

**INFORMATION TECHNOLOGY  
SERVICE AND SUPPORT AGREEMENT**

**BETWEEN**

**THE LOS ANGELES UNIFIED SCHOOL DISTRICT**

**AND**

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Period of Performance: **From January [X], 2016 (the “Effective Date”) through June 30, 2018** (subject to early termination or extension for up to one year as set forth herein)

Contractor Service Area: **[Identify specific service area(s) covered by this Agreement. Choose from the following options:]**  
**Program and Project Management**  
**Database Administration**  
**Training and Related Training Services**  
**Software Application Development and Programming**  
**Network Project Management**  
**Network Configuration Services**  
**Web and Portal Services**  
**Security Configuration Services**  
**Off-Site Support for Data Entry Services**  
**Short-Term Technical Services**  
**Software Support**  
**Document Management**  
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## **INFORMATION TECHNOLOGY SERVICE AND SUPPORT AGREEMENT**

THIS INFORMATION TECHNOLOGY SERVICE AND SUPPORT AGREEMENT (this “**Agreement**”) is made and entered into as of the [X] day of January, 2016, between The Los Angeles Unified School District (“**LAUSD**” or “**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) RESERVED
- (b) This Agreement sets forth the general terms and conditions governing the contractual relationship between LAUSD and Contractor for [ENTER TYPE OF SERVICES]
- (c) Contractor is an experienced provider of services in the Contractor Service Area. Contractor represents that it has, and will throughout the Term have, the skills, qualifications, expertise and experience necessary to perform and manage the services described in this Agreement 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;
- (c) consistent and effective management of the relationship between Contractor and LAUSD; and
- (d) a cooperative and collaborative relationship between Contractor and LAUSD’s other third-party contractors and Affiliates, should Contractor’s provision of the Services require such interaction(s).

### **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. All Charges will be in U.S. Dollars.
- (c) “**Change Order**” means an amendment executed by a duly authorized representative of Contractor and by District.
- (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, Personally Identifiable Information, 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 Off-The-Shelf Software**” means any software used to provide the Services that is available off-the-shelf software owned by Contractor or a third party, which Contractor makes available for licensing by end users and which does not result, in whole or in part, from development or customization efforts under this Agreement. Contractor Off-The-Shelf Software will include any and all bug fixes and other nonmaterial revisions to Contractor Off-The-Shelf Software.
- (f) “**Contractor Customized Software**” means any software used to provide the Services that is owned by Contractor or third parties, but which is customized or otherwise modified by Contractor pursuant to the terms of the Agreement 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, agents, contractors, and subcontractors (as well as any employees, agents, contractors, or subcontractors of those contractors or subcontractors) performing the Services.
- (h) “**Contractor Service Area**” means the contractor service area(s) identified on the cover page attached hereto.
- (i) “**Critical Task**” has the meaning given in Subsection 21.1(e).
- (j) “**Data Subject**” means an individual to whom Personally Identifiable Information relates.
- (k) “**Deliverable**” means a deliverable to be delivered or provided by Contractor under this Agreement, and may be Contractor Off-The-Shelf Software, Contractor Customized

Software, Work Product, Documentation, Code Documentation or any other items identified for delivery in this Agreement. “**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.

- (l) “**Deliverable Credit**” has the meaning given in Section 7.4.
- (m) “**Deliverable Work Plan**” has the meaning given in Section 7.1.
- (n) “**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.
- (o) “**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.
- (p) “**Final Criteria**” has the meaning given in Subsection 7.1(c).
- (q) “**Final Deliverable**” means all related Deliverables, where such Deliverables are intended or required to operate as a system or otherwise to perform interrelated functions.
- (r) “**Initial Acceptance Period**” has the meaning given in Subsection 7.2(d).
- (s) “**Key Contractor Personnel**” has the meaning given in Section 10.3.
- (t) “**Key Milestone**” has the meaning given in Subsection 7.1(a).
- (u) “**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.
- (v) “**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 or on behalf of 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.

- (w) **“LAUSD Information Security Policies”** means the written security policies and procedures set forth in Schedule G 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 by LAUSD from time to time and provided to Contractor.
- (x) **“LAUSD Software”** means software owned by LAUSD and includes software developed by LAUSD internally and software developed by third parties for ownership by LAUSD.
- (y) **“Pass-Through Expenses”** means reasonable and actual out-of-pocket expenses incurred by Contractor for equipment, materials, supplies or other Services provided to LAUSD that are chargeable to LAUSD. Pass-Through Expenses shall not include Contractor’s overhead costs, administrative expenses or other mark-ups.
- (z) **“Personally Identifiable Information”** means any nonpublic information that can be used to distinguish or trace an individual’s identity either directly or indirectly through linkages with other information.
- (aa) **“Schedule”** means any schedule, exhibit, agreement or other document either (i) attached to this Agreement; or (ii) executed by the parties at any time hereafter, if such document states that it is a schedule or exhibit to this Agreement.
- (bb) **“Service Level”** has the meaning given in Section 8.1.
- (cc) **“Service Level Default”** has the meaning given in Subsection 8.3(a).
- (dd) **“Services”** means services within the Contractor Service Area to be performed under this Agreement.
- (ee) **“Substantive Error”** means any defect in a Deliverable or Final Deliverable that materially and adversely affects (i) LAUSD’s operations or (ii) LAUSD’s ability to use the Deliverable or Final Deliverable for the purposes contemplated in this Agreement.
- (ff) **“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.
- (gg) **“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.
- (hh) **“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. 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 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 and the Schedules and will be defined in the context in which they are used and have the meanings there indicated.

## **3. AGREEMENT - GENERAL**

### **3.1 Agreement**

This Agreement contains general contractual terms for Services that Contractor will provide to LAUSD..

### **3.2 Interpretation and Precedence**

- (a) This Agreement, the Schedules attached hereto, 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 direct conflict between these documents, the following order of precedence will apply:
  - (i) This Agreement;
  - (ii) any Schedule to this Agreement; and
  - (iii) any Deliverable Work Plan.
- (b) References to and use of the terms “including” or “e.g.” in this Agreement or its Schedules means “including, without limitation.”

