

**San Bernardino City Unified School District**  
**Professional Services Provider**  
**(California Government Code, Section 53060)**  
**Standard Terms & Conditions**

A. Although not anticipated, the DISTRICT shall have the right to change or reduce the level of services to be provided under this contract with thirty (30) days written notice to the Professional Service Provider. Specific services scheduled may be rescheduled upon mutual agreement.

B. The PROVIDER is ultimately responsible for the results to be achieved under this contract. The PROVIDER itself, or other s hired by the PROVIDER and under the control of the PROVIDER, may provide the services necessary to achieve the results required under this contract.

C. The PROVIDER'S services will be provided on an as-needed basis to accomplish the results required under this contract.

D. The Professional Service Provider will perform services to achieve the results required hereunder in the Professional Service Provider's own independent way as an independent contractor in the pursuit of the Professional Service Provider's independent calling and not as an employee of the DISTRICT. The Professional Service Provider shall be under the control of the DISTRICT as to the results to be accomplished and not as to the means or manner by which such results are to be accomplished.

E. The Professional Service Provider shall provide its services at such time as the Professional Service Provider itself determines within the scope of the results to be achieved. If the Professional Service Provider is a regular employee of a public agency (any governmental agency or agent supported by public tax dollars), all services which the Professional Service Provider renders under this Agreement will be performed at times other than the Professional Service Provider's regular assigned workday for said entity, or during periods of vacation or of absence from said entity, in order that the Professional Service Provider shall not receive double compensation from public tax dollars for its time.

F. The Professional Service Provider shall provide all of its own supplies, equipment and materials as may be necessary within the scope of the results to be achieved.

G. The Professional Service Provider shall submit to the DISTRICT the Internal Revenue Service Form W-9, which may be substituted for the "Vendor Tax Information - Substitute Form W-9", which is included as an enclosure with the contract.

H. The Professional Service Provider understands that, as an independent contractor, it is not an employee of the DISTRICT and agrees that it will not purport to be nor represent itself as a DISTRICT employee, officer, or agent. The Professional Service Provider agrees that it will not act as nor perform in the capacity of a DISTRICT employee. The Professional Service Provider further agrees that it will specifically explain its independent contractor, non-employee status to those it contacts (including DISTRICT employees and non-DISTRICT employees), as a result of its work hereunder, in order to prevent any misconceptions on the part of third parties that the Professional Service Provider is an employee or representative of the DISTRICT.

I. The Professional Service Provider agrees to conduct and certify to the DISTRICT's governing board that it has completed any background check requirements of Education Code sections 45122.1 and 45125.1 and has returned the "Fingerprint and Criminal Background Check Certification" in advance of providing any contracted services described herein with the DISTRICT. Any expenses incurred to implement this requirement will be the sole responsibility of the Professional Service Provider.

J. The Professional Service Provider will follow accepted industry practices and comply with all federal, state and local laws and ordinances applicable to this Agreement.

K. By signing this agreement the Professional Service Provider acknowledges it has read and accepts the DISTRICT policies set forth here.

1. Smoking and Use of Tobacco at District Facilities (Board Policy BP 3513.4)
2. Drug- and Alcohol-Free Workplace (Board Policy BP 4020)
3. Nondiscrimination in Employment (Board Policy BP 4030)
4. Affirmative Action Program for Equal Employment Opportunity (Board Policy BP 4030.1)

These policies can be accessed on the DISTRICT'S website at [http://sbcusd.com/school\\_board/board\\_policies](http://sbcusd.com/school_board/board_policies)

L. All parties agree that the Professional Service Provider shall abide by the same terms and conditions of conduct as is expected of DISTRICT employees in each of these policies, without the implication of employment. It is further understood that failure to abide by these policies may result in immediate

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termination of this agreement and, in addition, may result in other personal legal avenues of remedy on the part of the individuals involved. While it is acknowledged that these policies specifically address employees of the DISTRICT, it is understood that the Professional Service Provider is not an employee of the DISTRICT.

