



SOUTH ORANGE COUNTY COMMUNITY COLLEGE DISTRICT INDEPENDENT CONTRACTOR AGREEMENT

This Agreement ("Agreement") is between South Orange County Community College District **[[Campus Location]]** ("District"), at 28000 Marguerite Parkway, Mission Viejo CA 92692, a California community college district and political subdivision of the State of California, and **[[Name (Primary Second Party)]]** ("Contractor"), at **[[Street Line 1 (Primary Second Party)]]**, **[[City/Town (Primary Second Party)]]** **[[State/Province (Primary Second Party)]]** **[[Postal Code (Primary Second Party)]]**. District and Contractor are also referred to collectively as the "Parties," and individually as "Party."

WHEREAS, District is in need of services and advice as it will assist the District in discharging its legal obligation to provide an adequate educational program;

WHEREAS, Contractor has represented to the District that Contractor is knowledgeable and qualified in skills required for this project and covenants that Contractor is capable of performing the services required under the Agreement; and

WHEREAS, District desires to obtain specialized services and/or advice stated in the Statement of Service reflected in this Agreement and is hereinafter referred to as the "Project" or "Services," located within the District.

WHEREAS, the reference to Contractor hereafter shall include, but not be limited to the Contractor and Contractor's employees, representatives, subconsultants, agents, and volunteers.

NOW THEREFORE, the Parties agree as follows:

1. **Statement of Service.** Contractor agrees to undertake, carry-out, and complete for the District, in a satisfactory and competent manner, the following Services: **[[Statement of Services]]**
2. **Term.** This Agreement shall commence on **[[Start Date]]**, and shall end no later than **[[End Date]]**, and may be modified only by mutual written agreement of the Parties. The District shall have the discretion to terminate this Agreement at any time by providing Contractor thirty (30) days prior written notice specifying the date of termination.
3. **Payment.** District agrees to pay the Contractor for Services satisfactorily rendered pursuant to this Agreement a total amount not to exceed **[[Contract Total Amount (Spelled Out)]]** Dollars (\$ **[[Contract Total Amount]]**). Additional details: **[[Payment Details]]**.

The District will not pay any reimbursable expenses of the Contractor and the total contract not to exceed amount shall include all costs for the services rendered.

District shall not be liable to Contractor for any costs or expenses paid or incurred by Contractor in performing Services for District, unless otherwise specifically stated in this Agreement.

The District may withhold, or on account of subsequently discovered evidence, nullify the whole or a part of any payment to such extent as may be necessary to protect the District from loss, including costs and attorneys' fees, on account of: (1) defective or deficient work product not remedied; (2) failure of the Contractor to make payments properly to its employees or subcontractors; or (3) failure of Contractor to perform its services in a timely manner so as to conform to Project schedule.

4. **Invoices.** Contractor to send invoices to AccountsPayable@socccd.edu or mail to South Orange County Community College District, 28000 Marguerite Parkway, Mission Viejo, CA 92692, Attn: Accounts Payable. Payment shall be net 30 days upon satisfactory completion and acceptance of Services. If payment term differs, it must be noted in Article 3. **To ensure prompt and accurate payment, all invoices related to this Agreement shall reference the following Agreement Number: [[Contract Number]]**
5. **Materials and Expenses.** Contractor shall furnish, at their own expense, all labor, materials, equipment, supplies and other items necessary to complete the Services to be provided pursuant to this Agreement. District shall not be liable to Contractor for any costs or expenses paid or incurred by Contractor in performing Services for District. Contractor's Services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of their profession.

6. **Transportation.** Contractor hereby acknowledges and understands that it is their responsibility to arrange for transportation to provide all Services necessary and/or required by this Agreement and is solely responsible for all associated costs. The District is in no way responsible for, nor does District assume any liability for, any injury or loss, which may result from Contractor's transportation for which the Contractor shall indemnify the District in accordance with the Hold Harmless and Indemnification provision herein.
7. **Taxes.** Contractor acknowledges and agrees that it is their sole responsibility to report as income their compensation received from the District and to make the requisite tax filings and payments to the appropriate federal, state and/or local taxation authorities. No part of Contractor's compensation shall be subject to withholding by the District for the payment of social security, unemployment, disability insurance, or any other similar state or federal tax obligation.
8. **California State Tax Withholding for Nonresidents of California.** It is mutually understood that if Contractor is a nonresident of California, which may include California nonresidents, corporations, limited liability companies, non-profits, and partnerships that do not have a permanent place of business in the State of California, the District is obligated to abide by California Franchise Tax Board (FTB) withholding requirements. The District is required to withhold from all payments or distributions of California source income made to a nonresident when payments or distributions are greater than One Thousand Five Hundred Dollars (\$1,500) for the calendar year unless the District receives authorization for a waiver or a reduced withholding rate from FTB. As of January 1, 2008, the standard withholding amount for all payments to nonresident California contractors is Seven Percent (7%). District will deduct the amount ordered by the State of California from the payment hereunder and will pay such amount directly to the Contractor's California State Income Tax Account, settlement of which must be made by Contractor directly with the State of California through Withholding Coordinator, Franchise Tax Board, P.O. Box 651, Sacramento, California, 95812-0651; telephone (916) 845-6262. Completion and submission of the appropriate form shall be the obligation of the nonresident Contractor and Contractor shall defend, indemnify and hold harmless the District against any loss, expense, or liability arising out of Contractor's acts or omissions with respect to this nonresident requirement. Contractor shall provide all necessary documentation and information to help District comply with all tax requirements related to California nonresidents.
9. **Standard of Care and Professional Conduct.** The Contractor shall perform all Services hereunder in a professional manner, using the degree of care and skill ordinarily exercised by, and consistent with, the current professional practices and standards of a professional practicing in California. The Contractor will furnish, at its expense, the Services that is set forth in this Agreement and represents that the Services is within the technical and professional areas of expertise of the Contractor or any subcontractor the Contractor has engaged or will engage to perform the Services. If the District desires, the District shall request in writing, the Contractor to provide Services in addition to, or different from, the Services described herein. The Contractor shall advise the District in writing of any Services that, in the Contractor's opinion, lie outside of the technical and professional expertise of the Contractor. The Services completed herein must meet the approval of the District and shall be subject to the District's general right of inspection to secure the satisfactory completion thereof.

Contractor or Contractor's employees, subcontractors, or volunteers who are determined by the District to be uncooperative, incompetent, a threat to the adequate or timely completion of the Services described herein, a threat to the safety of persons or property, or any of Contractor's employees, subcontractors, or volunteers who fail or refuse to perform the Services in a manner acceptable to the District, shall be promptly removed by the Contractor and shall not be contracted to perform this or any future Services for the District.
10. **Audit and Inspection of Records.** At any time during the normal business hours and as often as District may deem necessary, Contractor shall make available to District for examination at District's place of business as specified herein, all data, records, investigation reports and all other materials respecting matters covered by this Agreement and Contractor will permit the District to audit, and to make audits of all invoices, materials, payroll, records of personnel and other data related to all matters covered by this Agreement.
11. **Time is of the Essence.** Time is of the essence with respect to all provisions of this Agreement.
12. **Termination.** Either Party may, at any time, with or without cause, terminate this Agreement by providing at least thirty (30) days written notice to the other Party prior to the requested termination date. In such case, District shall compensate Contractor only for Services satisfactorily rendered to the date of termination. If District terminates for cause, it shall be entitled to compensation from Contractor for all costs associated with addressing and rectifying Contractor's noncompliance with this Agreement. Written notice by District shall be sufficient to stop further performance of Services by Contractor. In such case, notice shall be deemed given when received by the Contractor or no later than three (3) days after the day of mailing, whichever is sooner.

13. **Hold Harmless and Indemnification.** To the fullest extent permitted by law, the Contractor shall defend (with counsel of District's choosing), indemnify, and hold harmless the District, its Board of Trustees, officers, agents, employees, representatives, and volunteers (collectively "Indemnified Parties") from any and all claims, demands, causes of action, costs, expenses, liabilities, losses, in law or equity, property damage, personal injury, damages or injuries/illnesses (including COVID-19) of any kind, including wrongful death, in any manner arising out of, pertaining to, or incident to any alleged acts, equipment failure and/or malfunction, faulty installation, errors or omissions, negligence, recklessness or willful misconduct of Contractor, its officials, officers, agents, employees, representatives, subcontractor, or volunteers, in connection with the performance or non-performance of Contractor installed/provided equipment/materials and the Contractor's Services of this Agreement or obligations hereunder, including without limitation the payment of all consequential damages, expert witness fees, attorney's fees, and other related costs and expenses. In the event any article sold and delivered hereunder is covered by any patent, copyright, or application thereof, Contractor shall defend, indemnify, and hold harmless South Orange County Community College District, its Board of Trustees, officers, agents, employees, representatives, and volunteers from any and all losses, costs or expenses resulting from claims, suits or judgments rendered for violation of rights under such patents, copyright, or application. Contractor shall reimburse the District, its Board of Trustees, officers, agents, employees, representatives, and/or volunteers for all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity provided herein. This hold harmless and indemnification includes, but is not limited to, compensatory damages, regulatory fines, penalties, and extra-contractual liability. In no event shall the District, its Board of Trustees, officers, agents, employees, representatives, and/or volunteers be liable for any loss of Contractor's business, revenues or profits, or special, consequential, incidental, indirect or punitive damages of any nature, even if the District its Board of Trustees, officers, agents, employees, representatives, and/or volunteers have been advised in advance of the possibility of such damages.

- A. Contractor's obligation to indemnify the District, its Board of Trustees, officers, agents, employees, representatives, and/or volunteers shall not be restricted to insurance proceeds, if any, received by the District, its Board of Trustees, officers, agents, employees, representatives, and/or volunteers.
- B. The Parties understand and agree that this shall be the sole indemnity, as defined by California Civil Code § 2772, governing this Agreement. Any other indemnity that may be attached to this Agreement as an Exhibit shall be void and unenforceable between the Parties.
- C. Neither termination of this Agreement nor completion of the acts to be performed under this Agreement shall release Contractor from its obligations to indemnify as to any claims or causes of action asserted so long as the event(s) upon which such claim or cause of action is predicated shall have occurred prior to the effective date of termination or completion.

14. **Insurance.** The Contractor shall maintain in full force and effect throughout the term of this Agreement the following policies of insurance with no less than the limits set forth herein. District may adjust, Contractor's required minimum coverage limits set forth herein at the commencement of a renewal term by providing Contractor written notice.

- A. **A.M. Best Financial Rating.** Policies of insurance required herein shall be issued by insurers with an A.M. Best financial rating of A:VII or better.
- B. **Admitted Carrier(s).** Policies of insurance shall be afforded by insurers who are admitted - licensed to transact business in the State of California.
- C. **Workers' Compensation and Employer's Liability.** In accordance with the laws of the State of California, Contractor shall purchase and maintain Workers' Compensation insurance with statutory limits and Employer's Liability coverage with not less than One Million Dollars (\$1,000,000) for Each Accident, One Million Dollars (\$1,000,000) for Disease - Each Employee, and One Million Dollars (\$1,000,000) for Disease - Policy Limit.
- D. **Commercial General Liability.** Insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) general aggregate to cover losses including, but not limited to blanket contractual, broad form property damage, products & completed operations, personal injury, and wrongful death.
- E. **Automobile Liability.** Insurance with combined single limits of not less than One Million Dollars (\$1,000,000) to cover losses involving Symbol 1, "Any Auto".

- F. Additional Insured Endorsement. Contractor shall issue District an endorsement naming District, its Board of Trustees, officers, agents, employees, representatives, invitees, and volunteers as Additional Insureds to Contractor's Commercial General Liability and Automobile Liability insurance policies.
- G. Primary and non-contributory endorsement. Contractor's insurance coverage and limits shall be primary and any of the District's insurance coverage and limits shall be non-contributory.
- H. Waiver of Subrogation Endorsements. Contractor shall issue District an endorsement waiving all rights of subrogation against the District, its Board of Trustees, officers, agents, employees, representatives, invitees, and volunteers with respect to Contractor's Commercial General Liability, Automobile Liability, and Workers' Compensation insurance policies.
- I. No Cancellation or Material Modification. Policies of insurance and accompanying endorsements required by this Agreement shall not be cancelled or materially modified, except upon thirty (30) days' advance written notice to District. The Contractor's insurer(s) shall provide written notice of cancellation or material modification to the District.
- J. Certificate(s) of Insurance and Endorsement(s). Certificate(s) and endorsements evidencing the required coverages and limits set forth herein shall be provided to the District prior to or upon Contractor's execution of this Agreement. Any endorsements limiting coverage shall be stricken. No Services shall commence by Contractor until the required certificate(s) of insurance and endorsement(s) have been furnished to the District. Should Contractor's insurance expire during the term of this Agreement, renewal certificate(s) of insurance and endorsement(s) shall be provided prior to the expiration of the policies or within 10 days of expiration.

The District's obligation to collect the required certificate(s) and endorsement(s) and/or the Contractor's failure to furnish such documents and/or purchase and maintain coverage and limits as stipulated above shall not be deemed a waiver of this provision at any time. Furthermore, the Contractor's failure to purchase and maintain the insurance coverage and limits for the term as identified above and/or to comply with any provisions in this section shall be deemed a breach of contract.

- 15. **Public Retirement System Retirees.** Contractor must disclose to District if Contractor has retired from the California State Teachers' Retirement System ("CalSTRS") or the California Public Employees' Retirement System ("CalPERS"). Pursuant to California Education Code Section 24214 and 24214.5, there are postretirement limitations on earnings if Contractor has retired from CalSTRS and hours worked limitations if Contractor has retired from CalPERS. If Contractor has retired from either CalSTRS or CalPERS, Contractor should be aware that the District is required to report all payments under this and any additional Agreements in any given year (July 1 – June 30).
- 16. **Independent Contractor.** Contractor, in the performance of this Agreement, shall be and act as an independent Contractor and not an employee of the District. Contractor and its subcontractors, understand and agree that they shall not be considered officers, agents, employees, or volunteers of the District, and are not entitled to benefits of any kind or nature normally provided employees of the District and/or to which District's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Workers' Compensation. Contractor assumes the full responsibility of their actions and/or liabilities including those of their employees or agents as they relate to the Services to be provided under this Agreement. Contractor shall assume full responsibility for withholding and payment of all federal, state, local and applicable income taxes; workers' compensation; contributions, including but not limited to, unemployment insurance and social security with respect to Contractor and Contractor's employees. Contractor should be aware that the IRS regulations require District to report total income exceeding six hundred dollars (\$600) under this and any additional Agreements in any given year. The District will not withhold taxes, unemployment insurance or social security for Contractor or Contractor's employees or subcontractors. Contractor agrees to defend, indemnify and hold the District, its Board of Trustees, officers, agents, employees, representatives, and volunteers harmless from and against any and all liability arising from any failure or alleged failure of Contractor to withhold or pay any applicable tax, unemployment insurance or social security when due or any failure or alleged failure to comply with any applicable regulation applicable to Contractor's employees or subcontractors.
- 17. **Use of Subcontractors.** The obligations of the Contractor pursuant to this Agreement shall not be assigned by the Contractor without the express written approval of the District. Contractor must obtain District's prior written approval to use any subcontractors while performing any portion of this Agreement and such approval may be conditioned on approval of the subcontract between Contractor and subcontractor. Such approval must include approval of the proposed subcontractor and the terms of compensation. If written approval for Contractor's use of a subcontractor is provided by the District, Contractor warrants that said subcontractor shall have sufficient skill and experience to perform

the Services assigned to them. Contractor further represents that its subcontractors have all licenses, permits, qualifications, and approvals of whatever nature that are legally required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Agreement. District retains the right to obtain copies of subcontractor's insurance coverage at any time. Nothing in this Article shall be interpreted as creating a contractual relationship between District and any approved subcontractor. Notwithstanding District's approval of any subcontractor's contract, Contractor shall remain solely responsible for any harm, damage, or claim arising from any subcontractor's acts or omissions as set forth in the Hold Harmless and Indemnification provision herein.

