than reasonable in view of the type and nature of the data involved. Without limiting the foregoing, Contractor warrants that all electronic LAUSD Data will be encrypted in transmission using SSL [(Secure Sockets Layer) [or insert other

encrypting mechanism] (including via web interface) [and stored at no less than 128-bit level encryption].

iii) Contractor shall delete a student's covered information upon request of the District.

(h) Single Sign On (SSO). Use of District Single Sign-on for Students and Staff.

It is the intent of the District to facilitate the log on process to all external services including online learning tools and accounts, learning management systems and the like using single sign-on (SSO). The District requires all service providers/contractors to align their product(s) to the following requirements, complying with all federal, state and District rules and policies regarding security of data transferred for the purposes of authorization. All requirements must be met at the time of receipt of a Work Order.

NOTE: Contractors are reminded that protocol versions specified at the time of writing may not be current. It is the responsibility of the Contractor to verify the protocol versions used are the currently available versions that support versions being used by the District.

For Authentication:

The District uses implementation of the current version of Security Assertion Mark-up Language (SAML) using the current version of Active Directory Federated Services (ADFS) for authentication. The Contractor must support SAML or the current version of Lightweight Directory Access Protocol (LDAP) using the current version of Active Directory Lightweight Directory Services (AD LDS), or;

If the system is deployed on premise in the District's Data Center, the current version of Active Directory (AD), which leverages LDAP, may be used as well as SAML may be.

For Authorization:

Authorizations must support role-based management. The District currently supports the sharing of data for authorization purposes using two providers; EduTone and Clever, and through Secure FTP (SFTP). Requests regarding any sharing of data through either method must be directed to LAUSD's Office of Data and Accountability.

The District requires data exchanged with vendors via flat file be accomplished in an automated manner using SFTP or File transfer Protocol over Secure Socket Layer (FTPS). The process must not require manual intervention by LAUSD staff in order to complete transfers. Additionally, the file must be encrypted using Pretty Good Privacy (PGP) keys. It is preferred that the vendor log into the District's Secure File Transfer (SFT) system to retrieve and upload files.

15.3 Return of Data

At no cost to LAUSD, Contractor shall upon (a) request by LAUSD at any time, and (b) upon termination or expiration of this Agreement, promptly return to LAUSD, in the format and on the media in use as of the date of request, all or any requested portion of Confidential Information that may be in Contractor's possession or control. Archival tapes containing any Confidential Information shall be used by Contractor solely for back-up purposes and shall be maintained and used in accordance with the LAUSD Information Security Policies. Notwithstanding the foregoing and subject to any restrictions imposed by applicable law, Contractor may retain a copy of LAUSD Confidential Information (but excluding any student or employee data) solely for archival purposes and in connection with any dispute between the parties.

15.4 Security

- (a) Contractor and Contractor Personnel will comply with the LAUSD Information Security Policies. Specific modifications to any such policies may be included in an applicable Work Order.
- (b) Contractor shall use the most current version of antivirus and Virus detection software approved by LAUSD (including all updates). Contractor will not willfully or negligently insert or include, or permit or cause any third party under its control to insert or include, any Virus into any Deliverable or LAUSD's information technology environment. Contractor will use commercially reasonable efforts to reduce the likelihood that any Virus is introduced into any software or LAUSD's information technology environment, and will test Deliverables for Viruses. In the event a Virus is introduced into Contractor Commercial Software, Contractor Customized Software, Work Product, LAUSD Software or any other part of the LAUSD information technology environment by Contractor or any third party under its control who has access to such materials, Contractor will remove such Virus and will provide all necessary services to minimize the impact of such Virus. In such event, Contractor will be liable for loss of data or records of LAUSD to the extent such loss of data or records is due to the willful or negligent introduction of such Virus into a Deliverable or the LAUSD information technology environment by Contractor or any third party under its control who has access to such Deliverable, or any part thereof, or any part of the LAUSD information technology environment.

15.5 *Destroyed or Lost Data*

- (a) Contractor will not delete or destroy any LAUSD Data or media on which LAUSD Data resides without prior written authorization from LAUSD. In the event any LAUSD Data is lost or destroyed due to any act or omission of Contractor, including any breach of the security procedures described in this Article 15 and any Work Order, and such LAUSD Data cannot be fully restored by a reload under Section 15.5(b) below, Contractor shall be responsible for the prompt regeneration or replacement of such LAUSD Data. Contractor shall prioritize this effort so that the loss of LAUSD Data will not have an adverse effect upon LAUSD's business or the Services. LAUSD agrees to cooperate with Contractor to provide any available information, files or raw data needed for the regeneration of the LAUSD Data. If Contractor fails to regenerate the lost or destroyed LAUSD Data within a time reasonably set by LAUSD (or within a reasonable time, if no such time is set), then LAUSD may obtain data reconstruction services from a third party, and Contractor shall cooperate with such third party as requested by LAUSD. In addition to any other damages incurred by LAUSD, Contractor will be responsible for the actual costs incurred by LAUSD for the reconstruction of LAUSD Data by a third party. In the event it is determined that LAUSD Data has been lost or destroyed as a result of the willful conduct of Contractor or its employees, contractors or agents, LAUSD may terminate the applicable Work Order or this Agreement pursuant to Section 20.3.
- (b) Without limitation to Contractor's obligations regarding data regeneration set forth in Section 15.5(a) above, in the event of the loss of, damage to, or corruption of data caused by Contractor or any Contractor Personnel, Contractor shall, promptly and without charge to LAUSD, reload such data as shall be issued by LAUSD to Contractor from LAUSD back-up stores, provided that LAUSD has kept proper and adequate back-up copies of such data.

15.6 *Residuals*

Notwithstanding anything else contained within this Agreement, Contractor may use in its business activities the ideas, concepts and know-how that are contained in District's Confidential Information or that are developed or provided by District or jointly developed by the parties under any Work Order, and which

are retained in the unaided memories of Contractor Personnel who have had access to such ideas, concepts and know-how under this Agreement. Nothing contained in this paragraph modifies any of Contractor's obligations with respect to the Confidential Information.

16. CERTAIN REPRESENTATIONS, WARRANTIES AND COVENANTS

For purposes of this Article 16, all matters to which Contractor represents are true on the Effective Date, and all matters to which Contractor warrants shall continue throughout the Term.

16.1 *General Matters*

Contractor represents and warrants that it is a corporation duly incorporated, validly existing and is in good standing under the laws of the state in which it is incorporated, and is good standing in each other jurisdiction where the failure to be in good standing would have a material adverse effect on its business or its ability to perform its obligations under this Agreement. Contractor represents and warrants that it has all necessary corporate power and authority to own, lease and operate its assets and to carry on its business as presently conducted and as it will be conducted pursuant to this Agreement.

Contractor represents and warrants that it has full power and authority to enter into this Agreement and each Work Order and to perform hereunder and thereunder, and Contractor will exercise commercially reasonable efforts to ensure that such entry and performance do not and will not violate any rights of any third party. Contractor represents and warrants that it has all necessary corporate power and authority to enter into this Agreement and each Work Order and to perform its obligations thereunder. The execution and performance of this Agreement and the consummation of the transactions contemplated hereby have been and will be duly authorized by all necessary corporate actions on its part. This Agreement constitutes a legal, valid and binding obligation of Contractor, enforceable against it in connection with its terms and the terms of each Work Order.

16.2 *Efficiency and Cost Effectiveness*

Contractor will render the Services in as efficient a manner as is commercially reasonable and will exercise reasonable care to control resources (such as lighting, heating and other utilities) at LAUSD facilities used in providing Services. Contractor will provide the Services using technology that is reasonably intended to enable LAUSD to take advantage of relevant technological advancements.

16.3 *Non-infringement and Ownership*

If a Deliverable or any Services violate or infringe upon the rights of any third party, including, without limitation, any patent rights, copyright rights, trademark rights, trade secret rights, or other proprietary rights of any kind, District may seek the remedies set forth in Section 18.2. Contractor is and shall be (a) either the owner of, or authorized to use, the software and related material used in connection with the Services, which is not otherwise owned by LAUSD, and (b) sufficiently authorized to grant to LAUSD the rights, title, interest and/or ownership, specified in Article 10 or the applicable Work Order, in and to materials, information, Documentation, Work Product, or other Deliverables developed by Contractor for LAUSD as part of the Services. Contractor will use commercially reasonable efforts to perform its responsibilities under this Agreement in a manner that does not infringe, or constitute an infringement or misappropriation of, the patent, copyright, trademark, trade secret or other proprietary rights of a third party.

Contractor shall have sufficient title and rights to license to District, to the extent specified in Article 10 or any applicable Work Order, all Contractor Commercial Software, Contractor Customized Software, and Deliverables.

16.4 *Inducements*

Contractor represents and warrants to LAUSD that Contractor has not violated and will not violate any applicable laws or regulations, or any LAUSD policies of which Contractor has been given notice, regarding the offering of inducements in connection with this Agreement. In the event that Contractor does not comply with the foregoing, LAUSD will have the right to terminate this Agreement for cause without affording Contractor an opportunity to cure.

16.5 *Compliance with Laws*

At all times during the Term of this Agreement, Contractor shall comply with all federal, state, and local laws and regulations that are applicable to its performance of the Services. To the extent applicable, Contractor shall, as of the date of final acceptance of any System Deliverable, make such System Deliverable comply with all applicable federal, state and local laws and regulations. Contractor shall further provide District with reasonable assistance in complying with all federal, state, and local laws and regulations applicable to District under any Work Order.

16.6 *Year 2000*

All System Deliverables will operate on date-related data using four-digit year fields and will function in such a way that all date-related functionalities and data fields include the indication of century and millennium, and perform calculations that involve a four-digit year field.

16.7 *Facilities and Conditions*

The facilities used by Contractor to provide the Services to LAUSD will comply with the following standards related to Contractor's work force and facilities:

- (a) Contractor shall not use forced or compulsory labor in any form, including, but not limited to, prison, indentured, political, bonded or otherwise. Deposits or similar arrangements shall not be required as a condition of employment.
- (b) Contractor shall not use child labor in any facility providing Services to LAUSD.
- (c) Contractor shall not discriminate based on race, creed, gender, marital or maternity status, religious or political beliefs, age or sexual orientation. Contractor decisions related to hiring, salary, benefits, advancement, termination or retirement shall be based solely on the ability of an individual to do the job.
- (d) Contractor management practices shall recognize the dignity of the individual employees, the rights of free association and collective bargaining, and the right to a work place free of harassment, abuse or corporal punishment.
- (e) Contractor shall provide each employee at least the legal minimum wage or the prevailing industry wage where the facility is located, whichever is higher. Contractor shall provide each employee a clear, written accounting for each wage period and shall not deduct from employee pay for performance or disciplinary issues.
- (f) Contractor shall provide employees with a safe and healthy workplace that does not expose employees to hazardous conditions. Contractor shall have written health, safety and environmental guidelines, including those applying to employee residential facilities, where applicable.

16.8 *Warranty on Performance of Deliverables*

Except as may otherwise be set forth in a Work Order or under any license agreement for Contractor Commercial Software, for a period of one (1) year from the date of final acceptance of any Deliverable (including, but not limited to any Final Deliverable), such Deliverable (and for any Final Deliverable, the Final Deliverable and each System Deliverable therein) shall perform in accordance with all Final Criteria and Documentation therefor, and any other criteria agreed to by District and Contractor in the computer hardware and/or software environments with which such System Deliverable was intended to operate at the time of installation; provided, however, that this warranty shall not apply to the extent that any Deliverable is modified by LAUSD or any third party without Contractor's written authorization.

16.9 *Accuracy of Documentation*

Except as may otherwise be required by a Work Order, all Documentation shall be complete and describe the applicable System Deliverable and components thereof accurately so as to enable a staff consisting of a reasonable number of information systems professionals with ordinary skills and experience to fully utilize the System Deliverable for all purposes for which it is being acquired by or intended for use by District. To the extent required by a Work Order, all Code Documentation shall be complete and describe the source code and all components thereof accurately so as to enable computer programmers of ordinary skill and experience who are knowledgeable of the subject matter to fully utilize the source code to understand, support, modify, and otherwise use the software to which it relates.

16.10 *No Claims*

Contractor represents that there is no action, suit, proceeding, or material claim or investigation pending or threatened against it in any court, or by or before any federal, state, municipal, or other governmental department, commission, board, bureau, agency, or instrumentality, domestic or foreign, or before any arbitrator of any kind, that, if adversely determined, might adversely affect any Deliverable or restrict Contractor's ability to complete the transactions contemplated by this Agreement, or restrict District's right to use any Deliverable under this Agreement. Contractor knows of no basis for any such action, suit, claim, investigation, or proceeding.

16.11 *Third Party Warranties*

To the extent that it is legally able to do so, Contractor will assign and transfer to District all warranties received from the supplier (other than Contractor) of any component of any System Deliverable. As applicable, suppliers may provide their own warranties directly to District.

16.12 *Disclaimer*

THE WARRANTIES SET FORTH IN THIS AGREEMENT ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

17. *INSURANCE*

17.1 *Certification*

Contractor in executing this Agreement hereby certifies, pursuant to Section 1861 of the California Labor Code, as follows:

I am aware of the provisions of Section 3700 of the Labor Code, which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of

that code, and I will comply with such provisions before commencing the performance of the work of this contract.

