[LEA NAME]

SERVICES AGREEMENT

Signature Page

This Services Agreement (this “**Services Agreement**”) is entered into as of the \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ 20\_\_\_\_ (the “**Effective Date**”), by **[LEA name]**, a Texas school district (together with its Affiliates, and **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (together with its Affiliates, “**[VENDOR NAME]**,” or "**Licensor**").

On [MONTH]  \_\_, 20\_\_, **[LEA NAME]** issued Request for Service # [X-000] (as may have been amended, the “**RFS**”). On \_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_, **[VENDOR NAME]** filed its Response to the RFS (as may have been amended, the “**Response**”). On \_\_\_\_\_\_\_\_\_, 20\_\_, **[LEA NAME]** accepted the Response. This Services Agreement sets forth the terms and conditions under which **[VENDOR NAME]** will provide the Deliverables (as defined herein). **[VENDOR NAME]** agrees that by filing its Response, it has agreed to be bound by the terms and conditions of this Services Agreement, and the Master Services Agreement between the **[VENDOR NAME]** and TEA, and that any deviations from the terms and conditions of this Services Agreement were explicitly included in the Response and accepted in writing by **[LEA NAME]**.

This Services Agreement consists of this signature page and the following documents:

|  |
| --- |
| **Exhibits**: |
|  |
| Terms and Conditions |
| Exhibit I: Response to RFS |
| Exhibit II: Professional Services Agreement |
| Exhibit III: Statement of Work |
| Exhibit IV: Baseline Plan (once approved by both parties) |
| Exhibit V: Maintenance and Support Agreement |
| Exhibit VI: Services Purchase Order |
|  |

This Services Agreement may be supplemented through the execution and delivery by both parties of supplemental Exhibits for the addition, deletion, or modification of Deliverables covered by the Services Agreement, and all supplemental Exhibits shall also be part of this Services Agreement.

By executing this signature page, **[LEA NAME]** and **[VENDOR NAME]** acknowledge that they have reviewed this Services Agreement, including all Exhibits, and agree to be legally bound by its terms and conditions.

[The remainder of this page is intentionally left blank)

|  |  |
| --- | --- |
| **[LEA NAME]**  By:  Name:  Title: Superintendent | **[VENDOR NAME]**  By:  Name:  Title: |
| **[LEA NAME]**  Address  City, TX Zip  Attn: General Counsel | **Notices to [VENDOR NAME]:**  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| [Name] , Chief Financial Officer |
| [Name], General Counsel |
| [Name], President  Board of Trustees |

TERMS AND CONDITIONS

The following Terms and Conditions (“**Terms and Conditions**”) are common to this Services Agreement, including all Exhibits, amendments, additional SOWs, Baseline Plans and POs that may be entered into between **[LEA NAME]** and **[VENDOR NAME]** in the future.

# **Definitions**.

“**Affiliate**” means a legal entity controlling, controlled by or under common control with another party. The term “control” shall mean the power to direct the actions and policies of the Affiliate or ownership of a controlling beneficial interest in the Affiliate.

“**Confidential Information**” means, subject to the provisions of Section 6(e), (i) with respect to **[VENDOR NAME]**, information of **[VENDOR NAME]** or its suppliers and licensors that is of value to its owner and is treated by its owner as confidential, including Intellectual Property Rights, information concerning any software, services or products, operating procedures, pricing, methods of doing business, mailing lists, customer lists, lists of prospective customers or accounts, financial data, plans, suppliers, and any other information marked in writing as “Confidential;” and (ii) with respect to **[LEA NAME]**, information of **[LEA NAME]** or its suppliers and licensors that is of value to its owner and is treated by its owner as confidential, including Intellectual Property Rights, operating procedures, information concerning any software, services, products, or contracts regarding **[LEA NAME]**’s legal, financial or accounting information, its staff, staff compensation, consultants, students (including demographic data, grades, credits, transcripts, scheduling, attendance, enrollment history, GPAs, class rankings, discipline data, free and reduced lunch data, transportation data and special education data), and all information protected by the Health Insurance Portability and Accountability Act (“**HIPAA**”), the Family Educational Rights and Privacy Act (“**FERPA**”), any other applicable privacy laws governing **[LEA NAME]**, and any other information marked in writing as “Confidential.”

“**Deliverables**” means all items that **[VENDOR NAME]** is required to deliver under this Services Agreement, as described in the Response, the SOW, the Baseline Plan, and the Purchase Orders or in any future related SOWs, Baseline Plans, Purchase Orders and PCRs that the parties agree to in the future.

“**Exhibit**” means all exhibits attached to this Services Agreement and identified on the signature page as an exhibit, and all exhibits signed by both parties and attached to this Services Agreement in accordance with its terms following the Effective Date.

“**Fees**” means the fees and expenses to be paid to **[VENDOR NAME]** by **[LEA NAME]** as set forth in Exhibit VII.

“**Intellectual Property Rights**” means all rights with respect to copyrights, trademarks, trade secrets, patents, and all other intellectual property rights of any nature whatsoever.

“**Services Agreement**” means the Signature Page, these Terms and Conditions, each of the Exhibits and all exhibits agreed to by the parties following the Effective Date.

"**Initial Purchase Order**" means the purchase order attached to the Services Agreement at the Effective Date which sets out the pricing for the Service, any Third Party Software that **[VENDOR NAME]** is re-selling to **[LEA NAME]**, the services provided in connection with developing the Baseline Plan, and any required maintenance and support fees.

"**Services Purchase Order**" means the Purchase Order to be attached following the development of the Baseline Plan, which sets out the cost of the Implementation Services to be provided following the completion of the Baseline Plan.

"**Purchase Order**" or "**PO**" means the Initial Purchase Order and the Services Purchase Order, and any subsequent purchase orders issued by **[LEA NAME]**, each of which shall become an exhibit to this Services Agreement.

“**Products**” means all items provided or required to be provided to **[LEA NAME]** by **[VENDOR NAME]** under this Services Agreement.

“**Services**” means all work performed (or required to be performed) for **[LEA NAME]** by **[VENDOR NAME]** as set forth in this Services Agreement, including all Implementation Services, Training Services, and Maintenance and Support Services, and including any other services that **[VENDOR NAME]** agrees to provide to **[LEA NAME]** following the Effective Date.

“**Software**” means any computer programs, together with input and output for formats, program listings, narrative descriptions, operating instructions, and supporting documentation, including any enhancements, translations, modifications, updates, and new releases.