18. **Assignment.** The obligations of the Contractor pursuant to this Agreement shall not be assigned by the Contractor without the express written approval of the District.
19. **Employment with Public Agency.** If Contractor is an employee of another public agency, Contractor agrees that they will not receive salary or remuneration, other than vacation pay, for the actual time in which Services are actually being performed pursuant to this Agreement.
20. **Representations and Warranties.** Contractor on its own behalf and on behalf of all its employees, makes the following certifications, representations, and warranties for the benefit of the District. In addition, Contractor acknowledges and agrees that the District, in deciding to engage Contractor pursuant to this Agreement, is relying upon the truth and validity of the following certifications, representations and warranties and their effectiveness throughout the term of this Agreement and the course of Contractor's engagement hereunder:

Contractor is qualified in all respects to provide to the District all of the Services contemplated by this Agreement and, to the extent required by any applicable laws, Contractor and its employees have all licenses, permits, qualifications, and/or governmental approvals that are legally required to perform the Services as described herein. Such licenses, permits, qualifications, and/or governmental approvals shall be maintained throughout the term of this Agreement.

Contractor, in providing the Services and in otherwise carrying out its obligations to the District under this Agreement, shall, at all times, comply with all applicable federal, state, and local laws, rules, regulations, and ordinances, including workers' compensation and equal protection and non-discrimination laws. Contractor shall be liable for all violations of such laws and regulations in connection with the Services as described herein.

Contractor warrants all services related to installation of all equipment and materials, and shall perform all replacement and/or repairs within a reasonable time in accordance with industry standards. Contractor shall be responsible for transferring to the District all manufacturer related product warranties and guarantees where applicable.

21. **Equal Opportunity/Non-Discrimination.** Contractor shall not discriminate against any individual with respect to their compensation, terms, conditions, or privileges of employment; or discriminate in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect their status as a Contractor because of such individual's race, color, religion, sex, national origin, age, disability, medical condition, marital status, veteran status, or any other category protected by law.

Contractor shall ensure that all Services and benefits rendered to the District, its Board of Trustees, officers, agents, employees, representatives, students, consultants/contractors, and volunteers are provided free of any form of harassment and without regard to race, color, religion, sex, age, disability, medical condition, marital status, national origin, veteran status, or any other category protected by law. Contractor shall comply with Americans with Disabilities Act and the Rehabilitation Act of 1973, as amended.

22. **Compliance with Applicable Laws, Policies, Procedures, Rules & Regulations.** Contractor shall comply with District's policies, procedures, rules, regulations and/or guidelines that include but are not limited to a smoke, alcohol, and controlled substances free campus, conflict of interest, workplace violence, code of conduct, harassment and discrimination prevention and drug-free environment.

Contractor agrees to comply with all federal, state and local laws, rules, regulations, and ordinances that are now and may in the future become applicable to Contractor, its business, equipment, and personnel engaged in Services covered by this Agreement or accruing out of the performance of such Services. Additionally, Contractor shall strictly comply with all health and safety guidelines consistent with Cal/OSHA and CDC.

COVID-19 Related Responsibilities. Contractor shall respond to all potential COVID-19 exposure events immediately. If a possible COVID-19 infection or potential exposure event occurs involving Contractor performing Services on District property pursuant to the terms of this Agreement, Contractor shall immediately notify the District. While the

confidentiality of all medical conditions must be maintained in accordance with applicable law, the District reserves the right to inform any District staff, employees, students, and/or visitors that an unnamed individual has been diagnosed with COVID-19 if any of the District's staff, employees, students, or visitors might have been exposed to the disease so such individual(s) may take measures to protect their own health.

Contractor shall ensure that its employees will at all times comply with the District's current [COVID-19 Contractor Protocols](#).

Compliance with Economic Sanctions Imposed in Response to Russia's Invasion of Ukraine. Contractor shall comply with the economic sanctions imposed in response to Russia's actions in Ukraine, including with respect to, but not limited to, the federal Executive Order 14065 and the sanctions identified on the U.S. Department of the Treasury website. Contractor shall comply with any sanctions imposed under state law, including with respect to, but not limited to, Executive Order N-6-22 from the State of California's Executive Department:

<https://www.gov.ca.gov/wp-content/uploads/2022/03/3.4.22-Russia-Ukraine-Executive-Order.pdf>

23. **Certification Regarding the California Penal Code Section 290.** By executing this Agreement, Contractor agrees to comply with the rules and regulations of the Sex Offender Registration Act, California Penal Code Section 290.95. Contractor certifies and understands that every person required to register under Section 290 shall disclose their status as a registrant, upon application or acceptance of a position, to that person, group, or organization. Furthermore, no person who is required to register under Section 290 because of a conviction for a crime where the victim was a minor under sixteen (16) years of age shall be an employer, employee, or independent Contractor, or act as a volunteer with any person, group, or organization in a capacity in which the registrant would be working directly and in an unaccompanied setting with minor children on more than an incidental and occasional basis or have supervision or disciplinary power over minor children. A violation of this Article is a misdemeanor punishable by a fine not exceeding One Thousand Dollars (\$1,000), by imprisonment in a county jail not to exceed a period of six (6) months, or by both that fine and imprisonment.
24. **Background Check.** Contractor hereby certifies that Contractor has never been charged with a felony, including any "violent felony" as defined in California Civil Code Section 667.5(c) or serious felony defined by California Civil Code Section 1192.7 prior to, or on the date of, this Agreement. Contractor shall notify District in writing immediately if Contractor is charged with any felony during the term of this Agreement in which case District may terminate this Agreement immediately. Contractor further hereby authorizes the District or other organizations to conduct a comprehensive review of his/her background upon District's request. Contractor hereby consents to the background check to the fullest extent permitted by law. Contractor agrees to indemnify, defend and hold harmless the District from any claims, damages, harms, and costs, including legal and processing fees arising from the requirements of this Article, including any such issue arising from any felony Contractor has been charged with, or is charged with, during this Agreement. Failure to complete any required step to provide the background check and information required herein upon District request within thirty (30) days shall be grounds for termination of this Agreement.
25. **Profanity Prohibited.** Profanity of any kind, including, but not limited to, racial, ethnic, or sexual slurs or comments which could be considered harassment on any District property or any property while Contractor is performing Services described herein is prohibited.
26. **Mandatory Dress Code.** Appropriate attire is mandatory. Therefore, clothing with inappropriate language/suggestions/gestures graphics, indecent exposure, tank tops, cut-offs, and shorts are not allowed. Additionally, what is written or pictured on clothing must comply with the requirements of acceptable language as stated in the above Article.
27. **Trademark/Logo Use.** Contractor must obtain written approval from District's Public and Government Affairs, Public Information Office ("PIO") to use the District's name and/or logos in any advertisements, promotions, press releases or other media. In the event permission is granted, PIO will furnish Contractor with camera-ready artwork for such use. District, at its sole discretion, may limit or otherwise place conditions on Contractor's use of District's name, and/or logos in which case such limitations shall be incorporated into this Agreement. Contractor shall not revise, change, or otherwise alter any material related to District's name and/or logo without written consent from District.
28. **Originality of Services.**
 - A. **Matters Produced Under this Agreement.** Contractor understands and agrees that all matters produced under this Agreement shall become the property of District and cannot be used without District's express written permission. District shall have all rights, titles and interests in said matters, including the right to secure and maintain the

copyright, trademark and/or patent of said matter in the name of the District. Contractor consents to use of Contractor's name in conjunction with the sale, use, performance, and distribution of the matters, for any purpose and in any medium.

B. **Contractor Use of Other Copyright/Trademark/Patent Materials.** Contractor is responsible for arranging and paying for all rights and copyrights necessary and for all costs arising from the use of any material covered by copyright, patent, trademark or franchise. Contractor agrees to defend, indemnify, and hold harmless the District from any claims or costs, including legal fees, which might arise from questionable use of any such material. The District reserves the right to require verification.

29. **Rights to Data.** Contractor grants to the District the right to publish, translate, reproduce, deliver, use and dispose of, and to authorize others to do so, all data, including reports, drawings, blueprints, and technical information resulting from the performance of Services under this Agreement.

30. **Confidentiality.** Subject to any state or federal laws requiring disclosure (e.g., the California Public Records Act), the Parties agree, during the term of this Agreement and for five (5) years after termination or expiration of Agreement, to hold each other's proprietary or confidential information in strict confidence, except for any information protected under confidentiality laws, which shall be held in such confidence in perpetuity. Parties agree not to provide each other's proprietary or confidential information in any form to any third party or to use each other's proprietary or confidential information for any purpose other than the implementation of, and as specified in this Agreement. Confidential information may include, but is not limited to, information related to the District's research, development, trade secrets, and business affairs. Each Party agrees to take all reasonable steps to ensure that proprietary or confidential information of either Party is not disclosed or distributed by its employees, agents, or contractors in violation of the provisions of this Agreement.

Contractor shall advise the District of any and all materials subject to any copyright restrictions or requirements, which are used or recommended for use by Contractor to achieve the project goals. In the event Contractor shall fail to advise the District of such use under this Agreement, and as a result, the District should be found in violation of any copyright restrictions or requirements, Contractor agrees to indemnify, defend and hold harmless, District against any action or claim brought by the copyright holder.

Notwithstanding the above requirements, to the extent any records or documents associated with the Contractor's Services and/or the project are or become public records, they shall be subject to disclosure pursuant to the Public Records Act and applicable California law.

31. **Non-Waiver.** The failure of District or Contractor to seek redress for violation of, or to insist upon, the strict performance of any term or condition of this Contract shall not be deemed a waiver by that party of such term or condition, or prevent a subsequent similar act from again constituting a violation of such term or condition.

32. **Notices.** All notices or demands to be given under this Agreement by either Party to the other Party shall be in writing and given either by: (a) personal service or (b) by U.S. Mail, mailed either by certified or registered mail, return receipt requested, with postage prepaid. Service shall be considered given when received, if personally served, or, if mailed, on the third day after deposit in any U.S. Post Office. The address to which notices or demands may be given by either Party may be changed by written notice given in accordance with the notice provisions of this Article. At the date of this Agreement:

DISTRICT:

South Orange County Community College District
Priya Jerome, Executive Director of Procurement,
Central Services, and Risk Management
28000 Marguerite Parkway
Mission Viejo, CA 92692
(949) 582-4850 / purchasing-dept@socccd.edu

CONTRACTOR:

Second Party Contact)]]
[[Name (Primary Second Party)]]
[[Contact Name (Primary Second Party Contact)]], [[Contact Title (Primary
[[Street Line 1 (Primary Second Party)]]

[[City/Town (Primary Second Party)]], [[State/Province (Primary Second Party)]]

[[Postal Code (Primary Second Party)]]

[[Contact Phone Number (Primary Second Party Contact)]] / [[Contact E-mail
(Primary Second Party Contact)]]

The table below contains details about the potential clauses which could appear in a contract. It is not displayed on the contract.

Selected CCF: Is legal notice contact information different from Second Party Contact Name (Contractor Name)?

Response Type	Default Clause	Fallback 1	Fallback 2	Fallback 3
Default or No Response Selected	Second Party Notices 2 (inserted above)			
No	Second Party Notices 2	N/A	N/A	N/A
Yes	Legal Notices 2	N/A	N/A	N/A

A Party may change their designated representative and/or address for the purposes of receiving notices and communications under this Agreement by notifying the other Party of the change in writing and in the manner described in this Article.

33. **Supersedes.** This Agreement constitutes the entire agreement and understanding between the parties to this Agreement and supersedes all prior and contemporaneous negotiations and understandings between the parties whether oral or written, expressed or implied.
34. **Governing Law.** The terms and conditions of this Agreement shall be governed by the laws of the State of California with jurisdiction/venue in Orange, California.
35. **Force Majeure.** The Contractor and District are excused from performance during the time and to the extent that they are prevented from obtaining, performing any act or rendering any services required under this Agreement by a Force Majeure Event. If a Force Majeure Event caused the failure or delay beyond the Parties' control and which by the Parties' exercise of due diligence could not reasonably have been avoided, an extension of contract times in an amount equal to the time loss due to such delay shall be the Contractor's sole and exclusive remedy for such delay. A "Force Majeure Event" shall mean events or circumstances occurring by acts of God, such as tornadoes, lightning, earthquakes, hurricanes, floods, or other natural disasters; epidemics; pandemics; quarantine restrictions; fire; strikes; lock-out; commandeering of materials, products, plants or facilities by the government; terrorist attacks; wars; riots; civil disturbances; or governmental acts, including sanction, embargo, and import or export regulation, or order; when satisfactory evidence thereof is presented to the other party, provided that it is satisfactorily established that the non-performance is not due to the fault or neglect of the party not performing.
36. **Severability.** If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force and effect and shall not be affected, impaired or invalidated in any way.
37. **Interpretation.** In interpreting this Agreement, it shall be deemed to have been prepared by the Parties jointly, and no ambiguity shall be resolved against District on the premise that it or its attorneys were responsible for drafting this Agreement or any provision hereof. The captions or heading set forth in this Agreement are for convenience only and in no way define, limit, or describe the scope or intent of any Articles or other provisions of this Agreement. Any reference in this Agreement to an Article, unless specified otherwise, shall be a reference to an Article of this Agreement.
38. **Conflict of Interest.** Contractor hereby represents, warrants and covenants that (i) at the time of execution of this Agreement, Contractor has no interest and shall not acquire any interest in the future, whether direct or indirect, which would conflict in any manner or degree with the performance of Services under this Agreement; (ii) Contractor has no business or financial interests which are in conflict with Contractor's obligations to District under this Agreement; and (iii) Contractor shall not employ in the performance of Services under this Agreement any person or entity having any such interests.
39. **Certification Regarding Debarment, Suspension or Other Ineligibility.** (Applicable to all agreements funded in part or whole with federal funds).