17.2 Required Insurance Coverages

Contractor shall, at its sole cost and expense, maintain in full force and effect during the Term the following insurance coverage from a California licensed insurer with an A minus (A-), VII, or better rating from A.M. Best, sufficient to cover any claims, damages, liabilities, costs and expenses (including counsel fees) arising out of or in connection with Contractor's fulfillment of any of its obligations under this Agreement or either party's use of the Services or Deliverables or any component or part thereof:

- (a) Except as set forth in subsection (e) below, Commercial Form General Liability Insurance, including both bodily injury and property damage, with limits as follows:
 - (i) **\$1,000,000 per occurrence;**
 - (ii) **\$ 100,000 fire damage;**
 - (iii) **\$ 5,000 medical expenses;**
 - (iv) **\$1,000,000 personal & advertising injury;**
 - (v) **\$2,000,000 general aggregate;**
 - (vi) **\$2,000,000 products/completed operations aggregate;**
- (b) Business Auto Liability Insurance for owned scheduled, non-owned or hired automobiles with a combined single limit of no less than \$1 million per occurrence.
- (c) Workers' Compensation and Employers Liability Insurance in a form and amount covering Contractor's full liability under the California Workers' Compensation Insurance and Safety Act and in accordance with applicable state and federal laws, as follows:
 - (i) **Part A – Statutory Limits**
 - (ii) **Part B - \$1,000,000/\$1,000,000/\$1,000,000 Employers Liability**

If Contractor is not subject to the California Workers' Compensation Insurance and Safety Act, then in lieu of the foregoing requirements, Contractor will complete, execute and deliver to LAUSD the Workers' Compensation Statement attached hereto as Schedule F.

- (d) Except as set forth in subsection (e) below, **Errors & Omissions** (Professional Liability) coverage, when applicable, with limits of \$1,000,000 per occurrence and \$2,000,000 in the aggregate. **For cyber insurance**, the coverage is \$1,000,000 per occurrence and \$2,000,000 aggregate. **For Sexual Abuse and Molestation insurance**, the coverage is \$1,000,000 per occurrence and \$2,000,000 aggregate.
- (e) If the Contractor Service Area is or includes Database Administration, Document Management, Network Project Management, Software Applications, Software Support, or Program and Project Management, for any Work Order in any of the foregoing service areas that exceeds or is reasonably expected to exceed \$500,000 in Charges, Contractor's Commercial Form General Liability Insurance limits will be \$2,000,000 per occurrence under Section 17.2(a)(i) above and \$5,000,000 general aggregate under Section 17.2(a)(v) above, and provided, further, that if the Contractor Service Area is or includes Program and Project Management, then for any Work Order in such service area that exceeds or is reasonably expected to exceed \$1,000,000 in Charges, Contractor's Commercial Form General Liability Insurance limits will be \$5,000,000 per occurrence under Section 17.2(a)(v) above and \$10,000,000 general aggregate under Section 17.2(a)(v) above.

17.3 *Evidence of Insurance*

Contractor, upon execution of this contract and periodically thereafter upon request, shall furnish District with certificates of insurance evidencing such coverage. The certificate of insurance shall include a provision requiring thirty (30) days advance notice to District of cancellation or non-renewal. The policies of insurance required under this Article 17 shall name District and its Board of Education as additional insureds with respect to any potential tort liability, irrespective of whether such potential liability might be predicated on theories of negligence, strict liability or products liability. Premiums on all insurance policies shall be paid by Contractor at no additional charge to District.

17.4 *Additional Insurance*

Additional or lesser insurance coverage(s) may be required under a Work Order. District reserves the right to require, with respect to any Work Order and in the coverage amounts specified in such Work Order: (a) Employee Dishonesty and Computer Fraud Insurance for loss arising out of or in connection with fraudulent or dishonest acts committed by the employees of Contractor, acting alone or in collusion with others; and (b) Employment Practices Liability Insurance covering all of Contractor's employment practices and covering LAUSD for vicarious liability as the result of Contractor's actions on behalf of LAUSD.

18. INDEMNIFICATION

18.1 Indemnification by Contractor

- (a) Contractor shall defend, indemnify and hold harmless District, its officers, directors, employees, agents, volunteers, and Affiliates and District's Board of Education from any and all damages, costs and expenses, including attorneys' fees, arising out of any third party claims for damages for bodily injury (including death) or for damage to real property or tangible personal property resulting from, arising out of or otherwise related to Contractor's performance of this Agreement.
- (b) In the event District receives a Public Records Act request for any Contractor documents marked "TRADE SECRET," "CONFIDENTIAL" or "PROPRIETARY," Contractor agrees to defend, indemnify and hold harmless District, its officers, directors, employees, agents, volunteers, and Affiliates and District's Board of Education from any and all damages, costs and expenses, including attorneys' fees, in any action or liability resulting from such Public Records Act request or otherwise arising under the Public Records Act in connection with such request.
- (c) Contractor shall defend, indemnify and hold harmless District, its officers, directors, employees, agents, volunteers, and Affiliates and District's Board of Education from any and all damages, costs and expenses, including attorneys' fees, resulting from or arising out of a breach by Contractor or any Contractor Personnel of Section 15.4. Contractor will provide such assistance and provide such Services as are reasonably requested by LAUSD as a result of, or in the furtherance of any investigation of, any breach of security in the LAUSD information technology environment.
- (d) Contractor agrees to defend, indemnify and hold harmless the District from any penalties, damages, taxes, costs, assessments, withholdings or other losses related to any allegation or determination that the District is the employer or joint employer of Contractor's agent, employee or subcontractor.

18.2 *Action on Claim of Infringement*

- (a) If a third party claims that a Deliverable (or any component of a Deliverable) or any item used by Contractor to provide the Services infringes that party's patent rights, copyright rights, trademark rights, trade secret rights, or other proprietary rights of any kind, Contractor will defend District, its officers, directors, employees, agents, volunteers, and Affiliates and District's Board of Education from any and all damages, costs and expenses, including attorneys' fees, arising out of or related to that claim, and pay all costs, damages, and attorney's fees that a court finally awards or that are included in a settlement approved by Contractor, provided that District: (i) notify Contractor in writing of the claim in accordance with Section 18.3; and (ii) allow Contractor to control, and reasonably cooperate with Contractor in, the defense and any related settlement negotiations, as further set forth in Section 18.3.
- (b) If a claim under Section 18.2(a) is made or appears likely to be made, or if any item used by Contractor to provide the Services becomes, or in Contractor's reasonable opinion is likely to become, the subject of an infringement or misappropriation claim or proceeding, Contractor shall, at its option: (i) replace the same without additional charge, by compatible, functionally equivalent and non-infringing product(s); (ii) modify such Deliverable, or component or part thereof, to avoid the claim or infringement and retain materially similar functionality; or (iii) obtain license(s) for District to continue use of such Deliverable, or component or part thereof, and pay any additional fee required for such license(s). If Contractor determines that none of these alternatives is reasonably available, District agrees to return the Deliverable to Contractor on Contractor's written request, and Contractor will return all amounts paid under this Agreement (including, but not limited to, taxes, freight, shipping and handling costs, and license fees) for the applicable Deliverable and for any and all other Deliverables, or components or parts thereof, affected by loss of the applicable Deliverable.
- (c) Contractor's liability under this Section 18.2 shall be subject to an equitable reduction (as determined by written agreement of the parties, or by the court adjudicating the claim) to the extent that any claim arising hereunder is based on (i) any information, design, specification, instruction, software, data, or material not furnished by or authorized in writing by Contractor, or (ii) the unauthorized alteration of a Deliverable or the combination of a Deliverable with any products or services not provided, performed or authorized in writing by Contractor.

18.3 **Indemnification Procedures**

- (a) Promptly after receipt by District of any written claim or notice of any action giving rise to a claim for indemnification under this Section 18, District shall so notify Contractor and shall provide copies of such claim or any documents notifying District of the action and shall provide Contractor, at Contractor's expense, with all reasonable assistance in connection therewith. No failure to so notify Contractor shall relieve Contractor of its obligations under this Agreement except to the extent that the failure or delay is prejudicial. Within thirty (30) calendar days following receipt of such written notice, but in any event no later than ten (10) working days before the deadline for any responsive pleading, Contractor shall notify District in writing (a "**Notice of Assumption of Defense**") if Contractor elects to assume control of the defense and settlement of such claim or action.
- (b) If Contractor timely delivers a Notice of Assumption of Defense, Contractor shall have sole control over the defense and settlement of such claim or action; provided, however, that (i) District shall be entitled to participate in the defense of such claim or action and to employ counsel at its own expense to assist in the handling of such claim or action, and (ii) Contractor shall notify District in

writing if Contractor intends to enter into any settlement of such claim or action (other than a settlement solely for the payment of money that Contractor is obligated to pay under this Section, for which Contractor shall only be required to notify District upon entry into such settlement) and shall not enter into such settlement without District's prior written consent, which consent shall not be unreasonably withheld.

- (c) If Contractor does not timely deliver a Notice of Assumption of Defense, District may defend the claim or action in such a manner as it may deem appropriate, at Contractor's expense. Contractor shall promptly reimburse any and all costs and expenses of defense, including attorneys' fees, upon District's written request therefor.

19. LIMITATION OF LIABILITY

NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, EXEMPLARY, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF THIS AGREEMENT. Notwithstanding anything to the contrary in this Agreement, this Section shall not apply to damages arising out of or relating to any of the following: (i) either party's gross negligence or willful misconduct; (ii) breach of either party's confidentiality obligations, (iii) Contractor's indemnification obligations, (iv) claims for contributions or damages payable to third parties; and (v) violation of

20. REMEDIES AND TERMINATION

20.1 *Errors and Defects Escalation Procedures*

If District notifies Contractor of any material failure in performance of Services or material failure of a System Deliverable to operate as warranted, Contractor, at its own expense, shall promptly analyze the description of the circumstances relating to such material failure. The initial determination of priority, as described below, shall be made solely by District in its reasonable discretion by reference to the priority levels described in this Section 20.1. Contractor's obligations under this Section 20.1 are in addition to Contractor's remediation obligations for Deliverables that are rejected under the terms of Section 7.2 or Section 7.3, and Contractor's obligations under this Section 20.1 may arise at any time, including before District provides written notice of acceptance of any Deliverable or Final Deliverable. Contractor shall respond to notice from the District under this Section as follows:

- (a) *Priority 1.*

A "**Priority 1**" condition is any failure caused by a System Deliverable or by Contractor's performance of Services that precludes all work from being done on a computer system or that materially impairs a major function of a computer system or software. Nonexclusive examples include system crashes, database-wide information corruption, and incorrect writing of critical fields. Priority 1 conditions are the highest in severity, for which District shall receive a response within one hour from Contractor's project executive or his or her designee, and a correction within four hours. If a Priority 1 condition cannot be corrected within four hours, then: (i) after four hours, Contractor's project executive will notify Contractor's on-call support team, who will immediately commence efforts to remedy the problem; (ii) after eight hours, Contractor's national sales manager and operations manager will become involved and will identify and deploy the resources necessary to correct the problem; and (iii) after twelve hours, Contractor's president will become involved, and, if necessary, Contractor will dispatch a team to District's location to correct the problem.

- (b) *Priority 2.*

Any condition that impairs one or more functions that a System Deliverable is warranted to perform or that results from Contractor's performance of the Services and impairs District's use of any aspect of its information technology environment, but that does not involve a Priority 1 condition and is not a Priority 3 condition, is a

“Priority 2” condition. Nonexclusive examples include database information corruption for a single District customer or incorrect writing of non-critical fields. Priority 2 conditions are less severe than Priority 1 conditions. For Priority 2 conditions, District shall receive a response within four hours from the time Contractor is notified. Whenever possible, Priority 2 conditions will be addressed by providing a patch or suggested work-around to accommodate District’s needs within eight hours, with a correction within 24 hours. If a patch or work-around cannot be provided within eight hours, the problem shall be escalated to a Priority 1 condition and treated as set forth above.

(c) *Priority 3.*

Any condition that constitutes a non-material defect or error in one or more functions that a System Deliverable is warranted to perform is a **“Priority 3”** condition. Nonexclusive examples include minor bugs and annoyances. Priority 3 conditions are the least severe. For Priority 3 conditions, District shall receive a response within 48 hours from the time Contractor is notified. Contractor shall use reasonable efforts to correct Priority 3 conditions within three weeks. There is no escalation policy for a Priority 3 condition.

(d) *Inability to Correct*

If Contractor is unable to correct a Priority 1 or Priority 2 condition within ten calendar days after the date Contractor is notified of the Priority 1 or Priority 2 condition, District may, in its sole discretion, (i) withhold payment of any amount due under this Agreement with respect to the portion(s) or component(s) of the Work Order or System Deliverable affected by the Priority 1 or Priority 2 condition until the condition is corrected; (ii) reject the System Deliverable or any part thereof or revoke acceptance and immediately terminate, under Section 20.3 herein (but without any requirement of a 30-day cure period), the applicable Work Order, along with, in District’s discretion, any related Work Order(s); or (iii) exercise any other remedy available at law, in equity, by statute, under this Agreement or otherwise.

(e) *Remedies for Delay in Performing Critical Tasks*

If any task identified in a Work Order as a “Critical Task” is not completed and/or delivered on the date specified in the Work Order, and such delay is not materially caused by any fault of District, District may (i) agree to extend the date upon which such task is to be completed and/or delivered, or (ii) immediately terminate this Agreement under Section 20.3. To the extent that any delay is materially caused by any fault of the District, then District will make reasonable and appropriate adjustments to the due date for such task, as determined in consultation with Contractor, to account for this delay.

