

HCSO CONTRACT TEMPLATE

This _____ agreement (the "Agreement") is made and entered into as of this _____ day of _____, 2019, by and between the Haralson County School System a/k/a Haralson County School District ("District") and _____ ("Supplier"). District and _____ will be referred to jointly as the "Parties" and individually as a "Party".

The Parties hereto agree that the _____

_____ issued by the District on _____ (together with duly issued addenda by the District, collectively, the "RFP") and _____'s response to the RFP dated _____ (the "Proposal") are hereby incorporated by reference in their entirety as if fully set forth within the body of this agreement. In the event of any ambiguity, discrepancy, or conflicting provisions, the issue shall be resolved based upon the following order of precedence (1) the express terms of this Agreement (excluding any documents incorporated by reference, including all exhibits and attachments attached hereto); (2) the terms of this RFP including the District's general specification, terms, and conditions along with all other documents included within the RFP which documents are incorporated herein by reference; then (3) the terms of the Proposal.

Any "click-wrap agreement", agreements incorporated within a software product or other automatic agreements required to be accepted to use a product shall have no force or effect and shall not supersede or supplant the provisions hereof.

Pricing may not be changed, modified or updated from the amounts indicated in the Proposal.

{Supplier} acknowledges that the relationship between District and {Supplier} is vendor and vendee, and that {Supplier} is, and shall at all times remain, an independent contractor. {Supplier}, its agents, servants, employees and any sub-suppliers or sub-contractors shall under no circumstances be deemed agents or representatives of District for any purpose whatsoever, unless otherwise agreed to in writing, and {Supplier} shall have no authority to enter into any contracts or commitments in the name or on behalf of District, or to bind District in any way. {Supplier} is not and shall not be deemed to be a franchisee of District, and {Supplier} covenants and agrees not to make any representation to any person, express or implied, to the contrary.

{Supplier} expressly represents and warrants to District that each and all of the products and/or services supplied shall: (i) be of first-class quality and conform to all of {Supplier}'s specifications and advertising; (ii) preformed in a good and workman like manner; and, (iii) conform to all applicable standards and regulations promulgated by any and all governmental and regulatory authorities, including without limitation the U.S. Food and Drug Administration, the Federal Trade Commission, and the various state, municipal,

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territorial and local governmental and regulatory authorities, as well as any standards customary and accepted in the industry.

{Supplier} expressly makes and confirms all other warranties implied by law and by custom and usage in the trade.

{Supplier} shall comply with the provisions of OCGA §13-10-90 et seq.

In accordance with OCGA §50-5-85 by execution hereof {Supplier} certifies that they do not currently participate in an organized boycott of Israel. Supplier/Contractor/Vender further certify and agree that they will not participate in a boycott of Israel during the term of this contract.

DEFAULT

(a) Any one or more of the following events shall constitute an event of default under this Agreement:

(i) the breach of any covenant, agreement, representation or warranty under this Agreement, which breach shall not be cured within fifteen (15) days after notice of such breach given by the nonbreaching party ("Cure Period") shall be deemed to be a default under this Agreement, provided, however, that in the event such breach is the third breach under this Agreement by such party within any 12-month period, then such breach shall constitute an event of default immediately upon the giving of notice by the nonbreaching party of such breach; or

(ii) the failure of {Supplier} to cure a breach of this Agreement within the time and in the manner provided; or

(iii) the bankruptcy of {Supplier} to this Agreement. For purposes of this Agreement, the term "bankruptcy" shall mean the filing of a petition commencing a voluntary case under the Bankruptcy Code; a general assignment for the benefit of creditors; an admission in writing by such party of its inability to pay its debts as they become due; the filing of any petition or answer in any proceeding seeking or consenting to, or acquiescing in, any insolvency, receivership, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation; the filing of any answer or other pleading admitting or failing to deny, or to contest, the material allegations of the petition filed against such party in any such proceeding; the seeking or consenting to, or acquiescence in, the appointment of any trustee in bankruptcy, receiver or liquidator for the business or property of such party; or the commencement against such party of any involuntary case under the Bankruptcy Code, or a proceeding under any receivership, composition, readjustment, liquidation, insolvency, dissolution or like law or statute, which case or proceeding is not dismissed or vacated within ten (10) days of commencement.

