

**License Agreement for San Diego Imperial County JPA Member Agency
Participation in the National Association of State Directors of Teacher
Education and Certification's Clearinghouse Access Program**

This **License Agreement** (the "Agreement") is made and entered into between San Pasqual Union School District hereinafter referred to as "District," and National Association of State Directors of Teacher Education and Certification (NASDTEC), a service provider, hereinafter referred to as "Contractor." All correspondence to District should be sent via U.S. Mail to: 15305 Rockwood Road, Escondido CA 92027 or via email to Mark Burroughs at Mark.burroughs@sanpasqualunion.net; correspondence to Contractor should be sent via U.S. Mail to Phillip Rogers dba National Association of State Directors of Teacher Education and Certification, 1629 K Street, NW Suite 300 Washington, DC 20006 or to Contractor's Agreement Manager Phillip Rogers at: philrogers@nasdtec.org.

This Agreement shall govern all provisions for services which are to be delivered by Contractor to District at the expense of San Diego Imperial County JPA. This Agreement is based upon the following Recitals and subject to the Terms and Conditions mutually agreed upon by the Parties, and each of them.

Recitals

Whereas, District, is a Local Education Agency legally constituted in the state of California, and is fully empowered to enter into agreements with third parties for the provision of materials, services and related matters.

Whereas, District is a member agency of San Diego Imperial County JPA, a self-insurance pool.

WHEREAS, Contractor, on behalf of its Member Jurisdictions, created and operates the National Identification Clearinghouse ("Clearinghouse"), an electronic repository of adverse actions imposed against educators' certification and/or licenses by Member Jurisdictions including all 50 states, U.S. Territories and certain Canadian provinces;

Whereas, Contractor certifies under penalty of perjury that it is a legally constituted entity fully licensed, empowered and otherwise authorized by law to provide the District with a license to access to the Clearinghouse.

Whereas, Contractor and San Diego Imperial County JPA have entered into a Funding Agreement in which San Diego Imperial County JPA has agreed to pay for the annual license fee expense for each of its member agencies who have entered into this License Agreement. The Funding Agreement is attached hereto as "Attachment A and is fully incorporated as set forth herein (hereinafter (the "Funding Agreement")). *Whereas*, the Parties are prepared to enter into this Agreement, whereby the Contractor covenants and agrees to provide for District a limited license for access to the Clearinghouse.

Now, therefore, in consideration of the Recitals and mutual covenants provided in this Contract, District and Contractor agree as follows:

Terms and Conditions

1. Limited License Grant. Contractor grants District a limited, non-exclusive, non-assignable license to access the Clearinghouse as described in this Agreement and in the Licensee Clearinghouse Handbook (“Handbook”), which is attached hereto as “Attachment B” and is incorporated herein by reference. Unless disclosure is otherwise required or compelled by law, District agrees that any use, distribution or access to the Clearinghouse not expressly authorized by this Agreement is expressly prohibited, including but not limited to the following prohibitions:

- a. District is expressly prohibited from accessing, using or distributing the Clearinghouse for any commercial purpose;
- b. District is expressly prohibited from allowing unauthorized viewing or access to the Clearinghouse or Clearinghouse data, including any third party or personnel not directly involved in the selection and hiring process for the Licensee;
- c. Licensee is expressly prohibited from using the Clearinghouse data for any purpose other than the intended purpose described within this Agreement;
- d. District will take all reasonable measures to safeguard the confidentiality of the downloaded or accessed Clearinghouse data; and
- e. District is expressly prohibited from transferring, assigning or sublicensing access to the Clearinghouse to any other party.

2. Release of Clearinghouse Data. In the event that laws and regulations related to the California Public Records Act or freedom of information requests mandate release of Clearinghouse data that has been accessed or compiled by the Licensee, Licensee agrees to redact prior to release all CERT_IDs and date of birth data except year of birth. Licensee also agrees to notify NASDTEC immediately of the third-party request for access prior to release.