(f) *Nonexclusivity*

Except as explicitly set forth in this Agreement, no remedy set forth in this Agreement for breach of this Agreement is intended to be exclusive of any other remedy. Each remedy for breach shall be in addition to every other remedy given hereunder, or now or hereafter existing at law or in equity or by statute or otherwise.

Without limitation to District’s other rights under this Section 20, District may immediately suspend its duties of performance under this Agreement, in whole or in part, if Contractor fails to observe or perform any condition or material obligation in this Agreement and fails to cure such default within ten calendar days after District provides notice of the default.

20.2 *RESERVED*

20.3 Termination by LAUSD for Cause

- (a) LAUSD may terminate this Agreement or any Work Order issued pursuant to this Agreement, or any part of a Work Order:
 - (i) **subject to Section 20.3(ii), for a material breach of a single Work Order by Contractor that is not cured by Contractor within thirty (30) calendar days after LAUSD provides written notice of such breach;**
 - (ii) **for a material breach of a single Work Order by Contractor that is not reasonably subject to cure within thirty (30) calendar days after its occurrence;**
 - (iii) **for numerous or repeated breaches of one or more Work Orders (even if subsequently cured) that collectively constitute a material breach; or**
 - (iv) **for a material breach of the terms of this Agreement by Contractor that is not cured by Contractor within thirty (30) calendar days after LAUSD provides written notice of such breach, or for numerous or repeated breaches of this Agreement (even if subsequently cured) that collectively constitute a material breach.**
- (b) LAUSD shall exercise its termination right hereunder by delivering to Contractor written notice of the breach or breaches under Section 20.3 giving rise to such termination right. Where Section 20.3 provides for a cure period, the applicable Work Order(s) or this Agreement will automatically and immediately terminate upon expiration of such cure period if the breach identified in LAUSD's notice has not been cured. If LAUSD chooses to terminate a Work Order in part, the Charges payable under such Work Order will be equitably adjusted to reflect those Services that are not terminated.

20.4 Termination by LAUSD for Convenience

- (a) LAUSD may terminate this Agreement or any Work Order issued pursuant to this Agreement, or any part of a Work Order immediately for convenience and without cause at any time by giving Contractor written notice designating the termination date, which in no case will be less than thirty (30) calendar days after the date of such notice without Contractor's approval, and paying to Contractor either: (i) in the case of a Work Order under which Services are charged on a time and materials basis, the unpaid Charges for Services performed by Contractor prior to the effective date of termination; or (ii) in the case of a Work Order under which Services are charged on a fixed-fee or milestone basis, (1) the unpaid Charges due for completed Deliverables (or portions thereof) accepted by LAUSD prior to the effective date of termination, and (2) unpaid Charges (calculated on a time and materials basis) for Services performed by Contractor for Deliverables (or portions thereof) that are not completed or have not been accepted by LAUSD prior to the effective date of termination. Upon receipt of any termination notice from LAUSD hereunder, Contractor will immediately commence efforts to cease all affected Services, and will take all reasonable steps to minimize charges, fees or other costs that might be incurred by LAUSD after the date that LAUSD provides termination notice hereunder.
- (b) If LAUSD chooses to terminate a Work Order in part, the charges payable under such Work Order will be equitably adjusted to reflect those Services that are not terminated.
- (c) If a purported termination for cause by LAUSD under Section 20.3 is determined not to be a proper termination for cause, such termination shall be deemed a termination for convenience subject to

this Section 20.4.

20.5 *Termination by LAUSD for Non-Appropriation*

If District is not appropriated adequate funds for or to continue this Agreement or any Work Order, District shall provide written notification to Contractor of non-appropriation of funds (a “Non-Appropriation Notice”). In such event, District will have no further liability hereunder except with respect to payment for Services rendered up to the date of Contractor’s receipt of the Non-Appropriation Notice. This Agreement and all Work Orders will terminate effective as of the date of the Non-Appropriation Notice, unless the Non-Appropriation Notice specifically provides otherwise.

20.6 *Termination for Change of Control*

In the event that Contractor undergoes a change in control where voting or other control of Contractor is acquired, directly or indirectly, in a single transaction or series of related transactions, or all or substantially all of Contractor’s assets are acquired, by any entity, or Contractor are merged with or into another entity to form a new entity, then, at any time within nine (9) months after the last to occur of these events, LAUSD may terminate this Agreement or one or more Work Orders by (a) giving Contractor ninety (90) calendar days’ prior written notice and (b) designating a date upon which the termination(s) will be effective.

20.7 *Termination for Insolvency*

LAUSD may terminate this Agreement in its entirety (including all Work Orders) if Contractor (a) becomes insolvent or is unable to meet its debts as they mature, (b) files a voluntary petition in bankruptcy or seeks reorganization or to effect a plan or other arrangement with creditors, (c) files an answer or other pleading admitting, or fails to deny or contest, the material allegations of an involuntary petition filed against it pursuant to any applicable statute relating to bankruptcy, arrangement or reorganization, (d) is adjudicated a bankrupt or makes an assignment for the benefit of its creditors generally, (e) applies for, consents to or acquiesces in the appointment of any receiver or trustee for all or a substantial part of its property, or (f) any such receiver or trustee is appointed and not discharged within thirty (30) calendar days after the date of such appointment.

20.8 *Extension of Termination Effective Date*

LAUSD may, at its option, upon thirty (30) calendar days prior notice, extend any termination date it has specified pursuant to this Article 20 one or more times. In such event, the Services shall be provided pursuant to and on the terms and conditions set forth in this Agreement and each applicable Work Order and LAUSD shall compensate Contractor as specified in the applicable Work Order.

20.9 *Effect of Termination*

Termination of this Agreement or any Work Order for any reason under this Section shall not affect (a) any liabilities or obligations of either party arising before such termination or out of the events causing such termination, or (b) any damages or other remedies to which a party may be entitled under this Agreement or any Work Order, at law or in equity, arising from any breaches of such liabilities or obligations.

20.10 *Termination Assistance*

If this Agreement or any Work Order is terminated prior to completion, for a period of at least thirty (30) calendar days, Contractor, upon request, will provide to LAUSD or its designee termination assistance to allow the Services to continue without interruption or adverse effect and to facilitate the orderly transfer of the Services to District or to another contracted provider. Contractor will make available to LAUSD such

information as LAUSD may reasonably request for purposes of transferring the Services back into LAUSD or the purposes of procuring services similar to the Services from a third party.

21. MISCELLANEOUS

21.1 *Applicable Law*

All questions concerning the validity, interpretation and performance of this Agreement and the transactions it contemplates shall be governed by and decided in accordance with the laws of the State of California without regard to choice of law principles.

21.2 *Jurisdiction and Venue*

The parties hereby submit and consent to venue in and the exclusive jurisdiction of any state or federal courts located within the City of Los Angeles and irrevocably agree that all actions or proceedings relating to this Agreement shall be litigated in such courts, and each of the parties waives any objection which it may have based on improper venue or forum non conveniens to the conduct of any such action or proceeding in such court. Contractor waives any right to trial by jury and consents to be joined in any action or proceeding in which LAUSD is a defendant and for which Contractor is required to indemnify LAUSD pursuant to the provisions of this Agreement.

21.3 UCITA

To the maximum extent permitted under applicable law, this Agreement shall not be subject to the Uniform Computer Information Transactions Act (prepared by the National Conference of Commissioners on Uniform State Laws) as currently enacted or as may be codified or amended from time to time by any jurisdiction.

21.4 *Equitable Remedies*

The parties agree that (a) in the event of any breach or threatened breach of any provision of this Agreement or any Work Order concerning (i) Confidential Information, (ii) intellectual property rights, or (iii) other matters for which equitable rights may be granted, money damages would be an inadequate remedy; and (b) if either party makes a good faith determination that a breach of this Agreement is such that the damages to the party resulting from the breach will be so immediate, so large or severe and so incapable of adequate redress after the fact that a temporary restraining order or other immediate injunctive relief is the only adequate remedy; then a party may seek immediate injunctive relief and such provisions may be enforced by the preliminary or permanent, mandatory or prohibitory injunction or other order of a court of competent jurisdiction.

21.5 *Interpretation*

The parties are sophisticated and have been represented by counsel during the negotiation of this Agreement and each Work Order. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Agreement.

21.6 *Binding Nature and Assignment*

Contractor may not assign, voluntarily or by operation of law, any of its rights or obligations under this Agreement without the prior written consent of District. Subject to the foregoing, this Agreement and each Work Order shall be binding on the parties and their respective successors and permitted assigns.

21.7 *Expenses*

Except as expressly provided in this Agreement, each party shall pay its own fees and expenses (including, without limitation, the fees and expenses of its agents, representatives, attorneys and accountants) incurred in

connection with the negotiation, drafting, execution, delivery and performance of this Agreement and the transactions it contemplates.

21.8 *Amendment and Waiver*

No supplement, modification, amendment or waiver of this Agreement or any Work Order shall be binding unless executed in writing by the parties in accordance with the terms hereof. No waiver of any term, provision or condition of this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be or be construed as a further or continuing waiver of any such term, provision or condition or as a waiver of any other term, provision or condition of this Agreement.

21.9 *Further Assurances; Consents and Approvals*

Each party shall provide such further documents and instruments and take such other actions as may be reasonably necessary or desirable to give effect to this Agreement and to carry out its provisions. Whenever this Agreement requires or contemplates any action, consent or approval of a party, such party shall act reasonably and in good faith and (unless this Agreement expressly allows exercise of a party's sole discretion) shall not unreasonably withhold or delay such action, consent or approval.

21.10 *Publicity*

Contractor may not use LAUSD's name or any of LAUSD's trade names, trademarks, service marks, slogans, logos or designs for any advertising, promotional or other purpose which is not necessary in Contractor's performance under this Agreement without the prior, written permission of LAUSD.

21.11 *Severability*

If any provision of this Agreement is determined by any court of competent jurisdiction to be invalid or unenforceable (other than provisions going to the essence of this Agreement), such provision shall be interpreted to the maximum extent to which it is valid and enforceable, all as determined by such court in such action, and the remaining provisions of this Agreement will, nevertheless, continue in full force and effect without being impaired or invalidated in any way.

21.12 *Entire Agreement*

This Agreement, each of the Work Orders and all Schedules constitute the entire agreement between the parties pertaining to the subject matter hereof and supersede all prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, of the parties pertaining to the subject matter hereof.

21.13 *Notices*

Any notice, demand or other communication required or permitted to be given under this Agreement or any Work Order shall be in writing and shall be deemed delivered to a party (a) when delivered by hand or courier, (b) when sent electronically or by confirmed facsimile with a copy sent by another means specified in this Section, or (c) three (3) calendar days after the date of mailing if mailed by United States certified mail, return receipt requested, postage prepaid, in each case to the address of such party set forth below (or at such other address as the party may from time to time specify by notice delivered in the foregoing manner):

If to Contractor, to the address set forth by Contractor's signature below, or such other address as the parties may mutually agree.

NetXperts, Inc.
1777 Botelho Dr., #102
Walnut Creek, CA 94596
Phone: (925) 806-0800
Attention: Carol Ann Nordine

If to LAUSD:

Los Angeles Unified School District, Information Technology Division
333 S. Beaudry Avenue, 10th Floor
Los Angeles, CA 90017
Fax: (213) 241-4096
Attention: Sharhyar Khazei, Chief Information Officer

With a Required Copy to:

Los Angeles Unified School District, Office of General Counsel
333 S. Beaudry Avenue, 20th Floor
Los Angeles CA 90017
Fax: (213) 241-3316
Attention: Sharon Thomas

In addition, a copy of all questions and notices relating to contractual matters under this Agreement will be delivered electronically to District's Contract Administration Analyst, Tracey Vanderwende, at tracey.vanderwende@lausd.net (or to such other individual as District may designate in accordance with this section), and each Work Order will include contact information for the District representative(s) to whom Contractor should direct technical matters under such Work Order.

21.14 *Survival*

Any provision of this Agreement or of any Work Order which contemplates performance or observance subsequent to any termination or expiration of this Agreement or of any Work Order, including (without limitation) Article 10, Article 12, Section 13.4, Article 15, Article 16, Article 18, Article 19, Article 20 and Article 21, shall survive expiration or termination of this Agreement or any Work Order.

21.15 *Independent Contractors*

Contractor shall perform its obligations under this Agreement as an independent contractor of LAUSD. Nothing herein shall be deemed to constitute Contractor and LAUSD as partners, joint venturers, or principal and agent. Contractor has no authority to represent LAUSD as to any matters, except as expressly authorized in this Agreement or in a Work Order. This Agreement in no way creates an employee/employer relationship between Contractor Personnel and LAUSD.

21.16 *Third Party Beneficiaries*

Except for third parties specifically entitled to indemnification under the terms of, and as set forth in, Article 18, nothing in this Agreement or in any Work Order, express or implied, is intended to confer on rights, benefits,

remedies, obligations or liabilities on any person (including, without limitation, any employees of the parties) other than the parties or their respective successors or permitted assigns.

21.17 Cumulative Remedies

Except as otherwise expressly provided in this Agreement, remedies provided for herein will be cumulative and in addition to and not in lieu of any other remedies available to either party at law, in equity or otherwise.