### **3.3 No Implied Agreement; Nonexclusivity**

- (a) RESERVED.
- (b) Except as expressly agreed upon under this Agreement, 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 contained herein, including its obligations related to confidentiality.
- (d) Except for an express agreement for the purchase of specified amounts of, if any, 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 this Agreement.
- (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 as of the Effective Date and shall continue through June 30, 2018 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 a period of up to one year (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 such one year period, 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 shall continue to apply without change during any renewal period.

### **4.3 RESERVED**

## **5. SERVICES - GENERAL**

### **5.1 General**

In addition to the services, functions, responsibilities, and tasks expressly described in this Agreement, the following are deemed to be included in the Services as if expressly described therein: (i) services, functions, responsibilities and tasks normally performed by providers of similar services within the Contractor Service Area on an outsourced basis; and (ii) services, functions, responsibilities and tasks that are reasonably required for, or incidental to, the proper performance and provision of the expressly described Services.

### **5.2 Resources**

Except as otherwise expressly provided in this Agreement, Contractor will be responsible for providing all facilities, personnel, equipment 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, subject to LAUSD's rights to request reassignment of certain Contractor Personnel, as set forth in Article 10 of this Agreement.

#### **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 the Services. Contractor will pay all fees and taxes associated with such licenses, authorizations and permits.

#### **5.5 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. Contractor agrees to comply with this policy and applicable federal and state laws. In addition, Contractor agrees to require like compliance by all employees and subcontractors performing Services.

#### **5.6 Certification Regarding Debarment, Suspension or Ineligibility 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, or declared ineligible for the award of contracts by any Federal or State 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 or State 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.

#### **5.7 Conflict of Interest**

Contractor agrees to comply with, and cause all Contractor Personnel to comply with, the Contractors' and Consultants' 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 a material breach and grounds for immediate termination of this Agreement, in addition to any other remedies District may have.

## **5.8 Fingerprinting**

- (a) For those Contractor Personnel who will have contact with District pupils, Contractor will comply with this Section 5.8, 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 promptly 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 5.8(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.

## **5.9 Disaster Recovery**

Contractor will maintain adequate disaster recovery and business continuity plans in respect of each facility and data center from which Services are performed. Contractor will update and test its disaster recovery and business continuity plans at least annually and certify the results of such testing to LAUSD. Upon a disaster (as defined in Contractor’s disaster recovery and business continuity plans), Contractor will promptly undertake all applicable actions and precautions under the disaster recovery and business continuity plans, and diligently pursue them as necessary to avoid or, if unavoidable, minimize any interruption of Services.

## **6. RESERVED**

## **7. SERVICES – APPLICATION MAINTENANCE AND ENHANCEMENT**

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

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## 7.1 Development of Schedule and Acceptance Testing Criteria

Where the Agreement Contractor to deliver one or more Deliverables to District, Contractor shall, within the timeframe specified in the Agreement, deliver to District a written plan for the development and testing of such Deliverables (the “**Deliverable Work Plan**”). The Deliverable Work Plan shall include, at a minimum:

- (a) Staged milestones (each a “**Key Milestone**”) for the development of each Deliverable and objective criteria for measuring Contractor’s progress toward achieving each Key Milestone.
- (b) A schedule for the development of each Deliverable, including the dates that Contractor will achieve each Key Milestone and dates for the completion and delivery of each Deliverable, including any Final Deliverable(s).
- (c) Specifications and proposed acceptance criteria and/or review periods, as appropriate, for each Deliverable and each Final Deliverable (each a set of “**Final Criteria**”).
- (d) Specification of a timeframe following Contractor’s delivery of a Deliverable to District during which the Deliverable will be subject to acceptance testing against its Final Criteria by the District (the “**Initial Acceptance Period**”). While a Deliverable Work Plan may specify a longer period of time for the Initial Acceptance Period, the Initial Acceptance Period shall be no shorter than sixty (60) days.

The Deliverable Work Plan will be subject to District’s review, comment, and approval and will be approved by the parties in writing. Contractor will not commence development of any System Deliverable until the parties have approved the Deliverable Work Plan in writing, or, in the absence of such approval, the District has specifically authorized Contractor in writing to commence development.

## 7.2 Acceptance Testing

- (a) Following delivery to District of a Deliverable, the Deliverable shall be subject to acceptance testing or review by District. A System Deliverable shall be considered delivered upon the installation or other implementation thereof, unless otherwise specified in an applicable Deliverable Work Plan. If District notifies Contractor that a Deliverable does not satisfy or conform to the Final Criteria within 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, unless a shorter correction period is agreed upon by the Parties.
- (b) With respect to System Deliverables, 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 21 herein (but without any requirement of a 30-day cure period), the Agreement; 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 Subsection 7.2(b)(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 for related System Deliverable(s) or Final Deliverable(s). However, in the event that District has accepted a portion or component of the System Deliverable(s) in accordance with this Section 7.2, and District decides, in its sole discretion, 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.
- (d) When, in District's reasonable judgment, a Deliverable has satisfied the Final Criteria, District shall give Contractor written notice thereof. A Deliverable will be considered accepted only after District acknowledges acceptance in writing, which acknowledgement shall not be unreasonably withheld.

### **7.3 Acceptance of Final Deliverables**

At the completion of installation or configuration of any Final Deliverable, Contractor shall provide written notice to District that the Final Deliverable has been completed and delivered. Following receipt of such written notice, the Final Deliverable shall operate for a period of sixty (60) consecutive calendar days in conformity with its Final Criteria and Documentation. If a Final Deliverable does not operate for such sixty (60) days period, District may (i) immediately terminate, under Section 21.2 herein (but without any requirement of a 30-day cure period), this Agreement and, at District's request, Contractor shall promptly reimburse District any amounts paid for the non-conforming Final Deliverable and any component Deliverables; or (ii) if the parties agree in writing that it is commercially reasonable under the circumstances, Contractor shall, at no cost to District, continue efforts to correct the deficiencies for a period of time agreed to by the parties so that the Final Deliverable shall conform to its Final Criteria and Documentation. Notwithstanding District's agreement pursuant to Subsection 7.3(ii) above for Contractor to undertake efforts to correct deficiencies, District shall continue to have the right to terminate (as specified in Subsection 7.3(i) above) at any time so long as the Final Deliverable fails to conform to its Final Criteria and Documentation. A Final Deliverable will be finally accepted only after District acknowledges in writing that such Final Deliverable has operated in accordance with its Final Criteria and Documentation for the required sixty (60) day period, which acknowledgement shall not be unreasonably withheld.