- A. By executing this contractual instrument, Contractor agrees to comply with applicable federal suspension and debarment regulations, including, but not limited to, regulations implementing Executive Order 12549 (29 C.F.R. Part 98) (see Appendix 15).
- B. By executing this contractual instrument, Contractor certifies to the best of its knowledge and belief that it and its principals:
1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
 2. Have not, within a three-year period preceding the execution of this contractual instrument, been convicted of, or had a civil judgment rendered against them, for: (a) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or Local) or private transaction or contract; (b) Violation of Federal or State antitrust statutes; (c) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice; or (d) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects Contractor's present responsibility;
 3. Are not presently indicted for, or otherwise criminally or civilly charged by any government entity (Federal, State or Local), with commission of any of the offenses enumerated in B.2.) above, of this certification;
 4. Have not, within a three-year period preceding the execution of this contractual instrument, had one or more public transaction (Federal, State or Local) terminated for cause or default;
 5. Shall not, except as otherwise provided under applicable federal regulations, knowingly enter into any lower tier covered transaction with a person who is proposed for debarment, debarred, suspended, declared ineligible, or voluntarily excluded by any federal department or agency from participation in such transaction; and
 6. Include in all lower tier covered transactions, and all solicitations for covered transactions, provisions substantially similar to those set forth herein.

40. **Accessibility of Information and Communication Technology.** Contractor hereby warrants that the Services to be provided under this Agreement complies with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C §794d), and its implementing regulations set forth at Title 36, Code of Federal Regulations, Part 1194. Products covered under this provision include, without limitation, the following: Software applications; operating systems; web-based intranet and internet information and applications; telecommunications products; video or multimedia products; self-contained closed products such as copiers; source codes and desktop and portable computers. Contractor agrees to respond promptly and resolve any complaints regarding accessibility of its products or services that are brought to its attention. All websites developed and maintained must be accessible, built to the most current and highest Web Content Accessibility Guidelines (WCAG), and be delivered with documentation allowing the District to certify it as accessible and in compliance with California Government Code Sections 7405 and 11135. Contractor is responsible for all claims and expenses borne by the District, which arise out of the Services under this Agreement, found to be non-compliant with Federal and California laws. These costs include but are not limited to legal costs, court costs, and costs for remediation of Services produced. Contractor further agrees to indemnify and hold harmless the District from and against any claim arising out of Contractor's failure to comply with these requirements. Contractor acknowledges that failure to comply with these requirements shall constitute a breach and be grounds for termination of this Agreement or cancellation of the Services.

41. **Entire Agreement and Amendment.** The Agreement documents consist of this Agreement, any exhibits attached to or referenced herein, and all amendments and/or modifications issued in writing, duly approved or ratified by the District's Board of Trustees, and executed by the Parties shall be interpreted to the benefit of the District. Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence: (a) provisions set forth in this Agreement, (b) provisions set forth in any referenced attachments or exhibits to this Agreement attached or incorporated herein by reference. However, the Parties understand and agree that the service specified in the Agreement and any provisions set forth in any referenced attachments or exhibits to this Agreement is intended to cooperate and be complementary; provided further, however, that in the event of a conflict between the Agreement and the provisions set forth in any referenced attachments or exhibits, the Agreement shall control, unless the provisions set forth in any referenced attachments or exhibits to this Agreement provides the District with greater benefits or more expansive services in which case the provisions set forth in any referenced attachments or exhibits to this Agreement shall complement the terms of this Agreement.

42. **Authority to Execute.** The individual(s) executing this Agreement on behalf of the Contractor is/are duly and fully authorized to execute this Agreement on behalf of Contractor and to bind the Contractor to each and every term, condition, and covenant of this Agreement.
43. **Approval by District's Board of Trustees.** Pursuant to Education Code Section 81655, this Agreement is not valid and does not constitute an enforceable obligation against District unless and until District's Board of Trustees has approved or ratified this Agreement as evidenced by a motion duly passed and adopted by the Board of Trustees.

IN WITNESS WHEREOF, this Agreement has been executed by and on behalf of the Parties, the day and year signed below.

CONTRACTOR

DISTRICT

[[NAME (PRIMARY SECOND PARTY)]]

[[Name (Primary First Party)]]

Signature:

Signature:

Print Name:

Print Name:

Title:

Title:

Date:

Date:



SOUTH ORANGE COUNTY COMMUNITY COLLEGE DISTRICT DATA SHARING AGREEMENT

This Data Sharing Agreement (“Agreement”) is between South Orange County Community College District **[[Campus Location]]** (“District”), at 28000 Marguerite Parkway, Mission Viejo CA 92692, a California community college district and political subdivision of the State of California, and **[[Name (Primary Second Party)]]** (“Contractor”), at **[[Street Line 1 (Primary Second Party)]]**, **[[City/Town (Primary Second Party)]]** **[[State/Province (Primary Second Party)]]** **[[Postal Code (Primary Second Party)]]**. District and Contractor are also referred to collectively as the “Parties,” and individually as “Party.”

WHEREAS, the purpose of this Agreement is to facilitate the collection, analysis, and sharing of student data to **[[Statement of Services]]** and to improve educational programs and services to achieve overall student success; and

WHEREAS, The Parties will coordinate the process of sharing academic performance data concerning students who have or who are attending their institutions by facilitating the transfer of data and ensuring the confidentiality of records and their consistency with the Family Education Rights and Privacy Act (“FERPA”) guidelines; and

WHEREAS, the Parties desire to evaluate and improve their respective educational programs through the analysis of academic performance data concerning students who have or who are now attending their educational institutions. It is necessary, therefore, for the Parties to share student data on a reciprocal basis for the purpose of evaluating and analyzing their respective educational programs; and

NOW, THEREFORE, the Parties agree as follows:

1. SCOPE OF AGREEMENT.

The Parties shall provide one another with academic data concerning their respective students. The data shall be used only for conducting studies for the purpose of improving instruction. This data may include, but is not limited to, personally identifiable information such as names, date of birth, gender, and ethnicity as well as terms of enrollment, courses and grades (“Data”). Data shall be provided in the manner and form as specified by the Parties under the District and Educational Institution “Responsibilities”.

- A. The Parties will use Data for no purpose other than to meet the responsibilities under this Agreement and are prohibited from using Data for any purposes other than those agreed to by the Parties.
- B. Only approved representatives of the Parties may access the Data.
- C. Data amongst Parties will be transferred electronically via an encrypted and secure platform on a nightly or as needed basis during the term of this Agreement, but no less than once per year.

2. TERM.

This Agreement shall commence on **[[Start Date]]**, and shall continue in full force and effect for five (5) years until and including **[[End Date]]**, (“Term”), unless this Agreement is terminated during the Term pursuant to this Agreement.

3. EDUCATIONAL INSTITUTION’S RESPONSIBILITIES.

- A. Educational Institution agrees to share with District from their electronic Student Data for the purpose of supporting placement of students into English and Math courses at Saddleback College and Irvine Valley College. Student Data from Educational Institution will also be used for research to support improving student outcomes and overall student success for students from District’s feeder high school districts.
- B. Educational Institution agrees to use the Student Data shared under this Agreement for no purpose other than the work stated in this Agreement and authorized under Section 99.31 (a) (1) (i) (B) of Title 34 of the Code of Federal Regulations.
- C. Educational Institution agrees to allow District, on a nightly or as needed basis during the term of this Agreement, but no less than once per year, to automatically extract/transfer electronically via an encrypted and secure platform, Student Data to District’s database.

- D. Educational Institution shall maintain adequate data security measures to protect from unauthorized disclosure or acquisition by an unauthorized person their Student Data while transferring electronically to District's secure database.

4. DISTRICT'S RESPONSIBILITIES.

- A. District agrees to allow Educational Institution access to District data placement information.
- B. District agrees to use the Student Data shared under this Agreement for no purpose other than the work stated in this Agreement and authorized under Section 99.31 (a) (1) (i) (B) of Title 34 of the Code of Federal Regulations.
- C. District understands and agrees that Educational Institution Student Data uploaded to District's database is the property of the Educational Institution and that District in order to maintain data integrity is prohibited from editing the data without the written permission of Educational Institution.
- D. District understands and agrees to abide by and maintain adequate data security measures to protect Educational Institution Student Data from unauthorized disclosure or acquisition by an unauthorized person.
- E. District shall report any data breach to Educational Institution in an expedient manner and work with Educational Institution to ensure all affected parties are notified per California Civil Code § 17908.29(a).
- F. District understands and agrees to maintain security protocols that meet industry best practices in the transfer or transmission of any data, including ensuring that only parties legally allowed to access may view or access such Student Data.

5. CONFIDENTIALITY.

The Parties will maintain the confidentiality of any and all Data exchanged by each as a part of this Agreement. The confidentiality requirements under this Section shall survive the termination or expiration of this Agreement or any subsequent agreement intended to supersede this Agreement. All Data shall remain the sole property of the disclosing Party, and the receiving Party shall have no interest in or rights with respect thereto except as expressly set forth in this Agreement. Subject to any state or federal laws requiring disclosure (e.g., the California Public Records Act), the Parties agree: (i) not to use any of the other Party's Data for any purpose except in the performance of its obligations under this Agreement or as otherwise expressly permitted hereunder; (ii) to disclose such Data only to employees (or third party subcontractors permitted under this Agreement) who have a need to know such Data for purposes of this Agreement and who are under a duty of confidentiality no less restrictive than that set forth herein; (iii) to protect such Data from unauthorized use, access or disclosure in the same manner that it protects its own similar Data, but in no event with less care than a reasonably prudent business would exercise; and (iv) to promptly notify the other Party of any actual or potential unauthorized access to or use of Confidential Information. To ensure the continued confidentiality and security of the Data processed, stored, or transmitted under this Agreement, the Parties shall establish a system of safeguards that will at minimum include the following:

- A. Procedures and systems that shall require the use of secured passwords to access computer databases used to process, store, or transmit Data provided under this Agreement.
- B. Procedures and systems, such as good practices for assigning passwords, shall be developed and implemented to maintain the integrity of the systems used to secure computer databases used to process, store, or transmit Data provided under this Agreement.
- C. Procedures and systems that ensure that all confidential Data processed, stored, and/or transmitted under the provisions of this Agreement shall be maintained in a secure manner that prevents the interception, diversion, or other unauthorized access to said Data.
- D. The procedures and systems developed and implemented to process, store, or transmit Data provided under this Agreement shall ensure that any and all disclosures of confidential Data comply with all provisions of FERPA and California law relating to the privacy rights of students, such as but not limited to, the Information Practices Act and the California Public Records Act insofar as such laws are applicable to the Parties to this Agreement.

6. CONFLICT OF INTEREST.

District has no existing financial interest and will not acquire any such interest, directly or indirectly, which could conflict in any manner or degree with the performance of services required under this agreement and that no person having any such interest shall be subcontracted or employed by the District in connection with this agreement. Should a conflict of interest issue arise, District agrees to fully cooperate in any inquiry and to provide Educational Institution with all documents or other information reasonably necessary to enable Educational Institution to determine whether or not a conflict of interest existed or exists.

7. HOLD HARMLESS AND INDEMNIFICATION.

District and Educational Institution shall, to the extent permitted by law, defend, indemnify, and hold each other, their Board of Trustees, officers, agents, employees, and volunteers free and harmless from any costs, attorney's fees, expenses, losses, liabilities, claims, damages, and causes of action whatsoever, to the extent based or asserted upon an act or omission of the indemnifying party, their officers, agents, employees, subcontractors, and volunteers for property damage, bodily injury or death, or any other element of damage of any kind or nature relating to or in any way connected with or arising from this agreement. This hold harmless and indemnification includes but is not limited to compensatory damages, punitive damages, regulatory fines and penalties, and extra-contractual liability.

The parties understand and agree that the above shall be the sole indemnity provision governing this agreement. Any other indemnity attached to this agreement shall be void and unenforceable between the parties.

8. INSURANCE.

District and Educational Institution shall procure and maintain during the term of this agreement, the following insurance:

- A. Commercial General Liability insurance with a limit of not less than two million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) general aggregate, including coverages for contractual liability, personal injury, broad form property damage, and products and completed operations.
- B. Workers' Compensation insurance with a statutory limit and Employer's Liability insurance with limits not less than one million dollars (\$1,000,000) for each accident, one million dollars (\$1,000,000) for each employee, and one million dollars (\$1,000,000) for each disease.
- C. Commercial General Liability policy shall name each other, its Board of Trustees, its officers, agents, employees, representatives, and volunteers as Additional Insureds by endorsement.
- D. Commercial General Liability insurance policy shall be primary and any coverage maintained by the District/Educational Institution is non-contributory.
- E. All policies of insurance shall include a provision that the policy will not be materially modified, cancelled, or allowed to expire without at least thirty (30) days advance notice to the District.
- F. At least fifteen (15) days prior to commencing work, District and Educational Institution shall deliver certificates of insurance evidencing the required coverages and minimum limits, as well as the additional insured endorsement.

9. PRIVACY OF STUDENT RECORDS.

The Parties acknowledge that student educational records are protected by the FERPA and California law, and that student permission must be obtained before releasing student records. Each Party shall be solely responsible for ensuring its actions comply with all applicable law requirements regarding student records and privacy.

10. USE OF SUBCONTRACTORS.

Each Party must obtain the other Party's prior written approval to use any subcontractors while performing any portion of this Agreement and such approval may be conditioned on approval of the subcontract between the subcontracting Party and subcontractor. Such approval must include approval of the proposed subcontractor and the terms of compensation. All subcontractors must adhere to the same terms and conditions listed in this Agreement including maintaining the same insurance coverage limits required in this Agreement. Copies of subcontractor insurance

coverage may be requested by the non-subcontracting Party at any time. Nothing in this Section shall be interpreted as creating a contractual relationship between the non-subcontracting Party and any approved subcontractor. Notwithstanding approval of any subcontractor's contract, the subcontracting Party shall remain solely responsible for any harm, damage, or claim arising from any subcontractor's acts or omissions as set forth in Section 7.

11. MODIFICATION.

This agreement represents the entire agreement and understandings of the parties hereto and no prior writings, conversations or representations of any nature shall be deemed to vary the provisions hereof. This agreement may not be amended in any way except by a writing duly executed by both parties.