3. License Fee Paid by San Diego and Imperial County JPA. In consideration of the license for limited access to the Clearinghouse granted hereunder and during the initial term of this Agreement, Licensee and Contractor understand and agree that San Diego and Imperial County JPA will pay to Contractor the annual license fee as set forth in the Funding Agreement. Under no circumstances shall District become liable to or obligated to make any payments to Contractor as a result of this agreement. By paying the fee, San Diego and Imperial County JPA does not assume any responsibility for the quality or content of the data provided by Contractor.

4. Associate Membership. District understands and agrees that a prerequisite for District’s participation in the Clearinghouse Access Program is subscribing to NASDTEC as an Associate Member. An ongoing requirement for Licensee access is to remain in good standing as an Associate Member.

5. Access to Clearinghouse. District agrees that District will have access to the Clearinghouse for the sole purpose of verifying that an applicant for employment or a prospective employee has not been reported to the Clearinghouse as having had a public adverse action taken against their educator certification and/or license or having been denied licensure. District acknowledges and agrees to all of the following:

- a. All adverse actions against an educator’s certification, license and/or employment eligibility submitted to the Clearinghouse is the responsibility of the reporting Member Jurisdiction and NASDTEC does not warrant that the information contained in the Clearinghouse is free from inaccuracies or omissions. All

adverse actions reported are public final decisions made in accordance with the submitting Member Jurisdiction's laws and regulations.

- a. District recognizes that the grounds for discipline against an educator or denials of certification for cause vary between each Member Jurisdiction and that not all of the grounds should be or are employment disqualifications.
- b. District understands that the information submitted to the Clearinghouse by Member Jurisdictions concerning any individual is intended only to serve as an alert to other jurisdictions and Licensees and that no employment action should be taken solely on the existence of a record in the Clearinghouse.
- c. Prior to making any employment decision based in whole or in part on data revealed in the Clearinghouse verification, District must confirm the action taken against the educator.
- d. Should District become aware of any unauthorized access or use of the Clearinghouse or the data contained therein, District shall immediately notify Contractor and use all reasonable efforts to notify the violator that its access or use is unauthorized.

6 Term and Termination of Agreement. This Agreement shall be effective upon the execution of this Agreement by both Parties and shall extend for a period of one year thereafter. Subject to the continuation of the Funding Agreement, this Agreement may be renewed for additional one-year periods by mutual agreement upon a written request for extension to Contractor prior to the expiration of the initial or subsequent licensee period. Either Party may terminate this Agreement without cause with 30 days written notice to the other Party. This Agreement, and any renewal thereof, shall immediately terminate upon termination of the Funding Agreement and in the event District's membership with San Diego and Imperial County JPA terminates for any reason. Upon termination for any reason, the Contractor shall remit to San Diego and Imperial County JPA a pro-rata refund of the license fee. Contractor may terminate immediately for cause any District License Agreement should the District breach the terms and conditions contained in this Agreement, the Funding Agreement or the Licensee Clearinghouse Handbook.

7 Insurance and Indemnity. Contractor agrees to abide by the insurance requirements of the Funding Agreement and provide District with the original insurance certificates as required therein. Further, the indemnity provisions of the Funding Agreement shall apply to District and are incorporated herein by this reference. District agrees to defend, indemnify and hold Contractor harmless from and against all liabilities, losses, expenses, claims, actions or judgments recovered or made against Contractor or its Member Jurisdictions for any damage or injury to persons arising out of or resulting from District's negligent or intentional misuse of Clearinghouse data.

8 Independent Contractor. Contractor certifies that the service or services to be performed under this Agreement are those of an independent contractor, and that Contractor is solely responsible for the work performed under this Agreement. Contractor represents and warrants that Contractor, its subcontractors, and their employees, and agents are not officers, agents, or employees of District. Contractor shall be responsible for all federal, state, and local taxes and any and all fees applicable to payments for services under this Contract. Any personnel performing services under this Agreement on behalf of Contractor shall at all times be under Contractor's exclusive direction and control. Contractor shall be responsible for all reports and obligations respecting such employees, including, but not limited to, social security taxes, income tax withholding, unemployment insurance, and workers' compensation insurance.