21.18 Counterparts

This Agreement and each Work Order may be executed in one or more counterparts, each of which shall be deemed an original, and all of which, taken together, shall constitute one and the same instrument.

21.19 Force Majeure

Neither party shall be liable for failure to fulfill its obligations under this Agreement (other than a failure to pay money) where such failure or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the nonperforming party through the use of alternate sources, work-around plans or other means, and if that failure is caused, directly or indirectly, by flood, extreme weather, fire, mud slide, earthquake, or other natural calamity or act of God, interruption in water, electricity, heating or air conditioning (depending on the season), riots, civil disorders, rebellions or revolutions, acts of governmental agencies, quarantines, embargoes, labor disputes affecting vendors or subcontractors and for which the party claiming force majeure is not responsible, or any other similar cause beyond the reasonable control of that party (each, a “**Force Majeure Event**”). The occurrence of a force majeure event suffered by another customer of Contractor that may require Contractor to allocate additional resources to service that customer shall not constitute a Force Majeure Event under this Agreement that excuses Contractor’s performance hereunder or permits it to reallocate required resources away from the performance of this Agreement. If either party is delayed by a Force Majeure Event it shall promptly notify the other party by telephone and describe in reasonable detail the nature of the Force Majeure Event (to be confirmed in writing within five calendar days after the inception of such delay). Any party claiming a Force Majeure Event hereunder shall: (a) use reasonable efforts to overcome the effects of the Force Majeure Event; (b) use reasonable efforts to mitigate any effects or consequences of such Force Majeure Event; and, (c) promptly notify the other party once the Force Majeure Event has ended or its effects have otherwise been remedied. If any Force Majeure Event results in a failure to deliver the Services for more than five business days after District’s initial receipt of notice, District may, upon notice to Contractor, terminate the applicable Work Order without any liability to Contractor other than payment for Services rendered prior to the occurrence of the Force Majeure Event.

22. WORK-BASED LEARNING PROGRAM (WBLP):

“Notwithstanding any other provision of this Agreement, Contractor hereby acknowledges that the District has determined to enter into this Agreement with Contractor in reliance, in part, on:

- A. The veracity of the representations made by Contractor in Contractor’s Proposal,
- B. The quality of Contractor’s proposed staff and
- C. The WBLP Plan included in Contractor’s Proposal.

Contractor hereby warrants to provide the Services and the WBLP(s) in the manner represented in Contractor’s Proposal.

Furthermore, with respect to Contractor’s WBLP, Contractor acknowledges that:

The District is free to publicize its positive experiences with the Contractor and, if applicable, is also free

to share, with other school districts or organizations that inquire, whatever frustrations it may have experienced in Contractor's implementation of Contractor's WBLP(s);

The District will, of course, share Contractor's name, information regarding Contractor's business and regarding Contractor's proposed WBLP(s) with District schools seeking partners;

The District will also identify Contractor in District documentation regarding the District's Linked Learning program;

The District may photograph participating Contractor representatives and publish those photographs in District promotional and reporting materials relating to the District's Linked Learning program; and

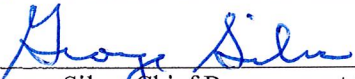
Should Contractor fail to provide the WBLP, in particular, as provided herein, then, in addition to all other remedies to which the District may be entitled, at law and in equity, the District may take Contractor's failure to perform as promised into consideration in the event Contractor is under consideration to provide services to the District in the future."

IN WITNESS WHEREOF the parties have executed this Agreement as of the Effective Date.

-DISTRICT-

LOS ANGELES UNIFIED SCHOOL DISTRICT

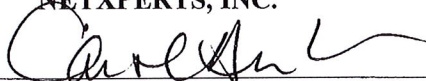
BY LOS ANGELES UNIFIED SCHOOL
DISTRICT BOARD OF EDUCATION

BY 
George Silva, Chief Procurement Officer
Procurement Services Division

Dated 10/5/16

-CONTRACTOR-

NETXPERTS, INC.

BY 
Carol Ann Nardini
(PRINT NAME)

TITLE VP operations

Fed. I.D. # 68 0409173

Dated Sept 26, 2016

SCHEDULE A

STATEMENT OF WORK

Site Based Technology Support Services

Contractor shall provide site based technology support services including computing hardware and software support, installed and cloud based applications support, local server administration, and network connected equipment support. THIS CONTRACT IS NOT TO BE USED FOR THE PURCHASE OF COMPUTERS OR SOFTWARE.

A. SERVICE REQUIREMENTS

OVERVIEW

1. **Desktop and Cloud Based Applications Support** - Provide basic support functions, including the installation and/or redeployment of desktops, laptops, mobile devices, printers, peripherals, and office software; troubleshooting, diagnosis and resolution of desktop and cloud applications problems, configuring of desktops, laptops, mobile devices and other types of equipment for standard applications; identification and correction of user hardware problems, with advanced troubleshooting as needed; maintenance of an updated inventory of all related computer related hardware and provide general help desk support services.
2. **Local Server Administration and Support** - Manage computer systems and networks to include complex application, database, messaging, web and other servers and associated hardware, software, communications, operating systems necessary for the quality, security, performance, availability, recoverability, and reliability of the system. Ensure scheduled preventive maintenance for equipment is properly and promptly performed; maintain the maintenance records on the equipment; develop operations, administrative, and quality assurance back-up plans and procedural documentation. Setup new users and edit or remove existing users on server. Server performance and capacity management services with reporting when specified thresholds are reached. Configuration management, including changes, upgrades, and patches. Support of specialized software products as it relates to the server(s) and associated hardware. Management of user logins and security. Coordinate repair and maintenance work with contracted repair vendors and ensure repairs are conducted in a timely fashion
3. **Network Connected Equipment Administration and Support** – Primary installation and maintenance of printers, network copiers/scanners, etc. Primary maintenance including regular analysis, routine configuration changes, and installation of upgrades. Alert notifications to designated District personnel in the event of failure.
4. **Other related services may include but are not limited to:**
 - (A) Review and maintain the equipment inventory, assessment of equipment for efficiency, life expectancy, capacity, speed, and current processes, and make recommendations for improving routine support criteria and eliminating emergency maintenance situations. A report of this assessment shall be submitted to an assigned District representative.
 - (B) Support schools during Smarter Balance Assessment Consortium (SBAC) and Interim Assessment Blocks (IABs) testing periods.

- (C) Manage salvage equipment process, following District policies, including asset tagging, inventory and distribution.
- (D) Some existing applications at sites include, but not limited to;
 - MS Office Products, including OS and Office 365
 - Adobe Products
 - Apple Products, including OS and iWorks
 - Lexus/Nexus Time Matters and Instructional applications
 - Online Courses for Students
 - Law Tool Box
 - Miscellaneous SaaS applications

B. REPORTING

To effectively monitor the status of the proposed services, management level status reports must be prepared and quarterly meetings with the assigned District representatives will be held to review work performed, network availability, help desk ticket summary, security issues and concerns, and planning.

C. WORK SCHEDULE

The contractor shall be available to begin work upon full execution of the agreement. Normal support coverage hours will be Monday thru Friday between 7:30 am to 4:30 pm Pacific Standard Time (PST), unless other arrangements are mutually agreed upon. Extended support coverage hours will cover the period of time not considered "normal support coverage" including weekends. The actual schedule may be adjusted on project needs by the sponsor.

D. PERFORMANCE

A performance review will be conducted by the District to ensure services are performed satisfactorily by the Contractor and its resource. Contractor will be notified by the District of their performance. If the review is unsatisfactory, the contractor will be required to submit a corrective action plan to address the deficiencies. If the performance is not improved, the contract will not be renewed and the option years will not be exercised.

E. OTHERS

The preferred method of tracking maintenance activities and schedules, and performance metrics (e.g., timeliness of response to trouble calls or open trouble tickets) is LAUSD's Remedy on Demand. Upon execution of the contract the contractor and LAUSD's IT Customer Services staff will coordinate a method of contact for service that will leverage the LAUSD Remedy on Demand. ITD and LAUSD rules, policies, and regulations supersede rules, policies, and regulations that are defined in this document. No changes to the physical network, or to the network configuration, will occur and no additions to the network will negatively impact the existing network.

END OF STATEMENT OF WORK

LOS ANGELES UNIFIED SCHOOL DISTRICT

CONTRACTOR RATE SCHEDULE

Below are fully burdened hourly rates for the different types of resources. The fully burdened not to exceed (NTE) hourly labor rates are inclusive of direct labor cost, overhead, general and administrative (G&A), travel expenses, and profit. The fully burdened not to exceed (NTE) labor rates shall be fixed for the duration of each applicable year.

Levels of Experience

Level I: 1 – 4 years of experience

Level II: 5 – 7 years of experience

Level III: 8+ years of experience

Normal Coverage Support Hours				
	Labor Category	Maximum Rates Services (Rate Card)		
		Initial Period (\$ per hour)	Option 1 (\$ per hour)	Option 2 (\$ per hour)
1	Desktop Application Support – Level I	\$ 60.00	\$ 62.50	\$ 65.00
	Desktop Application Support – Level II	\$ 65.00	\$ 67.50	\$ 70.00
	Desktop Application Support – Level III	\$ 70.00	\$ 72.50	\$ 75.00
2	Server Administration Support – Level I	\$ 70.00	\$ 72.50	\$ 75.00
	Server Administration Support – Level II	\$ 80.00	\$ 80.50	\$ 85.00
	Server Administration Support – Level III	\$ 90.00	\$ 92.50	\$ 90.00
3	Network Administration Support – Level I	\$ 80.00	\$ 82.50	\$ 85.00
	Network Administration Support – Level II	\$ 90.00	\$ 92.50	\$ 95.00
	Network Administration Support – Level III	\$ 100.00	\$ 102.00	\$ 105.00
4	Other Services – Level I	\$ 80.00	\$ 82.50	\$ 85.00
	Other Services – Level II	\$ 90.00	\$ 92.50	\$ 95.00
	Other Services – Level III	\$ 100.00	\$ 102.50	\$ 105.00

CONTRACTOR RATE SCHEDULE

Below are fully burdened hourly rates for the different types of resources. The fully burdened not to exceed (NTE) hourly labor rates are inclusive of direct labor cost, overhead, general and administrative (G&A), travel expenses, and profit. The fully burdened not to exceed (NTE) labor rates shall be fixed for the duration of each applicable year.

Levels of Experience

Level I: 1 – 4 years of experience

Level II: 5 – 7 years of experience

Level III: 8+ years of experience

Extended Coverage Support Hours				
	Labor Category	Maximum Rates Services (Rate Card)		
		Initial Period (\$ per hour)	Option 1 (\$ per hour)	Option 2 (\$ per hour)
1	Desktop Application Support – Level I	\$ 65.00	\$ 67.50	\$ 70.00
	Desktop Application Support – Level II	\$ 70.00	\$ 72.50	\$ 75.00
	Desktop Application Support – Level III	\$ 75.00	\$ 77.50	\$ 80.00
2	Server Administration Support – Level I	\$ 75.00	\$ 77.50	\$ 80.00
	Server Administration Support – Level II	\$ 85.00	\$ 85.50	\$ 90.00
	Server Administration Support – Level III	\$ 95.00	\$ 97.50	\$ 95.00
3	Network Administration Support – Level I	\$ 85.00	\$ 87.50	\$ 90.00
	Network Administration Support – Level II	\$ 95.00	\$ 97.50	\$ 95.00
	Network Administration Support – Level III	\$ 105.00	\$ 107.00	\$ 110.00
4	Other Services – Level I	\$ 85.00	\$ 87.50	\$ 90.00
	Other Services – Level II	\$ 95.00	\$ 97.50	\$ 100.00
	Other Services – Level III	\$ 105.00	\$ 107.50	\$ 110.00



LOS ANGELES UNIFIED SCHOOL DISTRICT

Contractor Code of Conduct

(adopted 11/02, revision effective 11/06)

Preamble

Los Angeles Unified School District's Contractor Code of Conduct was adopted to enhance public trust and confidence in the integrity of LAUSD's decision-making process. This Code is premised on three concepts:

- *Ethical and responsible use of scarce public tax dollars is a critical underpinning of effective government*
- *Contracting integrity and quality of service are the shared responsibilities of LAUSD and our Contractors*
- *Proactive and transparent management of potential ethics concerns improves public confidence*

This Code sets forth the ethical standards and requirements that all Contractors and their Representatives shall adhere to in their dealings with or on behalf of LAUSD. Failure to meet these standards could result in sanctions including, but not limited to, voidance of current or future contracts.

1. Contractors

All LAUSD Contractors and their Representatives are expected to conduct any and all business affiliated with LAUSD in an ethical and responsible manner that fosters integrity and public confidence. A "Contractor" is any individual, organization, corporation, sole proprietorship, partnership, nonprofit, joint venture, association, or any combination thereof that is pursuing or conducting business with and/or on behalf of LAUSD, including, without limitation, consultants, suppliers, manufacturers, and any other vendors, bidders or proposers. A Contractor's "Representative" is also broadly defined to include any subcontractors, employees, agents, or anyone else who acts on a Contractor's behalf.

2. Mission Support

LAUSD relies on Contractors and their Representatives to support our LAUSD mission statement of *"educating students to a higher level of achievement that will enable them to be responsible individuals and productive members of the greater society."* Contractors and their Representatives must provide high-value products, services and expertise which advance LAUSD's mission or provide mission-related benefits that support our goals for the students, employees, stakeholders, and the communities we serve.