12. TERMINATION.

This Agreement shall terminate upon expiration of the Term. Any termination of this Agreement during the Term shall be in accordance with the following:

- A. Termination for Convenience. Each Party may terminate this Agreement at any time at its convenience and without cause, upon providing the other Party at least thirty (30) days written notice before the effective date of termination. If this Contract is terminated in part (by elimination of any Services) pursuant to the foregoing, the Contractor shall continue to fully and timely perform all other obligations not subject to such partial termination.
- B. Termination for Cause. If a Party reasonably determines in good faith that the other Party has materially breached any of its obligations under this Agreement, the non-breaching Party, in its sole discretion shall have the right to provide the breaching Party with a fifteen (15) day period to cure the breach, or terminate this Agreement immediately if cure is not possible. The non-breaching Party shall provide written notice to the breaching Party describing the violation and the action it intends to take.
- C. Rights and Obligations Upon Expiration or Termination. Upon expiration, termination, or other conclusion of this Agreement, both Parties shall remain under their contractual obligations of security and confidentiality, and such obligations shall survive termination, expiration, or other conclusion of this Agreement. This Section shall survive the termination, expiration, or other conclusion of this Agreement.
 - a. Expiration. Upon expiration of this Agreement, all Data shall be securely archived by the receiving Party and shall be destroyed when it is no longer needed and no later than ten (10) years from the date the Data was first received.
 - b. Termination. Upon termination of this Agreement, all Data shall be securely and permanently destroyed, including all hard and soft (electronic) copies, by the Parties within fifteen (15) calendar days after such termination or expiration, or such other date as mutually agreed to in writing between the Parties. The destroying Party shall provide certification of destruction of all Data in writing to the other Party within five (5) business days of destruction.

13. NON-EXCLUSIVITY.

This is a non-exclusive Agreement and either Party retains the right to enter into similar agreements with other parties.

14. NON-WAIVER.

The failure by either Party to enforce at any time or for any period any one or more of the terms or conditions of this Agreement shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of this Agreement.

15. SEVERABILITY.

If any provision of this agreement is held by a court of competent jurisdiction to be illegal, invalid, or unenforceable under present or future laws effective during the term of this agreement, such provision shall be fully severable. This agreement shall remain in full force and effect, unaffected by such severance, provided that the severed provision(s) are not material to the over purpose and operation of this agreement.

16. REPRESENTATION.

The representative of District for the purposes of this Agreement is:

South Orange County Community College District
Priya Jerome, Exec. Dir.-Procurement, Central Svcs. & RM
28000 Marguerite Parkway
Mission Viejo, CA 92692
(949) 582-4850 /purchasing-dept@socccd.edu

The representative of Educational Institution for the purposes of this Agreement is:

[[Name (Primary Second Party)]]
[[Contact Name (Primary Second Party Contact)]], [[Contact Title (Primary
Second Party Contact)]]
[[Street Line 1 (Primary Second Party)]]
[[City/Town (Primary Second Party)]], [[State/Province (Primary Second Party)]]
[[Postal Code (Primary Second Party)]]
[[Contact Phone Number (Primary Second Party Contact)]] / [[Contact E-mail
(Primary Second Party Contact)]]

The table below contains details about the potential clauses which could appear in a contract. It is not displayed on the contract.

Selected CCF: Is legal notice contact information different from Second Party Contact Name (Contractor Name)?

Response Type	Default Clause	Fallback 1	Fallback 2	Fallback 3
Default or No Response Selected	Second Party Notices 2 (inserted above)			
No	Second Party Notices 2	N/A	N/A	N/A
Yes	Legal Notices 2	N/A	N/A	N/A

17. NOTICES.

All notices under this Agreement must be in writing and sent by electronic mail or regular mail to the Parties specified in Section - Representation.

Any party that changes its address, electronic mail address shall give prompt written notice of such change to the other party.

18. APPROVAL BY COLLEGE’S BOARD OF TRUSTEES.

Pursuant to Education Code Section 81655, this Agreement is not valid and does not constitute an enforceable obligation against College unless and until College’s Board of Trustees has approved or ratified this Agreement as evidenced by a motion duly passed and adopted by the Board of Trustees.

19. ENTIRE AGREEMENT.

This agreement represents the entire agreement and understandings of the parties hereto and no prior writings, conversations or representations of any nature shall be deemed to vary the provisions hereof. This agreement may not be amended in any way except by a writing duly executed by both Parties.

20. AUTHORITY.

Each person signing this agreement represents and warrants that they are duly authorized and have legal capacity to execute and deliver this agreement. Each party represents and warrants to the other that the execution and delivery of the agreement and the performance of such Party's obligations hereunder have been duly authorized and that the agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms.

IN WITNESS WHEREOF, this Agreement has been executed by and on behalf of the Parties, the day and year signed below.

[[NAME (PRIMARY SECOND PARTY)]]

[[Name (Primary First Party)]]

Signature:

Signature:

Print Name:

Print Name:

Title:

Title:

Date:

Date:



SOUTH ORANGE COUNTY COMMUNITY COLLEGE DISTRICT INFORMATION TECHNOLOGY INDEPENDENT CONTRACTOR AGREEMENT

This Agreement (“Agreement”) is between South Orange County Community College District **[[Campus Location]]** (“District”), at 28000 Marguerite Parkway, Mission Viejo CA 92692, a California community college district and political subdivision of the State of California, and **[[Name (Primary Second Party)]]** (“Contractor”), at **[[Street Line 1 (Primary Second Party)]]**, **[[City/Town (Primary Second Party)]]** **[[State/Province (Primary Second Party)]]** **[[Postal Code (Primary Second Party)]]**. District and Contractor are also referred to collectively as the “Parties,” and individually as “Party.”

WHEREAS, District is in need of services and advice as it will assist the District in discharging its legal obligation to provide an adequate educational program;

WHEREAS, Contractor has represented to the District that Contractor is knowledgeable and qualified in skills required for this project and covenants that Contractor is capable of performing the services required under the Agreement; and

WHEREAS, District desires to obtain specialized services and/or advice stated in Article 1 and is hereinafter referred to as the “Project” or “Services,” located within the District.

NOW THEREFORE, the Parties agree as follows:

1. **STATEMENT OF SERVICE.** Contractor agrees to undertake, carry-out, and complete for the District, in a satisfactorily and competent manner, the following services: **[[Statement of Services]]**
2. **TERM.** This Agreement shall commence on **[[Start Date]]**, and shall end no later than **[[End Date]]**, and may be modified only by mutual written agreement of the Parties. The District shall have the discretion to terminate this Agreement at any time by providing Contractor thirty (30) days prior written notice specifying the date of termination.
3. **PAYMENT.** District agrees to pay the Contractor for services satisfactorily rendered pursuant to this Agreement a total amount not to exceed **[[Contract Total Amount (Spelled Out)]]** Dollars (\$ **[[Contract Total Amount]]**). Additional details: **[[Payment Details]]**.

The District will not pay any reimbursable expenses of the Contractor and the total contract not to exceed amount shall include all costs for the services rendered.

District shall not be liable to Contractor for any costs or expenses paid or incurred by Contractor in performing services for District, unless otherwise specifically stated in this Agreement.

The District may withhold, or on account of subsequently discovered evidence, nullify the whole or a part of any payment to such extent as may be necessary to protect the District from loss, including costs and attorneys’ fees, on account of: (1) defective or deficient work product not remedied; (2) failure of the Contractor to make payments properly to its employees or sub-contractors; or (3) failure of Contractor to perform its services in a timely manner so as to conform to Project schedule.

4. **INVOICES.** Contractor to send invoices to AccountsPayable@socccd.edu or mail to South Orange County Community College District, 28000 Marguerite Parkway, Mission Viejo, CA 92692, Attn: Accounts Payable. Payment shall be net 30 days upon satisfactory completion and acceptance of Services. If payment term differs, it must be noted in Section 3. **To ensure prompt and accurate payment, all invoices related to this agreement shall reference the following Agreement Number: [[Contract Number]]**
5. **MATERIALS AND EXPENSES.** Contractor shall furnish, at their own expense, all labor, materials, equipment, supplies and other items necessary to complete the Services to be provided pursuant to this Agreement. District shall not be liable to Contractor for any costs or expenses paid or incurred by Contractor in performing Services for District. Contractor’s Services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of their profession.
6. **TRANSPORTATION.** Contractor hereby acknowledges and understands that it is their responsibility to arrange for transportation to provide all Services necessary and/or required by this Agreement and is solely responsible for all associated costs. The District is in no way responsible for, nor does District assume any liability for, any injury or

loss, which may result from Contractor's transportation for which the Contractor shall indemnify the District in accordance with the Hold Harmless and Indemnification provision herein.

7. **TAXES.** Contractor acknowledges and agrees that it is their sole responsibility to report as income their compensation received from the District and to make the requisite tax filings and payments to the appropriate federal, state and/or local taxation authorities. No part of Contractor's compensation shall be subject to withholding by the District for the payment of social security, unemployment, disability insurance, or any other similar state or federal tax obligation.
8. **CALIFORNIA STATE TAX WITHHOLDING FOR NONRESIDENTS OF CALIFORNIA.** It is mutually understood that if Contractor is a nonresident of California, which may include California nonresidents, corporations, limited liability companies, non-profits, and partnerships that do not have a permanent place of business in the State of California, the District is obligated to abide by California Franchise Tax Board (FTB) withholding requirements. The District is required to withhold from all payments or distributions of California source income made to a nonresident when payments or distributions are greater than One Thousand Five Hundred Dollars (\$1,500) for the calendar year unless the District receives authorization for a waiver or a reduced withholding rate from FTB. As of January 1, 2008, the standard withholding amount for all payments to nonresident California contractors is Seven Percent (7%). District will deduct the amount ordered by the State of California from the payment hereunder and will pay such amount directly to the Contractor's California State Income Tax Account, settlement of which must be made by Contractor directly with the State of California through Withholding Coordinator, Franchise Tax Board, P.O. Box 651, Sacramento, California, 95812-0651; telephone (916) 845-6262. Completion and submission of the appropriate form shall be the obligation of the nonresident Contractor and Contractor shall defend, indemnify and hold harmless the District against any loss, expense, or liability arising out of Contractor's acts or omissions with respect to this nonresident requirement. Contractor shall provide all necessary documentation and information to help District comply with all tax requirements related to California nonresidents.
9. **STANDARD OF CARE AND PROFESSIONAL CONDUCT.** Contractor shall perform all Services under this Agreement in a skillful, competent and timely manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Contractor represents and maintains that it is skilled in the professional calling necessary to perform the Services. Contractor warrants that all of Contractor's employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Contractor further represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Agreement. The Services completed herein must meet the approval of the District and shall be subject to the District's general right of inspection to secure the satisfactory completion thereof.

Contractor or Contractor's employees who are determined by District to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any of Contractor's employees who fail or refuse to perform the Services in a manner acceptable to District, shall be promptly removed from the Project by the Contractor and shall not be re-employed to perform any of the Services or to work on the Project.
10. **AUDIT AND INSPECTION OF RECORDS.** At any time during the normal business hours and as often as District may deem necessary, Contractor shall make available to District for examination at District's place of business as specified herein, all data, records, investigation reports and all other materials respecting matters covered by this Agreement and Contractor will permit the District to audit, and to make audits of all invoices, materials, payrolls, records of personnel and other data related to all matters covered by this Agreement.
11. **TIME IS OF THE ESSENCE.** Time is of the essence with respect to all provisions of this Agreement.
12. **TERMINATION.**
 - A. **Grounds for Termination.** District may, by written notice to Contractor, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Contractor of such termination, and specifying the effective date thereof, at thirty (30) days before the effective date of such termination. Upon termination, Contractor shall be compensated only for those Services which have been adequately rendered to District, and Contractor shall be entitled to no further compensation. Contractor may not terminate this Agreement except for cause.

- B. Effect of Termination. If this Agreement is terminated as provided in this Article, Contractor shall be required to provide all finished or unfinished documents, data, programming source code, reports, or any other items prepared by Contractor in connection with the performance of Services under this Agreement within fifteen (15) days of the request.
- C. Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, the District may procure, upon such terms and in such manner as it may determine appropriate, Services similar or identical to those terminated.
13. **HOLD HARMLESS AND INDEMNIFICATION**. To the fullest extent permitted by law, the Contractor and its subcontractors shall defend (with counsel of District's choosing), indemnify, and hold harmless the District, its Board of Trustees, officers, agents, employees, representatives, and volunteers (collectively "Indemnified Parties") from any and all claims, demands, causes of action, costs, expenses, liabilities, losses, in law or equity, property damage, personal injury, damages or injuries/illnesses (including COVID-19) of any kind, including wrongful death, in any manner arising out of, pertaining to, or incident to losses including, but not limited to equipment failure and/or malfunction, faulty installation, allegations that the Contractor's Services, software, documentation, product, output, presentation, materials or the like infringed any trademark, copyright or patent or misappropriated any trade secret of a third party, exposure of confidential information to unauthorized parties by Contractor's Services, software, or documentation, or Contractor's introduction of any unauthorized material (including but not limited to viruses, Trojans, rootkits, ransomware, blockchain, or other malware) to the District's computer network, including any cloud, storage, or extension thereof, and any alleged acts, errors or omissions, negligence, recklessness or willful misconduct of Contractor, its officials, officers, agents, employees, representatives, subcontractor, or volunteers, in connection with the performance or non-performance of Contractor installed/provided equipment/materials and the Contractor's Services of this Agreement or obligations hereunder, including without limitation the payment of all consequential damages, expert witness fees, attorney's fees, and other related costs and expenses. In the event any article sold and delivered hereunder is covered by any patent, copyright, or application thereof, Contractor and its subcontractors shall defend, indemnify, and hold harmless South Orange County Community College District, its Board of Trustees, officers, agents, employees, representatives, and volunteers from any and all losses, costs or expenses resulting from claims, suits or judgments rendered for violation of rights under such patents, copyright, or application. Additionally, Contractor shall defend, indemnify, and hold harmless the District, its Board, officers, agents, employees, representatives, and volunteers from any claims or losses arising out of the infringement or misappropriation of any individual's/entity's intellectual property. Contractor shall reimburse the District, its Board of Trustees, officers, agents, employees, representatives, and/or volunteers for all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity provided herein. This hold harmless and indemnification includes, but is not limited to, compensatory damages, regulatory fines, penalties, and extra-contractual liability. In no event shall the District, its Board of Trustees, officers, agents, employees, representatives, and/or volunteers be liable for any loss of Contractor's and its subcontractors business, revenues or profits, or special, consequential, incidental, indirect or punitive damages of any nature, even if the District its Board of Trustees, officers, agents, employees, representatives, and/or volunteers have been advised in advance of the possibility of such damages.
- A. Contractor's and its subcontractor's obligation to indemnify the District, its Board of Trustees, officers, agents, employees, representatives, and/or volunteers shall not be restricted to insurance proceeds, if any, received by the District, its Board of Trustees, officers, agents, employees, representatives, and/or volunteers.
- B. The Parties understand and agree that this shall be the sole indemnity, as defined by California Civil Code § 2772, governing this Agreement. Any other indemnity that may be attached to this Agreement as an Exhibit shall be void and unenforceable between the Parties.
- C. Neither termination of this Agreement nor completion of the acts to be performed under this Agreement shall release Contractor and its subcontractors from their obligations to indemnify as to any claims or causes of action asserted so long as the event(s) upon which such claim or cause of action is predicated shall have occurred prior to the effective date of termination or completion.
14. **INSURANCE**. The Contractor and its subcontractors shall maintain in full force and effect throughout the term of this Agreement the following policies of insurance with no less than the limits set forth herein. District may adjust, Contractor's required minimum coverage limits set forth herein at the commencement of a renewal term by providing Contractor and subcontractor (if applicable) written notice.
- A. A.M. Best Financial Rating. Policies of insurance required herein shall be issued by insurers with an A.M. Best

financial rating of A:VII or better.