### **7.4 Deliverable Credits**

Contractor acknowledges that the failure to complete and/or deliver a Deliverable or Final Deliverable or to meet a Key Milestone, each by the time and in the manner required under the applicable Deliverable Work Plan, will 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 quantify or determine. Accordingly, a Deliverable Work Plan may provide for credits ("**Deliverable Credits**") against fees due to Contractor for Contractor's failure to provide or complete any Deliverable or Final Deliverable or to meet any Key Milestone, each by the time and in the manner required under the applicable Deliverable Work Plan. Contractor acknowledges that Deliverable Credits are not intended as a penalty but are instead the parties' best approximation of District's actual damages resulting from Contractor's failure to complete and/or deliver a Deliverable or Final Deliverable or to

meet a Key Milestone in a timely and compliant manner. A Deliverable Credit will be credited to District on the invoice that contains fees for the month during which the right to such Deliverable Credit arose or as soon as practicable thereafter. Payment of a Deliverable Credit does not limit District's other remedies for Contractor's delay or failure to provide a Deliverable or Final Deliverable or to meet a Key Milestone.

## **8. SERVICE LEVELS; PERFORMANCE STANDARDS**

### **8.1 Service Levels**

This Agreement may include quantitative or qualitative performance targets to be met by Contractor in performing the Services (each a "**Service Level**"). 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 this Agreement includes Service Levels, Contractor shall perform all Services and obligations promptly, diligently and in a workmanlike and professional manner, using qualified individuals and with at least the same degree of accuracy, quality, completeness, timeliness, responsiveness and efficiency as that achieved by well-managed operations performing services similar to the Services.

### **8.2 Measurement and Monitoring Tools**

Unless otherwise specified in this Agreement, Contractor's performance of the Services against applicable Service Levels will be measured on a monthly basis. 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. 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. Contractor's failure to measure its performance against any applicable Service Level to the required degree of specificity during any reporting period shall constitute a Service Level Default during that reporting period.

### **8.3 Failure to Meet Service Levels**

- (a) If Contractor fails to provide the Services in a manner that meets or exceeds any Service Level (a "**Service Level Default**"), Contractor will (A) promptly perform a root-cause analysis and identify the problems causing the failure, (B) report to District on the nature and scope of the problems identified, (C) correct the problems as soon as practicable and resume meeting the Service Levels, (D) advise District of the progress of correction efforts at stages determined by District and (E) demonstrate to District that all reasonable action has been taken to prevent a recurrence of the Service Level Default.
- (b) Contractor acknowledges that Service Level Default(s) 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, LAUSD shall have the option, but not the obligation, to recover the amounts specified in this Agreement as Service Level Credits against amounts owed to Contractor by LAUSD.

## **9. EQUIPMENT; FACILITIES; SERVICE LOCATIONS.**

### **9.1 Equipment**

- (a) The terms of this Section 9.1 shall only apply to the extent that Contractor provides or maintains equipment and tools in order to provide the Services.
- (b) Except as otherwise specified in this Agreement, 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 LAUSD's request or upon termination or expiration of this Agreement, in the same condition it was in when delivered or provided to Contractor, ordinary wear and tear excepted.

### **9.2 Facilities**

- (a) The terms of this Section 9.2 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 this Agreement, 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 12.4.
- (c) Contractor shall host LAUSD Data in data centers located in the United States and will not export or send LAUSD Data outside of the United States without the prior written approval of LAUSD's [Chief Information Officer and Contract Administration Analyst]. 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 physical and logistical security measures and safeguards at Contractor facilities and data centers (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, alteration, or unauthorized access of any LAUSD property or LAUSD Data that is maintained or stored at such facilities and data centers.
- (e) The security measures and safeguards maintained at Contractor facilities and data centers shall be no less rigorous than the most rigorous of the following standards: (i) those maintained by LAUSD as of the Effective Date at similar LAUSD facilities and data

centers; (ii) those maintained by Contractor for its other facilities and data centers; or (iii) industry standards for similar facilities and data centers. 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 USB drives and/or 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.

### **9.3 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, and cause all Contractor Personnel to comply with, all policies and procedures governing access to and use of LAUSD facilities; and (iv) return such space to LAUSD, upon LAUSD's request or upon termination or expiration of this Agreement, in the same condition it was in when provided to Contractor, ordinary wear and tear excepted. 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 will manage to a resolution any suspected or actual incidents of non-compliance with District policies and procedures described in this Section 9.3, in cooperation with District, and will promptly provide District with written reports of each instance of noncompliance.
- (c) Contractor shall be responsible and liable for (i) any damage to LAUSD property caused by Contractor or any Contractor Personnel and (ii) any injury to Contractor Personnel sustained at any LAUSD facility or elsewhere while performing Services for LAUSD. Contractor shall, at Contractor's own expense, replace or repair all damaged property to its original condition.

## **10. PERSONNEL**

### **10.1 Qualifications and Requirements of Contractor Personnel**

- (a) Contractor will assign an adequate number of Contractor Personnel to perform the Services. Contractor Personnel shall be properly educated, trained, and fully qualified to perform the Services. Contractor will not charge District for the costs of training such Contractor Personnel, including the time necessary for such Contractor Personnel to become familiar with District's operations.
- (b) Contractor shall comply and shall require all Contractor Personnel to comply with the LAUSD Information Security Policies and, if performing Services at an LAUSD facility, all policies and procedures applicable to the access and use of such LAUSD facilities. Contractor Personnel working at LAUSD facilities shall be subject to LAUSD-required verification (which may include background checks, finger printing, and drug testing). 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.
- (d) Contractor shall use commercially reasonable efforts to prevent the transfer, reassignment, or replacement of Contractor Personnel assigned to perform the Services so as to maintain continuity in the performance of the Services. Contractor will provide a semi-annual report of turnover for Contractor Personnel assigned to perform the Services, and will work to reduce the turnover rate. Contractor will ensure that all replacement personnel receive sufficient information and training, without additional charge to District, to assure continuity of Services without adverse impact. Contractor will take steps to keep the turnover rate at a level reasonably acceptable to District.

### **10.2 Right to Reject Contractor Personnel**

District shall have the right to accept or reject assignment of any Contractor Personnel. 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 or greater 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 and promptly replace such person with another person of equal or greater ability and qualifications.