L. The Professional Service Provider certifies it will not unlawfully discriminate on the basis of race, color, national origin, ancestry, sex (including sexual harassment), marital status, handicap, disability, medical condition, religion, or age in any of its policies, procedures, or practices in compliance with:

1. Title VI and VII of the Civil Rights Act of 1964, as amended  
(Pertaining to race, color, national origin, and religion);
2. Title IX of the Education Amendments of 1972  
(Pertaining to sex discrimination);
3. Section 504 of the Rehabilitation Act of 1973  
(Pertaining to handicap);
4. The Age Discrimination Act of 1975  
(Pertaining to age);
5. The Fair Employment and Housing Act  
(Pertaining to ancestry, race, national origin, color, sex, religion, physical or mental disability, medical condition, marital status, and age over 40);
6. The Americans with Disabilities Act of 1990  
(Pertaining to disability).

It is the responsibility of the Professional Service Provider to ensure that those employed by or subcontracted by the Professional Service Provider also adhere to DISTRICT and Public Policies. These non-discrimination policies cover admission and access to, and treatment and employment in, the DISTRICT's programs and activities.

N. The Professional Service Provider shall not in any manner, directly or indirectly, by operation of law or otherwise, subcontract, assign, transfer or encumber this Agreement or any portion hereof or any interest herein, in whole or in part, without the prior written consent of the DISTRICT. If consent is not given by the DISTRICT to assign, transfer, or encumber this Agreement, such action shall be deemed automatically void.

O. This contract binds the Professional Service Provider's successors and assignees.

P. The Professional Service Provider shall conform to all applicable Federal, State, County, and City laws, rules, ordinances, codes and regulations

covering this work. It is the Professional Service Provider's total responsibility to determine specific details of such requirements and warrant that all work performed as part of this Agreement totally conforms to such requirements.

**II. GENERAL RESPONSIBILITIES OF THE DISTRICT**

A. The DISTRICT will prepare and furnish to the Professional Service Provider upon the Professional Service Provider's request, such information as is reasonably necessary to the performance of the Professional Service Provider's work under this Agreement. The Professional Service Provider understands that all information provided to the Professional Service Provider is the property of the DISTRICT and shall not be removed from the DISTRICT's possession. Failure to keep such information confidential and/or failure to return information requested by the DISTRICT is reasonable cause for termination of this Agreement and may subject the Professional Service Provider to liability for damages to the DISTRICT.

B. The DISTRICT may request an audit of the records of attendance and any other pertinent information relating to the Agreement.

C. The DISTRICT will notify the Professional Service Provider of administrative procedures required and name a representative authorized to act in its behalf. The DISTRICT shall promptly render decisions pertaining thereto to avoid unreasonable delay in the progress of any services hereunder.

**III. CANCELLATION; TERMINATION; NON-COMPLIANCE OF PROFESSIONAL SERVICE PROVIDER**

A. If, at any time during the performance of this Agreement, the DISTRICT determines, at the DISTRICT's sole discretion, that the Professional Service Provider's services are not achieving the results required hereunder, the DISTRICT shall be obligated to pay the Professional Service Provider only for that portion, if any, of the results achieved and the DISTRICT may immediately cancel the Agreement. Any unpaid balance shall be paid by the DISTRICT on a pro-rata basis from date of cancellation.

B. Non-compliance by the Professional Service Provider with the terms of this Agreement shall be cause for suspension and/or termination by the DISTRICT. The DISTRICT shall provide written notice to the Professional Service Provider including the reasons for

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suspension or termination under this provision. If the Contract is suspended, the Professional Service Provider shall have five (5) business days to cure the conditions(s) for which the suspension was given or the contract will be immediately terminated.