- B. Admitted Carrier(s). Policies of insurance shall be afforded by insurers who are admitted - licensed to transact business in the State of California.
 - C. Workers' Compensation and Employer's Liability. In accordance with the laws of the State of California, Contractor shall maintain Workers' Compensation insurance and Employer's Liability coverage with not less than One Million Dollars (\$1,000,000) for Each Accident, One Million Dollars (\$1,000,000) for Disease - Each Employee, and One Million Dollars (\$1,000,000) for Disease - Policy Limit.
 - D. Commercial General Liability. Insurance with limits of not less than [[Commercial General Liability per Occurrence Limit]] per occurrence and Two Million Dollars (\$2,000,000) general aggregate to cover losses including, but not limited to blanket contractual, broad form property damage, products & completed operations, personal injury, and wrongful death.
 - E. Automobile Liability. Insurance with combined single limits of not less than [[Automobile Liability Limit]] per occurrence and Two Million Dollars (\$2,000,000) general aggregate to cover losses involving "Any Auto".
 - F. Technology Professional Liability aka Errors and Omissions. Contractor and its subcontractors shall each procure and maintain throughout the term of this Agreement, Technology Professional Liability insurance with limits of not less than [[Technology Professional Liability aka Errors and Omissions Limit]] per occurrence or claim and Two Million Dollars (\$2,000,000) general aggregate to cover against liability claims/lawsuits related to the technology professional's Services as stated herein. If coverage is written on a claims made and reported form, such coverage shall contain an Extended Reporting Period (aka tail coverage) for a minimum of two (2) years following the termination date of this Agreement.
 - G. Cyber Liability (1st and 3rd Party Coverage). Contractor and its subcontractors shall each procure and maintain throughout the term of this Agreement, Cyber Liability insurance with limits not less than [[Cyber Liability (1st and 3rd Party Coverage) Limit]] per occurrence and Two Million Dollars (\$2,000,000) general aggregate. Such coverage shall protect against causes of loss including but not limited to invasion of privacy violations, breach of data, disruption of networks, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, introduction or intrusion of a virus, malware, notification, credit monitoring, breach response costs, regulatory fines and penalties, extortion and network security, and also infringement of intellectual property.
 - H. Additional Insured Endorsement. Contractor and its subcontractors shall each issue District an endorsement naming District, its Board of Trustees, officers, agents, employees, representatives, invitees, and volunteers as Additional Insureds to Contractor and its subcontractor's Commercial General Liability and Automobile Liability insurance policies.
 - I. Primary and non-contributory endorsement. Contractor and its subcontractors insurance coverage and limits shall be primary and any of the District's insurance coverage and limits shall be non-contributory.
 - J. Waiver of Subrogation Endorsements. Contractor and its subcontractors shall each issue District an endorsement waiving all rights of subrogation against the District, its Board of Trustees, officers, agents, employees, representatives, invitees, and volunteers with respect to Contractor and its subcontractor's Commercial General Liability, Automobile Liability, and Workers' Compensation insurance policies.
 - K. No Cancellation or Material Modification. Contractor and its subcontractor's policies of insurance and accompanying endorsements required by this Agreement shall not be cancelled or materially modified, except upon thirty (30) days' advance written notice to District. Written notice of cancellation or material modification shall be from the insurer(s) issuing the policy(ies) of insurance to the District or the Contractor/subcontractors.
 - L. Certificate(s) of Insurance and Endorsement(s). Certificate(s) and Endorsement(s) evidencing the required coverages and limits set forth herein shall be provided to District upon Contractor's execution of this Agreement. No Services shall commence by Contractor or its subcontractors until the required certificate(s) of insurance and endorsement(s) have been furnished to the District.
15. **PUBLIC RETIREMENT SYSTEM RETIREES**. Contractor must disclose to District if Contractor has retired from the California State Teachers' Retirement System ("CalSTRS") or the California Public Employees' Retirement System

("CalPERS"). Pursuant to California Education Code Section 24214 and 24214.5, there are postretirement limitations on earnings if Contractor has retired from CalSTRS and hours worked limitations if Contractor has retired from CalPERS. If Contractor has retired from either CalSTRS or CalPERS, Contractor should be aware that the District is required to report all payments under this and any additional Agreements in any given year (July 1 – June 30).

16. **INDEPENDENT CONTRACTOR.** Contractor, in the performance of this Agreement, shall be and act as an independent Contractor and not an employee of the District. Contractor and its subcontractors, understand and agree that they shall not be considered officers, agents, employees, or volunteers of the District, and are not entitled to benefits of any kind or nature normally provided employees of the District and/or to which District's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Workers' Compensation. Contractor assumes the full responsibility of their actions and/or liabilities including those of their employees or agents as they relate to the Services to be provided under this Agreement. Contractor shall assume full responsibility for withholding and payment of all federal, state, local and applicable income taxes; workers' compensation; contributions, including but not limited to, unemployment insurance and social security with respect to Contractor and Contractor's employees. Contractor should be aware that the IRS regulations require District to report total income exceeding six hundred dollars (\$600) under this and any additional Agreements in any given year. The District will not withhold taxes, unemployment insurance or social security for Contractor or Contractor's employees or subcontractors. Contractor agrees to defend, indemnify and hold the District, its Board of Trustees, officers, agents, employees, representatives, and volunteers harmless from and against any and all liability arising from any failure or alleged failure of Contractor to withhold or pay any applicable tax, unemployment insurance or social security when due or any failure or alleged failure to comply with any applicable regulation applicable to Contractor's employees or subcontractors.
17. **USE OF SUBCONTRACTORS.** The obligations of the Contractor pursuant to this Agreement shall not be assigned by the Contractor without the express written approval of the District. Contractor must obtain District's prior written approval to use any subcontractors while performing any portion of this Agreement and such approval may be conditioned on approval of the subcontract between Contractor and subcontractor. Such approval must include approval of the proposed subcontractor and the terms of compensation. If written approval for Contractor's use of a subcontractor is provided by the District, Contractor warrants that said subcontractor shall have sufficient skill and experience to perform the Services assigned to them. Contractor further represents that its subcontractors have all licenses, permits, qualifications, and approvals of whatever nature that are legally required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Agreement. District retains the right to obtain copies of subcontractor's insurance coverage at any time. Nothing in this Article shall be interpreted as creating a contractual relationship between District and any approved subcontractor. Notwithstanding District's approval of any subcontractor's contract, Contractor shall remain solely responsible for any harm, damage, or claim arising from any subcontractor's acts or omissions as set forth in the Hold Harmless and Indemnification provision herein.
18. **ASSIGNMENT.** This Agreement is not assignable by Contractor, either in whole or in part, nor shall the Contractor further contract for the performance of any of its obligations hereunder, without the prior written consent of District.
19. **EMPLOYMENT WITH PUBLIC AGENCY.** If Contractor is an employee of another public agency, Contractor agrees that they will not receive salary or remuneration, other than vacation pay, for the actual time in which Services are actually being performed pursuant to this Agreement.
20. **REPRESENTATIONS AND WARRANTIES.** Contractor on its own behalf and on behalf of all its employees, makes the following certifications, representations, and warranties for the benefit of the District. In addition, Contractor acknowledges and agrees that the District, in deciding to engage Contractor pursuant to this Agreement, is relying upon the truth and validity of the following certifications, representations and warranties and their effectiveness throughout the term of this Agreement and the course of Contractor's engagement hereunder:

Contractor and its employees are qualified in all respects to provide to the District all of the Services contemplated by this Agreement and, to the extent required by any applicable laws, Contractor and its employees have all licenses, permits, qualifications, and/or governmental approvals that are legally required to perform the Services as described herein. Such licenses, permits, qualifications, and/or governmental approvals shall be maintained throughout the term of this Agreement.

Contractor, in providing the Services and in otherwise carrying out its obligations to the District under this Agreement, shall, at all times, comply with all applicable federal, state, and local laws, rules, regulations, and ordinances,

including workers' compensation and equal protection and non-discrimination laws. Contractor shall be liable for all violations of such laws and regulations in connection with the Services as described herein.

Contractor warrants all services related to installation of all equipment and materials, and shall perform all replacement and/or repairs within a reasonable time in accordance with industry standards. Contractor shall be responsible for transferring to the District all manufacturer related product warranties and guarantees where applicable.

21. **EQUAL OPPORTUNITY/NON-DISCRIMINATION.** Contractor shall not discriminate against any individual with respect to his or her compensation, terms, conditions, or privileges of employment; or discriminate in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his or her status as an employee because of such individual's race, color, religion, sex, national origin, age, disability, medical condition, marital status, veteran status, or any other category protected by law.

Contractor shall ensure that all services and benefits rendered to the District, its representatives, consultants/contractors and volunteers are provided free of any form of harassment and without regard to race, color, religion, sex, age, disability, medical condition, marital status, national origin, veteran status, or any other category protected by law. Contractor shall comply with the Americans with Disabilities Act and the Rehabilitation Act of 1973, as amended.

22. **COMPLIANCE WITH APPLICABLE LAWS, POLICIES, PROCEDURES, RULES & REGULATIONS.** Contractor shall comply with District's policies, procedures, rules, regulations and/or guidelines that include but are not limited to a smoke, alcohol, and controlled substances free campus, conflict of interest, workplace violence, code of conduct, harassment and discrimination prevention and drug-free environment.

Contractor agrees to comply with all federal, state and local laws, rules, regulations, and ordinances that are now and may in the future become applicable to Contractor, Contractor's business, equipment and personnel engaged in Services covered by this Agreement or accruing out of the performance of such Services. Additionally, Contractor shall strictly comply with all health and safety guidelines consistent with Cal/OSHA and CDC.

COVID-19 Related Responsibilities. Contractor shall respond to all potential COVID-19 exposure events immediately. If a possible COVID-19 infection or potential exposure event occurs involving Contractor and any of its employees performing Services on District property pursuant to the terms of this Agreement, Contractor shall immediately notify the District. While the confidentiality of all medical conditions must be maintained in accordance with applicable law, the District reserves the right to inform any District staff, employees, students, and/or visitors that an unnamed individual has been diagnosed with COVID-19 if any of the District's staff, employees, students, or visitors might have been exposed to the disease so such individual(s) may take measures to protect their own health.

Contractor shall ensure that its employees will at all times comply with the District's current [COVID-19 Contractor Protocols](#).

Compliance with Economic Sanctions Imposed in Response to Russia's Invasion of Ukraine. Contractor shall comply with the economic sanctions imposed in response to Russia's actions in Ukraine, including with respect to, but not limited to, the federal Executive Order 14065 and the sanctions identified on the U.S. Department of the Treasury website. Contractor shall comply with any sanctions imposed under state law, including with respect to, but not limited to, Executive Order N-6-22 from the State of California's Executive Department: <https://www.gov.ca.gov/wp-content/uploads/2022/03/3.4.22-Russia-Ukraine-Executive-Order.pdf>

23. **CERTIFICATION REGARDING THE CALIFORNIA PENAL CODE SECTION 290.** By executing this Agreement, Contractor agrees to comply with the rules and regulations of the Sex Offender Registration Act, California Penal Code Section 290.95. Contractor certifies and understands that every person required to register under Section 290 shall disclose his or her status as a registrant, upon application or acceptance of a position, to that person, group, or organization. Furthermore, no person who is required to register under Section 290 because of a conviction for a crime where the victim was a minor under sixteen (16) years of age shall be an employer, employee, or independent contractor, or act as a volunteer with any person, group, or organization in a capacity in which the registrant would be working directly and in an unaccompanied setting with minor children on more than an incidental and occasional basis or have supervision or disciplinary power over minor children. A violation of this Article is a misdemeanor punishable by imprisonment in a county jail for not exceeding six (6) months, by a fine not exceeding One Thousand

Dollars (\$1,000), or by both imprisonment and fine, and a violation of this Article shall not constitute a continuing offense.

24. **BACKGROUND CHECK.** Contractor hereby certifies that Contractor has never been charged with a felony, including any "violent felony" as defined in California Civil Code section 667.5(c) or serious felony defined by California Civil Code section 1192.7 prior to, or on the date of, this Agreement. Contractor shall notify District in writing immediately if Contractor is charged with any felony during the term of this Agreement in which case District may terminate this Agreement immediately. Contractor further hereby authorizes the District or other organizations to conduct a comprehensive review of his/her background upon District's request. Contractor hereby consents to the background check to the fullest extent permitted by law. Contractor agrees to indemnify, defend and hold harmless the District from any claims, damages, harms, and costs, including legal and processing fees arising from the requirements of this Section, including any such issue arising from any felony Contractor has been charged with, or is charged with, during this Agreement. Failure to complete any required step to provide the background check and information required herein upon District request within thirty (30) days shall be grounds for termination of this Agreement.
25. **PROFANITY PROHIBITED.** Profanity, including, but not limited to, racial, ethnic, or sexual slurs or comments which could be considered harassment on any District property is prohibited.
26. **MANDATORY DRESS CODE.** Appropriate attire is mandatory. Therefore, clothing with inappropriate language/suggestions/gestures graphics, indecent exposure, tank tops, cut-offs, and shorts are not allowed. Additionally, what is written or pictured on clothing must comply with the requirements of acceptable language as stated in the above Article.
27. **TRADEMARK/LOGO USE.** Contractor must obtain written approval from District's Public and Government Affairs, Public Information Office ("PIO") to use the District's name and/or logos in any advertisements, promotions, press releases or other media. In the event permission is granted, PIO will furnish Contractor with camera-ready artwork for such use. District, at its sole discretion, may limit or otherwise place conditions on Contractor's use of District's name, and/or logos in which case such limitations shall be incorporated into this Agreement. Contractor shall not revise, change, or otherwise alter any material related to District's name and/or logo without written consent from District.
28. **ORIGINALITY OF SERVICES.** Contractor agrees that all material produced by the Contractor and delivered to District hereunder shall be original, except for such portion as is included with permission of the copyright owners thereof, that it shall contain no libelous or unlawful statements or materials, and will not infringe upon any copyright, trademark, patent, statutory or other proprietary rights of others and that it will hold harmless the District, its Board of Trustees, officers, agents, employees, and volunteers from any costs, expenses and damages resulting from any breach of this representation.