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(b) Upon the occurrence of an event of default under this Agreement, the non-defaulting party may at its option immediately terminate this Agreement upon notice to the other party of such termination. The non-defaulting party shall have available to it and may pursue all other rights and remedies under applicable law.

(c) Any subsequent shipment by {Supplier} to District of, and any subsequent orders submitted by District to {Supplier} for, Products, and District's acceptance of and payment for such Products, shall not constitute a waiver of any breach under this Agreement.

TERMINATION

(a) This Agreement shall terminate upon the earliest to occur of any one of the following events:

(i) at the expiration of the Initial Term or any Renewal Term;

(ii) upon the occurrence of an event of default of this Agreement and notice being given;

(iii) at any time upon not less than _____ days' notice by District to {Supplier} terminating this Agreement.

(b) Upon termination of this Agreement:

(i) all indebtedness between {Supplier} and District shall become due and payable; and,

(iv) neither party shall have any liability to the other party as a result of or in consequence of any such rightful termination for loss, cost or damage directly relating to such rightful termination, including, but not limited to, any loss of future profits, or any expenses incurred or claimed to have been incurred by the other party in reliance upon the continued effectiveness of this Agreement, such as for, among other things, development of business, procuring customers, expenditures or commitments made in connection with such party's business, or for any other such cause, provided, however, that the foregoing shall not be construed to affect any indebtedness then due and owing between the parties and any other rights or remedies of the parties relating to the performance, nonperformance or other actions in violation of this Agreement.

INDEMNIFICATION

{Supplier} indemnifies and holds District harmless from and against any and all actions, suits, proceedings, claims, losses, liabilities, damages and expenses (including attorneys' and experts' fees and sums reasonably expended in investigation and settlement of litigation, pending or threatened) arising out of or in connection with any breach by {Supplier} of any term, provision, covenant, agreement, representation or warranty

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contained in this Agreement, including, but not limited to, the breach of any warranties under this Agreement, express or implied, any and all product liability claims, actions and other proceedings, patent, copyright, trademark, trade name or service mark infringements or claims of infringement, and any and all other claims, actions and proceedings against District relating to the Products or Services.

Upon the occurrence of any event giving rise to a right to seek indemnification under this Agreement, the District shall deliver or transmit to the indemnifying party a documented notice of such claim, action or proceeding within ten (10) days after it becomes known to such party, provided, however, that the failure to give such notice shall not relieve the indemnifying party of its obligations to indemnify. The indemnifying party shall, within ten (10) days after receipt of such notice, notify the District as to whether or not it intends to take over the defense of such action, failing which, the party seeking indemnification shall be entitled to take over the defense of the action. Upon proper notification by the indemnifying party of its intention to defend the claim, the indemnifying party shall engage counsel reasonably satisfactory to the indemnified party to assume the investigation and defense of the claim and shall keep the indemnified party and its counsel currently informed as to all material aspects of the claim and its investigation and defense. The indemnified party may, in such case, engage counsel to assist in the investigation and defense of the claim, but shall not be entitled to reimbursement for any expenses related to the engagement of such counsel. If the indemnifying party elects not to assume the investigation and defense of the claim, or fails to make any election within the time period in this Agreement provided, or if in the reasonable opinion of counsel to the indemnified party, the indemnified party has available to it defenses which are contrary to the interests of the indemnifying party in any such action, then the indemnified party shall be entitled to engage its own counsel for such investigation and defense, and shall be entitled to the full indemnification therefor.