“**SOW**” means the Statement of Work attached to this Services Agreement as Exhibit IV, and any other Statements of Work agreed to by **[LEA NAME]** and **[VENDOR NAME]** in writing subsequent to the Effective Date.

"**Third Party**" means any natural person or legal entity other than **[VENDOR NAME]** and **[LEA NAME]**.

# **Deliverables**. **[VENDOR NAME]** will provide the Deliverables to **[LEA NAME]** on or prior to the dates set forth in the SOW, the Baseline Plan, and any approved PCRs. Without limitation, **[VENDOR NAME]** will provide the Deliverables in accordance with the Deadlines.

# **Fees and Expenses**. As compensation for the Deliverables, **[LEA NAME]** shall pay **[VENDOR NAME]** the Fees set forth in Exhibit VII. **[LEA NAME]** shall also reimburse **[VENDOR NAME]** for reasonable expenses (including travel expenses) at **[LEA NAME]**’s standard approved rates on submission by **[VENDOR NAME]** of expense reports on **[LEA NAME]**’s standard forms. **[LEA NAME]** shall not pay any fees for travel time except to the extent **[LEA NAME]** work is being performed during that time. Unless otherwise set forth in this Services Agreement, all undisputed Fees and expenses are due within 60 days of receipt by **[LEA NAME]** of an invoice. Notwithstanding anything in this Services Agreement to the contrary, (i) no amounts shall be due and owing to **[VENDOR NAME]** during any period when **[VENDOR NAME]** is in default under this Services Agreement; (ii) **[LEA NAME]** shall have the right to offset against any amounts due to **[VENDOR NAME]** any amounts that **[VENDOR NAME]** owes to **[LEA NAME]**; and (iii) **[LEA NAME]**’s obligations under this Services Agreement are contingent upon the continued availability of appropriations, and this Services Agreement is subject to termination, without penalty, either in whole or in part, if funds are not appropriated by **[LEA NAME]**’s Board of Trustees, or are otherwise not made available to **[LEA NAME]**.

# **Independent [VENDOR NAME]; No Authority**. **[VENDOR NAME]** is an independent contractor. This Services Agreement is not intended in any manner to and does not create the relationship of principal and agent between the parties, nor shall this Services Agreement be deemed to establish a partnership or joint venture. Neither party shall have the power, express or implied, to obligate or bind the other in any manner whatsoever. Each party shall be solely responsible for compensating its own employees, including the payment of employment-related taxes, and shall maintain its own workers’ compensation and general liability insurance.

# **Change Control**.If either party desires any changes to be made to an SOW or the Baseline Plan, the proposed changes shall be managed through the project managers of each party.

## If **[LEA NAME]** requests a change, then **[LEA NAME]** shall deliver to **[VENDOR NAME]**’s project manager a written request, describing the requested change and the rationale for the change. **[VENDOR NAME]** will then develop and deliver to **[LEA NAME]**, within 10 days of receiving the request, a proposed Project Change Request (“**PCR**”) that sets forth in detail the scope of the proposed change, the proposed delivery date, the proposed **[LEA NAME]** testing period, the effect on other Deadlines, the costs to deliver the Products and Services described in the PCR, and any other anticipated effect on other parts of the overall project. Before sign-off by both parties, the finalized delivery date and the testing period will be added to the PCR.

## If **[VENDOR NAME]** proposes a change, then **[VENDOR NAME]** will develop and deliver to **[LEA NAME]** a proposed PCR with the same information.

## Upon receipt of a PCR, the parties will work together to reach an agreement as to the scope and other terms of the PCR. However, **[LEA NAME]** may, in its sole discretion, decline to consider any PCR that requires payment of any additional money or significant time of **[LEA NAME]** staff.

## A PCR shall be effective and shall be an amendment to this Services Agreement only when signed by an authorized representative of each party.

# **Confidentiality**.

## Each party (as applicable, a “**Disclosing Party**”) acknowledges that, except as otherwise provided by law, all Confidential Information disclosed to the other party (the “**Receiving Party**”) pursuant to this Services Agreement is owned by the Disclosing Party. This Services Agreement shall not be deemed to vest in either party any rights to the Confidential Information of the other party. Each party shall keep the Confidential Information strictly confidential and prevent the unauthorized use, disclosure, or publication thereof, whether negligent, inadvertent or otherwise. Each party shall prevent unauthorized access to the Confidential Information and shall permit access only to those persons authorized to work on the matter to which the Confidential Information relates. The non-disclosure obligations shall continue after the termination of this Services Agreement.

## Each party consents to the disclosure of the other party’s Confidential Information to those employees, contractors and consultants who have a need to know such information in order to comply with the terms of this Services Agreement.

## Certain Confidential Information, including Confidential Information protected by FERPA, may be provided to **[VENDOR NAME]** in an encrypted, password protected, electronic format as necessary to enable **[VENDOR NAME]** to provide the Deliverables. **[VENDOR NAME]** shall maintain such Confidential Information in the format described in this Section 6(c) and in a secure environment as may be verified through **[LEA NAME]**-required security audits. **[VENDOR NAME]** acknowledges its understanding that any unauthorized disclosure of confidential student information is a violation of HIPAA and FERPA, and it shall not permit such a disclosure to occur.

## On termination of this Services Agreement, either party may make a written request for return of any Confidential Information, and within five days after such request, the other party shall deliver to the requesting party: (a) all materials furnished to the Receiving Party by the Disclosing Party; and (b) all tangible media of expression in the Receiving Party’s possession or control which incorporate or include any Confidential Information of the requesting party. Electronic records shall be delivered in the format requested by the requesting party. In addition, the Receiving Party shall permanently delete any of the Disclosing Party’s Confidential Information that is electronically stored on all equipment under its control. A Receiving Party shall, within five days of written request, provide the Disclosing Party with written certification of the Receiving Party’s compliance with its obligations under this Section 6.