### **10.3 Key Contractor Positions**

The key personnel assigned to perform the Services and their respective roles are identified herein (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 in its sole discretion. Contractor shall submit to District written documentation of the qualifications for a proposed replacement to any of the Key Contractor Personnel.

## **11. SOFTWARE AND INTELLECTUAL PROPERTY RIGHTS AND OBLIGATIONS**

### **11.1 Software Generally**

Except as otherwise specified in this Agreement, 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.

### **11.2 Software Owned or Licensed by LAUSD; Work Product**

#### (a) LAUSD Software

This Agreement may 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. Contractor will be granted a license during the term of this Agreement 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 this Agreement. 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 this Agreement.

#### (b) Work Product

Except as otherwise agreed in writing by the parties under this Agreement, LAUSD will own all right, title and interest in and to the Work Product, including 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 11.6 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

This Agreement will specify any third party software required in order to perform the Services and Contractor will not use in connection with this Agreement 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 this Agreement.

### **11.3 Contractor Software and Other Intellectual Property**

- (a) This Agreement will identify any Contractor Off-The-Shelf Software that will be used to provide the Services, and Contractor Off-The-Shelf 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, update, and maintain at its expense any Contractor Off-The-Shelf Software needed to provide the Services.
- (b) Pursuant to the terms of this Agreement, Contractor shall grant to District with respect to all Contractor Off-The-Shelf Software, 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 Off-The-Shelf Software, 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 include use of the Contractor Off-The-Shelf Software and 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 this Agreement, District shall not be subject to any upgrade, maintenance, transfer, or other fees based upon District's use of any Contractor Off-The-Shelf 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 Off-The-Shelf 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 Off-The-Shelf Software, Contractor Customized Software, Contractor Pre-Existing Items or Work Product as set forth herein.

#### **11.4 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 this Agreement, 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 Off-The-Shelf 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 11.6 below.

#### **11.5 Proprietary Notices**

District agrees that any copies of the Contractor Off-The-Shelf 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.

#### **11.6 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 13.1 below.

#### **11.7 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.

#### **11.8 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.



## 12. CONTRACT AND PROJECT MANAGEMENT

### 12.1 Appointments

- (a) District will appoint an appropriately qualified individual to manage District's obligations and monitor Contractor's performance under this Agreement (the "**District Relationship Manager**"). Wherever District's approval is required under this Agreement, District will only be deemed to have given that approval if provided by the District Relationship Manager or a duly authorized delegate of the District Relationship Manager, except as otherwise provided herein. Contractor will appoint an appropriately qualified individual to manage Contractor's performance of this Agreement and day-to-day operations (the "**Contractor Relationship Manager**"). The Contractor Relationship Manager will provide District with a single point of contact and will be one of the Key Contractor Personnel with respect to this Agreement.
- (b) In addition to the Contractor Relationship Manager, Contractor will designate an individual as its "**Project Executive**" for this Agreement, to serve as the onsite manager for the delivery of Services thereunder and have overall responsibility for Contractor's performance of the Services thereunder. 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 Services, (iii) manage and supervise the Contractor Personnel performing Services, (iv) report to the Contractor Relationship Manager (unless the Contractor Relationship Manager and Project Executive are the same individual), and (v) have such additional roles and responsibilities as may be outlined in this Agreement or designated by Contractor.

### 12.2 Project Management Meetings

- (a) Meeting Schedule

Unless a different schedule is set forth in this Agreement, the parties shall hold regular project management meetings at least once every month. Additional project management meetings may be held upon the reasonable request of either party. Unless both parties agree otherwise, project management meetings shall be held in person at a location to be determined by District.

- (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. The agenda for each project management meeting will include review of the most recent performance report provided by Contractor pursuant to Section 12.3 of this Agreement. At LAUSD's request, Contractor will prepare and circulate minutes promptly after a meeting.

- (c) Attendees

The District Relationship Manager, Contractor Relationship Manager, and the Project Executive or, with respect to each a suitable designee, shall be present at all project management meetings.

### **12.3 Performance Reports**

Unless otherwise provided in this Agreement, Contractor will provide monthly performance reports, which will be delivered to LAUSD within ten (10) calendar days after the end of each month of the Term, describing Contractor's performance of the Services in that month. Each monthly performance report will, to the extent applicable: (a) track the status of Contractor's work against all applicable project schedules, including Contractor's progress toward any Key Milestones and Critical Tasks; (b) address Contractor's performance against each of the Service Levels; (c) describe the status of each key project, problem resolution effort and any other initiative; (d) explain deviations from Service Levels and include for each deviation a plan for corrective action; (e) explain any deviations from the schedule set forth in the Deliverable Work Plan and include a plan for corrective action that will allow Contractor to meet future schedule and Key Milestone requirements; (f) describe the status of any corrective action currently underway to address rejected Deliverables; (g) describe the status of any corrective action currently underway to meet any extended deadlines for any Critical Tasks; (h) set forth the utilization of resources for the month and utilization trends; (i) provide LAUSD a projection of the Charges for the following month; and (j) include any other information required by this Agreement. Contractor will also provide such other reports as may be upon the reasonable request of District.

### **12.4 Certain Rights In The Event Of Service Level Default Or Failure To Meet Key Milestone**

Without limiting LAUSD's other rights and remedies set forth in this Agreement or otherwise, if Contractor experiences a Service Level Default, fails to meet a Key Milestone, or fails to timely complete a Critical Task, LAUSD shall have the right, at no additional charge to LAUSD, (i) to stop the Services or a subset of the Services being performed under this Agreement, (ii) to request that Contractor provide a remediation plan that details how Service Levels, Key Milestones, and/or Critical Tasks, as applicable, will be met in the future, which remediation plan may involve amendments to the applicable Deliverable Work Plan; and (iii) to review and request revisions to any such remediation plan or amended Deliverable Work Plan. LAUSD may, at its sole discretion, accept or reject any remediation plan or amended Deliverable Work Plan. A remediation plan or amended Deliverable Work Plan provided pursuant to this Section 12.4 shall be implemented by Contractor only after it is accepted in writing by LAUSD.

### **12.5 Change Control Procedures**

- (a) No changes or additions may be made to this Agreement 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.