Contractor understands and agrees that all matters produced under this Agreement shall become the property of District and cannot be used without District's express written permission. District shall have all rights, titles and interests in said matters, including the right to secure and maintain the copyright, trademark and/or patent of said matter in the name of the District. Contractor consents to use of Contractor's name in conjunction with the sale, use, performance, and distribution of the matters, for any purpose and in any medium.
29. **RIGHTS TO DATA.** Contractor grants to the District the right to publish, translate, reproduce, deliver, use and dispose of, and to authorize others to do so, all data, including reports, drawings, blueprints, and technical information resulting from the performance of Services under this Agreement.
30. **PERSONAL INFORMATION.** During the course of this Agreement, should Contractor come into possession of any personal information that is considered sensitive, nonpublic personal data or contains personally identifiable information related to District's users, which include but are not limited to employees, students, and volunteers, Contractor shall immediately notify the District. Contractor shall not disclose this information to any third party under any circumstances.
31. **CONFIDENTIALITY.** Contractor shall hold in trust for the District, and shall not disclose to any person, any confidential information. Confidential information is information, which is related to the District's research, development, trade secrets and business affairs; but does not include information, which is generally known or easily ascertainable by nonparties through available public documentation.

Contractor shall advise the District of any and all materials used, or recommended for use by Contractor to achieve the project goals, that are subject to any copyright restrictions or requirements. In the event Contractor shall fail to so advise the District and as a result of the use of any programs or materials developed by Contractor under this Agreement the District should be found in violation of any copyright restrictions or requirements, or the District should be alleged to be in violation of any copyright restrictions or requirements, Contractor agrees to indemnify, defend and hold harmless, District against any action or claim brought by the copyright holder.

Notwithstanding the above requirements, to the extent any records or documents associated with the Contractor's services and/or the project are or become public records, they shall be subject to disclosure pursuant to the Public Records Act and applicable California law.

- 32. **NON-WAIVER.** The failure of District or Contractor to seek redress for violation of, or to insist upon, the strict performance of any term or condition of this Agreement shall not be deemed a waiver by that party of such term or condition, or prevent a subsequent similar act from again constituting a violation of such term or condition.
- 33. **NOTICES.** All notices to any party hereunder shall be in writing, signed by the party giving it, and shall be sufficiently given or served, if personally served, emailed, or if sent by registered mail addressed to the parties at their address indicated in this Agreement.

DISTRICT: South Orange County Community College District
 Priya Jerome, Executive Director, Procurement, Central Services, and Risk Management
 28000 Marguerite Parkway
 Mission Viejo, CA 92692
 (949) 582-4850 /purchasing-dept@socccd.edu

CONTRACTOR: [[Name (Primary Second Party)]]
 [[Contact Name (Primary Second Party Contact)]], [[Contact Title (Primary Second Party Contact)]]
 [[Street Line 1 (Primary Second Party)]]
 [[City/Town (Primary Second Party)]], [[State/Province (Primary Second Party)]], [[Postal Code (Primary Second Party)]]
 [[Contact Phone Number (Primary Second Party Contact)]] / [[Contact E-mail (Primary Second Party Contact)]]

The table below contains details about the potential clauses which could appear in a contract. It is not displayed on the contract.
Selected CCF: Is legal notice contact information different from Second Party Contact Name (Contractor Name)?

Response Type	Default Clause	Fallback 1	Fallback 2	Fallback 3
Default or No Response Selected	Second Party Notices 2 (inserted above)			
No	Second Party Notices 2	N/A	N/A	N/A
Yes	Legal Notices 2	N/A	N/A	N/A

A Party may change their designated representative and/or address for the purposes of receiving notices and communication under this Agreement by notifying the other Party of the change in writing and in the manner described in this Article.

- 34. **SUPERSEDES.** This Agreement constitutes the entire agreement and understanding between the parties to this Agreement and supersedes all prior and contemporaneous negotiations and understandings between the parties whether oral or written, expressed or implied.

35. **GOVERNING LAW.** The terms and conditions of this Agreement shall be governed by the laws of the State of California with jurisdiction/venue in Orange, California.
36. **FORCE MAJEURE.** The Contractor and District are excused from performance during the time and to the extent that they are prevented from obtaining, performing any act or rendering any services required under this Agreement by a Force Majeure Event. If a Force Majeure Event caused the failure or delay beyond the Parties' control and which by the Parties' exercise of due diligence could not reasonably have been avoided, an extension of contract times in an amount equal to the time loss due to such delay shall be the Contractor's sole and exclusive remedy for such delay. A "Force Majeure Event" shall mean events or circumstances occurring by acts of God, such as tornadoes, lightning, earthquakes, hurricanes, floods, or other natural disasters; epidemics; pandemics; quarantine restrictions; fire; strikes; lock-out; commandeering of materials, products, plants or facilities by the government; terrorist attacks; wars; riots; civil disturbances; or governmental acts, including sanction, embargo, and import or export regulation, or order; when satisfactory evidence thereof is presented to the other party, provided that it is satisfactorily established that the non-performance is not due to the fault or neglect of the party not performing.
37. **SEVERABILITY.** If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force and effect and shall not be affected, impaired or invalidated in any way.
38. **INTERPRETATION.** In interpreting this Agreement, it shall be deemed to have been prepared by the Parties jointly, and no ambiguity shall be resolved against District on the premise that it or its attorneys were responsible for drafting this Agreement or any provision hereof. The captions or heading set forth in this Agreement are for convenience only and in no way define, limit, or describe the scope or intent of any Articles or other provisions of this Agreement. Any reference in this Agreement to an Article, unless specified otherwise, shall be a reference to an Article of this Agreement.
39. **CONFLICT OF INTEREST.** Contractor hereby represents, warrants and covenants that (i) at the time of execution of this Agreement, Contractor has no interest and shall not acquire any interest in the future, whether direct or indirect, which would conflict in any manner or degree with the performance of Services under this Agreement; (ii) Contractor has no business or financial interests which are in conflict with Contractor's obligations to the District under this Agreement; and (iii) Contractor shall not employ in the performance of Services under this Agreement any person or entity having any such interests.
40. **ACCESSIBILITY OF INFORMATION AND COMMUNICATION TECHNOLOGY.** The Contractor hereby warrants that the goods or services to be provided to the District comply with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. S794d), and its implementing regulations set forth at Title 36, Code of Federal Regulations, Part 194. The Contractor agrees to promptly respond to and resolve any complaint regarding accessibility of its products or services. Contractor further agrees to indemnify and hold harmless the District from any claim arising out of its failure to comply with the aforesaid requirements. Failure to comply with these requirements shall constitute a breach and be grounds for termination of this order or Agreement.

Contractor is responsible for following all Federal and California accessibility laws set forth under Sec 508 of the Rehabilitation Act of 1973, passed in 2000 and updated in 2017 and California Government Code Section 7405. All materials and Information and Communication Technology (ICT) produced or provided by the Contractor, as part of this contract must meet the standards set forth under these laws. These requirements include, but are not limited to, closed captioning of all videos or portions of videos; all presentations; training materials; curriculum; computers; and all other ICT as defined under the law, must be created and delivered in a manner where they meet accessible requirements. All websites developed and maintained must be accessible, built to the most current and highest Web Content Accessibility Guidelines (WCAG), and be delivered with documentation allowing the District to certify it as accessible and in compliance with California Government Code Sections 7405 and 11135. Contractor is responsible for all claims and expenses borne by the District, which arise out of the Services under this Agreement, found to be non-compliant with Federal and California Laws. These costs include but are not limited to legal costs, court costs, and costs for remediation of Services produced.

41. **ENTIRE AGREEMENT AND AMENDMENT.** The Agreement documents consist of this Agreement, any exhibits attached to or referenced herein, and all amendments and/or modifications issued in writing, duly approved or ratified by District's Board of Trustees, and executed by the Parties shall be interpreted to the benefit of the District. Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence: (a) provisions set forth in this Agreement, (b) provisions set forth in any referenced attachments or exhibits to this Agreement attached or incorporated herein by reference. However, the Parties understand and agree that the service specified in the

Agreement and any provisions set forth in any referenced attachments or exhibits to this Agreement is intended to cooperate and be complementary; provided further, however, that in the event of a conflict between the Agreement and the provisions set forth in any referenced attachments or exhibits, the Agreement shall control, unless the provisions set forth in any referenced attachments or exhibits to this Agreement provides the District with greater benefits or more expansive services in which case the provisions set forth in any referenced attachments or exhibits to this Agreement shall compliment the terms of this Agreement.

- 42. **AUTHORITY TO EXECUTE.** The individual(s) executing this Agreement on behalf of the Contractor is/are duly and fully authorized to execute this Agreement on behalf of Contractor and to bind the Contractor to each and every term, condition, and covenant of this Agreement.
- 43. **APPROVAL BY DISTRICT'S BOARD OF TRUSTEES.** Pursuant to Education Code Section 81655, this Agreement is not valid and does not constitute an enforceable obligation against District unless and until District's Board of Trustees has approved or ratified this Agreement as evidenced by a motion duly passed and adopted by the Board of Trustees.

IN WITNESS WHEREOF, this Agreement has been executed by and on behalf of the Parties, the day and year signed below.

CONTRACTOR

DISTRICT

[[NAME (PRIMARY SECOND PARTY)]]

[[Name (Primary First Party)]]

Signature:

Signature:

Print Name:

Print Name:

Title:

Title:

Date:

Date:



SOUTH ORANGE COUNTY COMMUNITY COLLEGE DISTRICT
INFORMATION TECHNOLOGY PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (“Agreement”) is between South Orange County Community College District **[[Campus Location]]** (“District”), a California community college district and political subdivision of the State of California, and **[[Name (Primary Second Party)]]** (“Consultant”). District and Consultant are also referred to collectively as the “Parties” and individually as “Party.”

WHEREAS, District is in need of such special services and advice; and

WHEREAS, Consultant is specially trained and experienced and competent to perform the special services required by the District, and such services are needed on a limited basis; and

WHEREAS, District desires to obtain specialized services and/or advice stated in the Statement of Service and is hereinafter referred to as the “Project” or “Services,” located within the District.

NOW THEREFORE, in consideration of these mutual promises, the Parties agree as follows:

1. **STATEMENT OF SERVICE.** Consultant agrees to undertake, carry-out, and complete for the District, in a satisfactory and competent manner, the following Services:
[[Statement of Services]]
2. **TERM.** This Agreement shall commence on **[[Start Date]]**, and shall end no later than **[[End Date]]**, and may be modified only by mutual written agreement of the Parties. The District shall have the discretion to terminate this Agreement at any time by providing Consultant thirty (30) days prior written notice specifying the date of termination.
3. **PAYMENT.** District agrees to pay the Consultant, as full consideration and compensation for Consultant’s performance of the Work under this Agreement, a total amount not to exceed **[[Contract Total Amount (Spelled Out)]]** Dollars **[[Contract Total Amount]]** (“Contract Amount”). Additional details: **[[Payment Details]]**.

The District shall not be liable to Consultant for any costs or expenses paid or incurred by Consultant in performing services for the District, unless otherwise specifically stated in this Article. The Consultant’s mileage and travel time shall not be considered as an allowable reimbursable expense.

The descriptive categories of expenses that may be considered for reimbursement shall be calculated in accordance with the rates set forth and are as follows, and any other reimbursable expenses must be approved in writing by the District:

- A. Approved reproduction of reports and/or other documents in excess of the copies required by this Agreement;
 - B. Fees advanced for securing approval of authorities in connection with the Services rendered pursuant to this Agreement;
 - C. Cost of UPS, Federal Express, and other deliverables; and
 - D. Cost of subconsultants hired by Consultant with prior written approval of District.
4. **INVOICES.** Consultant to send invoices to AccountsPayable@socccd.edu or mail to South Orange County Community College District, 28000 Marguerite Parkway, Mission Viejo, CA 92692, Attn: Accounts Payable. Payment shall be net 30 days upon satisfactory completion and acceptance of Services. If payment term differs, it must be noted in Article 3. **To ensure prompt and accurate payment, all invoices related to this agreement shall reference the following Agreement Number: [[Contract Number]]**

All District-authorized expenses shall be documented with original receipts and shall be pre-approved in writing by District, unless such expenses are specifically authorized by this Agreement. Invoices shall include the invoice date, date(s) of service(s), District’s Purchase Order number, and Consultant’s Taxpayer Identification Number. Invoices shall be paid on a “net 30-day basis” for Work satisfactorily rendered (as determined by the District) pursuant to this Agreement. An invoice cannot be paid unless this Agreement has been signed by Consultant and has been properly

executed by District, and Consultant has submitted a completed Vendor Form/Substitute Form W-9 to District's Contract and Procurement Services Department.

5. **MATERIALS AND EXPENSES.** Consultant shall furnish, at their own expense, all labor, materials, equipment, supplies and other items necessary to complete the Work to be provided pursuant to this Agreement. District shall not be liable to Consultant for any costs or expenses paid or incurred by Consultant in performing Work for District.
6. **TRANSPORTATION.** Consultant hereby acknowledges and understands that it is their responsibility to arrange for transportation to provide all services necessary and/or required by this Agreement and is solely responsible for all associated costs. The District is in no way responsible for, nor does District assume any liability for, any injury or loss, which may result from Consultant's transportation for which the Consultant shall indemnify the District in accordance with the Hold Harmless and Indemnification provision herein.
7. **TAXES.** Consultant acknowledges and agrees that it is their sole responsibility to report as income their compensation received from the District and to make the requisite tax filings and payments to the appropriate federal, state and/or local taxation authorities. No part of Consultant's compensation shall be subject to withholding by the District for the payment of social security, unemployment, or disability insurance or any other similar state or federal tax obligation.
8. **CALIFORNIA STATE TAX WITHHOLDING FOR NONRESIDENTS OF CALIFORNIA.** It is mutually understood that if Consultant is a nonresident of California, which may include California nonresidents, corporations, limited liability companies, non-profits, and partnerships that do not have a permanent place of business in the State of California, the District is obligated to abide by California Franchise Tax Board (FTB) withholding requirements. The District is required to withhold from all payments or distributions of California source income made to a nonresident when payments or distributions are greater than One Thousand Five Hundred Dollars (\$1,500) for the calendar year unless the District receives authorization for a waiver or a reduced withholding rate from FTB. As of January 1, 2008, the standard withholding amount for all payments to nonresident California contractors is Seven Percent (7%). District will deduct the amount ordered by the State of California from the payment hereunder and will pay such amount directly to the Consultant's California State Income Tax Account, settlement of which must be made by Consultant directly with the State of California through Withholding Coordinator, Franchise Tax Board, P.O. Box 651, Sacramento, California, 95812-0651; telephone (916) 845-6262. Completion and submission of the appropriate form shall be the obligation of the nonresident Consultant and Consultant shall defend, indemnify, and hold harmless the District against any loss, expense, or liability arising out of Consultant's acts or omissions with respect to this nonresident requirement. Consultant shall provide all necessary documentation and information to help District comply with all tax requirements related to California nonresidents.
9. **STANDARD OF CARE AND PROFESSIONAL CONDUCT.** Consultant shall perform all Services under this Agreement in a skillful, competent and timely manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all of Consultant's employees and subconsultants shall have sufficient skill and experience to perform the Services assigned to them. Consultant further represents that it, its employees and subconsultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the services, and that such licenses and approvals shall be maintained throughout the term of this Agreement. The services completed herein must meet the approval of the District and shall be subject to the District's general right of inspection to secure the satisfactory completion thereof.

