

EXHIBIT A – BEAVERTON SCHOOL DISTRICT TERMS AND CONDITIONS

These terms and conditions apply to all purchases of services by or on behalf of the Beaverton School District unless specifically provided otherwise in writing.

1. Assignment. Provider shall not subcontract, assign, or transfer any of its interest in this Contract without the District's prior written consent.

2. Compliance with Laws. Provider certifies that in performing this Contract they will comply with all applicable provisions of federal, state, and local laws, regulations, rules, and orders. Provider expressly agrees to comply with: (i) Title VI and VII of Civil Rights Act of 1964, as amended; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended, and ORS 659.425; (iv) Executive Order 11246, as amended; (v) The Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vi) The Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (vii) ORS Chapter 659, as amended; (viii) all regulations administrative rules established pursuant to the foregoing laws; (ix) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations; and (x) all federal and state laws governing the handling, processing, packaging, storage, labeling, and delivery of food products, if applicable. All laws, regulations and executive orders applicable to the Contract are incorporated by reference where so required by law.

3. Changes. The District may make written changes to this contract. If such change causes an increase or decrease in the consideration or the time required to perform, an equitable adjustment shall be made and the agreement modified in writing.

4. Force Majeure. Neither the District nor Provider shall be held responsible for delay or default caused by any contingency beyond their control, including, but not limited to war or insurrection, strikes or lockouts by the parties' own employees, walkouts by the parties' own employees, fires, natural calamities, riots, or demands or requirements of governmental agencies other than the District.

5. Activities away from and/or after normal School hours. Provider assumes responsibility, liability, and control of students during all activities in performance of contracted services.

6. Contact With Students: All Providers are subject to Law Enforcement Data System background check. The Provider must not have unsupervised contact with students. When unsupervised contact with students is requested by the District, Provider must be fingerprinted (\$75.00 fee).

7. Governing Law. The laws of the State of Oregon shall govern this contract. Any action or suit commenced in connection with this contract shall be in the Circuit Court of Washington District or the Federal District Court for Oregon. The prevailing party shall be entitled to reasonable attorney

fees and costs as awarded by the Court, including any appeal. All rights and remedies of District and Consultant shall be cumulative and may be exercised successively or concurrently.

8. Indemnification and Hold Harmless. Except for claims arising out of acts caused by the sole negligence of the District, its Administrators or employees, the Provider agrees to indemnify and hold harmless the District and its board members, administrators, teachers, employees and agents, from acts or omissions of any nature whatsoever of the Provider, its agents, servants and employees, causing injury to, or death of person(s) or damage to property during the term of this contract, and from any expense incident to the defense of the District there from. The Provider agrees to indemnify and hold harmless the District and its board members, administrators, teachers, employees and agents, from and to defend it against, any and all claims arising from the purchase, installation, and/or use of the equipment, articles and/or materials which are the subject of this Contract.

9. Independent Contractor. The services provided under this Contract are those of an independent contractor. Provider is not an officer, employee or agent of the District. Although the District reserves the right (i) to determine (and modify) the delivery schedule for the Work to be performed and (ii) to evaluate the quality of the completed performance, the District cannot and will not control the means or manner of Provider's performance.

10. Insurance. Provider shall purchase and maintain:

- a. WORKER'S COMPENSATION as required by law.
- b. EMPLOYER'S LIABILITY in the minimum amount of \$500,000 when the Provider has one or more employees performing services under the contract.
- c. COMPREHENSIVE AUTOMOBILE LIABILITY including owned, non- owned and hired vehicles: \$1,000,000 Combined Single Limit Bodily Injury and Property Damage any one occurrence and in the aggregate. May be waived if Provider has no vehicle while providing work under the contract.
- d. COMPREHENSIVE GENERAL LIABILITY to include premises operations, independent Providers, products/completed operations, and blanket contractual: \$1,000,000 Combined Single Limit Bodily Injury, Property Damage, and personal injury any one occurrence and in the aggregate. May be waived only by the District Risk Management Department.
- e. CERTIFICATES OF INSURANCE. The District, its employees, officials, and agents shall be named as an Additional Insured on general liability and automobile policies and shall be provided a copy of the additional insured endorsement. Such insurance shall be primary. Certificates of Insurance shall be issued, prior to the commencement of the contract, to Beaverton School District, Attn: Risk Department,

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16550 SW Merlo Rd, Beaverton, OR 97003. The Provider agrees to pay for the insurance specified and agrees to provide the District with a 30 days' notice of cancellation if non-renewal occurs during the contract period. Insurance companies must have an A rating.

- f. The District reserves the right to require additional insurance which will be delineated in an attachment to this agreement.

11. Ownership of Work Product. All work product of Provider that results from this Contract is the exclusive property of the District. Provider hereby irrevocably assigns to the District all of its right, title, and interest in and to any and all of the work product, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Provider forever waives any and all rights relating to the work product including any and all rights arising under Title 17 USC §106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or modifications.

12. Representations. Provider represents and warrants to the District that (1) Provider has the power and authority to enter into and perform this Contract, (2) the Work under this Contract shall be performed in a good and workmanlike manner and in accordance with the highest professional standards, (3) Provider shall, at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work.

13. Responsibility for Taxes and Withholding. Provider shall be responsible for all federal or state taxes applicable to compensation paid to Provider under this Contract. The District will not withhold from such compensation any amount(s) to cover Provider's federal or state tax obligations. Provider is not eligible for any social security, unemployment insurance or workers' compensation benefits from compensation paid to Provider under this Contract.

14. Severability. If any provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall be construed and enforced as if the Contract did not contain the particular provision held to be invalid.