### **12.6 Subcontracting**

- (a) Contractor will not enter into any subcontract for the provision of the Services without the prior written consent of LAUSD. Before subcontracting any portion of the Services, Contractor must notify LAUSD of the proposed subcontractor, the scope of the Services proposed to be subcontracted, the location(s) from which the subcontracted Services will be provided, and the terms of the proposed subcontract. Before amending or

supplementing any subcontract relating to the Services, Contractor will notify LAUSD of the terms of the proposed amendment, modification or supplement and will obtain Customer's written approval thereof.

- (b) Subcontractors approved by LAUSD shall be set forth in this Agreement. 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. Contractor is responsible for all payments to its subcontractors and will promptly pay for all services, materials, equipment and labor used by Contractor in providing the Services. In the event that a subcontractor of Contractor causes a lien to be placed on any District property, Contractor will at its own expense promptly cause such lien to be removed.

## **12.7 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.

## **13. AUDITS**

### **13.1 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, including any royalties due under Section 11.6 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.

### **13.2 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).

### **13.3 Records Retention**

Until (a) the later of five (5) years after the expiration or termination of this Agreement or five (5) 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.

## **14. CHARGES**

### **14.1 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. 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 E (Contractor's Rates) without LAUSD's prior written approval.

### **14.2 Pass-Through Expenses**

- (a) If this Agreement 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 this Agreement provides that a Pass-Through Expense is to be paid by Contractor, Contractor will act as payment agent for LAUSD and will timely 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.

### **14.3 Incidental Expenses**

Except as expressly provided in this Agreement, 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.

### **14.4 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. 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.

#### **14.5 LAUSD Expense Guidelines, Travel Policies**

The LAUSD Expense Guidelines and Travel Policies attached as Schedule B to this Agreement, as such policies are created or modified by LAUSD from time to time and provided to Contractor, shall govern expenses for Contractor's and approved subcontractors' employees. Approved expenses shall be billed to LAUSD as a Pass-Through Expense.

### **15. INVOICING AND PAYMENT**

#### **15.1 Invoices**

- (a) Contractor shall issue to LAUSD on a monthly basis, in arrears, one consolidated invoice for all Charges due this Agreement. 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 this Agreement as the LAUSD project executives, Contractor will provide paper and electronic copies of each invoice issued hereunder to LAUSD's IT Support Services division at the following addresses:

IT Support Services  
333 South Beaudry  
10th Floor  
Los Angeles, CA 90017  
Attention: Billing

InvoiceITD@lausd.net

- (b) For Services provided on a time and materials basis, Contractor will include with each invoice a chronological, itemized listing of the activities performed 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.

## **15.2 Payment**

- (a) Subject to Section 15.5, each invoice delivered pursuant to Section 15.1 shall be due and payable within thirty (30) calendar days after the date such invoice is received by LAUSD.
- (b) To the extent LAUSD is entitled to a credit (including any service level credit) pursuant to this Agreement, 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.

## **15.3 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.

## **15.4 Refunds**

If Contractor should receive a refund, credit or other rebate for goods or services paid for by LAUSD, Contractor shall promptly notify LAUSD and shall pay such amount to LAUSD (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 Contractor will begin to accrue interest at the prime rate of Citibank of New York.

## **15.5 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.

## **16. DATA AND INFORMATION**

### **16.1 Public Records**

This Agreement is 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 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.

### **16.2 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, employees, or students, 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 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 or distribute any Confidential Information to any third party or use Confidential Information for the benefit of itself or any third party without LAUSD’s prior written consent. Contractor will disclose Confidential Information only to Contractor Personnel with a need to access such information 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 FERPA and HIPAA. 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. Contractor further agrees to comply, and agrees to require Contractor Personnel to comply, with all applicable laws relating to the 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.



- (d) 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 16.
- (e) Contractor will cooperate, and will cause Contractor Personnel to cooperate, fully in resolving any actual or suspected acquisition or misuse of Confidential Information.

### **16.3 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 and shall permanently delete any electronic copies of any such Confidential Information.

### **16.4 Security**

- (a) Contractor and Contractor Personnel will comply with the LAUSD Information Security Policies.
- (b) Contractor will protect all Confidential Information from unauthorized use or disclosure to the same extent and with at least the same degree of care Contractor uses to protect its own confidential or proprietary information of like kind and import, but in no event using less than a reasonable degree of care.
- (c) In addition to the restrictions applicable to other Confidential Information, LAUSD Data will be stored separately from Contractor's property or any property or data of third parties and will not be comingled with Contractor's or any third party's data. Contractor will utilize commercially reasonable efforts, including the use of systems security measures, to guard against the unauthorized access, alteration, reassurance or corruption of LAUSD Data. Such measures will include the use of software that (i) requires all users to enter a user identification and password before gaining access to the information systems; (ii) controls and tracks the addition and deletion of users; and (iii) controls and tracks user access to areas and features of the information system.
- (d) Contractor shall use the most current version of antivirus and Virus detection software approved by LAUSD (including all updates) and shall keep all virus definition files up-to-date. 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 Off-The-Shelf 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, all at no cost to LAUSD. 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.

## **16.5 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 16, and such LAUSD Data cannot be fully restored by a reload under Section 16.5(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 this Agreement pursuant to Section 21.2 (but without any requirement of a 30-day cure period).
- (b) Without limitation to Contractor's obligations regarding data regeneration set forth in Section 16.5(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.

## **16.6 Unauthorized Uses and Disclosures**

Without limiting Districts other rights in respect of a breach of this Article 16, Contractor will:

- (a) promptly notify District of any unauthorized possession, use, knowledge, or attempted possession, use, or knowledge of Confidential information by any person or entity that may become known to Contractor;
- (b) promptly furnish District with full details of the unauthorized possession, use, or knowledge, or attempt thereof, and assist District in investigating or preventing the recurrence of any unauthorized possession, use, or knowledge, or attempt thereof, of Confidential Information;
- (c) cooperate with District in any litigation or investigation against third parties deemed necessary by District to protect its rights in Confidential Information to the extent such litigation or investigation relates to the Services; and

- (d) use diligent efforts to prevent a recurrence of any such unauthorized possession, use, or knowledge, or attempt thereof, of District's Confidential Information.

## **16.7 Reporting and Mitigating the Effect of Unauthorized Uses and Disclosures**

Contractor will comply with the following obligations in connection with the use or disclosure of Personally Identifiable Information that is not expressly permitted by this Agreement, and that takes place while such information is in the custody or control of Contractor or a Contractor Agent (a "**Security Incident**").