1. Assignment. Contractor shall not assign this Agreement without the prior written consent of District by executed addendum, including execution by the authorized assignee. Consent to an assignment may be withheld by District at its sole and unrestricted discretion. Should an assignment be consented to by District, the terms and conditions of this Agreement shall be binding on Contractor's successors and assigns. Prior to assignment, the assignee shall provide District with evidence of all insurance and licenses required by this Agreement.

2. Licenses and Authority to Do Business. Contractor warrants that it is a duly authorized entity fully empowered and legally entitled to enter into this Agreement and to agree to undertake and to perform the services recited. Contractor covenants and agrees to maintain, during the course of this Agreement, all necessary government and professional licenses, certifications and incidents of authority required for the legal performance of the contracted-for services. This includes but is not limited to, that Contractor shall ensure that all persons or entities hired or retained by Contractor shall hold and maintain current licenses and certifications required by law and standards and care. San Diego and Imperial County JPA maintains the right to request and immediately receive evidence of proper licensure and certificates at any time, upon request.

3. Applicable Law. This Agreement shall be construed, enforced and administered according to the laws of the State of California.

4. Dispute Resolution. If any dispute should arise under this Agreement, the Parties agree to abide by the dispute resolution procedures as set forth in the Funding Agreement.

5. Integration. This Agreement and the Funding Agreement reflects a fully integrated document, superseding any prior or concurrent oral or written understandings, agreements or representations. This Agreement may only be revised, amended or otherwise changed by a subsequent writing, signed by the Parties, evidencing a specific intent to amend, change or modify this Agreement.

6. Non-discrimination. Contractor agrees that no person shall be subject to unlawful discrimination based on race; color; gender; age; religion; national origin; U.S. military veteran status; marital status; sexual orientation; disability; source of income; or political affiliation in programs, activities, services, benefits, or employment in connection with this Agreement. Contractor agrees not to discriminate on any of these bases in its employment or personnel policies.

7. Confidentiality. Under the terms of this Agreement, Contractor may receive or obtain access to student data, pupil records, or other information that is privileged, confidential, not publically available, which is covered by federal or state privacy laws, rules, and regulations, including but not limited to the Family Educational Rights and Privacy Act of 1974 (FERPA) 20 U.S. § 1232g; the Protection of Pupil Rights Amendment (PPRA) 20 U.S.C. 1232h, the Health Insurance Portability and Accountability Act of 1996 (HIPAA) 42 U.S.C. § 300gg and 29 U.S.C § 1181 et seq. and 42 USC 1320d et seq., AB 1584, found at California Education Code Section 49073.1, the Children's Online Privacy Protection Act of 1998 (COPPA) 15 U.S. Code §§ 6501 et seq., the Student Online Personal Information Privacy Act (SOPIPA) Cal. Bus. & Prof. Code § 22586 et seq., the Early Learning Personal Information Protection Act (ELPIPA) Cal. Bus. & Prof. Code § 22586 et seq., or which is considered confidential and protected from disclosure by the policies and procedures of one of San Diego and Imperial County JPA's AMAs ("Confidential Information"). Contractor understands and agrees that all Confidential Information shall be preserved and protected as privileged or confidential, that Confidential Information of the AMAs shall be held strictly accordance with that AMA's policies and procedures, that Confidential

Information shall be preserved and held in compliance with all applicable state or federal laws, rules, or regulations, and that Confidential Information shall not be shared with any third party without the expressed written authorization of San Diego and Imperial County JPA.

& Authority. The undersigned warrant that they are duly authorized representatives of the Parties and have been empowered to execute this Agreement on behalf of party indicated.

DISTRICT

San Pasqual Union School District

Signature: _____

By: _____
Its Duly Authorized Representative

Date: _____

CONTRACTOR

**NATIONAL ASSOCIATION OF STATE
DIRECTORS OF TEACHER EDUCATION AND
CERTIFICATION**

Signature: *Phillip S. Rogers* _____

By: Phillip S. Rogers _____
Its Duly Authorized Representative

Date: 04/15/2019