## Except to the extent that confidentiality is required by law, the provisions of this Section do not apply to the extent that: (i) the information communicated was already known to the Receiving Party, without any obligation to keep it confidential, at the time of the Receiving Party’s receipt of the information; (ii) the information communicated was received in good faith from a Third Party lawfully in possession of the information and having no obligation to keep it confidential; (iii) the information communicated was publicly known at the time of receipt or has become publicly known other than by a breach of this Services Agreement; (iv) the information was independently developed without reference to the Confidential Information; or (v) the Receiving Party is ordered by an administrative agency or other governmental body of competent jurisdiction (including a request under the Texas Open Records Act or similar law or regulation) to disclose the Confidential Information; provided, however, the Receiving Party will attempt to notify the Disclosing Party prior to disclosure in order to give the Disclosing Party a reasonable opportunity to seek an appropriate protective order, and the Receiving Party shall disclose only that portion of the Confidential Information that it is required to disclose under an administrative or other governmental order. **[VENDOR NAME]** acknowledges that all public contracts, including contract addenda, are a matter of public record and that all requests for **[LEA NAME]** information shall be left to the ruling of the office of the Attorney General for the State of Texas.

# **Privacy**. **[VENDOR NAME]** acknowledges that the Deliverables provided to **[LEA NAME]** under this Services Agreement may include the transfer of personally identifiable student information and confidential employee information and agrees to abide by all laws relating to confidentiality of student data. **[LEA NAME]** shall notify **[VENDOR NAME]** when student information is no longer needed for the purposes for which it was made available to **[VENDOR NAME]**, and **[VENDOR NAME]** shall destroy such information in compliance with Section 6(d), as if this Services Agreement had been terminated.

# **Injunctive Relief**. Breach of certain of the obligations in this Services Agreement, including Sections 4, 6, 7, 9, and 13 through 18 of these Terms and Conditions, as well as breach of certain other provisions of this Services Agreement, would cause irreparable damage to **[LEA NAME]** and therefore, in addition to all other remedies available at law or in equity, each party shall have the right to seek equitable and injunctive relief for such breach. In addition, each party shall be liable to the other under this Services Agreement if there is any breach by a party or its Affiliates, or by their respective employees, contractors, consultants, auditors, agents or representatives.

# **Indemnification.**

## **[VENDOR NAME]** shall protect and indemnify **[LEA NAME]** from and against all claims, damages, judgments and losses arising from infringement or alleged infringement of any Intellectual Property Rights arising by or out of: (i) the use of the Deliverables in accordance with the terms of this Services Agreement; (ii) the use by **[VENDOR NAME]** of any item; or (iii) the use by **[LEA NAME]**, at the direction or with the approval of **[VENDOR NAME]**, of any item. Upon becoming aware of a suit or threat of suit for infringement, **[LEA NAME]** shall promptly notify **[VENDOR NAME]**. However, **[LEA NAME]**’s failure to provide prompt notice will not excuse **[VENDOR NAME]** from its indemnification obligations except to the extent that **[VENDOR NAME]** was materially prejudiced by such failure. If litigation arises alleging infringement by **[LEA NAME]**, **[LEA NAME]** shall cooperate reasonably with **[VENDOR NAME]**, at **[VENDOR NAME]**’s expense, to defend the litigation. In addition, **[LEA NAME]** shall be entitled, in connection with any litigation, to be represented by its own counsel, at its own expense (unless a conflict of interest between **[VENDOR NAME]** and **[LEA NAME]** exists, in which case, **[VENDOR NAME]** will pay the cost of separate counsel for **[LEA NAME]**). **[VENDOR NAME]** shall have the right to enter into negotiations for and the right to effect settlement or compromise of any action, except that **[LEA NAME]** must consent in writing to any settlement that requires payment of money or other affirmative action by **[LEA NAME]**.

## To the fullest extent permitted by applicable law, **[VENDOR NAME]** and its officers, directors, agents, partners, employees, and consultants (collectively, the “**Indemnitors**”) shall indemnify, protect, defend with counsel approved by **[LEA NAME]**, and hold harmless **[LEA NAME]**, members of its Board of Trustees, representatives, and their respective officers, directors, board members, partners, employees, and agents (collectively, “**Indemnitees**”) from and against all claims, damages, losses, liens, causes of action, suits, judgments and expenses, including attorneys’ fees, of any nature, kind, or description of any person or entity, arising out of, caused by, or resulting from the use of the Deliverables pursuant to this Services Agreement, or the breach of a representation or warranty contained in this Services Agreement, even if it is caused in part by the negligence or omission of any Indemnitees, so long as it is not caused by the sole negligence or willful misconduct of any Indemnitee. The provisions of this Section shall not be construed to eliminate or reduce any other indemnification or right that **[LEA NAME]** or any Indemnitee has by law or otherwise.

# **Warranty**. **[VENDOR NAME]** warrants and represents that: (i) it will provide the Services in a good, workmanlike and professional manner, consistent with standards in the industry, and as described in this Services Agreement, including the SOW, the Baseline Plan, the POs, and any approved SCRs; (ii) the Deliverables will conform to the descriptions in this Services Agreement, including the SOW, the Baseline Plan, the POs and any approved SCRs; and (iii) it is not a party to any dispute with customers relating to the performance of the Service or Professional Services relating to the Service. **[VENDOR NAME]** does not disclaim any warranties, express or implied, with respect to any Deliverable, including but not limited to a warranties of merchantability and fitness for a particular purpose, and affirmatively warrants that the Deliverables are merchantable and are fit for the purpose described in the RFP, the Response, the SOW and the Documentation.

# **Term and Termination**.

## **Term**. This Services Agreement shall begin on the Effective Date and continue in force for so long as any Exhibit to this Services Agreement remains in effect or until terminated in accordance with its terms.

## **Termination**.

### **[LEA NAME]** may terminate this Services Agreement or any Exhibit at any time, without cause, upon 30 days written notice to **[VENDOR NAME]**. Subject to Section 3 of the License Agreement, **[VENDOR NAME]** may terminate this Services Agreement at any time on 30 days written notice to **[LEA NAME]** if there is no outstanding work to be performed under any Professional Services Agreement, Statement or Work, Baseline Plan or Purchase Order.

### Either party may terminate this Services Agreement at any time by giving written notice to the other party if the defaulting party fails to remedy any default under this Services Agreement for a period continuing more than 30 days after the non-defaulting party gives the defaulting party written notice specifying the failure or default and the failure or default continues to exist as of the date upon which the non-defaulting party gives notice terminating this Services Agreement.

## **Survival**. Sections 1, 3, 4, and 6 through 18 shall survive the termination of this Services Agreement.

# **Reference Account**. **[VENDOR NAME]** may not use **[LEA NAME]** as a reference without **[LEA NAME]**’s prior written consent which may be granted or withheld in **[LEA NAME]**’s sole discretion.