- (a) Contractor will report to District each Security Incident of which it becomes aware. The initial report of a Security Incident will be made by telephone call to the [District Relationship Manager] no later than twenty-four (24) hours after Contractor becomes aware of the Security Incident. The initial report will be followed by a written report to District no later than three (3) days after the date on which Contractor became aware of the Security Incident.
- (b) The written report of the Security Incident will include: (1) the date the Security Incident occurred; (2) a description of the unauthorized uses or disclosures involved in the Security Incident; (3) the number of Data Subjects affected by the Security Incident; (4) to the extent possible, the identities of the Data Subjects whose Personally Identifiable Information has been, or is reasonably believed by Contractor to have been, accessed, acquired, used or disclosed during the Security Incident; (5) the types of Personally Identifiable Information involved in the Security Incident; and (6) the steps Contractor has taken to investigate the Security Incident, mitigate potential harm to the affected Data Subjects, and prevent further Security Incidents, including steps Contractor believes the affected Data Subjects should take to protect themselves against potential harm resulting from the Security Incident.
- (c) Contractor will promptly supplement the written report with additional information about the Security Incident as Contractor obtains the information, including Contractor's assessment as to whether the Security Incident is reportable under applicable laws.
- (d) To the extent that any applicable law requires that the affected Data Subjects or any governmental authorities be notified of a Security Incident, Contractor will be responsible at its cost and expense for:
  - (i) at District's request, and where possible under law, providing such notices to Data Subjects or governmental authorities containing the information required by applicable law, provided that Contractor will provide District's prior approval of any content, form and timing of such notice;
  - (ii) conducting any forensic and security review and audit in connection with such Security Incident;
  - (iii) providing any forensic and security review and audit in connection with such Security Incident;
  - (iv) providing remediation services and other reasonable assistance to such Data Subjects as are (1) required by law, (2) requested by governmental authorities, (3) requested by District, or (4) consistent with customary industry practice; and

- (v) reasonably cooperating with District and its Affiliates in responding to such Security Incident.

## **17. CERTAIN REPRESENTATIONS, WARRANTIES AND COVENANTS**

For purposes of this Article 17, all matters to which Contractor represents are true on the Effective Date, and all matters to which Contractor warrants shall continue throughout the Term.

### **17.1 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 in 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 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 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.

### **17.2 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.

### **17.3 Non-infringement and Ownership**

If a Deliverable or any Services violate or infringe upon the rights of any third party, including 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 19.2. 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 11, 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 11, all Contractor Off-The-Shelf Software, Contractor Customized Software, and Deliverables.

## **17.4 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.

## **17.5 Compliance with Laws**

- (a) 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 Deliverable or Final Deliverable, make such Deliverable or Final Deliverable comply with all applicable federal, state and local laws and regulations.
- (b) If Contractor provides Services from outside of the United States, without limiting any of Contractor's other obligations set forth in this Agreement and notwithstanding anything to the contrary contained in this Agreement, Contractor will be responsible for compliance with all applicable laws governing the Services in the location from which the Services will be provided and will be responsible for compliance with United States export laws and import laws of the location from which Services will be performed.
- (c) Contractor and District will work together to identify the effect of changes in applicable laws on the provision and receipt of the Services and will promptly discuss the changes to the Services, if any, required to comply with all laws. If a change to the Services is required for Contractor to comply with a change in the law, the change will be implemented at Contractor's sole expense and will not impact the fees paid by District under this Agreement. If a change to the Services is required for District or Contractor to comply with a change in laws, and such change will materially increase the cost to provide the Services, District will in its sole discretion and by written notice to Contractor either (i) direct Contractor to implement the required change to the Services, in which case District will pay any additional fees that may be determined to be payable under the change control procedures described in Section 12.4 of this Agreement, or (ii) terminate this Agreement, or any portion thereof, affected by the change in Law.
- (d) If applicable, all public interfaces are required to be compliant with Section 508 of the Rehabilitation Act of 1973; W3C's Web Content Accessibility Guidelines (WCAG) 2.0 Level AA and the Web Accessibility Initiative Accessible Rich Internet Applications Suite (WAI-ARIA) 1.0.

## **17.6 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 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, sex, 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.

#### **17.7 Warranty on Performance of Deliverables**

- (a) For a period of one (1) year from the date of final acceptance of any Deliverable (including any Final Deliverable), such Deliverable (and for any Final Deliverable, the Final Deliverable and each System Deliverable therein) shall perform in accordance with all applicable Final Criteria and Documentation, and any other criteria agreed to by District and Contractor, in the computer hardware and/or software environments within which such System Deliverable or Final 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.
- (b) In the event that any Deliverable or Final Deliverable fails to perform as set forth in Subsection 17.7(a), LAUSD shall notify Contractor of any defects and Contractor shall promptly correct any defects at no additional cost to District. Contractor shall correct or provide a reasonable workaround for any Substantive Errors LAUSD reports to Contractor within thirty (30) days of receipt of such notification.
- (c) Following the installation or receipt of any correction or reasonable workaround provided pursuant to Subsection 17.7(b) above, District shall have the longer of (i) the remaining warranty period set forth in Subsection 17.7(a) above or (ii) thirty (30) days to report to Contractor any Substantive Errors that have not been adequately cured or any new defects (including any new Substantive Errors) arising out of the correction or reasonable workaround. Contractor will then have an additional fifteen (15) days after receipt of such notification to correct or provide a reasonable workaround to any newly identified defects.
- (d) In the event that Contractor is unable to correct or provide a reasonable workaround for any Substantive Error within the timeframes specified in Subsections 17.7(b) or 17.7(c),

Contractor shall refund to District all fees paid for the Deliverable (or in the case of a Final Deliverable, for the Final Deliverable and each System Deliverable therein).

- (e) Contractor expressly acknowledges that the warranty set forth in this Section 17.7 shall apply regardless of any contrary provisions or disclaimer of warranties set forth in any Contractor or third-party license agreement, whether for Contractor Off-The-Shelf Software or otherwise.

### **17.8 Accuracy of Documentation**

Except as may otherwise be required by this Agreement, 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 this Agreement, 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.

### **17.9 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 provide the Services or 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. Contractor warrants that it will promptly notify District in writing in the event that it becomes aware of any such action, suit, proceeding, or material claim or investigation.