3. Ethical Responsibilities

All LAUSD contracts must be developed and maintained within an ethical framework. LAUSD seeks to promote public trust and confidence in our contracting relationships and we expect every individual, regardless of position or level of responsibility, who is associated with an LAUSD procurement process or contract, to commit to exemplifying high standards of conduct in *all phases* of any relationship with LAUSD.

Given that the business practices and actions of Contractors and their Representatives may impact or reflect upon LAUSD, strict observance with the standards in this Code, all applicable local, state and federal laws, and any other governing LAUSD policies or agreements is not only a minimum requirement for all Contractors and their Representatives, but an ethical obligation as well.

In addition to any specific obligations under a Contractor's agreement with LAUSD, all Contractors and their Representatives shall comply with the following requirements:

A. *Demonstrate Honesty and Integrity* – Contractors shall adhere to the highest standards of honesty and integrity in all their dealings with and/or on behalf of LAUSD. As a general rule, Contractors must exercise caution and avoid *even the appearance of impropriety or misrepresentation*. All communications, proposals, business information, time records, and any other financial transactions must be provided truthfully, accurately, and completely.

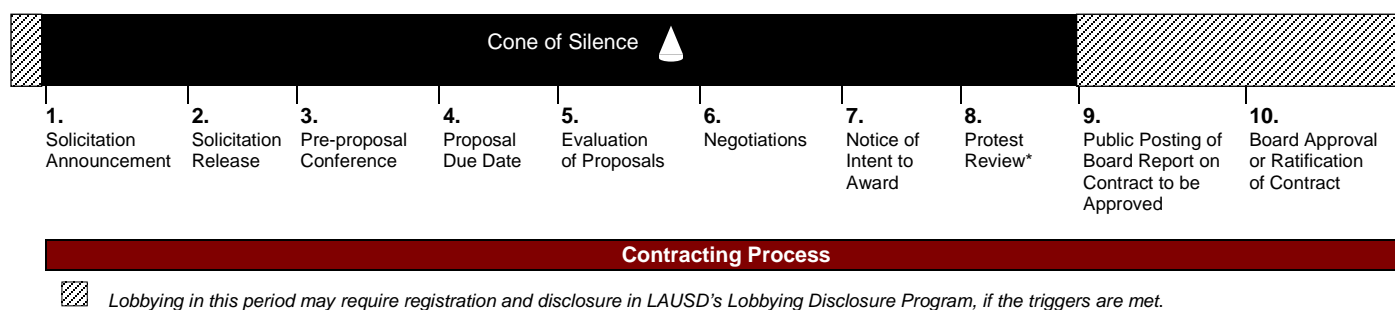
B. *Be a Responsible Bidder* – Contractors shall demonstrate a record of integrity and business ethics in accordance with all policies, procedures, and requirements established by LAUSD.

- (1) Critical Factors – In considering a Contractor's record of integrity and business ethics, LAUSD may consider factors including, but not limited to: criminal investigations, indictments, injunctions, fines, convictions, administrative agreements, suspensions or debarments imposed by other governmental agencies, tax delinquencies, settlements, financial solvency, past performance, prior determinations of failure to meet integrity-related responsibilities, and violations by the Contractor and its Representatives of any LAUSD policies and Codes in prior procurements and contracts. LAUSD reserves the right to reject any bid, proposal and contract, and to impose other sanctions against Contractors who fail to comply with our district policies and requirements, or who violate the prohibitions set forth below in Section 6, Prohibited Activities.

C. *Maintain the Cone of Silence* – Contractors shall maintain a Cone of Silence during required times of the contracting process to ensure that the process is shielded from even the appearance of undue influence. Contractors and their Representatives risk disqualification from consideration and/or other penalties outlined in Section 8, Enforcement Provisions, if they engage in prohibited communication during the restricted period(s).

- (1) Competitive Contracting Process – To ensure a level playing field with an open and uniform *competitive* contracting process, Contractors and their Representatives must maintain a Cone of Silence from the time when an Invitation for Bid (IFB), Request for Proposal (RFP), Request for Interest and Bid (RFIB), Request for Quote, Request for Qualification, or any other solicitation release is announced until the time a contract award recommendation is made public by the Board Secretariat's posting of the board report for the contract to be approved. During the time under the Cone of Silence, Contractors and their Representatives are prohibited from making any contact on any part of a proposal, negotiation or contract with any LAUSD official as this could appear to be an attempt to curry favor or influence. An "LAUSD official" is broadly defined to include "any board member, employee, consultant or advisory member of LAUSD" who is involved in making recommendations or decisions for LAUSD.

Schematic of LAUSD's Competitive Contracting Process (Illustrative Only)



* Note: Protests can sometimes extend past the contract approval process

- (a) Prohibited Communication – Examples of prohibited communication by Contractors and their Representatives under the Cone of Silence include, but are not limited to:
- (i) contact of LAUSD Officials, including members of the department initiating a contract, or members who will serve on an evaluation team for any contract information that is not uniformly available to all other bidders, proposers or contractors;
 - (ii) contact of LAUSD Officials, including Board Members and their staff, to lobby on any aspect relating to a contract matter under consideration, negotiation, protest or dispute;
 - (iii) contact of LAUSD Officials in the particular department requesting a competitive contract to discuss other business or partnership opportunities.
- (b) Exceptions – The following are exceptions to the Cone of Silence:
- (i) open and uniform communications which are made as part of the procurement process such as the pre-bid or pre-proposal meetings or other exchanges of information which are given to all proposers;
 - (ii) interviews or presentations to evaluation committee members which are part of the procurement process;

- (iii) clarification requests made in writing, under the terms expressly allowed for in an LAUSD contracting document, to the appropriate designated contract official(s);
 - (iv) negotiations with LAUSD's designated negotiation team members;
 - (v) protests which follow the process outlined by LAUSD's protest policies and procedures; and
 - (vi) requests for technical assistance approved by LAUSD contract officials (for example questions relating to LAUSD's Small Business Enterprise Program, or requests for formal guidance on ethics matters from the Ethics Office).
- (2) **Non-Competitive Contracting Process** – To ensure the integrity of the non-competitive contracting process, Contractors and their Representatives must maintain a Cone of Silence from the time when a proposal is submitted to LAUSD until the time the contract is fully executed. During this designated time, Contractors and their Representatives are prohibited from making any contact with LAUSD officials on any of the terms of the contract under consideration as this could appear to be an attempt to curry improper favor or influence. The only exceptions to this Cone of Silence are clarification requests made with the Contract Sponsor or the appropriate designated contract official(s) in the Procurement Services Group or Facilities Contracts Branch.
- Examples of Maintaining the Cone of Silence*
- (3) Mai Vien Da is the CEO of a firm that wants to do business with LAUSD. She is at a party when she sees the head of the LAUSD division that has just issued an RFP that her company is interested in bidding on.
- Mai can say "hello," but she must not discuss her proposal or the contracting process at all with the division head.*
- (4) Mai is also interested in having her sales team meet with LAUSD officials district-wide to promote her firm's services, so that they can sell work on smaller projects that do not need to be competitively bid.
- Mai and her employees may attempt to meet with district officials to discuss potential services outside of a competitive process, but she needs to recognize that her marketing activities may require her to register her firm and her employees in LAUSD's Lobbying Disclosure Program. (See Section 5, Disclosure Obligations).*
- D. **Manage Potential Conflicts** – Contractors shall disclose all potential or actual conflicts to LAUSD on an ongoing basis with a Meaningful Conflict Disclosure. A "Meaningful Conflict Disclosure" is a written statement to LAUSD which lays out full, accurate, timely, and understandable information with regard to any potential conflicts involving Contractors and their work for LAUSD. The specific requirements for a Meaningful Conflict Disclosure are set forth in Section 3.D.(2) below. LAUSD relies on these proactive disclosures by Contractors to manage potential conflicts before they become actual conflicts of interest. A potential for conflict is present whenever a situation arises which creates a real or apparent advantage or a competing professional or personal interest for a Contractor. Such situations become conflicts of interest, if appropriate safeguards are not put into place. Examples of potential or actual conflicts include, but are not limited to situations when:
- a financial relationship (income, stocks, ownership, investments, loans, excessive gifts, etc.) or close personal relationship exists or has existed between a Contractor or its Representatives and a LAUSD official;
 - a financial or close personal relationship exists between any officers, directors or key employees of a Contractor or its Representatives and a LAUSD official;
 - a prior, current or potential employment relationship exists between a Contractor or its Representatives and a current or former LAUSD official;
 - an overlap exists between work that a Contractor or its Representative performs or has performed for LAUSD and work he or she will perform on behalf of another client; or
 - an opportunity arises in which a Contractor or its Representative can make a governmental decision within the scope of LAUSD contractual duties that impacts his or her personal financial interests or relationships,
- Contractors and their Representatives have a *continuing* obligation to advise LAUSD proactively of any potential conflicts which may arise relating to a contract.

- (1) State Conflict Standards – LAUSD is generally prohibited by California’s Political Reform Act (Government Code Section 87100) and Government Code Section 1090 from contracting with Contractors if the Contractors, their Representatives, their officers, or any household member of the preceding serve LAUSD in any way in developing, awarding, or otherwise participating in the making of the same contract.

California law also governs situations in which there has been a financial interest between a Contractor and a public official within a 12-month window leading up to a governmental decision. It does not matter whether the impact of an existing relationship is beneficial or detrimental to the interests of the Contractors, their Representatives, or the public agency. Moreover, 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.

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. In fact, the agency can also seek repayment from the Contractor of any amounts already paid and the agency can refer the matter to the appropriate authorities for prosecution.

- (2) Meaningful Conflict Disclosure – Contractors shall provide a meaningful disclosure of all potential and actual conflicts in a written statement to the LAUSD Contract Sponsor, the Ethics Office and the contracting contact from the Procurement Services Group/or the Facilities Contracts Branch. This disclosure requirement is a continuing duty on all Contractors. At a minimum, a Meaningful Conflict Disclosure must identify the following:
- (a) names and positions of all relevant individuals or entities;
 - (b) nature of the potential conflict, including specific information about the financial interest or relationship; and
 - (c) a description of the suggested remedy or safeguard for the conflict.
- (3) Resolution of Conflicts – When necessary, LAUSD will advise Contractors on how a disclosed conflict should be managed, mitigated or eliminated. The Contract Sponsor, in consultation with the Procurement Services Group/Facilities Contracts Branch, the Ethics Office, and the Office of the General Counsel, shall determine necessary actions to resolve any of the Contractors’ disclosed conflict(s). When it is determined that a conflict must be addressed, a written notification will be made to the Contractor, indicating the actions that the Contractor and LAUSD will need to take to resolve the conflict.

Examples of Managing Potential Conflicts

- (4) Rhoda Warrior is a consultant from Global Consulting Firm. She has been assigned by her firm to do work for a particular LAUSD department. Although she does not directly work with him, her husband, Antonio, is one of the senior officials in that department.

Global Consulting must disclose this potential problem via a Meaningful Conflict Disclosure to LAUSD. Depending on the exact nature of her work within that department, Global Consulting and the LAUSD Contract Sponsor may need to take steps to safeguard Rhoda’s work from any actual conflict of interest.

- (5) Amartya Singh is a HR consultant from the Tip Top Talent Agency whose firm is providing temporary support to help LAUSD improve its recruitment efforts. Amartya is himself serving as acting deputy director for the HR division, and in that capacity has been asked to review and approve all bills for the department. In doing his work, Amartya comes across a bill for the Tip Top Talent Agency which requires approval.

Tip Top Talent Agency must disclose the conflict and work with LAUSD to ensure that someone more senior or external to Amarty’s chain-of-command is the one that reviews, evaluates, or approves bills relating to Tip Top Talent Agency. Even if Amartya decides to quit Tip Top Talent to join LAUSD, he cannot be involved with matters relating to Tip Top Talent until 12 months have passed from the date he received his last payment from the firm.

- (6) Greta Planner is a technology consultant that has been hired to design all the specifications for a group of new technology labs. One of the services that Greta will be specifying is an automated wireless

projection system. As it turns out, Greta owns direct stock in a firm that manufactures these types of projection systems.

Greta's direct stock ownership constitutes a financial interest in that company. She must disclose the potential conflict right away in writing to the LAUSD Contract Sponsor, so that the appropriate safeguards can be put in place to prevent any actual conflict.

- E. *Provide Contracting Excellence* – Contractors are expected to deliver high quality, innovative and cost-effective goods and services to LAUSD, so that the public is served with the best value for its dollars.
- F. *Promote Ethics Standards* – Contractors shall be responsible for ensuring that their Representatives, regardless of position, understand and comply with the duties and requirements outlined in this Code and to ensure that their behavior, decisions, and actions demonstrate the letter and spirit of this Code. Contractors may draw upon the resources provided by LAUSD, including but not limited to those made available by the Ethics Office, the Procurement Services Group, and the Facilities Contracts Branch. Such training resources and additional information about LAUSD policies can be found on LAUSD's website (www.lausd.net).
- G. *Seek Advice* – Contractors are expected and encouraged to ask questions and seek formal guidance regarding this Code or other aspects of responsible business conduct from the LAUSD Ethics Office whenever there is a doubt about how to proceed in an ethical manner. A Contractor's proactive management of potential ethics concerns is necessary and vital since this Code does not seek to address or anticipate all the issues that may arise in the course of seeking or doing business with LAUSD.