NOTICE

Any notices or other communications under this Agreement is to be in documented form. Any notice or other communication, including any Purchase Order Form, or invoice, may be delivered personally, or by United States first class mail, or by Postal Service or commercial overnight document delivery service, or may be transmitted by electronic means, using the following contact information:

If to {Supplier}:

[contact person(s)]

[complete street and mailing address]

[landline, mobile and facsimile telephone number(s)]

[E-mail address(es)]

If to District:

[Stacy J. Gilbert, Maintenance Director]

[299 Robertson Avenue Tallapoosa, GA 30176]

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[7705742500 Office 2562016251 Cell]
[stacy.gilbert@haralson.k12.ga.us]

Any notice given under this Agreement is deemed to have been given on the date dispatched or transmitted, or if given personally, on the date such notice document was personally delivered. The contact information in this paragraph may be changed by the respective parties upon a documented notice delivered pursuant to this paragraph.

APPLICABLE LAW

This Agreement shall be deemed to have been executed in the city of Tallapoosa, Georgia, and shall be governed by, construed, interpreted and enforced in accordance with the laws of the State of Georgia. All suits, proceedings and other actions relating to or arising out of this Agreement shall be submitted to the jurisdiction of the courts of the State of Georgia, or the federal district court for the Northern District of Georgia (Atlanta Division) and venue for any such suits, proceedings and other actions shall be in Tallapoosa, Georgia. {Supplier} waives any claim against or objection to jurisdiction and venue in the courts of the State of Georgia in the City of Tallapoosa, Georgia or the federal district court for the Northern District of Georgia (Atlanta Division).

{Supplier} irrevocably appoints the Secretary of State of Georgia as its true and lawful attorney within the State of Georgia to receive service of process in any suit, action or proceeding against it arising out of or relating to this Agreement, and consents and agrees that service upon the Secretary of State of Georgia shall be of the same force and validity as if served personally upon Seller in the State of Georgia.

DATA PROTECTION

Supplier acknowledges that by the nature of the work it may be granted access to District's Data. "District's Data" includes all Personally Identifiable Information ("PII") and other non-public information regarding District, District's students, parents and/or customers. Data includes, but is not limited to, student and parent data, metadata, credit card information, credit information, educational records, student images, and user content. Supplier may have a limited, nonexclusive license to District's Data for the purpose of performing its obligation as outlined in this Agreement. Regardless of the parties' current contractual postures (breach of contract, non-payment etc.) District Data will always be available to District without conditions. Supplier may only use de-identified data for product development, research or other purposes to improve its services under this agreement. Supplier may only collect data necessary to fulfill its duties as outlined in this agreement. De-identified data will have all direct and indirect personal identifiers removed. This includes but is not limited to, name, ID numbers, credit card number, credit information, date of birth, demographic information, location information, student images,

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and/or school ID. Furthermore, Supplier agrees not to attempt to re-identify de-identified data and not to transfer de-identified data to any party unless that party agrees in writing not to attempt re-identification. Any data collected by Supplier that contains PII may not be used for any purpose other than the specific purposes outlined in this agreement. Supplier will not change how data is collected, used or shared under the terms of this agreement without advance notice to and written consent from the authorized representative of the District. Supplier may not mine data for any purpose other than those purposes specifically contained within this agreement. Data mining, data scanning or otherwise obtaining User content for the purpose of advertising or marketing to students, students' parents, District's customers, or other parties is specifically prohibited.

Supplier shall undertake industry best practices at all times to ensure the security of District Data either while being stored or transmitted. This includes appropriate administrative, physical and technical safeguards to secure District Data from unauthorized access, disclosure and use. At a minimum District Data must be encrypted for storage and for internal and external transmission. Supplier shall periodically review, update, and upgrade its data security practices to assure the implementation of current industry best practices regarding security measures. Supplier shall provide prompt written notification to District in the event of a security or privacy incident. Upon written request, Supplier shall ensure that all data in its possession and in the possession of any subcontractors, agents or others are Securely Deleted or transferred back to District. Upon written request, Supplier shall certify in writing to District that all appropriate measures have been undertaken to Securely Delete or return District Data at such time as the Data is no longer necessary to comply with the provisions of this agreement. "Securely Delete" means that industry standard measures are taken for the purpose of ensuring that no unauthorized person will be able to reasonably locate or extract the District Data after the deletion date.