### **17.10 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.

### **17.11 Disclaimer**

EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, NEITHER CONTRACTOR NOR DISTRICT MAKES ANY REPRESENTATIONS OR WARRANTIES AND EACH EXPLICITLY DISCLAIMS ALL OTHER REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, WRITTEN, ORAL OR STATUTORY, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND WARRANTIES OTHERWISE ARISING FROM A COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE.

## 18. INSURANCE

### 18.1 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.

### 18.2 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) \$3,000,000 general aggregate;
  - (vi) \$3,000,000 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 \$1,000,000 in the aggregate. **For cyber insurance**, the coverage is \$1,000,000 per occurrence and \$1,000,000 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, 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 18.2(a)(i) above and \$5,000,000 general aggregate under Section 18.2(a)(v) above, and provided, further, that if the Contractor Service Area is or includes Program and Project Management 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 18.2(a)(vi) above and \$10,000,000 general aggregate under Section 18.2(a)(vi) above.

### **18.3 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 18 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.

### **18.4 RESERVED**

## **19. INDEMNIFICATION**

### **19.1 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
  - (i) 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 or Contractor Personnel's acts or omissions;
  - (ii) related to any duties or obligations of Contractor owed to a third party; or
  - (iii) relating to a breach of the representations and warranties made by Contractor under 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 Security Incident or a breach by Contractor or any Contractor Personnel of Section 16.4 of this Agreement. 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.

## **19.2 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 19.3; 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 19.3.
- (b) If a claim under Section 19.2(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, at no additional cost to District. 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 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 19.2 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.

## **19.3 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 19, 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.
- (d) Contractor will indemnify District against any losses (including attorneys’ fees) incurred in connection with enforcement of this Article 19.

## **20. LIMITATION OF LIABILITY**

NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY LOST PROFITS OR PUNITIVE, SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES ARISING OUT OF THIS AGREEMENT, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

Except as set forth below, Contractor’s maximum liability to District arising out of this Agreement will not exceed the aggregate of: (a) any liability for loss of data or records of LAUSD under Section 16.5 above, or for reconstruction of LAUSD Data under Section 16.4 above; (b) payments required under Section 19.1 and 19.2 and Subsection 19.3(d) above; (c) damages for bodily injury (including death) and for damage to real property and tangible personal property; and (d) the amount of any other actual direct damages up to the greater of (i) the compensation and fees paid under this Agreement; (ii) the total dollar amount paid to Contractor by District under this Agreement (completed or in process) during the twelve (12) months prior to the date of the claim giving rise to damages hereunder; or (iii) if Contractor has provided Services under this Agreement for fewer than twelve (12) months prior to the date of the claim giving rise to damages hereunder, then twelve (12) times the median (or if Contractor has provided Services under this Agreement for fewer than three (3) months prior to the date of the claim giving rise to damages, then the average) monthly dollar amount paid to Contractor by District under this Agreement (completed or in process).

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) Contractor's gross negligence or willful misconduct; (ii) Contractor's breach of any confidentiality obligations; and (iii) Contractor's violations of law.

## **21. REMEDIES AND TERMINATION**

### **21.1 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 21.1. Contractor's obligations under this Section 21.1 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 21.1 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 Final Deliverable or by Contractor's performance of Services that renders LAUSD or any of its schools or other Affiliates' information technology systems inoperable or unavailable or that materially impairs a major function of a computer system or software in a manner that precludes all work from being done on a computer system or materially interferes with a business process. Nonexclusive examples include system crashes, database information corruption, and incorrect writing of critical fields. Priority 1 conditions are the highest in severity. Contractor shall begin working to provide a reasonable resolution for a Priority 1 condition as soon as practicable, but in any event within one (1) hour, and shall use commercially reasonable efforts on an around-the-clock (24x7x365) basis to resolve all Priority 1 conditions that are either reported to Contractor or that become apparent to Contractor even if not reported by LAUSD. Unless this Agreement specifies a different timeframe, failure to correct a Priority 1 condition within twenty-four (24) hours shall constitute a Service Level Default. In addition to any other rights or remedies District may have, this Agreement may specify Deliverable Credits or Service Level Credits for Contractor's failure to remedy a Priority 1 condition in a timely manner. 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 or Final 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 incorrect writing of non-critical fields. Priority 2 conditions are less severe than Priority 1 conditions. Contractor shall begin working to provide a reasonable resolution for a Priority 2 condition within four (4) hours, and shall use commercially reasonable efforts, taking into account the nature and severity of the condition, to timely resolve all Priority 2 conditions that are either reported to Contractor or that become apparent to Contractor even if not reported by LAUSD. Unless this Agreement specifies a different timeframe, failure to correct a Priority 2 condition within seven (7) days shall constitute a Service Level Default. In addition to any other rights or remedies District may have, this Agreement may specify

Deliverable Credits or Service Level Credits for Contractor's failure to remedy a Priority 2 condition in a timely manner.

(c) *Priority 3.*

Any condition that constitutes a non-material defect or error in one or more functions that a System Deliverable or Final Deliverable is warranted to perform is a "**Priority 3**" condition. Nonexclusive examples include minor bugs and annoyances that do not corrupt data or render information technology systems, data, or applications unusable or inaccessible. Priority 3 conditions are the least severe. Contractor shall begin working to provide a reasonable resolution for a Priority 3 condition within forty-eight (48) hours, and shall use commercially reasonable efforts to resolve all Priority 3 conditions that are either reported to Contractor within three (3) weeks of receipt of notice thereof.

(d) *Inability to Correct*

If Contractor is unable to correct a Priority 1 condition within two (2) calendar days or a Priority 2 condition within ten (10) calendar days after the date Contractor is notified of the condition, District may, in its sole discretion, (i) withhold payment of any amount due under this Agreement until the condition is corrected; (ii) reject the System Deliverable or Final Deliverable or any part thereof or revoke acceptance thereof; (iii) immediately terminate, under Section 21.2 herein (but without any requirement of a 30-day cure period), this Agreement or any portion thereof, along with, in District's sole discretion; or (iv) 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 this Agreement as a "Critical Task" is not completed and or delivered on the date specified, District may (i) agree to extend the date upon which such task is to be completed and/or delivered, or (ii) provided that the delay was not materially caused by any fault of District, immediately terminate this Agreement under Section 21.2. 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.