Example of Seeking Advice

- (1) Abe Iznismann is President of Accelerated Sciences, a new company that makes supplemental teaching tools in the sciences. Over the summer, Abe hired Grace Principle, a seasoned LAUSD administrator who now works in teacher recruitment, to consult with Accelerated Sciences in developing a cutting-edge learning tool. Originally, the company planned to sell the products only to schools in other states, but now it wants to sell the products in California and possibly to LAUSD. Abe wants to work with Grace to develop a win-win strategy for offering the new tools to LAUSD at a discount.

Accelerated Sciences needs to be very careful to ensure that Grace is not involved in any aspect relating to selling the product to LAUSD, especially since Grace has a financial interest with the firm. Remember, under California law, the mere existence of a financial interest creates a concern that will cause the good faith of any acts to be questioned, no matter how conscientious the individuals. Before undertaking any effort to sell to LAUSD, Abe or another manager at Accelerated Sciences should seek out advice on other safeguarding measures to ensure that their good intentions do not inadvertently create a bad outcome for the firm or Grace.

4. Relationship Management

LAUSD expects Contractors and their Representatives to ensure that their business dealings with and/or on behalf of LAUSD are conducted in a manner that is above reproach.

- A. *Employ Good Practices* – Contractors and their Representatives shall conduct their employment and business practices in full compliance with *all* applicable laws, regulations and LAUSD policies, including but not limited to the following:
 - (1) *Equal Employment Opportunity* – Contractors shall ensure that there is no discrimination in hiring due to race, color, religious creed, national origin, ancestry, marital status, gender, sexual orientation, age, or disability.
 - (2) *Health and Safety* – Contractors shall provide a safe and healthy work environment and fully comply with all applicable safety and health laws, regulations, and practices.
 - (3) *Drug Free Environment* – Contractors shall ensure that there is no manufacture, sale, distribution, possession or use of illegal drugs or alcohol on LAUSD-owned or leased property.
 - (4) *No Harassment* – Contractors shall not engage in any sexual or other harassment, physical or verbal abuse, or any other form of intimidation.

(5) **Sweat-Free Conditions** – Contractors shall ensure that no child and/or forced or indentured labor is used in their supply chain. Contractors shall require that all goods provided to LAUSD are made in compliance with the governing health, safety and labor laws of the countries of origin. Additionally, Contractors shall ensure that workers are free from undue risk of physical harm or exploitation and receive a non-poverty wage.

B. **Use Resources Responsibly** – Contractors and their Representatives shall use LAUSD assets for LAUSD business-related purposes only unless given written permission for a specific exception by an authorized LAUSD official. LAUSD assets include: time, property, supplies, services, consumables, equipment, technology, intellectual property, and information.

C. **Protect Confidentiality** – Contractors and their Representatives shall protect and maintain confidentiality of the work and services they provide to LAUSD. All communications and information obtained in the course of seeking or performing work for LAUSD should be considered confidential. No confidential information relating to LAUSD should ever be disclosed without express authorization by LAUSD in writing, unless otherwise legally mandated.

D. **Guard the LAUSD Affiliation** – Contractors and their Representatives shall be cautious of how they portray their relationship with LAUSD to the Public. Communications on behalf of LAUSD can only be made when there is express written permission by an LAUSD official authorized by LAUSD's Office of General Counsel.

(1) **LAUSD Name and Marks** – Contractors shall ensure that all statements, illustrations or other materials using or referencing LAUSD or its marks and logos—including the names and logos of any of our sub-divisions, and/or any logos created by and for LAUSD—receive advance review and written approval of the relevant LAUSD division head prior to release or use.

(2) **Commercial or Advertising Message** – Contractors shall ensure that no commercial or advertising message, or any other endorsements—express or implied—are suggested or incorporated in any products, services, enterprises or materials developed for/or relating to LAUSD unless given written permission to do otherwise by LAUSD's Board of Education.

E. **Respect Gift Limits** – Contractors and their Representatives shall abide by LAUSD's gift limits and use good judgment, discretion and moderation when offering gifts, meals or entertainment or other business courtesies to LAUSD officials, so that they do not place LAUSD officials in conflict with any specific gift restrictions:

- (1) No Contractor or their Representative shall offer, give, or promise to offer or give, directly or indirectly, any money, gift or gratuity to any LAUSD procurement official at any time.
- (2) No Contractor or their Representative shall offer or give, directly or indirectly, any gifts in a calendar year to an LAUSD Official which exceed LAUSD's allowable gift limit.

Example of Respecting Gift Limits

- (3) It's the holidays and Sue Tienda, a Contractor, wants to take a few LAUSD officials out to lunch and to provide them with gift baskets as a token of thanks for the work they have done together.

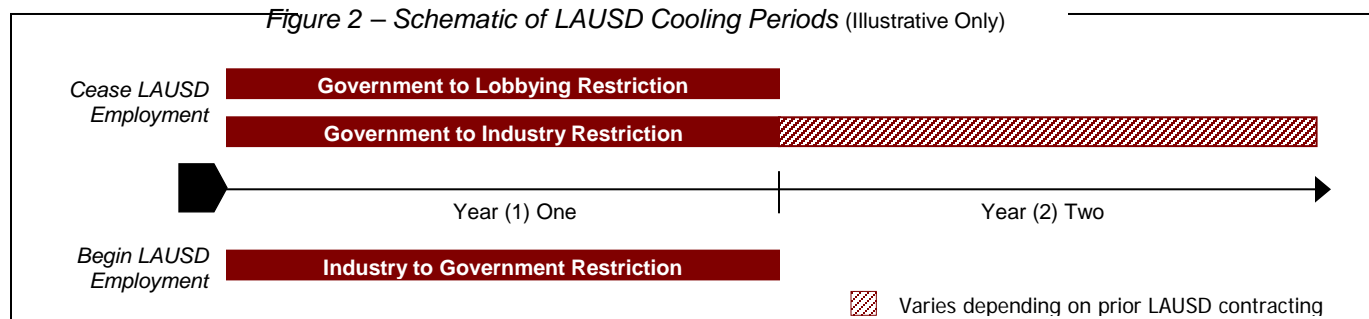
Assuming Sue is not attempting to take out any procurement officials (since they observe a zero tolerance policy on gifts), Sue needs to respect the Board-established gift limit for LAUSD officials. Sue should also be aware that giving a gift totaling over \$50 in a year to LAUSD officials will create a reporting responsibility for the officials, if they are designated Form 700 Statement of Economic Interest filers. Additionally, if there is a procurement underway involving Sue or her firm, she should not give gifts to the LAUSD officials who are part of the evaluation process until the contract is awarded. Finally, Sue may also want to keep in mind that a nice personalized thank-you note can pack quite a punch!

Anyone doing business with LAUSD shall be charged with full knowledge that LAUSD's contracting decisions are made based on quality, service, and value. LAUSD does not seek any improper influence through gifts or courtesies.

F. **Observe Cooling Periods** – Contractors and their Representatives shall observe and maintain the integrity of LAUSD's Cooling Periods. A "Cooling Period" is a mechanism used by public agencies and private organizations across the country to ensure that no unfair competitive advantage is extended due to the hiring of current or former employees. Allowing for some time to pass before a former official works on matters related to their prior agency or a new official works on matters related to their prior employer helps to mitigate

concerns about the appearance of a “revolving door” where public offices are sometimes seen to be used for personal or private gain.

Contractors shall certify that they are upholding LAUSD’s revolving door provisions as part of the contracting process. In their certification, Contractors shall detail the internal firewalls that have been put in place to preserve LAUSD’s cooling periods. As with other public agencies, LAUSD observes three key types of cooling periods for safeguarding the critical transitions between public service and private industry:



- (1) Government to Lobbying Restriction (One-Year Cooling Period) – LAUSD will not contract with any entity that compensates a former LAUSD official who lobbies LAUSD before a one (1) year period has elapsed from that official’s last date of employment

Example of Lobbying Restriction

Ace Impact Group wants to hire Joe Knowsfolks, a former LAUSD official, to help the company cultivate new business opportunities with LAUSD and arrange meetings with key LAUSD officials.

To avoid the possibility of unfair advantage or improper influence, Ace Impact Group is prohibited from utilizing Joe to contact anyone at LAUSD on their behalf until at least one year has passed from Joe’s last date of employment. Joe may help Ace lobby other public entities, but Joe cannot communicate with anyone at LAUSD, either in person or in writing, on behalf of his new company.

- (2) Government to Industry Restriction

- (a) Insider Advantage Restriction (One-Year Cooling Period) – LAUSD will not contract with any entity that compensates any current or former LAUSD official to work on a matter with LAUSD, if that official, within the preceding 12 months, held a LAUSD position in which they personally and substantially participated in that matter.

Example of Insider Advantage Restriction

Risky Business is a small boutique firm that helps public agencies, including LAUSD, develop strategies for managing and overcoming their unfunded liability. Risky Business wants to extend an offer of employment to Nooriya, a LAUSD official, whose previous responsibilities included advising LAUSD’s Board and management on the issue of the district’s unfunded liability.

As part of its certification, Risky Business needs to identify what safeguards it will have in place to ensure that Nooriya’s work for them does not include matters relating to her prior LAUSD responsibilities for at least one year from when she left her LAUSD job. Given that “matters” include broad policy decisions, the general rule of thumb for avoiding any insider advantage is to have former LAUSD officials steer clear of LAUSD work for a year.

- (b) Contract Benefit Restriction (Two-Year Cooling Period) – LAUSD will not contract with any entity that employs any current or former LAUSD official who within the preceding two (2) years, substantially participated in the development of the contract’s RFP requirements, specifications or any part of the contract’s procurement process, if the official will perform any services for the Contractor relating to LAUSD on that contract.

Example of Contracting Benefit Restriction

Technology Advances has just won a big contract with LAUSD and is looking for talent to help support the company's growing work load. The firm wishes to hire some LAUSD employees: Aisha, a LAUSD technology official, her deputy Raj who was the individual who oversaw LAUSD's contracting process with Technology Advances, and Linda, an engineer who was on the evaluation committee that selected Technology Advances.

If Technology Advances hires any of these individuals, none may perform any work for the firm relating to this LAUSD work until two years have elapsed from the date that the contract was fully executed. This case is a good example of how the cooling period seeks to ensure that there is no benefit resulting from a public official's awarding of a contract. All of the LAUSD employees in this example would be considered to have substantially participated in the contract – Raj due to his direct work, Linda due to her role evaluating the bid proposals, and Aisha due to the fact that supervising both employees is a part of her official responsibility. Technology Advances should consider the implications before hiring individuals involved with their LAUSD contracting process.

- (3) Industry to Government Restriction (One-Year Cooling Period) – In accordance with California law, Contractors and/or their Representatives who act in the capacity of LAUSD officials shall be disqualified from making any governmental decisions relating to a personal financial interest until a 12-month period has elapsed from the time the interest has been disposed or severed.

Example of Industry to Government Restriction

Sergei Konsultantov is an outside contractor that has been hired to manage a major reorganization project for LAUSD. Sergei is on the Board of Directors for several companies who do business with LAUSD.

Sergei must not participate in any governmental decisions for LAUSD relating to any private organization for whom he has served as an employee, officer, or director, even in an unpaid capacity, if less than 12 months has passed since he held such a status. Sergei should contact the Ethics Office before starting his work to put a formal disqualification into effect and to seek out any other ethical safeguards he should have in place.

- (4) In rare and unusual circumstances, LAUSD's General Superintendent or his/her designee upon a showing of good cause may waive the Insider Advantage Restriction in writing with notification to the Board of Education, *prior* to approving a contract or its amendment.

- G. *Safeguard Prospective Employment Discussions* – Contractors and their Representatives shall safeguard any prospective employment discussions with current LAUSD officials, especially when the official is one who may participate "personally and substantially" in a matter relating to the Contractor.

Example of Safeguarding an Employment Offer

- (1) Audit Everything, a firm that does work for LAUSD, has been really impressed by Thora Revue, an audit manager that oversees some of their audits. Audit Everything is interested in having Thora work for their firm.

Before Audit Everything begins any prospective discussions with Thora, they should let her supervisor know of their interest and ask what safeguards need to be put in place. For example, if Thora does not outright reject the idea and is instead interested in entertaining the offer, she and her manager will have to work with the Ethics Office to put into effect a disqualification from any further involvement relating to the Contractor before any actual employment discussions are allowed to proceed. Any Contractor who engages in employment discussions with LAUSD officials before a disqualification has been completed is subject to the penalties outlined in this Code.

- H. *Conduct Political Activities Privately* – Contractors and their Representatives shall only engage in political support and activities in their own personal and voluntary capacity, on their own time, and with their own resources.
- I. *Make Philanthropy Voluntary* – Contractors and their Representatives shall only engage in philanthropic activities relating to LAUSD on their own time and with their own resources. LAUSD views philanthropic support as a strictly voluntary opportunity for Contractors to demonstrate social responsibility and good

citizenship. No expressions of support should be construed to have a bearing on current or future contracts with LAUSD. And no current or potential contracting relationship with LAUSD to provide goods or services is contingent upon any philanthropic support from Contractors and their Representatives, unless otherwise designated as part of a bid or proposal requirement in an open, competitive contracting process to solicit a specific type of support.