# **Use of [LEA NAME] Marks**. Without **[LEA NAME]**’s prior written approval, **[VENDOR NAME]** may not use, reproduce, display or transmit **[LEA NAME]**’s name, logo, trademarks or service marks for any purpose. All permitted use of **[LEA NAME]**’s logos, marks and names shall be in accordance with **[LEA NAME]**’s standards and specifications, which standards and specifications shall be provided to **[VENDOR NAME]** upon request to **[LEA NAME]** by **[VENDOR NAME]**.

# **Compliance With Laws**. Each party will strictly comply with all applicable laws and regulations, including without limitation, FERPA and HIPAA and all other applicable privacy laws and regulations governing educational institutions and agencies, relating in any way to its performance under this Services Agreement and the provision and use of the Deliverables. This obligation includes the obligation to obtain all necessary licenses or permits and any other governmental and non-governmental approvals necessary for the provision or use of the Deliverables. **[VENDOR NAME]** is knowledgeable about privacy laws and regulations governing educational institutions and agencies, including FERPA and HIPAA, and will maintain systems at an industry accepted standard of security to prevent unauthorized access to personally identifiable student information and confidential employee information.

# **Non-Solicitation of Employees and Former Employees**. During the term of this Services Agreement and during the six-month period following the termination of this Services Agreement, **[VENDOR NAME]** shall not, directly or indirectly, solicit or induce, or attempt to solicit or induce, any employee of **[LEA NAME]** to leave the employ of **[LEA NAME]** for any reason whatsoever, or hire any employee of **[LEA NAME]** or person who was employed by **[LEA NAME]** at any time during the six-month period preceding the date **[VENDOR NAME]** hires the employee.

# **Record Keeping**.

## **[VENDOR NAME]** shall maintain accurate records relevant to this Services Agreement for a period of four years after final payment under this Services Agreement. **[VENDOR NAME]** shall permit an authorized representative of **[LEA NAME]** or its designee or both at any reasonable time to inspect or audit all data, in whatever form or format.

## **[LEA NAME]** shall have the full right to audit and review (i) **[VENDOR NAME]**’s records relating to performance and billing; (ii) **[VENDOR NAME]**’s work-in-progress; and (iii) **[VENDOR NAME]**’s adherence to the licensing requirements under this Services Agreement, whether at **[VENDOR NAME]**’s premises, at **[LEA NAME]**’s premises or wherever the work is being performed, in order to ascertain or confirm the quality, completeness or timeliness of the work, adherence to the schedule, and any related matters.

# **General Provisions.**

## **Amendment; Entire Agreement; Waiver**. This Services Agreement may not be amended except by a writing signed by an authorized representative of both **[LEA NAME]** and **[VENDOR NAME]**. This Services Agreement supersedes all prior agreements, and is the only agreement between **[LEA NAME]** and **[VENDOR NAME]**, either oral or in writing (except to the extent this Services Agreement or a prior document specifically provides that some or all of that document survives a later agreement). Any waiver of any terms or conditions of this Services Agreement by **[LEA NAME]** shall not be construed as a continuing waiver but shall only apply to the particular matter involved.

## **Force Majeure**. Neither party shall be liable for any delay or failure in performance due to acts of nature, labor disputes, changes in law, riots, war, fire, epidemics, disruption of utility services or other similar occurrences that are beyond its reasonable control. However, in order to avail itself of such excuse, the party must act diligently to remedy the cause of and to mitigate the impact of the delay or failure.

## **Notices**. Any notice required or permitted by this Services Agreement shall be in writing and may be delivered personally, by facsimile, overnight delivery or mail, at the party’s address set forth on the signature page. Any notice will be effective only upon actual receipt by the party, except that, in the case of notice by mail, notice shall be deemed received on the earlier of: (i) actual receipt; or (ii) five days following deposit in the United States mail, postage prepaid, and properly addressed.

## **Governing Law; Venue; Legal Fees**. This Services Agreement, and any dispute relating to this Services Agreement shall be governed by the laws of the State of Texas without giving effect to any choice or conflict of law provision that would cause the application of the laws of any other state. The courts within the State of Texas shall have exclusive jurisdiction over all disputes pertaining to this Services Agreement, and venue for all disputes shall be in Travis County, Texas. If litigation arises between the parties relating to this Services Agreement, the prevailing party shall be entitled to recover, in addition to any charges fixed by the court, its costs and expenses of suit, including reasonable attorneys’ fees and expenses.

## **Assignment**. **[VENDOR NAME]** may not assign this Services Agreement or delegate its obligations under this Services Agreement to any person or entity without the prior written consent of **[LEA NAME]**, and any purported assignment or delegation in contravention of this Section shall be void *ab initio*. This Services Agreement will be binding upon and inure to the benefit of the parties, their legal representatives, successors and permitted assigns.

## **Severability**. If any provision of this Services Agreement is held by final judgment of a court of competent jurisdiction to be invalid, illegal or unenforceable, the invalid, illegal or unenforceable provision shall be severed from the remainder of this Services Agreement, and the remainder of this Services Agreement shall be enforced, except as modified to the minimum extent necessary to render the provision valid and enforceable.

## **No Third Party Beneficiaries**. This Services Agreement is for the sole benefit of **[LEA NAME]** and **[VENDOR NAME]**, and no Third Parties, including students, parents, guardians, and **[LEA NAME]**’s teachers and other employees, shall be entitled to enforce the provisions of this Services Agreement or to receive damages or other relief under this Services Agreement.

## **Liquidated Damages.** Certain provisions in this Agreement provide for payment of a specific sum of money for failure to meet Deadlines. These required payments are liquidated damages and not penalties, and are provided because actual damages would be uncertain and difficult to ascertain. The amounts agreed upon for failure to meet Deadlines are the parties' best estimate of the damages that would be incurred if the applicable Deadline is not met.

## **Authority**. Each party represents to the other that: (i) the individuals executing this Services Agreement on its behalf have the power and authority to execute, deliver and perform this Services Agreement and to consummate the transactions contemplated by this Services Agreement; (ii) its execution, delivery and performance of this Services Agreement and the consummation by it of the transactions contemplated by this Services Agreement have been duly authorized by all necessary action on its part; (iii) this Services Agreement has been duly and validly executed and delivered and constitutes the valid and binding obligation of each party, enforceable against each party in accordance with its terms; and (iv) the execution, delivery and performance of this Services Agreement and the consummation of the transactions contemplated by this Services Agreement will not, with or without the giving of notice or the lapse of time, or both: (A) require the consent of any Third Party, conflict with or cause breach or default under any agreement, (B) violate any provision of any law, rule or regulation to which such party is subject, or (C) violate any order, judgment or decree applicable to such party; except, in each case, for violations which in the aggregate would not materially hinder or impair the consummation of the transactions contemplated by this Services Agreement. **[VENDOR NAME]** represents and warrants that: (a) the information contained in the Response is true and correct in all material respects; and (b) the Deliverables will fill **[LEA NAME]**’s needs as described in the RFP and will comply with the Response, the SOW, the Baseline Plan, any approved PCRs.