In the event District's Data is misappropriated or disclosed while in Supplier's control Supplier shall indemnify and hold harmless District from all costs, claims, damages and expense, including reasonable attorneys' fees, arising therefrom.

Supplier shall maintain for the term hereof Data Breach Insurance that will provide insurance coverage to Supplier and District to reimburse damages, assessment, fines, the cost of investigation, and response for any Data Breach caused by Supplier, its employees, agents or sub-contractors in an amount of no less than Three Million Dollars ("\$3,000,000") per occurrence. Such insurance shall be provided with an insurance company authorized to transact business in the State of Georgia with an AM Best rating of "A" or better. A certificate of such insurance shall be provided to District evidencing said

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coverage and naming the District as additional insured prior to execution hereof. In addition, such insurance may not terminate or be non-renewed without providing District at least thirty (30) days' notice of termination or non-renewal. In the event the insurance required hereby provides insurance coverage on a Claims-made Coverage basis (*A policy of insurance providing coverage that is triggered when a claim is made against the insured during the policy period*) rather than Occurrence Coverage (*A policy of insurance that provides coverage for incidents occurring during the policy period regardless of when the claim is made*) Supplier must assure that the Claims-made policy provides (i) that the retroactive date of the policy be shown, and such date must be prior to the effective date of this contract; (ii) the required insurance must be maintained and evidence of insurance must be provided for at least three (3) years after completion of the contract ("tail coverage");(iii) if the required insurance policy is canceled or non-renewed during the term hereof together with the three (3) additional years of tail coverage required in (ii), and not replaced with another claims-made policy exhibiting a retroactive date of coverage prior to the contract effective date, Supplier must purchase "extended reporting" coverage for a minimum of three (3) years after completion of the contract.

INSURANCE

- (a) The following requirements apply to any and all work under this contract by all Suppliers and sub-suppliers/subcontractors.
 - i. Any and all insurance required by this contract shall be maintained during the entire length of this contract, including any extensions thereto, and until all work has been completed to the satisfaction of District. Any and all insurance must be on an occurrence basis.
 - ii. No Suppliers and sub-suppliers/subcontractors shall commence any work of any kind under this contract until all insurance requirements contained within this contract have been complied with and until evidence of all insurance requirements in each and every contract with each and every subcontractor of any tier has been provided to District.
 - iii. District shall be covered as an **Additional Insured** under any and all insurance required by the contract documents. Confirmation of this requirement shall appear on all certificates of insurance and on any and all applicable policies.
 - iv. District shall be given not less than thirty (30) days prior written notice of cancellation of any insurance required by the contract documents.

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- v. District shall be given not less than thirty (30) days prior written notice of any material change of any insurance required by this contract document.
 - vi. Each and every insurance agent shall warrant, when executing the certificate of insurance, that he/she is acting as an authorized representative on behalf of the companies providing coverage to the contract as required by the contract document and that he/she is licensed by the State of Georgia to conduct business in the State of Georgia and that the companies providing insurance coverage to the Suppliers and sub-suppliers/subcontractors are currently licensed by the State of Georgia and are currently in good standing with the Commissioner of Insurance for the State of Georgia.
 - vii. In the event the insurance required hereby provides insurance coverage on a Claims-made Coverage basis (*A policy of insurance providing coverage that is triggered when a claim is made against the insured during the policy period*) rather than Occurrence Coverage (*A policy of insurance that provides coverage for incidents occurring during the policy period regardless of when the claim is made*) Vendor must assure that the Claims-made policy provides (i) that the retroactive date of the policy be shown, and such date must be prior to the effective date of this contract; (ii) the required insurance must be maintained and evidence of insurance must be provided for at least three (3) years after completion of the contract (“tail coverage”);(iii) if the required insurance policy is canceled or non-renewed during the term hereof together with the three (3) additional years of tail coverage required in (ii), and not replaced with another claims-made policy exhibiting a retroactive date of coverage prior to the contract effective date, Vendor must purchase “extended reporting” coverage for a minimum of three (3) years after completion of the contract.
- (b) Any and all companies providing insurance required by the contract documents shall meet or exceed the minimum financial security requirements as set forth below. The rating for each company shall be indicated on the certificate of insurance. For all contracts, regardless of risk, companies providing insurance required by the contract documents shall have a current:
- i. Best’s Rating of not less than “A-“, and
 - ii. Best’s Financial Size Category of not less than Class “VIII”
- (c) In the event the Supplier and sub-supplier/subcontractor neglects, refuses, or fails to provide the insurance required by the contract documents, after at least thirty