Consultant or Consultant's employees who are determined by District to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any of Consultant's employees who fail or refuse to perform the services in a manner acceptable to District, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the services or to work on the Project.
10. **AUDIT AND INSPECTION OF RECORDS.** At any time during the normal business hours and as often as District may deem necessary, Consultant shall make available to District for examination at District's place of business as specified herein, all data, records, investigation reports and all other materials respecting matters covered by this Agreement and Consultant will permit the District to audit, and to make audits of all invoices, materials, payrolls, records of personnel and other data related to all matters covered by this Agreement.
11. **TIME IS OF THE ESSENCE.** Time is of the essence with respect to all provisions of this Agreement.

12. **TERMINATION.**

- A. **Grounds for Termination.** District may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof, at thirty (30) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those services which have been adequately rendered to District, and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause.
- B. **Effect of Termination.** If this Agreement is terminated as provided in this Article, Consultant shall be required to provide all finished or unfinished documents, data, programming source code, reports, or any other items prepared by Consultant in connection with the performance of services under this Agreement within fifteen (15) days of the request.
- C. **Additional Services.** In the event this Agreement is terminated in whole or in part as provided herein, the District may procure, upon such terms and in such manner as it may determine appropriate, services similar or identical to those terminated.

13. **HOLD HARMLESS AND INDEMNIFICATION.** To the fullest extent permitted by law, the Consultant and its subconsultants shall defend (with counsel of District's choosing), indemnify, and hold harmless the District, its Board of Trustees, officers, agents, employees, representatives, and volunteers (collectively "Indemnified Parties") from any and all claims, demands, causes of action, costs, expenses, liabilities, losses, in law or equity, property damage, personal injury, damages or injuries/illnesses (including COVID-19) of any kind, including wrongful death, in any manner arising out of, pertaining to, or incident to losses including, but not limited to allegations that the Consultant's and/or its subconsultant's Services, software, documentation, product, output, presentation, materials or the like infringed any trademark, copyright or patent or misappropriated any trade secret of a third party, exposure of confidential information to unauthorized parties by Consultant's and/or its subconsultant's Services, software, or documentation, or Consultant's and/or its subconsultant's introduction of any unauthorized material (including but not limited to viruses, Trojans, rootkits, ransomware, blockchain, or other malware) to the District's computer network, including any cloud, storage, or extension thereof, and any alleged acts, errors or omissions, negligence, recklessness or willful misconduct of Consultant, its officials, officers, agents, employees, representatives, subconsultant, or volunteers, in connection with the performance of the Consultant's Services of this Agreement or obligations hereunder, including without limitation the payment of all consequential damages, expert witness fees, attorney's fees, and other related costs and expenses. In the event any article sold and delivered hereunder is covered by any patent, copyright, or application thereof, Consultant and its subconsultants shall defend, indemnify, and hold harmless South Orange County Community College District, its Board of Trustees, officers, agents, employees, representatives, and volunteers from any and all losses, costs or expenses resulting from claims, suits or judgments rendered for violation of rights under such patents, copyright, or application. Additionally, Consultant shall defend, indemnify, and hold harmless the District, its Board, officers, agents, employees, representatives, and volunteers from any claims or losses arising out of the infringement or misappropriation of any individual's/entity's intellectual property. Consultant shall reimburse the District, its Board of Trustees, officers, agents, employees, representatives, and/or volunteers for all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity provided herein. This hold harmless and indemnification includes, but is not limited to, compensatory damages, regulatory fines, penalties, and extra-contractual liability. In no event shall the District, its Board of Trustees, officers, agents, employees, representatives, and/or volunteers be liable for any loss of Consultant's business, revenues or profits, or special, consequential, incidental, indirect or punitive damages of any nature, even if the District its Board of Trustees, officers, agents, employees, representatives, and/or volunteers have been advised in advance of the possibility of such damages.

- A. Consultant's and its subconsultants' obligation to indemnify the District, its Board of Trustees, officers, agents, employees, representatives, and/or volunteers shall not be restricted to insurance proceeds, if any, received by the District, its Board of Trustees, officers, agents, employees, representatives, and/or volunteers.
- B. The Parties understand and agree that this shall be the sole indemnity, as defined by California Civil Code § 2772, governing this Agreement. Any other indemnity that may be attached to this Agreement as an Exhibit shall be void and unenforceable between the Parties.
- C. Neither termination of this Agreement nor completion of the acts to be performed under this Agreement shall release Consultant or its subconsultants from its obligations to indemnify as to any claims or causes of action asserted so long as the event(s) upon which such claim or cause of action is predicated shall have occurred prior to the effective date of termination or completion.

14. **INSURANCE.** The Consultant and its subconsultants shall maintain in full force and effect throughout the term of this Agreement the following policies of insurance with no less than the limits set forth herein. District may adjust, Consultant's required minimum coverage limits set forth herein at the commencement of a renewal term by providing Consultant and subconsultant (if applicable) written notice.
- A. A.M. Best Financial Rating. Policies of insurance required herein shall be issued by insurers with an A.M. Best financial rating of A:VII or better.
 - B. Admitted Carrier(s). Policies of insurance shall be afforded by insurers who are admitted - licensed to transact business in the State of California.
 - C. Workers' Compensation and Employer's Liability. In accordance with the laws of the State of California, Consultant shall maintain Workers' Compensation insurance and Employer's Liability coverage with not less than One Million Dollars (\$1,000,000) for Each Accident, One Million Dollars (\$1,000,000) for Disease - Each Employee, and One Million Dollars (\$1,000,000) for Disease - Policy Limit.
 - D. Commercial General Liability. Insurance with limits of not less than [[Commercial General Liability per Occurrence Limit]] per occurrence and Two Million Dollars (\$2,000,000) general aggregate to cover losses including, but not limited to blanket contractual, broad form property damage, products & completed operations, personal injury, and wrongful death.
 - E. Automobile Liability. Insurance with combined single limits of not less than [[Automobile Liability Limit]] per occurrence and Two Million Dollars (\$2,000,000) general aggregate to cover losses involving "Any Auto".
 - F. Technology Professional Liability aka Errors and Omissions. Consultant and its subConsultants shall each procure and maintain throughout the term of this Agreement, Technology Professional Liability insurance with limits of not less than [[Technology Professional Liability aka Errors and Omissions Limit]] per occurrence or claim and Two Million Dollars (\$2,000,000) general aggregate to cover against liability claims/lawsuits related to the technology professional's Services as stated herein. If coverage is written on a claims made and reported form, such coverage shall contain an Extended Reporting Period (aka tail coverage) for a minimum of two (2) years following the termination date of this Agreement.
 - G. Cyber Liability (1st and 3rd Party Coverage). Consultant and its subconsultants shall each procure and maintain throughout the term of this Agreement, Cyber Liability insurance with limits not less than [[Cyber Liability (1st and 3rd Party Coverage) Limit]] per occurrence and Two Million Dollars (\$2,000,000) general aggregate. Such coverage shall protect against causes of loss including but not limited to invasion of privacy violations, breach of data, disruption of networks, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, introduction or intrusion of a virus, malware, notification, credit monitoring, breach response costs, regulatory fines and penalties, extortion and network security, and also infringement of intellectual property.
 - H. Additional Insured Endorsement. Consultant and its subconsultants shall each issue District an endorsement naming District, its Board of Trustees, officers, agents, employees, representatives, invitees, and volunteers as Additional Insureds to their respective Commercial General Liability and Automobile Liability insurance policies.
 - I. Primary and Non-Contributory Endorsement. Consultant and its subconsultants insurance coverage and limits shall be primary and any of the District's insurance coverage and limits shall be non-contributory.
 - J. Waiver of Subrogation Endorsements. Consultant and its subconsultants shall each issue District an endorsement waiving all rights of subrogation against the District, its Board of Trustees, officers, agents, employees, representatives, invitees, and volunteers to their respective Commercial General Liability, Automobile Liability, and Workers' Compensation policies.
 - K. No Cancellation or Material Modification. Consultant and its subconsultant's policies of insurance and accompanying endorsements required by this Agreement shall not be cancelled or materially modified, except upon thirty (30) days' advance written notice to District. Written notice of cancellation or material modification shall be from the insurer(s) issuing the policy(ies) of insurance to the District.

- L. Certificate(s) of Insurance and Endorsement(s). Certificate(s) and Endorsement(s) evidencing the required coverages and limits set forth herein shall be provided to District upon Consultant's execution of this Agreement. No Services shall commence by Consultant or its subconsultants until the required certificate(s) of insurance and endorsement(s) have been furnished to the District.
15. **PUBLIC RETIREMENT SYSTEM RETIREES.** Consultant must disclose to District if Consultant has retired from the California State Teachers' Retirement System ("CalSTRS") or the California Public Employees' Retirement System ("CalPERS"). Pursuant to California Education Code Section 24214 and 24214.5, there are postretirement limitations on earnings if Consultant has retired from CalSTRS and hours worked limitations if Consultant has retired from CalPERS. If Consultant has retired from either CalSTRS or CalPERS, Consultant should be aware that the District is required to report all payments under this and any additional Agreements in any given year (July 1 – June 30).
16. **INDEPENDENT CONSULTANT.** Consultant, in the performance of this Agreement, shall be and act as an independent Consultant and not an employee of the District. Consultant and its subconsultants, understand and agree that they shall not be considered officers, agents, employees, or volunteers of the District, and are not entitled to benefits of any kind or nature normally provided employees of the District and/or to which District's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Workers' Compensation. Consultant assumes the full responsibility of their actions and/or liabilities including those of their employees or agents as they relate to the Services to be provided under this Agreement. Consultant shall assume full responsibility for withholding and payment of all federal, state, local and applicable income taxes; workers' compensation; contributions, including but not limited to, unemployment insurance and social security with respect to Consultant and Consultant's employees. Consultant should be aware that the IRS regulations require District to report total income exceeding six hundred dollars (\$600) under this and any additional Agreements in any given year. The District will not withhold taxes, unemployment insurance or social security for Consultant or Consultant's employees or subconsultants. Consultant agrees to defend, indemnify and hold the District, its Board of Trustees, officers, agents, employees, representatives, and volunteers harmless from and against any and all liability arising from any failure or alleged failure of Consultant to withhold or pay any applicable tax, unemployment insurance or social security when due or any failure or alleged failure to comply with any applicable regulation applicable to Consultant's employees or subconsultants.
17. **USE OF SUBCONSULTANTS.** The obligations of the Consultant pursuant to this Agreement shall not be assigned by the Consultant without the express written approval of the District. Consultant must obtain District's prior written approval to use any subconsultants while performing any portion of this Agreement and such approval may be conditioned on approval of the subcontract between Consultant and subconsultant. Such approval must include approval of the proposed subconsultant and the terms of compensation. If written approval for Consultant's use of a subconsultant is provided by the District, Consultant warrants that said subconsultant shall have sufficient skill and experience to perform the services assigned to them. Consultant further represents that its subconsultants have all licenses, permits, qualifications, and approvals of whatever nature that are legally required to perform the services, and that such licenses and approvals shall be maintained throughout the term of this Agreement. District retains the right to obtain copies of subconsultant's insurance coverage at any time. Nothing in this Article shall be interpreted as creating a contractual relationship between District and any approved subconsultant. Notwithstanding District's approval of any subconsultant's contract, Consultant shall remain solely responsible for any harm, damage, or claim arising from any subconsultant's acts or omissions as set forth in the Hold Harmless and Indemnification provision herein.
18. **ASSIGNMENT.** This Agreement is not assignable by Consultant, either in whole or in part, nor shall the Consultant further contract for the performance of any of its obligations hereunder, without the prior written consent of District.
19. **EMPLOYMENT WITH PUBLIC AGENCY.** If Consultant is an employee of another public agency, Consultant agrees that they will not receive salary or remuneration, other than vacation pay, for the actual time in which services are actually being performed pursuant to this Agreement.
20. **REPRESENTATIONS AND WARRANTIES.** Consultant on its own behalf and on behalf of all its employees, makes the following certifications, representations, and warranties for the benefit of the District. In addition, Consultant acknowledges and agrees that the District, in deciding to engage Consultant pursuant to this Agreement, is relying upon the truth and validity of the following certifications, representations and warranties and their effectiveness throughout the term of this Agreement and the course of Consultant's engagement hereunder:

Consultant and its employees are qualified in all respects to provide to the District all of the services contemplated by this Agreement and, to the extent required by any applicable laws, Consultant and its employees have all licenses, permits, qualifications, and/or governmental approvals that are legally required to perform the Services as described herein. Such licenses, permits, qualifications, and/or governmental approvals shall be maintained throughout the term

of this Agreement.

Consultant, in providing the services and in otherwise carrying out its obligations to the District under this Agreement, shall, at all times, comply with all applicable federal, state, and local laws, rules, regulations, and ordinances, including workers' compensation and equal protection and non-discrimination laws. Consultant shall be liable for all violations of such laws and regulations in connection with the services as described herein.

21. **EQUAL OPPORTUNITY/NON-DISCRIMINATION.** Consultant shall not discriminate against any individual with respect to his or her compensation, terms, conditions, or privileges of employment; or discriminate in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his or her status as an employee because of such individual's race, color, religion, sex, national origin, age, disability, medical condition, marital status, veteran status, or any other category protected by law.

Consultant shall ensure that all services and benefits rendered to the District, its representatives, consultants/contractors and volunteers are provided free of any form of harassment and without regard to race, color, religion, sex, age, disability, medical condition, marital status, national origin, veteran status, or any other category protected by law. Consultant shall comply with the Americans with Disabilities Act and the Rehabilitation Act of 1973, as amended.

22. **COMPLIANCE WITH APPLICABLE LAWS, POLICIES, PROCEDURES, RULES & REGULATIONS.** Consultant shall comply with District's policies, procedures, rules, regulations and/or guidelines that include but are not limited to a smoke, alcohol, and controlled substances free campus, conflict of interest, workplace violence, code of conduct, harassment and discrimination prevention and drug-free environment.

Consultant agrees to comply with all federal, state and local laws, rules, regulations, and ordinances that are now and may in the future become applicable to Consultant, Consultant's business, equipment and personnel engaged in Work covered by this Agreement or accruing out of the performance of such Work. Additionally, Consultant shall strictly comply with all health and safety guidelines consistent with Cal/OSHA and CDC.

COVID-19 Related Responsibilities. Consultant shall respond to all potential COVID-19 exposure events immediately. If a possible COVID-19 infection or potential exposure event occurs involving Consultant and any of its employees performing Work on District property pursuant to the terms of this Agreement, Consultant shall immediately notify the District. While the confidentiality of all medical conditions must be maintained in accordance with applicable law, the District reserves the right to inform any District staff, employees, students, and/or visitors that an unnamed individual has been diagnosed with COVID-19 if any of the District's staff, employees, students, or visitors might have been exposed to the disease so such individual(s) may take measures to protect their own health.