- (1) Guidelines for Making a Gift to a Public Agency – Contractors who wish to provide philanthropic support to LAUSD shall abide by the ethical and procedural policies and requirements established by LAUSD which build upon the “Gifts to an Agency” requirements established in California’s Code of Regulations Section 18944.2. For outside entities to make a gift or payment to LAUSD in a manner that maintains public integrity, the following minimum requirements must be met:
 - (a) LAUSD must receive and control the payment;
 - (b) LAUSD must use the payment for official agency business;
 - (c) LAUSD, in its sole discretion, must determine the specific official or officials who shall use the payment. The donor may identify a specific purpose for the agency’s use of the payment, so long as the donor does not designate the specific official or officials who may use the payment; and
 - (d) LAUSD must have the payment memorialized in a written public record which embodies the requirements of the above provisions and which:
 - Identifies the donor and the official, officials, or class of officials receiving or using the payment;
 - Describes the official agency use and the nature and amount of the payment;
 - Is filed with the agency official who maintains the records of the agency’s Statements of Economic Interests (i.e. the Ethics Office); and
 - Is filed as soon as possible, but no later than 30 days of receipt of the payment by LAUSD.

5. Disclosure Obligations

LAUSD expects Contractors and their Representatives to satisfy the following public disclosure obligations:

- A. *Identify Current and Former LAUSD Officials* – To ensure against conflict or improper influence resulting from employment of current or former LAUSD employees, Contractors and their Representatives shall disclose any of their employees, subcontractors or consultants who within the last three years have been or are employees of LAUSD. The disclosure will be in accordance with LAUSD guidelines and will include at a minimum the name of the former LAUSD employee(s), a list of the LAUSD positions the person held in the last three years, and the dates the person held those positions. Public agencies that provide contract services are not subject to this requirement.
 - (1) In rare and unusual circumstances, LAUSD’s General Superintendent or his/her designee upon a showing of good cause may waive this disclosure requirement in writing with notification to the Board of Education, *prior* to approving a contract or its amendment.
- B. *Be Transparent about Lobbying* – Contractors and their Representatives shall abide by LAUSD’s *Lobbying Disclosure Code* and register and fulfill the associated requirements, if they meet the trigger(s). LAUSD’s lobbying policy seeks to enhance public trust and confidence in the integrity of LAUSD’s decision-making process by providing transparency via a public record of the lobbying activities conducted by individuals and organizations. A “lobbying activity” is defined as any action taken with the principal purpose of supporting, promoting, influencing, modifying, opposing, delaying or advancing any rule, resolution, policy, program, contract, award, decision, or other proposal under consideration by LAUSD officials.

For further information on LAUSD’s lobbying policy, Contractors and their Representatives shall review the resource materials available on the Ethics Office website (www.lausd.net/ethics). Failure to comply with LAUSD’s Lobbying Disclosure Code can result in fines and sanctions including debarment from contracting with LAUSD.

- C. *Fulfill the State-Mandated Statement of Economic Interests (“Form 700”) Filing Requirement* – Contractors and their Representatives shall abide by the financial disclosure requirements of California’s Political Reform Act (Gov. Code Section 81000-91015). Under the Act, individual Contractors and their Representatives may be required to disclose economic interests that could be foreseeably affected by the exercise of their public duties in a disclosure filing called the Statement of Economic Interests or Form 700. A Form 700 serves as a tool for

aiding public officials at all levels of government to ensure that they do not make or participate in making, any governmental decisions in which they have an interest.

(1) Applicability – Under the law, individual Contractors and their Representatives are considered public officials and need to file a Form 700 as “consultants”, if the services they are contracted to provide fit the triggers identified by the Political Reform Act. Meeting either of the test triggers below requires a Contractor’s Representative(s) to file a Form 700:

- (a) Individual Makes Governmental Decisions – Filing is required if an individual is involved in activities or decision-making such as: obligating LAUSD to any course of action; authorizing LAUSD to enter into, modify, or renew a contract; granting approval for contracts, plans, designs, reports, studies or other items; adopting or granting approval on policies, standards or guidelines for any subdivision of LAUSD; or negotiating on behalf of LAUSD without significant intervening review.
- (b) Individual Participates in the Making of Governmental Decisions for LAUSD and Serves in Staff-like Capacity – Filing is also required if an individual is performing duties for LAUSD on a continuous or ongoing basis extending beyond one year such as: advising or making recommendations to LAUSD decision makers without significant intervening review; conducting research or an investigation; preparing a report or analysis which requires the individual to exercise their judgment; or performing duties similar to an LAUSD staff position that is already designated as a filer position in LAUSD’s *Conflict of Interest Code*.

(2) Filing Timelines – Individuals who are legally required to complete a Statement of Economic Interests form must submit a filing:

- 1.0 (a) upon commencement of work with LAUSD,
- 2.0 (b) on an ongoing basis thereafter in accordance with the April 1st annual deadline, and
- (c) upon termination of work with LAUSD.

(3) Process – Contractors and their Representatives shall coordinate with their LAUSD Contract Sponsor(s) to ensure that they meet this state mandate in the manner required by law. Form 700s must be received by the LAUSD Ethics Office to be considered properly filed in accordance with the Political Reform Act.

(4) Disqualifications – Individuals who must file financial disclosure statements are subject to the requirements of the Political Reform Act as is the case with any other “public official” including 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, so as not to violate any aspect of the Act.

Examples of Form 700 Filers and Non-Filers

(5) Maria Ley is an attorney for the firm of Legal Eagles which serves as outside counsel to LAUSD. In her capacity as outside counsel, Maria provides ongoing legal services for LAUSD and as such participates in the making of governmental decisions. Maria’s role involves her in advising or making recommendations to government decision-makers and also gives her the opportunity to impact decisions that could foreseeably affect her own financial interests.

Maria would be considered a consultant under the Political Reform Act and would need to file a Form 700.

(6) The Research Institute has been hired by LAUSD to do a major three-year policy study which will help LAUSD decide the shape and scope of a major after-school tutoring initiative, including the total funding that should be allocated. As part of the Institute’s work, their researchers will help LAUSD design and decide on some additional contracts for supplemental survey research. The Institute knows that all the principal researchers on their team will have to be Form 700 filers because their work is ongoing and will influence LAUSD’s governmental decision. However, the Institute is unsure of whether their trusty secretary, Bea Addman, would have to be a filer.

Bea does not need to file. Even though she will be housed at LAUSD for the three years and act in a staff-like capacity, she will provide clerical support primarily and will not participate in making any governmental decisions.

(7) Bob Builder works for a construction company that will be supporting LAUSD’s school-building initiative on a continuous basis. Bob will direct activities concerning the planning and construction of various schools facilities, coordinate land acquisition, supervise teams, set policies, and also prepare various budgets for LAUSD.

Bob meets the trigger defined under the law because as part of the services he will provide, he has the authority to affect financial interests and commit LAUSD to government actions at his discretion. Additionally, in his role, he will be performing essentially the same tasks as an LAUSD Facilities Project Manager which is a position that is already designated in LAUSD's Conflict of Interest Code. Therefore, Bob is required to file a Form 700.

6. Prohibited Activities

A Contractor, its Representative(s) and all other agent(s) acting on its behalf are prohibited from engaging in the following activities:

GENERAL PROHIBITIONS

- A. *Acting in a manner that would be reasonably known to create or lead to a perception of improper conduct that could result in direct or indirect damage to LAUSD or our reputation*
- B. *Acting with the purpose or intent of placing an LAUSD official under personal obligation to any Contractor or its Representatives*
- C. *Conducting business with or on behalf of LAUSD in a manner that would be reasonably known to create or lead to a perception of self-dealing*
- D. *Conducting work on behalf of another client on a matter that would be reasonably seen as in conflict with work performed for LAUSD*
- E. *Disclosing any proprietary or confidential information, including employee or student health information, about LAUSD, our employees, students, or contractors to anyone not authorized by a written LAUSD re-disclosure agreement to receive the information*
- F. *Knowingly deceiving or attempting to deceive an LAUSD official about any fact pertaining to any pending or proposed LAUSD decision-making*
- G. *Making or arranging for any gift(s) or gratuities that violate LAUSD's policies, including:*
 - (1) *Providing any gifts at all to a procurement employee;*
 - (2) *Providing any gifts in excess of LAUSD's gift limit in a calendar year to any LAUSD official or to a member of his/her household; and*
 - (3) *Providing gifts without the necessary public disclosure when disclosure is required*
- H. *Offering any favor, gratuity, or kickback to an LAUSD official for awarding, modifying, or providing preferential treatment relating to an LAUSD contract*
- I. *Receiving or dispersing compensation contingent upon the defeat, enactment, or outcome of any proposed policy or action*
- J. *Taking any action to circumvent LAUSD's system of controls or to provide misleading information on any documents or records*
- K. *Using LAUSD assets and resources for purposes which do not support LAUSD's work*
- L. *Using LAUSD provided technology or systems to create, access, store, print, solicit or send any material that is false, derogatory, malicious, intimidating, harassing, threatening, abusive, sexually explicit or otherwise offensive*
- M. *Violating or counseling any person to violate any provisions of LAUSD's Contractor Code of Conduct, Lobbying Disclosure Code, Employee Code of Ethics, and/or any other governing state or federal laws*

CONTRACTING PROHIBITIONS

- N. *Dealing directly with an LAUSD official who is a close relative or cohabitant with a Contractor or its Representatives in the course of negotiating a contracting agreement or performing a Contractor's obligation*
 - 1. *For the purposes of this policy, close relatives shall be defined as including spouse, sibling, parent, grandparent, child, and grandchild. Cohabitants shall be defined as persons living together.*
- O. *Engaging in prohibited communication with LAUSD officials during the Cone of Silence time period(s) of the contracting process*
 - (1) *In a competitive contracting process, the Cone of Silence begins from the time when an Invitation for Bid (IFB), Request for Proposal (RFP), Request for Interest and Bid (RFIB), Request for Quote, Request for*

Qualification, or any other solicitation release is announced by LAUSD until the time a contract award recommendation is made public by the Board Secretariat's posting of the board report for the contract to be approved.

- (2) In a non-competitive contracting process, the Cone of Silence begins at the time when a proposal is submitted to LAUSD until the time the contract is fully executed.

- P. *Employing any current or former LAUSD employee to perform any work prohibited by the "Cooling Periods" defined in Section 4F of this Code*
- Q. *Making or participating in the making of governmental decisions on behalf of LAUSD when a Contractor or its Representatives has an existing financial interest that is prohibited under the law*
- R. *Making any substitution of goods, services, or talent that do not meet contract specifications without prior approval from LAUSD*
- S. *Making false charges on claims for payment submitted to LAUSD in violation of the California False Claims Act, Cal. Government Code §§ 12650-12655*
- T. *Requesting, attempting to request, or accepting—either directly or indirectly—any protected information regarding present or future contracts before the information is made publicly available at the same time and in the same form to all other potential bidders*
- U. *Submitting a bid as a proposer or sub-proposer on a particular procurement after participating in its development (e.g. identifying the scope of work, creating solicitation documents or technical specifications, developing evaluation criteria, and preparing contractual instruments)*

LOBBYING PROHIBITIONS

- V. *Engaging in any lobbying activities without the appropriate disclosure, if the registration trigger has been met*
- W. *Lobbying on behalf of LAUSD, if a Contractor or its Representatives is lobbying LAUSD officials.*
 - (1) Any person or entity who receives compensation to lobby on behalf of or otherwise represent LAUSD, pursuant to a contract or sub-contract, shall be prohibited from also lobbying LAUSD on behalf of any other person or entity for compensation as this would be considered a conflict of interest.

7. Issues Resolution

Early identification and resolution of contracting or other ethical issues that may arise are critical to building public trust. Whenever possible, it is advisable to initiate the issue resolution process proactively, either with the designated contracting contact if the issue arises during the contracting process, or with the Contract Sponsor in the case of an active contract that is being carried out. It is always appropriate to seek out the Procurement Services Group or the Facilities Contracts Branch to resolve an issue, if another alternative is not possible. Formal disputes regarding bid solicitations or contract awards should be raised and addressed in accordance with LAUSD policy where such matters will be given full, impartial, and timely consideration.

8. Enforcement Provisions

While Contractors and their Representatives are expected to self-monitor their compliance with this Contractor Code of Conduct, the provisions of this Code are enforceable by LAUSD. Enforcement measures can be taken by LAUSD's Procurement Services Group or Facilities Contracts Branch in consultation with the Contract Sponsor, the Ethics Office, the Office of the General Counsel, and the Office of the Inspector General. The Office of the Inspector General may also refer matters to the appropriate authorities for further action.

Report Violations – Good faith reporting of suspected violations of the Contractor Code of Conduct is encouraged. Reports of possible violations should be made to the Office of the Inspector General where such reports will be investigated and handled with the level of confidentiality that is merited and permitted by law. No adverse consequences will result to anyone as a result of making a good faith report.

Cooperate on Audits and Investigations – Contractors and their Representatives shall cooperate with any necessary audits or investigations by LAUSD relating to conduct identified in this Code. Such audits and investigations may be conducted when LAUSD has reason to believe that a violation of this Code has occurred. Once an audit or investigation is complete, LAUSD may contact a Contractor or their Representatives to establish remedies and/or sanctions.