## **Construction**. Pronouns shall be construed to include the masculine, feminine, neuter, singular or plural as the identity of the antecedent shall require. This Services Agreement has been the subject of arm’s-length negotiations and each party has had the opportunity to consult with its own attorney; therefore, it shall be construed as though drafted equally by both parties. If a conflict exists between any provisions of this Services Agreement, it shall be construed to give **[LEA NAME]** the maximum rights to receive the Deliverables and the maximum recourse if **[VENDOR NAME]** fails to comply with its obligations to **[LEA NAME]**. All remedies provided in this Services Agreement are cumulative. The headings in this Services Agreement are for convenience only and shall not be considered in its interpretation. References to Exhibits and Sections are to Exhibits and Sections of these Terms and Conditions unless otherwise indicated. All Exhibits are incorporated into this Services Agreement as if set forth herein in full.

# **Availability of Services**

## **Customer Support Services. [VENDOR NAME]** will have support staff on-site in **[VENDOR NAME]** facilities during normal business support hours. **[VENDOR NAME]** support staff will be available on-call daily for incident escalation and resolution outside of normal business support hours. Immediate incident resolution may not be available at the time an incident is called in to Customer Support in which case **[VENDOR NAME]**'s support team will attempt to estimate the "time to resolution." **[VENDOR NAME]** will conduct District-and Site-Based Confirmation Visits according to schedules and site selections mutually agreed to by **[VENDOR NAME]** and TEA to confirm that **[VENDOR NAME]** services and systems will be sufficient to provide the contracted services.

## **Service Level Hours of Operation.**

|  |  |  |
| --- | --- | --- |
| Service | Hours of Operation | Comments |
| Customer Support | 7:00 am to 6:00 pm (CST)  Monday through Friday | External: 1-800-**TBD**  Email: SupportEmail.com  (E-mails are designated low priority requests and treated as severity 3 unless followed up with a phone Customer Support  Availability for resolution of Severity 1 and 2 incidents: 24 hours/daily, 7 days/week |
| Availability of Application Services | 24 hours/daily,  7 days/week | Excludes:   * Maintenance windows * Scheduled outages * Excusable downtime |

## **Call Log Reports.** Each month, **[VENDOR NAME]** will provide **[LEA NAME]** with a detailed summary of the calls tracked by the Incident Tracking System, including year-over-year comparisons (where applicable) and a summary of the top categories of calls during the period of the activity.

# **Service Levels and Severity Categories.** The following table summarizes the service levels related to **[VENDOR NAME]** support of **[LEA NAME]**. Please note that the following conditions will apply *only* to **[VENDOR NAME]**, and not to issues that occur with hardware, systems, and networks at the local campus or district level or network infrastructure comprising the Internet.

|  |  |
| --- | --- |
| **Severity Category** | **Criteria & Conditions of Incident** |
| **Severity 1\*** | * The system, component, or application is down and unusable; * Critical Deliverables and Schedules will be impacted; * The result is a negative LEA-wide Impact to activities; and * No alternative or bypass is available. |
| **Severity 2** | * The system, component, or application is down or unusable; * Critical Deliverables and Schedules will be impacted; * The result is a negative LEA-wide Impact to Activities; and * An alternative or bypass is available. |
| **Severity 3** | * The system, component, or application is degraded or difficult to use; * There is no critical LEA-wide Impact to Activities; and * An alternative or bypass is available. |
| **Severity 4** | * The system, component, or application is usable but causes some loss of capability; * There is no critical LEA-wide Impact to Activities; and * Deferred maintenance is acceptable. |

# \*The **[VENDOR NAME]** support team will work on Severity 1 problems until they are resolved or an acceptable work-around is identified. **[VENDOR NAME]** will provide **[LEA NAME]** with updates at a minimum of 2 times daily until Severity 1 problems have been resolved.

# **Remedies for Interruption of Services**

## **Severity Remedies. [LEA NAME]** reserves the right to assess liquidated damages in accordance with the severity categories and consequences set forth in this document. **[VENDOR NAME]** and **[LEA NAME]** agree that the actual damages to **[LEA NAME]** as a result of **[VENDOR NAME]**’s failure to provide promised service levels for Activities would be difficult or impossible to determine with accuracy. **[LEA NAME]** and **[VENDOR NAME]** therefore agree that liquidated damages as set out herein shall be a reasonable approximation of the damages that shall be suffered by **[LEA NAME]** as a result. Accordingly, in the event of such damages, at the written direction of **[LEA NAME],** **[LEA NAME]** shall pay **[VENDOR NAME]** the indicated amount as liquidated damages, and not as a penalty.

# **[LEA NAME]** and **[VENDOR NAME]** further agree that any assessment of liquidated damages under this agreement will not overlap or duplicate any other assessment of liquidated damages that could otherwise be applicable under another liquidated damages provision. In no event shall the assessment of liquidated damages exceed a maximum of $500,000 in any calendar year.

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| --- | --- |
| **Severity Category** | **Remedy (Liquidated Damages)** |
| **Severity 1\*** | For every hour or partial hour of Severity 1 interruption, **[VENDOR NAME]** will credit to **[LEA NAME]** $**SUM TBD**, not to exceed $**SUM TBD** in any business day, starting at 7 a.m. CST and continuing through 5 p.m. CST on that same day -Monday through Friday excluding regularly scheduled maintenance periods and state or national holidays. |
| **Severity 2** | No liquidated damages required. |
| **Severity 3** | No liquidated damages required. |
| **Severity 4** | No liquidated damages required. |

# Note the severity definitions are documented in the Severity Category Criteria and Conditions table in this document.

## **Exception. [VENDOR NAME]** shall not be liable for liquidated damages under the following conditions:

* If delay or interruption of the services arises out of causes beyond the control and without the fault and negligence of the **[VENDOR NAME]**. Such causes may include, but are not limited to, any act, negligence, omission, or default on the part of any governmental body, force majeure, government restrictions, wars, acts of terrorism, riots, insurrections, industrial or labor disturbances, fires, severe weather (e.g., hurricanes, floods, and blizzards), epidemics, and/or any other cause beyond the reasonable control of the contractor. The **[VENDOR NAME]** shall notify the other party of the extent and nature of the problem as soon as possible and shall take all reasonable steps to minimize delays;
* Scheduled Outage and Excusable Downtime;
* Failure of access circuits to the Network, unless such failure is caused solely by **[VENDOR NAME]**;
* DNS issues outside the direct control of **[VENDOR NAME]** or outages elsewhere on the Internet that hinder access to the services;
* Customer's acts or omissions (or acts or omissions of others engaged or authorized or served under contract by customer) including, without limitation, custom scripting or coding, any negligence, willful misconduct, or use of the services in a manner not contemplated by the contract.