15. Termination.

- a. **Terminate For Convenience.** This Contract may be terminated at any time by mutual written consent of the parties, or the District may, at its sole discretion, terminate this Contract, in whole or in part, upon 30 days' notice to Provider.
- b. **The District's Right to Terminate For Cause.** The District may terminate this Contract, in whole or in part, immediately upon notice to Provider, or at such later date as the District may establish in such notice, upon the occurrence of any of the following events:

- (i) The District fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to pay for Provider's Work;
 - (ii) Federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the Work under this Contract is prohibited, or the District is prohibited from paying for such Work from the planned funding source;
 - (iii) Provider no longer holds any license or certificate that is required to perform the Work; or
 - (iv) Provider commits any material breach or default of any covenant, warranty, obligation or agreement under this Contract, fails to perform the Work under this Contract within the time specified herein or any extension thereof, or so fails to pursue the Work as to endanger Provider's performance under this Contract in accordance with its terms, and such breach, default or failure is not cured within 10 business days after delivery of the District's notice, or such period as the District may specify in such notice.
- c. **Provider's Right to Terminate for Cause.** Provider may terminate this Contract upon 30 days' notice to the District if the District fails to pay Provider pursuant to the terms of this Contract and the District fails to cure within 30 business days after receipt of Provider's notice.
 - d. **Enforcement.** Termination under any provision of this Contract shall not extinguish or prejudice the District's right to enforce this Contract with respect to any breach of a Provider warranty or any defect in or default of Provider's performance that has not been cured, including any right of the District to indemnification by Provider. If this Contract is so terminated, Provider shall be paid in accordance with the terms of the contract for services rendered and accepted.
 - e. **Remedies.** In the event of termination pursuant to above, Provider's sole remedy shall be a claim for the sum designated for accomplishing the Work multiplied by the percentage of Work completed and accepted by the District, less previous amounts paid. If previous amounts paid to Provider exceed the amount due to Provider under this subsection, Provider shall pay any excess to the District upon demand.
 - f. **Provider's Tender Upon Termination.** Upon receiving a notice of termination of this Contract, Provider shall immediately cease all activities under this Contract, unless the District expressly directs otherwise in such notice of termination. Upon termination of this

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Contract, Provider shall deliver to the District all documents, information, works-in-progress and other property that are or would be deliverables had the Contract been completed.

- g. Limitation of Liabilities. Neither party shall be liable for (i) any indirect, incidental, consequential or special damages under the contract or (ii) any damages of any sort arising solely from the termination of this contract in accordance with its terms.

16. Confidential information. Provider acknowledges that it or its employees, sub-contractors, or agents may, in the course of performing their responsibilities under this Contract, be exposed to or acquire information that is the confidential information of District or District's clients. Any and all information provided by District and marked confidential, or identified as confidential in a separate writing, that becomes available to Provider or its employees, sub-contractors, or agents in the performance of this Contract shall be deemed to be confidential information of District ("Confidential Information"). Any reports or other documents or items including software, that result from Provider's use of the Confidential Information and any Work Product that District designates as confidential are deemed Confidential Information. Confidential Information shall be deemed not to include information that: (a) is or becomes (other than by disclosure by Provider) publicly known; (b) is furnished by District to others without restrictions similar to those imposed by this Contract; (c) is rightfully in Provider's possession without the obligation of nondisclosure prior to the time of its disclosure under this Contract; (d) is obtained from a source other than the District without the obligation of confidentiality; (e) is disclosed with the written consent of the District; or (f) is independently developed by employees or agents of Provider who can be shown to have had no access to the Confidential Information.

- a. **NON-DISCLOSURE.** Provider agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Provider uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than the provision of Services to the District under this Contract, and to advise each of its employees, sub-contractors, and agents of their obligations to keep Confidential Information confidential. Provider shall use its best efforts to assist the District in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the generality of the foregoing, Provider shall advise the District immediately in the event Provider learns or has reason to believe that any person who has had

access to Confidential Information has violated or intends to violate the terms of this Contract and Provider will at its expense cooperate with the District in seeking injunctive or other equitable relief in the name of the District or Provider against any such person. Provider agrees that, except as directed by the District, Provider will not at any time during or after the term of this Contract disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Contract, and that upon termination of this Contract or at the District's request, Provider will turn over to the District all documents, papers, and other matter in Provider's possession that embody Confidential Information.

- b. **INJUNCTIVE RELIEF.** Provider acknowledges that breach of this Section, including disclosure of any Confidential Information, will give rise to irreparable injury to the District that is inadequately compensable in damages. Accordingly, the District may seek and obtain injunctive relief against the breach or threatened breach of this Section, in addition to any other legal remedies that may be available. Provider acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of the District and are reasonable in scope and content.

17. FERPA. Provider agrees to comply with both FERPA and corresponding Oregon law respecting student education records. Personally identifiable information obtained from the District by the Provider in the performance of their services: (i) will not be disclosed to third parties, except as expressly provided for in FERPA §§99.31, without signed and dated written consent of the student, or if the student is under eighteen (18) years of age, signed and written consent of the student's parents/guardians and (ii) will be used only to fulfill the Provider's responsibilities under this Agreement.

18. Waiver. No failure of either party to exercise any power given to it hereunder or to insist upon strict compliance by the other party with its obligations hereunder, and not custom or practice of the parties at variance with the terms hereof, nor any payment under this agreement shall constitute a waiver of either party's right to demand exact compliance with the terms hereof.

*District Public Contracting Rules can be found on the following website: <https://www.beaverton.k12.or.us/depts/business/purchasing/Pages/default.aspx> - END -