[IN LIEU OF THE FOREGOING PARAGRAPH, CONSIDER: Certain tasks may be identified as "Critical Tasks.". Contractor acknowledges that the failure to complete and/or deliver a Critical Task on time and in accordance with the requirements set forth in this Agreement will 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 quantify or determine. Accordingly, in the event that Contractor fails to perform a Critical Task on time and in the manner specified in this Agreement, and LAUSD has not caused the failure, LAUSD will be entitled to recover damages of \$X for each day/week/month that the Critical Task remains unperformed, uncompleted, deficient or delayed. Contractor acknowledges that such damages are not intended as a penalty but are instead the parties' best approximation of District's actual damages resulting from Contractor's failure to perform the applicable Critical Tasks in a timely and compliant manner. Failure to complete and/or deliver a Critical Task on time and in accordance with the requirements set forth in this Agreement will be deemed a material breach of this Agreement.]

(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 21, 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 or in a Work Order and fails to cure such default within ten (10) calendar days after District provides notice of the default.

### **21.2 Termination by LAUSD for Cause**

- (a) LAUSD may, by giving written notice to Contractor, terminate this Agreement, or any part of this Agreement:
  - (i) subject to Subection 21.2(a)(ii), for a material by Contractor that is not cured by Contractor within thirty (30) calendar days after LAUSD provides written notice of such breach;
  - (ii) RESERVED ;
  - (iii) RESERVED
  - (iv) for Service Level Defaults that occur with respect to the same Service Level in three (3) consecutive months or in four (4) out of six (6) months in any period of six (6) consecutive months; or
  - (v) 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 Subsection 21.2(a) giving rise to such termination right. Where Subsection 21.2(a) provides for a cure period, 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 this Agreement in part, the Charges payable under this Agreement will be equitably adjusted to reflect those Services that are not terminated.

### **21.3 Termination by LAUSD for Convenience**

- (a) LAUSD may terminate this Agreement 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 where 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 where 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 (based on the rates set forth in Schedule E) 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 this Agreement in part, the charges payable under this Agreement will be equitably adjusted to reflect those Services that are not terminated.
- (c) If a purported termination for cause by LAUSD under Section 21.2 is determined not to be a proper termination for cause, such termination shall be deemed a termination for convenience subject to this Section 21.3.

#### **21.4 Termination by LAUSD for Non-Appropriation**

If District is not appropriated adequate funds for or to continue this Agreement, 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 will terminate effective as of the date of the Non-Appropriation Notice, unless the Non-Appropriation Notice specifically provides otherwise.

#### **21.5 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 by (a) giving Contractor ninety (90) calendar days' prior written notice and (b) designating a date upon which the termination(s) will be effective.

#### **21.6 Termination for Insolvency**

LAUSD may terminate this Agreement in its entirety 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.

#### **21.7 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 21 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 LAUSD shall compensate Contractor as specified in this Agreement.

## **21.8 Effect of Termination**

Termination of this Agreement 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, at law or in equity, arising from any breaches of such liabilities or obligations.

## **21.9 Termination Assistance**

If any this Agreement 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.

## **21.10 RESERVED**

## **22. MISCELLANEOUS**

### **22.1 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.

### **22.2 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 and the Services provided hereunder 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.

### **22.3 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.

### **22.4 Equitable Remedies**

The parties agree that (a) in the event of any breach or threatened breach of any provision of this Agreement 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.

## **22.5 Interpretation**

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

## **22.6 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 shall be binding on the parties and their respective successors and permitted assigns.

## **22.7 Expenses**

Except as expressly provided in this Agreement, each party shall pay its own fees and expenses (including 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.

## **22.8 Amendment and Waiver**

No supplement, modification, amendment or waiver of this Agreement 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.

## **22.9 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 expressly allows exercise of a party's sole discretion) shall not unreasonably withhold or delay such action, consent or approval.

## **22.10 Publicity**

All media releases, public announcements and other disclosures by Contractor relating to this Agreement, including promotional or marketing materials, but excluding announcements intended solely for internal distribution or to meet legal or regulatory requirements, shall be coordinated with and approved by LAUSD prior to release. 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.

**22.11 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.

**22.12 Entire Agreement**

This Agreement 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.

**22.13 Notices**

Any notice, demand or other communication required or permitted to be given under this shall be in writing and shall be deemed delivered to a party (a) when delivered by hand or courier, (b) when sent 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.

If to LAUSD:

Los Angeles Unified School District, Information Technology Division  
333 S. Beaudry Avenue, 10<sup>th</sup> Floor  
Los Angeles, CA 90071  
Fax: (213) 241-8400

Attention: Chief Information Officer

With a Required Copy to:

Los Angeles Unified School District, Office of General Counsel  
333 S. Beaudry Avenue, 20<sup>th</sup> Floor  
Los Angeles CA 90017  
Fax: (213) 241-

Attention:

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, \_\_\_\_\_ (or to such other individual as District may designate in accordance with this section).

#### **22.14 Survival**

Any provision of this Agreement which contemplates performance or observance subsequent to any termination or expiration of this Agreement, including Article 11, Article 13, Section 14.4, Article 16, Article 17, Article 19, Article 20, Article 21 and Article 22, shall survive expiration or termination of this.

#### **22.15 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. This Agreement in no way creates an employee/employer relationship between Contractor Personnel and LAUSD.

#### **22.16 Third Party Beneficiaries**

Except for third parties specifically entitled to indemnification under the terms of, and as set forth in, Article 19, nothing in this Agreement, express or implied, is intended to confer any rights, benefits, remedies, obligations or liabilities on any person (including any employees of the parties) other than the parties or their respective successors or permitted assigns.

#### **22.17 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.

#### **22.18 Counterparts**

This Agreement 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.

#### **22.19 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 (5) 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 (5) business days after District's initial receipt of notice, District may, upon notice to Contractor, terminate this Agreement without any liability to Contractor other than payment for Services rendered prior to the occurrence of the Force Majeure Event. District is not required to pay for those Services that are not performed because of an excused performance in a Force Majeure Event.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

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

“LAUSD”

“CONTRACTOR”

**The Los Angeles Unified School District**  
333 S. Beaudry Avenue  
Los Angeles, CA 90071

\_\_\_\_\_  
Contractor Name

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Contractor Address

\_\_\_\_\_  
Contractor Fax Number

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_