C. Notwithstanding anything to the contrary stated in this Agreement, the DISTRICT may terminate this Agreement for convenience at any time upon thirty (30) days' prior written notice to the Professional Service Provider. If the DISTRICT terminates the Agreement as provided herein, the DISTRICT, in its sole and absolute discretion, may require the Professional Service Provider to complete any services required hereunder to facilitate the transfer of the Professional Service Provider's responsibilities to another Professional Service Provider or other person.

D. If this Agreement is terminated, the DISTRICT reserves the right to make a new award to a new Professional Service Provider. All the DISTRICT's proprietary materials shall be returned and any rights shall rescind as of the date of termination.

E. Notwithstanding the above provisions, either party may terminate this Agreement with a thirty (30) day written notice.

**IV. MODIFICATION AND AMENDMENT**

This agreement may be amended by the mutual written consent of the parties hereto. If any actual or physical deletions or changes appear on the face of the Agreement, such deletions or changes shall only be effective if the initials of both contracting parties appear beside such deletion or change.

**V. WAIVER AND SEVERABILITY**

One or more waivers of any term, condition or covenant by either party shall not be construed as a waiver of any other term, condition or covenant. If any provision of this Agreement is held, in whole or in part, to be unenforceable for any reason, the remainder of that provision and of the entire Agreement shall be severable and remain in effect.

**VI. DISPUTE RESOLUTION**

Disputes between the DISTRICT and Professional Service Provider concerning the meaning, requirements or performance of this contract shall be submitted to the DISTRICT's Superintendent. The determination of the DISTRICT Superintendent shall be made in writing and shall be binding on both parties.

**VII. GOVERNING LAW**

This Agreement is governed by and construed in accordance with the laws of the State of California, San Bernardino County.

**VIII. PROVISIONS OF LAW INSERTION**

Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and the Agreement shall be read and enforced as though it were included herein and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon application of either party, the Agreement shall forthwith be physically amended to make such insertion or correction.

**IX. CONFLICT WITH EXISTING LAW**

The Professional Service Provider and the DISTRICT agree that if any provision of this Agreement is found to be illegal or unenforceable, such term or provision shall be deemed stricken and the remainder of the Agreement shall remain in full force and effect. Either party having knowledge of such term or provision shall promptly inform the other of the presumed no-applicability of such provision. Should the offending provision go the heart of the Agreement, the Agreement shall be terminated in a manner commensurate with the interests of both parties, to the maximum extent reasonable.

**X. TOBACCO-FREE ENVIRONMENT**

The DISTRICT is proud to provide a healthy, tobacco-free environment. Smoking or the use of any tobacco products are prohibited in building and vehicles, and on any property owned, leased or contracted for by the DISTRICT.

**XI. COOPERATION IN DISPOSITION OF CLAIMS**

DISTRICT and Professional Service Provider agree to cooperate with each other in the investigation and disposition of audits, peer review matters, disciplinary actions and third party liability claims arising out of any services provided under this Agreement. It is the intention of the parties to fully cooperate in the disposition of all such audits, actions or claims. Such cooperation may include, but is not limited to, joint investigation, defense, disposition of claims of third parties arising from services performed under this Agreement, and making witnesses available; provided,

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however, that nothing shall require either DISTRICT or Professional Service Provider to disclose any peer review documents, records or communications which are privileged under Section 115.7 of the California Evidence Code, under the Attorney –Client Privilege or under Attorney Work-Product Privilege.

**XII. MEDIATION**

All controversies, claims, and disputes between the parties arising out of or related to this Agreement, or the interpretation thereof, will first be submitted to mediation by a mediator certified by the Supreme Court of California, which mediator shall be selected and retained by the DISTRICT’s Board of Education. The cost of the mediator’s fee shall be borne equally by the parties. The mediation process shall be invoked by written notice from either party. The Board shall retain the mediator and schedule mediation within thirty (30) days of sending or receiving the written notice, or on a date as agreed by the parties. Mediation shall be a condition precedent to filing a lawsuit by either party.