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EXHIBIT I

RESPONSE TO RFS

(See Attached)

EXHIBIT II

PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (this "**Services Agreement**") between **[LEA NAME]** and **[VENDOR NAME]** is attached as Exhibit II to the Services Agreement, and, except as otherwise explicitly provided in this Services Agreement, is subject to the Terms and Conditions of the Services Agreement.

# **Defined Terms**. The defined terms used in this Services Agreement, except as specifically defined otherwise in this Services Agreement, are set forth in the Services Agreement. The following additional terms shall have the meanings indicated for purposes of this Services Agreement:

“**Deadlines**” means the dates by which **[VENDOR NAME]** must provide certain Deliverables.

"**Baseline Plan**" consists of (i) the Baseline Scope (defining in detail the work included to produce the Deliverables and serving as the basis for the Baseline Schedule and the Baseline Budget); (ii) the Baseline Schedule (a detailed project schedule developed based on the Baseline Scope); and the Baseline Budget (corresponding to the Baseline Scope). The Baseline Plan will be jointly developed by **[LEA NAME]** and **[VENDOR NAME]** within eight weeks of the Project Start Date, will include the provisions currently described in the instructions to Exhibit V, and, on its completion, will become Exhibit V to the Services Agreement.

"**Implementation Services**" means the services described in the SOW, the Baseline Plan, and any approved PCRs relating to **[VENDOR NAME]**'s implementation of the Service, including business process analysis, data conversion, training, report writing, knowledge transfer and implementation project management.

**"Project Start Date"** means the date indicated in the SOW on which the **[VENDOR NAME]**'s project manager begins full-time, on-site work on the Services.

“**Training Services**” means on-site or on-line services to train **[LEA NAME]** staff on the use of the Service and system administration, and assist **[LEA NAME]** personnel in fully using the capabilities of the Service.

# **Services**.

## **Baseline Plan**.

### The project managers for **[VENDOR NAME]** and **[LEA NAME]** will jointly complete the Baseline Plan within eight weeks of the Project Start Date. If the Baseline Plan is not completed within that time, **[LEA NAME]** shall have the right to rescind the Services Agreement and receive a return of all Fees paid. Alternatively, **[LEA NAME]** may elect to continue the Services Agreement, but to require **[VENDOR NAME]** to pay liquidated damages equal to 15% of the fees paid for Services prior to this Deadline plus $1,000 per day after the Deadline until the Baseline Plan is complete. No further amounts will be due from **[LEA NAME]** until the Baseline Plan is completed. With the written consent of the project managers of the **[VENDOR NAME]** and **[LEA NAME]**, the Baseline Plan may be revised (re-baselined) to account for changes in the cost and timeline due to approved PCRs developed as a result of an **[LEA NAME]**-initiated or approved scope change. If the Baseline Plan is re-baselined, the re-baselined plan will replace all prior versions of the Baseline Plan and will become Exhibit IV to the Services Agreement.

### The **[LEA NAME]** project manager will maintain a project schedule to define the detailed tasks necessary to complete the Baseline Plan. If **[VENDOR NAME]** agrees in writing, including by email exchange, to Deadlines that are set forth in the project schedule, for instance with respect to rejected Deliverables, then **[VENDOR NAME]** shall comply with those Deadlines.

## **Implementation Services**. **[VENDOR NAME]** will provide the Implementation Services as described in the SOW, any approved PCRs, and the Baseline Plan. Without limitation, **[VENDOR NAME]** shall configure the Service, complete the **[LEA NAME]** Interfaces and perform the other services for **[LEA NAME]** as shall be agreed to by the parties by the dates set forth in the SOW, the Baseline Plan, and all approved PCRs.

## **Training Services**. **[VENDOR NAME]** will provide Training Services as described in the SOW and the Baseline Plan.

## **Maintenance and Support Services**. **[VENDOR NAME]** will provide the Maintenance and Support Services as provided in Exhibit V.

# **Term**.

## This Services Agreement shall begin on the Effective Date and, unless earlier terminated pursuant to its terms, it shall remain in effect until all Services under the SOW, Baseline Scope Statement, and all approved PCRs have been provided. In addition, this Agreement shall govern all amendments to the attached SOW and Baseline Plan, as well as all additional SOWs, and Baseline Plans agreed to in writing by the parties.

## **[LEA NAME]** may terminate this Services Agreement or any SOW at any time, without cause, upon 30 days written notice to **[VENDOR NAME]**.

## Either party may terminate this Services Agreement at any time by giving written notice to the other party if the defaulting party fails to remedy any default under this Services Agreement for a period continuing more than 30 days after the non-defaulting party gives the defaulting party written notice specifying the failure or default and the failure or default continues to exist as of the date upon which the non-defaulting party gives notice terminating this Services Agreement.

## If so directed in the notice of termination for cause from **[LEA NAME]**, **[VENDOR NAME]** shall immediately cease work under this Services Agreement.

## On termination of this Services Agreement or an SOW for convenience or a suspension of Services, **[LEA NAME]** shall pay **[VENDOR NAME]** for all Services provided up to the effective date of termination at the rates specified in the applicable PO.

## Upon expiration or termination of this Services Agreement, **[LEA NAME]** may request that **[VENDOR NAME]** provide transition services to **[LEA NAME]** to ensure an orderly transfer of Services to **[LEA NAME]** or any other Third Party **[LEA NAME]** may designate as a successor to **[VENDOR NAME]**. Transition services, if any, will be undertaken at agreed upon rates in accordance with the terms of an SOW or PCR signed by both parties. During any transition period, **[VENDOR NAME]** agrees to maintain the same level of performance of Services and use its best efforts to cooperate with **[LEA NAME]** and the successor to effect an orderly and efficient transition.