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(30) days prior written notice to Supplier and without cure by Suppliers and sub-suppliers/subcontractors during such period, or if such insurance is cancelled for any reason, District shall have the option in its sole discretion either to procure the same in which case the cost thereof shall be deducted from monies then due or thereafter to become due to the Supplier, or to cancel the contract.

- (d) Comprehensive or Commercial form General Liability Insurance. \$2,000,000.00 General Aggregate and \$1,000,000.00 Each Occurrence - combined single limit for bodily injury and property damage. A comprehensive form certificate of insurance shall be provided.
- (e) Business Automobile Liability Insurance. \$2,000,000.00 General Aggregate and \$1,000,000.00 Each Occurrence - combined single limit for bodily injury and property damage. A comprehensive form certificate of insurance shall be provided.
- (f) Worker Compensation Insurance. Statutorily required limits.
- (g) Third Party Employee Fidelity Insurance applicability:
 - i. Work conducted on HCSO premises or requiring access to a HCSO computer system.
 - ii. In such instance Employee Fidelity Insurance with a minimum of \$250,000 in limits per employee. Additional insurance limits may be required as determined by School District personnel based upon circumstances. The policy must be endorsed to modify the policy to include coverage on the School District's premises and this shall be so noted on the Certificate of Insurance.

MISCELLANEOUS

(a) This Agreement shall be binding upon and inure to the benefit of the parties to this Agreement and their successors but shall not be assignable except as in this Agreement provided.

(b) If any term or provision under this Agreement, or any portion of this Agreement, is held to be invalid or unenforceable, it shall not affect any other term or provision under this Agreement or any part of this Agreement.

(c) All promises, covenants, agreements, representations and warranties contained in this Agreement shall survive the execution and delivery, and the subsequent termination, of this Agreement and the transactions contemplated under this Agreement.

(d) This Agreement contains the full, entire and integrated agreement and understanding between {Supplier} and District with respect to the covenants, promises and agreements in this Agreement described, and no representations, warranties, provisions, covenants,

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agreements or understandings, written or oral, not in this Agreement contained or referred to shall be of any force or effect. This Agreement may not be modified or amended except in writing signed by both of the parties in this Agreement.

(e) No waiver of any breach of any term of this Agreement shall be effective unless made in writing signed by the party having the right to enforce such breach and no waiver shall be construed as a waiver of any subsequent breach.

(f) This Agreement may be executed by the parties in one or more counterparts by manual or electronic signature or by use of one or more physical or electronic copies that are either physically delivered or electronically transmitted, and all of which, when taken together, constitutes one and the same original of the Agreement.

IN WITNESS WHEREOF, the parties to this Agreement have caused this Agreement to be duly executed under SEAL as of {date}.

{Signatures on following page}

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{SUPPLIER}:

By [Officer's Signature] _____

Its: {Corporate Title} _____

[Corporate Seal]

DISTRICT:

By: [Officer's Signature] _____

Its: {Corporate Officer} _____

[Corporate Seal]