**XIII. ATTORNEY’S FEES; COSTS; VENUE**

In the event that any party hereto shall bring an action or proceeding for an alleged breach of any provision of this Agreement, the prevailing party shall be entitled to recover, as part of such action or proceeding, reasonable attorney’s fees, paralegal fees, and court costs at both trial and appellate levels. For the purpose of any suit, action, or proceeding arising out of or relating to this Agreement, the parties hereby consent to the jurisdiction and venue of any of the courts of record of the State of California, San Bernardino County.

**XIV. HOLD HARMLESS**

A. PROVIDER agrees to indemnify and hold harmless the DISTRICT, its officers, agents, and volunteers from any and all claims, actions or losses, damages, and/or liability resulting from PROVIDER’S negligent acts or omissions arising from PROVIDER’S performance of its obligations under the contract.

B. DISTRICT agrees to indemnify and hold harmless PROVIDER, its officers, agents, and volunteers from any and all claims, actions or losses, damages, and/or liability resulting from DISTRICT’S negligent acts or omissions arising from DISTRICT’S performance of its obligations under the contract.

C. In the event PROVIDER and/or DISTRICT is found to be comparatively at fault for any claim, action, loss, or damage which results from their respective

obligations under the contract, PROVIDER and DISTRICT shall indemnify the other to the extent of its comparative fault.

**XV. RETIREMENT BENEFITS**

The Professional Service Provider must indicate if the Provider is currently receiving any type of retirement benefits, such as those from California Teacher’s Retirement System (STRS) or Public Employee’s Retirement System (PERS) or other retirement plan, or Social Security or other similar benefits, the District and the Provider are both aware that continuance of said benefit amount, is or may be subject to certain limits on current annual income from public schools and/or other sources in order to maintain full benefits. The Provider understands and acknowledges that it has full responsibility for being aware of any limits and monitoring and not accepting or contracting to accept income in excess of said limits.

Furthermore, the Provider specifically agrees to indemnify, defend, and hold harmless the District, from any liability or damages resulting from receipt of monies paid under the Agreement, which adversely affect the Provider’s own retirement benefits.

I am currently receiving retirement benefits:  
YES \_\_\_ NO \_\_\_ NA \_\_\_

If yes, please indicate the type of retirement benefits you are currently receiving:

\_\_\_\_\_  
\_\_\_\_\_

**XVI. INSURANCE REQUIREMENTS**

The Professional Service Provider, at their own cost and expense, shall insure, keep in force and maintain insurance in connection with this agreement in the following limits:

1. General Liability in the amount of at least \$1,000,000 per occurrence.
2. Automobile Liability \$1,000,000 per occurrence for bodily and property damage.
3. Professional Liability \$1,000,000 Errors & Omissions Insurance or Professional Liability.
4. Sexual Abuse or Molestation, \$1,000,000 per occurrence.
5. Property Insurance, replacement value.
6. Workers’ Compensation – Certificate of insurance indicating “statutory” limits.

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Certificate of Insurance – Insurance is to be placed with a California admitted surety with a current A.M. Best’s rating of no less than A-VII unless otherwise acceptable to the District. Provider shall furnish the District with certificate of insurance prior to commencing services. Policy must include San Bernardino City Unified School District, its trustees, officers, employees and agents and Southern California Schools Risk Management named as “Additional Insured” in Certificates of Insurance.

Provider Employees/Contractors/Volunteers: The District understands that Provider may use independent contractors, volunteers, or others not covered by the Provider’s workers compensation insurance coverage, to provide services hereunder. Provider shall advise such persons providing services hereunder at the direction of Provider that the District does not provide workers compensation insurance and Provider shall hold the District harmless from any and all claims for damages that may be asserted by such persons.

By signing, I certify that I have read and agree to the terms and conditions of the professional service provider agreement.

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

Signature: \_\_\_\_\_

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