Comply with Sanctions – Contractors and their Representatives shall comply with the necessary sanctions for violations of this Code of Conduct. Remedies can include and/or combine one or more of the following actions:

- (1) Removal of offending Contractor or subcontractor;
- (2) Implementation of corrective action plan approved by LAUSD;
- (3) Submission of training plan for preventing future violations of the Code;
- (4) Probation for 1-3 years;
- (5) Rescission, voidance or termination of a contract;
- (6) Suspension from all LAUSD contracting for a period of time;
- (7) Prohibition from all LAUSD lobbying activities;
- (8) Compliance with deferred debarment agreement;
- (9) Debarment from all LAUSD procurement or contracting; or
- (10) Other sanctions available by law that are deemed reasonable and appropriate.

In the case of a procurement in which a contract has yet to be awarded, LAUSD reserves the right to reject any bid or proposal, to terminate the procurement process or to take other appropriate actions.

Failure to remedy the situation in the timely manner prescribed by LAUSD can result in additional sanctions. *Records of violations or any other non-compliance are a matter of public record.*

Any debarment proceeding will follow due process in accordance with the procedures described in LAUSD's Debarment Policy.

9. Future Code Updates

To ensure that LAUSD maintain our effectiveness in promoting integrity in our contracting processes and our use of public tax dollars, LAUSD reserves the right to amend and modify this Contractor Code of Conduct at its discretion. LAUSD's Ethics Office will post the latest version of the Code on its website. Interested parties with ideas on how LAUSD can strengthen our Code to improve public trust in the integrity of LAUSD's decision-making can contact LAUSD's Ethics Office in writing to share their comments. Such comments will be evaluated for future code updates.

LAUSD is not responsible for notifying a Contractor or their Representatives of any changes to this Code. It is the responsibility of a Contractor to keep itself and its Representatives apprised of any changes made to this Code. LAUSD is not responsible for any damages that may occur as a result of a Contractor's failure to fulfill its responsibilities of staying current on this Code.

10. Severability

If one part or provision of this Contractor Code of Conduct, or its application to any person or organization, is found to be invalid by any court, the remainder of this Code and its application to other persons or organizations, which has not been found invalid, shall not be affected by such invalidity, and to that extent the provisions of this Code are declared to be severable.

**LOS ANGELES UNIFIED SCHOOL DISTRICT
WORK ORDER FORM**

Order for Services No. _____ by the _____ (name of school/office requesting services) is effective as of _____, between the Los Angeles Unified School District (LAUSD) and **(VENDOR and CONTRACT Number)**_____.

The following information to be completed by requesting school/office in the Work Order Request:

1. Scope of Services:

2. Period of Performance:

3. Deliverables:

4. Staffing and Rates:

IN WITNESS WHEREOF, the parties hereto have executed this Services Order under the Agreement referenced above.

LOS ANGELES UNIFIED SCHOOL DISTRICT

CONTRACTOR

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

ONSITE TECHNOLOGY SUPPORT REQUEST FORM

The following information must be completed by the requesting LAUSD School or Office:

School Name:	_____	Date:	_____
Contact Name:	_____	Location Code:	_____
		Telephone No.:	_____
		Email Address:	_____
Estimated Start Date:	_____	Estimated End Date:	_____
Location of Work:	_____		

Scope of Work (please provide supplemental pages if needed):

Justification (please provide supplemental pages if needed):

Requesting School/Office

Information Technology Division (ITD)

Authorized Signature

Authorized Signature

ITD Recommendation

District IT Staff:

MSA Vendor(s):

**DATA USE AGREEMENT
BETWEEN**

**THE LOS ANGELES UNIFIED SCHOOL DISTRICT
AND**

—

FOR

THE DISCLOSURE OF EDUCATION RECORDS

1. PARTIES

- 1.1 The Los Angeles Unified School District (“District”) is a public school district organized and existing under and pursuant to the constitution and laws of the State of California and with a primary business address at 333 S. Beaudry Avenue, Los Angeles, California 90017.
- 1.2 ***CONTRACTOR DESCRIBES THEMSELVES*** (Contractor) provides ***DESCRIBE GENERAL NATURE OF BUSINESS*** with a primary place of business at

2. PURPOSE

- 2.1 The purpose of this Data Use Agreement (“Agreement”) is to allow for the District to provide Contractor with personally identifiable information (“PII”) from student education records (“student data”) without consent so that the Contractor may perform the following institutional service or function for which the District would otherwise use employees.
- 2.2 ***DESCRIBE SPECIFIC SERVICES CONTRACTOR IS TO PERFORM*** The Contractor will be performing this service that would otherwise be performed by District employees.
- 2.3 This Agreement is meant to insure that Contractor adheres to the requirements concerning the use of student information protected under the Family Educational Rights and Privacy Act (“FERPA”), 20 U.S.C. §1232g, 34 Code of Federal Regulations Part 99, and California Education Code sections 49060-49085. This agreement applies to all interactions between Contractor and District schools.
- 2.4 34 C.F.R. §99.30 and Education Code §49076(a) require the consent of the education rights holder prior to the release of PII from the education record of a student. An exception to the consent requirement is provided for in 34 CFR §99.31(a)(1)(i) and Education Code §49076(a)(2)(G)(i) for contractors “performing institutional services or functions otherwise performed by school employees.” These contractors are considered “school officials” under FERPA and the California Education Code.
- 2.5 Under this Agreement, the District considers Contractor to be such a school official with legitimate educational interests performing an institutional service or function for which the District would otherwise use employees within the meaning of 34 C.F.R. §99.31(a)(1)(i) and Education Code §49076(a)(2)(G)(i) and this allows the District to disclose PII from education records of students without the consent required by 34 C.F.R. § 99.30 and Education Code §49076(a).

- 2.6 This Agreement does not necessarily describe the complete nature of all interactions between the Contractor and the District. Rather, this Agreement pertains to the disclosure of personally identifiable information from education records only. It is likely that the Contractor has some other form of written agreement with the District (possibly including, but not limited to a separate contract or MOU, a license agreement, a subscription agreement, etc.) However, in so far as it pertains to the subject matter of this Agreement, this Agreement takes precedence over any inconsistencies with any other agreements.

3. PROCESS FOR DATA TRANSFER

DESCRIBE DATA TRANSFER PROCESS

4. DISTRICT DUTIES

- 4.1 The District will provide student data in compliance with the Family Educational Rights and Privacy Act (“FERPA”), 20 U.S.C. section 1232g and 34 C.F.R. 99, and California Education Code sections 49060-49085.

- 4.2 The following student data will be provided:

4.2.1 LIST DATA TO BE PROVIDED

4.2.2

4.2.3

4.2.4

4.2.5

5. CONTRACTOR DUTIES

- 5.1 The Contractor will perform the following duties in regard to any student data it obtains:
- 5.1.1 Not disclose the information to any other party without the consent of the parent or eligible student;
 - 5.1.2 Use the data for no purpose other than the work stated in this Agreement;
 - 5.1.3 Allow the District access to any relevant records for purposes of completing authorized audits;
 - 5.1.4 Require all employees, contractors and agents of any kind to comply with all applicable provisions of FERPA and other federal and California laws with respect to the data shared under this Agreement;
 - 5.1.5 Designate in writing a single authorized representative able to request data under this Agreement. The authorized representative shall be responsible for transmitting all data requests and maintaining a log or other record of all data requested and received pursuant to this Agreement, including confirmation of the completion of any projects and the return or destruction of data as required by this Agreement.

District or its agents may, upon request, review the records required to be kept under this section;

- 5.1.6 Maintain all data obtained pursuant to this Agreement in a secure computer environment and not copy, reproduce or transmit data obtained pursuant to this Agreement except as necessary to fulfill the purpose of this Agreement. All copies of data of any type, including any modifications or additions to data from any source that contains information regarding students, are subject to the provisions of this Agreement in the same manner as the original data. The ability to access or maintain data under this Agreement shall not under any circumstances transfer from Contractor to any other institution or entity;
 - 5.1.7 Destroy or return all personally identifiable information obtained under this Agreement when it is no longer needed for the purpose for which it was obtained no later than 30 days after it is no longer needed. In the event Contractor destroys the PII, Contractor shall provide the District with certification of such destruction. Failure to return or destroy the PII will preclude Contractor from accessing personally identifiable student information for at least five years as provided for in 34 C.F.R. section 99.31(a)(6)(iv); and,
 - 5.1.8 Comply with the District Information Protection Policy, BUL-1077.1, available at: http://notebook.lausd.net/pls/ptl/docs/PAGE/CA_LAUSD/FLDR_ORGANIZATIONS/FLDR_GENERAL_COUNSEL/BULL-1077.1%20REVISED%20120506.PDF.
- 5.2 If Contractor is an operator of an Internet website, online service, online application, or mobile application, Contractor shall comply with the requirements of California Business and Professions Code section 22584 and District policy as follows:
- 5.2.1 Contractor shall not (i) knowingly engage in targeted advertising on the Contractor's site, service or application to District students or their parents or legal guardians; (ii) use PII to amass a profile about a District student; (iii) sell information, including PII; or (iv) disclose PII without the District's written permission.
 - 5.2.2 Contractor will store and process District Data in accordance with commercial best practices, including appropriate administrative, physical, and technical safeguards, to secure such data from unauthorized access, disclosure, alteration, and use. Such measures will be no less protective than those used to secure Contractor's own data of a similar type, and in no event less than reasonable in view of the type and nature of the data involved. Without limiting the foregoing, Contractor warrants that all electronic District Data will be encrypted in transmission using SSL [(Secure Sockets Layer)] [or insert other encrypting mechanism] (including via web interface) [and stored at no less than 128-bit level encryption].
 - 5.2.3 Contractor shall delete a student's covered information upon request of the District.
 - 5.2.4 District Data will not be stored outside the United States without prior written consent from the District.

- 5.3 Contractor shall comply with the District's information security specifications prior to receiving any electronic transfers of pupil record information from Clever. District may require Contractor to provide documentation of compliance prior to any transmittal.
- 5.4 If the Contractor will provide cloud-based services for the digital storage, management, and retrieval of pupil records or will provide digital educational software that will access, store, and use pupil records, the following requirements in compliance with California Education Code section 49073.1 pertain:
- 5.4.1 The pupil records continue to be the property of and under the control of the District;
- 5.4.2 Contractor will not use any information in the pupil record for any purpose other than those required or specifically permitted by this Agreement.
- 5.4.3 In order for a parent, legal guardian or eligible pupil to review personally identifiable information in the pupil's records and correct erroneous information, Contractor shall:

CONTRACTOR TO DESCRIBE

- 5.4.4 Contractor shall take the following actions, including the designation and training of responsible individuals, to ensure the security and confidentiality of pupil records:

CONTRACTOR TO DESCRIBE

- 5.4.5 Contractor shall use the following procedure for notifying the affected parent, legal guardian, or eligible pupil in the event of an unauthorized disclosure of the pupil's records:

CONTRACTOR TO DESCRIBE

- 5.4.6 Contractor certifies that it will not retain the pupil records upon completion of the services. Contractor will take the following actions to enforce this certification:

CONTRACTOR TO DESCRIBE

- 5.4.7 Contractor shall not use personally identifiable information in pupil records to engage in targeted advertising.

6. AUTHORIZATION FOR TRANSFER OF DATA.

- 6.1 The District hereby authorizes Contractor to receive the student data listed in Section 4.2.

- 6.2 Contractor agrees that District makes no warranty concerning the accuracy of the student data provided.

7. TERM

- 7.1 This Agreement shall be effective on the date the last party signs and shall be for an indefinite term to match any Contractor interactions with the District under which the Contractor receives student data.
- 7.2 Either party may terminate this Agreement for any reason at any time upon reasonable notice to the other party.

8. NOTICES

- 8.1 All notices required or permitted by this Agreement shall be in writing and shall be either personally delivered or sent by nationally-recognized overnight courier, facsimile or by registered or certified U.S. mail, postage prepaid, addressed as set forth below (except that a party may from time to time give notice changing the address for this purpose). A notice shall be effective on the date personally delivered, on the date delivered by a nationally-recognized overnight courier, on the date set forth on the receipt of a telecopy or facsimile, or upon the earlier of the date set forth on the receipt of registered or certified mail or on the fifth day after mailing.
- 8.2 Notices shall be delivered to the following:

DISTRICT:

Attention: Cynthia Lim
Office of Data and Accountability
333 South Beaudry Avenue, 16th Floor
Los Angeles, CA 90017

CONTRACTOR:

Attention:

IN WITNESS WHEREOF, the parties have executed this Agreement as of the last day noted below.

LOS ANGELES UNIFIED SCHOOL DISTRICT

By: _____

Date: _____

Title/Position: _____

CONTRACTOR

By: _____

Date: _____

Title/Position: _____

LOS ANGELES UNIFIED SCHOOL DISTRICT
Division of Risk Management and Insurance Services
Insurance & Risk Finance Branch



WORKERS' COMPENSATION STATEMENT

(Statement on exemption from California Workers' Compensation Laws)

I, _____,
(name of representative)

certify that in the performance of my agreement with the Los Angeles Unified School District that

(name on contract)

shall not employ any person in any manner so as to become subject to the Workers' Compensation Laws of the state of California.

I agree that should _____
(name on contract)

become subject to the Workers' Compensation Laws of the state of California during the term of the agreement, I will notify the Los Angeles Unified School District and will comply with those laws immediately.

NAME ON CONTRACT: _____

Signature

Date

Print Name and Title

Address: _____

City: _____ State/Zip Code: _____

333 South Beaudry Avenue - 28th Floor, Los Angeles, CA 90017 - <http://riskmanagement.lausd.net>
Telephone: (213) 241-2176 Fax: (213) 241-8993 TTY: (213) 241-6882