# **Fees and Payment**. **[LEA NAME]** shall pay **[VENDOR NAME]** the fees specified in the Exhibit VII and agreed upon in connection with any approved PCR. **[LEA NAME]** shall not pay any overtime or other premium rates unless expressly agreed in advance and in writing. **[VENDOR NAME]** is not authorized to begin any Services other than development of the Baseline Plan until the Baseline Plan is complete and has been signed by both parties except as otherwise agreed to in writing by **[LEA NAME]**'s project manager. **[LEA NAME]** shall not be liable to **[VENDOR NAME]** for any costs, charges, fees or expenses that are not expressly stated in a signed SOW the Initial PO, the Baseline Plan, or an approved PCR.

# **Acceptance or Rejection.**

## Each Deliverable, including each item denoted as a Deliverable in the SOW and in the Baseline Project Schedule, must be tested and accepted by **[LEA NAME]** in accordance with this Section \_\_ prior to the Deliverable being considered complete.

## The **[LEA NAME]** and **[VENDOR NAME]** project managers will establish a testing period for each Deliverable as part of the Baseline Project Schedule. The testing period for each Deliverable will depend on the complexity and nature of the Deliverable.

## Deliverables will be considered accepted when **[LEA NAME]**'s project manager gives the **[VENDOR NAME]**'s project manager written notice of acceptance, naming the specific Deliverable, including project schedule unique identification number, to which the acceptance relates.

## If **[LEA NAME]** does not accept a Deliverable, then within five business days following the end of the testing period, the **[LEA NAME]** project manager will give written notice of the reasons the Deliverable is not accepted, along with suggested corrective actions. The **[LEA NAME]** project manager and the **[VENDOR NAME]** project manager will work together to determine a new due date for the corrected Deliverable but, generally this period will not exceed 20% of the time taken to create the Deliverable, calculated from the date that **[VENDOR NAME]** receives the written notice that the Deliverable has not been accepted. The **[LEA NAME]** and **[VENDOR NAME]** project managers will work together to determine a reasonable period for **[LEA NAME]** to review and test the corrected Deliverable but, generally, this period will not exceed the length of time taken to correct the Deliverable. All revised due dates will be reflected in an approved PCR and in the then current project schedule. This process will be repeated until the Deliverable is accepted in writing by the **[LEA NAME]** project manager. If **[LEA NAME]** does not accept the Deliverable after three iterations, then unless the failure is the result of **[LEA NAME]**’s failure to provide reasonable support or its failure to meet the agreed upon Deadlines in the project schedule, then **[LEA NAME]** will have the option to either: (i) hire a Third Party to provide the Services and Deliverables at **[VENDOR NAME]**’s expense; or (ii) require payment of an amount equal to the amount **[LEA NAME]** paid for Services related to that Deliverable.

# **Property Rights**.

## All right, title, and interest in the **[LEA NAME]** Interfaces created specifically for **[LEA NAME]**, as well as all modifications and enhancements to the **[LEA NAME]** Interfaces (including associated Intellectual Property Rights) are and shall remain the property of **[LEA NAME]**.

## **[VENDOR NAME]** acknowledges that **[LEA NAME]** shall have the right to use **[LEA NAME]** Interfaces in accordance with the terms and conditions of the Services Agreement, without payment of any royalty or fee and without acknowledgment of **[VENDOR NAME]** as the creator of the **[LEA NAME]** Interfaces. **[LEA NAME]** shall have the right to obtain and hold in its own name copyrights and other applicable registrations and other protection as may be appropriate to any portion or all of the **[LEA NAME]** Interfaces. **[VENDOR NAME]** agrees to provide **[LEA NAME]** and any person designated by **[LEA NAME]** such reasonable assistance as may be required to perfect the rights defined in this Section.

## Notwithstanding the provisions of this Section, any intellectual or other property, including but not limited to methodologies, trade secrets or works of authorship, standard training material, courseware or content which (i) is not customized specifically for **[LEA NAME]**; and (ii) does not contain any **[LEA NAME]** Confidential Information or Intellectual Property Rights (“**[VENDOR NAME] Property**”), belongs to and remains the property of **[VENDOR NAME]**. **[VENDOR NAME]** hereby grants to **[LEA NAME]** a nonexclusive, irrevocable, perpetual, royalty-free license to use, copy, distribute and display all **[VENDOR NAME]** Property in accordance with this Services Agreement.

# **Security**.

## **Security Procedures**. **[VENDOR NAME]** shall maintain and enforce at all **[VENDOR NAME]** locations security procedures that are consistent with the security standards of the information technology industries for locations similar to the **[VENDOR NAME]** and **[LEA NAME]** locations. **[VENDOR NAME]** is responsible for any and all security breaches at all **[VENDOR NAME]** service locations.

## **Network Security**. With respect to **[VENDOR NAME]**’s access to the **[LEA NAME]** information technology network and virtual private network (“**VPN**”), **[VENDOR NAME]** shall comply with the following access and security requirements:

### **[VENDOR NAME]**’s use of the Internet or electronic mail through the **[LEA NAME]** network will be solely for business purposes and provision of the Services requested by **[LEA NAME]**.

### **[VENDOR NAME]** and its employees shall not knowingly access or distribute any gambling, pornography, hate or violence sites and shall not forward any chain letters, fraudulent virus alerts, executable ready to run files or other files or codes which may damage the **[LEA NAME]** network.

### Router filters and firewall rules will be applied to limit the networking protocols and number of network devices accessing **[LEA NAME]** network resources across the VPN connection to the minimum required to provide the needed business function. The implementation of the VPN connection will be in accordance with **[LEA NAME]** remote access policy pertaining to VPN access.

### **[VENDOR NAME]** must apply and maintain virus protection software on any machine accessing the **[LEA NAME]** network either directly or across the VPN connection and **[VENDOR NAME]** shall not introduce any software viruses or other malicious computer instructions, applications, devices, or techniques that can or were designed to threaten, infect, damage, disable or shut down the **[LEA NAME]** network, computer system, or any component of a computer system, including its security or user data.

### To the extent **[VENDOR NAME]** accesses or downloads any Software applications from any **[LEA NAME]** internal Software distribution site, **[VENDOR NAME]** is solely responsible for obtaining a valid license prior to installing applications that require purchase of a license. In addition to other indemnities provided in the Services Agreement, **[VENDOR NAME]** agrees to defend, indemnify and hold **[LEA NAME]** and its employees, officers, directors, representatives, and affiliates harmless from and against any claims that may arise as a result of **[VENDOR NAME]** accessing, downloading, using or distributing any Software applications from any **[LEA NAME]** internal Software distribution site.

### **[LEA NAME]** reserves the right to monitor **[VENDOR NAME]**’s use of the **[LEA NAME]** network and VPN to assure compliance with these policies and standards. **[LEA NAME]** may disconnect or disable access to the **[LEA NAME]** network and VPN if **[VENDOR NAME]** fails to comply with any aspect of the access and security requirements set forth in this Services Agreement or in any applicable **[LEA NAME]** security policy.

## **Adequate Controls**.

### **[LEA NAME]** reserves the right, at **[VENDOR NAME]**’s sole expense, to perform, or direct **[VENDOR NAME]** to perform, an independent audit,which may include work performed by **[LEA NAME]**’s independent auditor, of **[VENDOR NAME]**’s control environment and the controls performed by **[VENDOR NAME]** upon which **[LEA NAME]** relies. The audit may be conducted any time during the Term and for a period of 12 months following termination or expiration of this Services Agreement, on 10 days advance written notice and shall take place during **[VENDOR NAME]**’s normal business hours.

### **[LEA NAME]** may, at its sole expense, perform an independent audit of **[VENDOR NAME]**’s control environment and the controls performed by **[VENDOR NAME]** upon which **[LEA NAME]** relies. The audit may be conducted any time during the Term and for a period of up to 12 months following termination or expiration of this Services Agreement, on 10 days advance written notice and shall take place during **[VENDOR NAME]**’s normal business hours.

# **Access to [LEA NAME] Premises**.

## In its sole discretion, **[LEA NAME]** will provide access to its premises to **[VENDOR NAME]**’s personnel to enable **[VENDOR NAME]** to perform on-site Services. **[VENDOR NAME]** shall at all times comply with the following requirements in connection with such access: (i) **[VENDOR NAME]**’s personnel shall observe all of **[LEA NAME]**’s security and safety policies at all times provided they have been communicated to **[VENDOR NAME]** in written form; (ii) **[VENDOR NAME]** shall perform background checks on its personnel, whether employees or authorized subcontractors, who actually perform the on-site Services. The background check shall comply with all applicable laws and shall include: (a) criminal history checks; (b) education checks (if degree indicated); (c) employment checks (last three positions or last five years if with same employer); and (d) reference checks if any of items (a) through (c) cannot be completed), at **[LEA NAME]**’s reasonable discretion. **[VENDOR NAME]** personnel may not have any positive drug test or any felony convictions. If the background check shows a felony conviction or any other issue which may present a safety concern, **[VENDOR NAME]** may not have the worker perform Services under this Services Agreement without disclosing the safety concerns and obtaining **[LEA NAME]**’s advance written approval.

## All **[VENDOR NAME]** personnel will receive a security badge from **[LEA NAME]** prior to performing any portion of on-site Services and will be required to carry and display the badge at all times while on **[LEA NAME]**'s premises. If the individual to whom the badge is issued stops providing Services, **[VENDOR NAME]** shall return the security badge to **[LEA NAME]** with 48 hours.

## **[LEA NAME]** may, in its discretion, request removal of any personnel of **[VENDOR NAME]** for any reason satisfactory to **[LEA NAME]**. If **[LEA NAME]** requests the removal of any **[VENDOR NAME]** personnel, **[LEA NAME]** must notify **[VENDOR NAME]** about the issue in writing (via email). **[VENDOR NAME]** will work with **[LEA NAME]** to understand and resolve the personnel issue. However, pending resolution of the issue, **[VENDOR NAME]** will have the personnel immediately cease any on-site and remote activities.

## If any employee or subcontractor of **[VENDOR NAME]** makes a claim that an employee or independent contractor of **[LEA NAME]** may be treating them in an improper manner, including subjecting them to discrimination or harassment, **[VENDOR NAME]** shall report this immediately and in writing to **[LEA NAME]**.

# **[LEA NAME] Guidelines**. **[VENDOR NAME]** will not have any worker perform Services under this Services Agreement unless it has ensured that the worker understands and agrees to comply with **[LEA NAME]**’s Code of Business Conduct, Harassment Policy, and Travel Policy.

# **Representations and Warranties**. **[VENDOR NAME]** represents and warrants that (i) it is capable of providing all services necessary for full implementation of the Service, including consulting, training, data conversion from the legacy application to the Service, and the development of the **[LEA NAME]** Interfaces; (ii) the Services will be as described in the Response, the SOW, the Baseline Plan, and any approved PCRs; (iii) the pricing for the Services set forth in the Response and the SOW is a good faith estimate of the cost of providing the Services ; (iv) the Baseline Budget to be included in the Baseline Plan will be a good faith estimate of the cost of providing the Services described in the Baseline Plan; and (v) the Baseline Plan will be, in **[VENDOR NAME]**'s good faith judgment, a realistic plan, and if there are no unforeseeable occurrences that prevent successful execution of the plan, and if **[LEA NAME]** provides reasonable support, the Baseline Plan will be achievable.

# **References**. References to Exhibits and Sections are to Exhibits and Sections of this Services Agreement unless otherwise indicated.

EXHIBIT III

STATEMENT OF WORK

(See Attached)

EXHIBIT IV

BASELINE PLAN

Instructions:

The Baseline Plan will be jointly developed by the **[LEA NAME]** project manager and the **[VENDOR NAME]** project manager and attached as Exhibit IV within weeks of the Project Start Date.

The Baseline Plan will include the following Deadlines. If these Deadlines are not met, **[LEA NAME]** will have the right to receive the following liquidated damages as indicated:

EXHIBIT V

MAINTENANCE AND SUPPORT AGREEMENT

(See Attached)

Instructions:

Licensor to attach its standard Maintenance and Support Agreement with the following revisions or additions if not included in the standard agreement:

1. Must have limit on annual price increases for next five years and **[LEA NAME]** must have the ability to change plans from year to year.

2.

## 3. The Maintenance and Support Services Agreement will provide that an error correction will not be valid if it results in significant additional time for **[LEA NAME]** end users or technical staff to operate or maintain the Service.

EXHIBIT VI

SERVICES PURCHASE ORDER

(See Attached)