

# Memorandum of Understanding

This Agreement, for Phishing Simulation Services, is entered into this 1 April 2021, by and between the San Pasqual Union School District (hereinafter referred to as "District") and the SAN DIEGO COUNTY SUPERINTENDENT OF SCHOOLS (hereinafter referred to as "County") who agrees to provide the following services to the District:

**WHEREAS** cybersecurity, which includes, but is not limited to, the secure installation of systems and networks, the protection of unauthorized access to data, and other safe internet practices, is an integral part to the operations of every school district in today's modern, data-driven environment;

**WHEREAS** October is Cybersecurity Awareness Month, allowing an opportunity for employees at school districts to become aware of safe internet practices and implement them in their daily work routine;

**WHEREAS** without sufficient training on the common vulnerabilities of weak passwords and pernicious phishing messages, employees can fall prey to the aforementioned tactics, jeopardizing their district's internet connections and networks to unauthorized users, malware, and other viruses;

**WHEREAS** the County Office of Education has created a software that sends fake phishing emails to employees in order to help train them to safely recognize and appropriately respond to emails of this kind;

**WHEREAS** local school districts could also benefit from, and have shown interest in, utilizing this software;

**NOW THEREFORE**, the District and County hereby agree as follows:

1) **Scope of Work.**

County will allow District to use Phishing Simulation software called Red Herring that is created by County for the sole purpose of Cybersecurity awareness activities. The County will create an administrator account for District to perform the phishing simulation. District is not permitted to use this application for any activity other than awareness program within the District network. District is not permitted to use this software to send email to individuals and/or organizations outside the district domain. Information gathered by the software is intended for District administrators only and is to be used to improve employee awareness. Any email template or landing page that is marked as public by the District will be available for all individuals and organizations that have access to the system. Prior to using this application, the administrator should get a written approval from the superintendent of the District. County will activate the software when the written approval is received from the superintendent of the District. County has a super admin account for the purpose of creating an admin account for District. The super admin user does not have access to view District data. However, since all the information from District is stored in a local database, County database manager will have access to view District data. This agreement is valid for a period of one year from the date this document was signed by the San Diego County Superintendent of Schools.

**2) Compensation and Reimbursement.**

There will be no exchange of funds for the performance of these services.

**3) Term of Agreement.**

This Agreement shall be effective from the period commencing upon 04/01/2021, and ending 04/01/2022, unless sooner terminated by as provided in the section of the Agreement entitled "Termination."

**4) Renewal.**

This Agreement shall automatically renew for successive one-year periods, on the same terms and conditions, unless earlier terminated as provided for herein.

**5) Termination.**

This Agreement may be terminated with or without cause by County. Termination without cause shall be effective only upon 30-day written notice to District. During said 30-day period County shall not revoke license. Upon termination of this agreement, County shall download and store District data for a period of 30 days during which District may reclaim all stored data. Upon the expiration of 30 days all data may be deleted. This Agreement may be terminated by District for cause in the event of a material breach of this Agreement, misrepresentation by County in connection with the formation of this Agreement or the software performance, or the failure to provide benefit to District. Termination for cause shall be affected by delivery of written notice of termination to County. Such termination shall be effective upon delivery of said notice.

**6) Confidential Relationship.**

District may from time to time communicate to County certain information to enable County to effectively improve the product. County shall treat all such information as confidential, whether or not so identified, and shall not disclose any part thereof without the prior written consent of the District. County shall limit the use and circulation of such information, even within its own organization, to the extent necessary to perform the intended upgrade or bug fixes. The foregoing obligation of this Paragraph 4, however, shall not apply to any part of the information that (i) has been disclosed in publicly available sources of information; (ii) is, through no fault of County, hereafter disclosed in publicly available sources of information; (iii) is now in the possession of County without any obligation of confidentiality; (iv) is required to be disclosed by operation of law; or (v) has been or is hereafter rightfully disclosed to County by a third party, but only to the extent that the use or disclosure thereof has been or is rightfully authorized by that third party.

County shall not disclose any reports, recommendations, conclusions or other results without the prior written consent of the District. In its performance hereunder, County shall comply with all legal obligations it may now or hereafter have respecting the information or other property of any other person, firm or corporation.

**7) Ownership of Documents.**

All final stored information within the database is the property of District and shall be delivered to District by County upon demand (hereafter, "Deliverables"). County shall own its working papers and

any engagement documentation. County also shall own its consultant-related general skills, know-how, expertise, ideas, concepts, methods, techniques, processes, software, materials or other intellectual property which may have been discovered, created, received, developed or derived by County either prior to or as a result of providing services under the Agreement, so long as County acquires such information without any unauthorized use or disclosure of confidential information of the District.

**8) No Assignments.**

Neither any part nor all of this Agreement may be assigned or subcontracted. Any assignment or subcontracting in violation of this provision shall be void.

**9) Audit.**

County agrees to maintain and preserve, until three (3) years after termination of the Agreement with the District and to permit the State of California or any of its duly authorized representatives, to have access to and to examine and audit any pertinent records related to this Agreement.

**10) Assumption of Risk.**

District understands that the transactions contemplated by this Agreement are subject to complex risks that may arise without warning and may at times be volatile. Because the losses that may occur can be of unanticipated magnitude, District expressly acknowledges that it hereby assumes any and all risks associated with the use of the *phishing simulation software* and accepts such terms and conditions. The County shall have no liability to District or any third party for any liability, problem, loss, or damage resulting from their use or attempted use of the simulation software.

**11) Independent Contractor.**

It is expressly understood that at all times, while rendering the services described herein, and in complying with any terms and conditions of this Agreement. County is acting as an independent contractor and not as an officer, agent, or employee of the District.

**12) Indemnification.**

Each party shall defend, indemnify, and hold the other party, its officers, employees, and agents harmless from and against any and all liability, loss, expense (including reasonable attorneys' fees), or claims for personal injury (including death) or damages to property arising out of the performance of this Agreement but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of the indemnifying party, its officers, employees, students, or agents.

**13) Notices.**

All notices hereunder shall be in writing and sent to the following address:

To County: Assistant Superintendent, Business Services  
6401 Linda Vista Road, San Diego, CA 92111

With a copy to: Cybersecurity Officer, Integrated Technology Services  
6401 Linda Vista Road, San Diego, CA 92111

To District: Mark Burroughs, Superintendent  
San Pasqual Union School District

**14) Governing Law/Venue.**

In the event of litigation, the Agreement and related matters shall be governed by and construed in accordance with the laws of the State of California. Venue shall be with the appropriate State or Federal court located in San Diego County.

**15) Compliance with Law.**

The County shall be subject to, and shall comply with, all Federal, State, and local laws and regulations applicable with respect to its performance under this Agreement including, but not limited to: licensing, employment, purchasing practices, wages, hours, and conditions of employment, including nondiscrimination.

**16) Final Approval.**

This Agreement is of no force or effect until approved by signature by the County Superintendent of Schools or his designee, the Assistant Superintendent of Business Services.

**17) Entire Agreement.**

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

**IN WITNESS WHEREOF**, the parties hereto have caused this Contract to be duly executed, such parties acting by their representatives being thereunto duly authorized.

**SAN DIEGO COUNTY SUPERINTENDENT OF SCHOOLS**

 Digitally signed by Michael Simonson  
Date: 2021.03.30 16:52:48 -07'00'

By (Authorized Signature)

Michael Simonson

Name (Type or Print)

Deputy Superintendent, Chief Business Officer

Title

**San Pasqual Union School District**



By (Authorized Signature)

Mark Burroughs

Name (Type or Print)

Superintendent

Title

3-26-21