Contractor shall ensure that its employees will at all times comply with the District's current [COVID-19 Contractor Protocols](#).

Compliance with Economic Sanctions Imposed in Response to Russia's Invasion of Ukraine. Consultant shall comply with the economic sanctions imposed in response to Russia's actions in Ukraine, including with respect to, but not limited to, the federal Executive Order 14065 and the sanctions identified on the U.S. Department of the Treasury website. Consultant shall comply with any sanctions imposed under state law, including with respect to, but not limited to, Executive Order N-6-22 from the State of California's Executive Department:

<https://www.gov.ca.gov/wp-content/uploads/2022/03/3.4.22-Russia-Ukraine-Executive-Order.pdf>

23. **CERTIFICATION REGARDING THE CALIFORNIA PENAL CODE SECTION 290.** By executing this Agreement, Consultant agrees to comply with the rules and regulations of the Sex Offender Registration Act, California Penal Code Section 290.95. Consultant certifies and understands that every person required to register under Section 290 shall disclose his or her status as a registrant, upon application or acceptance of a position, to that person, group, or organization. Furthermore, no person who is required to register under Section 290 because of a conviction for a crime where the victim was a minor under sixteen (16) years of age shall be an employer, employee, or independent Consultant, or act as a volunteer with any person, group, or organization in a capacity in which the registrant would be working directly and in an unaccompanied setting with minor children on more than an incidental and occasional basis or have supervision or disciplinary power over minor children. A violation of this Article is a misdemeanor punishable by imprisonment in a county jail for not exceeding six (6) months, by a fine not exceeding One Thousand Dollars (\$1,000), or by both that imprisonment and fine, and a violation of this Article shall not constitute a continuing offense.

24. **BACKGROUND CHECK.** Consultant hereby certifies that Consultant has never been charged with a felony, including any "violent felony" as defined in California Civil Code section 667.5(c) or serious felony defined by California Civil Code section 1192.7 prior to, or on the date of, this Agreement. Consultant shall notify District in writing immediately if Consultant is charged with any felony during the term of this Agreement in which case District may terminate this Agreement immediately. Consultant further hereby authorizes the District or other organizations to conduct a comprehensive review of his/her background upon District's request. Consultant hereby consents to the background check to the fullest extent permitted by law. Consultant agrees to indemnify, defend and hold harmless the District from any claims, damages, harms, and costs, including legal and processing fees arising from the requirements of this Section, including any such issue arising from any felony Consultant has been charged with, or is charged with, during this Agreement. Failure to complete any required step to provide the background check and information required herein upon District request within thirty (30) days shall be grounds for termination of this Agreement.

25. **CERTIFICATION REGARDING DEBARMENT, SUSPENSION OR OTHER INELIGIBILITY (Applicable to all agreements funded in part or whole with federal funds).**

A. By executing this contractual instrument, Consultant agrees to comply with applicable federal suspension and debarment regulations, including, but not limited to, regulations implementing Executive Order 12549 (29 C.F.R. Part 98) (see Appendix 15).

B. By executing this contractual instrument, Consultant certifies to the best of its knowledge and belief that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
2. Have not, within a three-year period preceding the execution of this contractual instrument, been convicted of, or had a civil judgment rendered against them, for: (a) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or Local) or private transaction or contract; (b) Violation of Federal or State antitrust statutes; (c) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice; or (d) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects Consultant's present responsibility;
3. Are not presently indicted for, or otherwise criminally or civilly charged by any government entity (Federal, State or Local), with commission of any of the offenses enumerated in b.2) above, of this certification;
4. Have not, within a three-year period preceding the execution of this contractual instrument, had one or more public transaction (Federal, State or Local) terminated for cause or default;
5. Shall not, except as otherwise provided under applicable federal regulations, knowingly enter into any lower tier covered transaction with a person who is proposed for debarment, debarred, suspended, declared ineligible, or voluntarily excluded by any federal department or agency from participation in such transaction; and
6. Include in all lower tier covered transactions, and all solicitations for covered transactions, provisions substantially similar to those set forth herein.

26. **PROFANITY PROHIBITED.** Profanity, including, but not limited to, racial, ethnic, or sexual slurs or comments, which could be considered harassment on any District property is prohibited.

27. **MANDATORY DRESS CODE.** Appropriate attire is mandatory. Therefore, clothing with inappropriate language/suggestions/gestures graphics, indecent exposure, tank tops, cut-offs, and shorts are not allowed. Additionally, what is written or pictured on clothing must comply with the requirements of acceptable language as stated in the above Article.

28. **TRADEMARK/LOGO USE.** Consultant must obtain written approval from District's Public and Government Affairs, Public Information Office ("PIO") to use the District's name and/or logos in any advertisements, promotions, press releases or other media. In the event permission is granted, PIO will furnish Consultant with camera-ready artwork for such use. District, at its sole discretion, may limit or otherwise place conditions on Consultant's use of District's name, and/or logos in which case such limitations shall be incorporated into this Agreement. Consultant shall not revise, change, or otherwise alter any material related to District's name and/or logo without written consent from District.

29. **ORIGINALITY OF SERVICES.** Consultant agrees that all material produced by the Consultant and delivered to District hereunder shall be original, except for such portion as is included with permission of the copyright owners thereof, that it shall contain no libelous or unlawful statements or materials, and will not infringe upon any copyright, trademark, patent, statutory or other proprietary rights of others and that it will hold harmless the District, its Board of Trustees,

officers, agents, employees, and volunteers from any costs, expenses and damages resulting from any breach of this representation.

Consultant understands and agrees that all matters produced under this Agreement shall become the property of District and cannot be used without District's express written permission. District shall have all rights, titles and interests in said matters, including the right to secure and maintain the copyright, trademark and/or patent of said matter in the name of the District. Consultant consents to use of Consultant's name in conjunction with the sale, use, performance, and distribution of the matters, for any purpose and in any medium.

- 30. **RIGHTS TO DATA.** Consultant grants to the District the right to publish, translate, reproduce, deliver, use and dispose of, and to authorize others to do so, all data, including reports, drawings, blueprints, and technical information resulting from the performance of work under this Agreement.
- 31. **PERSONAL INFORMATION.** During the course of this Agreement, should Consultant come into possession of any personal information that is considered sensitive, nonpublic personal data or contains personally identifiable information related to District's users, which include but are not limited to employees, students, and volunteers, Consultant shall immediately notify the District. Consultant shall not disclose this information to any third party under any circumstances.
- 32. **CONFIDENTIALITY.** Consultant shall hold in trust for the District, and shall not disclose to any person, any confidential information. Confidential information is information, which is related to the District's research, development, trade secrets and business affairs; but does not include information, which is generally known or easily ascertainable by nonparties through available public documentation.

Consultant shall advise the District of any and all materials used, or recommended for use by Consultant to achieve the project goals, that are subject to any copyright restrictions or requirements. In the event Consultant shall fail to so advise the District and as a result of the use of any programs or materials developed by Consultant under this Agreement the District should be found in violation of any copyright restrictions or requirements, or the District should be alleged to be in violation of any copyright restrictions or requirements, Consultant agrees to indemnify, defend and hold harmless, District against any action or claim brought by the copyright holder.

Notwithstanding the above requirements, to the extent any records or documents associated with the Consultant's services and/or the project are or become public records, they shall be subject to disclosure pursuant to the Public Records Act and applicable California law.

- 33. **NON-WAIVER.** The failure of District or Consultant to seek redress for violation of, or to insist upon, the strict performance of any term or condition of this Agreement shall not be deemed a waiver by that party of such term or condition, or prevent a subsequent similar act from again constituting a violation of such term or condition.
- 34. **NOTICES.** All notices to any party hereunder shall be in writing, signed by the party giving it, and shall be sufficiently given or served, if personally served, emailed, or if sent by registered mail addressed to the parties at their address indicated in this Agreement.

DISTRICT: South Orange County Community College District
 Priya Jerome, Executive Director, Procurement,
 Central Services, and Risk Management
 28000 Marguerite Parkway
 Mission Viejo, CA 92692
 (949) 582-4850 / purchasing-dept@socccd.edu

CONSULTANT:
 [[Name (Primary Second Party)]]
 [[Contact Name (Primary Second Party Contact)]], [[Contact Title (Primary Second Party Contact)]]
 [[Street Line 1 (Primary Second Party)]]
 [[City/Town (Primary Second Party)]], [[State/Province (Primary Second Party)]], [[Postal Code
 (Primary Second Party)]]
 [[Contact Phone Number (Primary Second Party Contact)]] / [[Contact E-mail (Primary Second Party
 Contact)]]

The table below contains details about the potential clauses which could appear in a contract. It is not displayed on the contract.

Selected CCF: Is legal notice contact information different from Second Party Contact Name (Contractor

Name)?

Response Type	Default Clause	Fallback 1	Fallback 2	Fallback 3
Default or No Response Selected	Second Party Notices 2 (inserted above)			
No	Second Party Notices 2	N/A	N/A	N/A
Yes	Legal Notices 2	N/A	N/A	N/A

A Party may change their designated representative and/or address for the purposes of receiving notices and communication under this Agreement by notifying the other Party of the change in writing and in the manner described in this Article.

35. **SUPERSEDES.** This Agreement constitutes the entire agreement and understanding between the parties to this Agreement and supersedes all prior and contemporaneous negotiations and understandings between the parties whether oral or written, expressed or implied.
36. **GOVERNING LAW.** The terms and conditions of this Agreement shall be governed by the laws of the State of California with jurisdiction/venue in Orange, California.
37. **FORCE MAJEURE.** The Consultant and District are excused from performance during the time and to the extent that they are prevented from obtaining, performing any act or rendering any services required under this Agreement by a Force Majeure Event. If a Force Majeure Event caused the failure or delay beyond the Parties' control and which by the Parties' exercise of due diligence could not reasonably have been avoided, an extension of contract times in an amount equal to the time loss due to such delay shall be the Consultant's sole and exclusive remedy for such delay. A "Force Majeure Event" shall mean events or circumstances occurring by acts of God, such as tornadoes, lightning, earthquakes, hurricanes, floods, or other natural disasters; epidemics; pandemics; quarantine restrictions; fire; strikes; lock-out; commandeering of materials, products, plants or facilities by the government; terrorist attacks; wars; riots; civil disturbances; or governmental acts, including sanction, embargo, and import or export regulation, or order; when satisfactory evidence thereof is presented to the other party, provided that it is satisfactorily established that the non-performance is not due to the fault or neglect of the party not performing.
38. **SEVERABILITY.** If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force and effect and shall not be affected, impaired or invalidated in any way.
39. **INTERPRETATION.** In interpreting this Agreement, it shall be deemed to have been prepared by the Parties jointly, and no ambiguity shall be resolved against District on the premise that it or its attorneys were responsible for drafting this Agreement or any provision hereof. The captions or heading set forth in this Agreement are for convenience only and in no way define, limit, or describe the scope or intent of any Articles or other provisions of this Agreement. Any reference in this Agreement to an Article, unless specified otherwise, shall be a reference to an Article of this Agreement.
40. **CONFLICT OF INTEREST.** Consultant hereby represents, warrants and covenants that (i) at the time of execution of this Agreement, Consultant has no interest and shall not acquire any interest in the future, whether direct or indirect, which would conflict in any manner or degree with the performance of services under this Agreement; (ii) Consultant has no business or financial interests which are in conflict with Consultant's obligations to the District under this Agreement; and (iii) Consultant shall not employ in the performance of services under this Agreement any person or entity having any such interests.
41. **ACCESSIBILITY OF INFORMATION AND COMMUNICATION TECHNOLOGY.** The Consultant hereby warrants that the goods or services to be provided to the District comply with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. S794d), and its implementing regulations set forth at Title 36, Code of Federal Regulations, Part 194. The Consultant agrees to promptly respond to and resolve any complaint regarding accessibility of its products or services. Consultant further agrees to indemnify and hold harmless the District from any claim arising out of its failure to comply with the aforesaid requirements. Failure to comply with these requirements shall constitute a breach and be grounds for termination of this order or Agreement.

Consultant is responsible for following all Federal and California accessibility laws set forth under Sec 508 of the Rehabilitation Act of 1973, passed in 2000 and updated in 2017 and California Government Code Section 7405. All materials and Information and Communication Technology (ICT) produced or provided by the Consultant, as part of this contract must meet the standards set forth under these laws. These requirements include, but are not limited to, closed captioning of all videos or portions of videos; all presentations; training materials; curriculum; computers; and all other ICT as defined under the law, must be created and delivered in a manner where they meet accessible requirements. All websites developed and maintained must be accessible, built to the most current and highest Web Content Accessibility Guidelines (WCAG), and be delivered with documentation allowing the District to certify it as accessible and in compliance with California Government Code Sections 7405 and 11135. Consultant is responsible for all claims and expenses borne by the District, which arise out of the work under this contract, found to be non-compliant with Federal and California Laws. These costs include but are not limited to legal costs, court costs, and costs for remediation of work produced.

42. **ENTIRE AGREEMENT AND AMENDMENT.** The Agreement documents consist of this Agreement, any exhibits attached to or referenced herein, and all amendments and/or modifications issued in writing, duly approved or ratified by District's Board of Trustees, and executed by the Parties shall be interpreted to the benefit of the District. Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence: (a) provisions set forth in this Agreement, (b) provisions set forth in any referenced attachments or exhibits to this Agreement attached or incorporated herein by reference. However, the Parties understand and agree that the service specified in the Agreement and any provisions set forth in any referenced attachments or exhibits to this Agreement is intended to cooperate and be complementary; provided further, however, that in the event of a conflict between the Agreement and the provisions set forth in any referenced attachments or exhibits, the Agreement shall control, unless the provisions set forth in any referenced attachments or exhibits to this Agreement provides the District with greater benefits or more expansive services in which case the provisions set forth in any referenced attachments or exhibits to this Agreement shall compliment the terms of this Agreement.
43. **AUTHORITY TO EXECUTE.** The individual(s) executing this Agreement on behalf of the Consultant is/are duly and fully authorized to execute this Agreement on behalf of Consultant and to bind the Consultant to each and every term, condition, and covenant of this Agreement.
44. **APPROVAL BY DISTRICT'S BOARD OF TRUSTEES.** Pursuant to Education Code Section 81655, this Agreement is not valid and does not constitute an enforceable obligation against District unless and until District's Board of Trustees has approved or ratified this Agreement as evidenced by a motion duly passed and adopted by the Board of Trustees.

IN WITNESS WHEREOF, this Agreement has been executed by and on behalf of the Parties, the day and year signed below.

CONSULTANT

DISTRICT

[[NAME (PRIMARY SECOND PARTY)]]

[[Name (Primary First Party)]]

Signature:

Signature:

Print Name:

Print Name:

Title:

Title:

Date:

Date: