

**GENERAL TERMS AND CONDITIONS
FOR VENDOR PROVIDED SERVICES
(GTCV)**

These General Terms and Conditions contain the following Articles:

- Article 1 – Scope of Services and Obligations
- Article 2 – Payment
- Article 3 – Term and Termination of Agreement; Suspension of Services
- Article 4 – Insurance
- Article 5 – Indemnity
- Article 6 – Dispute Resolution
- Article 7 – General Provisions

Terms with initial capital letter shall have the respective meanings set forth in this Agreement.

ARTICLE 1 – SCOPE OF SERVICES AND OBLIGATIONS.

Section 1.1 Purpose	By this Agreement, the Parties desire to set forth the terms and conditions upon which MCOE shall provide, and Counterparty shall compensate MCOE for, performance of MCOE’s obligations under this Agreement, and to set forth the Parties’ rights and obligations relating to this Agreement.
Section 1.2 Precedence of Agreement Terms	Notwithstanding any provision to the contrary within this Agreement or any attached exhibits hereto, the terms and conditions of this Cover shall supersede in the event of any inconsistency with the terms of such exhibits.
Section 1.3 Non-Exclusive Agreement	MCOE understands and agrees that (A) this Agreement does not constitute an exclusive Agreement for MCOE to provide the Services to Counterparty that are identical or similar to the Services; and (B) except as required by Purchase Order issued in accordance with this Agreement, MCOE is not obligated to provide any Services to Counterparty and Counterparty is not obligated to accept or pay MCOE for any Services.
Section 1.4 Qualification, Supervision, and Control	MCOE represents and shall ensure that it and all persons whom it employs or retains to perform this Agreement have the necessary training, skill, and experience and are qualified to so perform, including having throughout the Agreement Term all required licenses, permits, and/or certifications (collectively and separately “License”).

Section 1.5
Work Products and
Rights Thereto

Unless stated otherwise on the Cover in which case such provisions shall apply to the extent provided therein, this Section shall survive the termination of this Agreement and apply to: (A) any Work that Counterparty provides to MCOE pursuant to or relating to this Agreement (“Counterparty Work”); and (B) any work that is prepared for and/or provided to Counterparty by or on behalf of MCOE pursuant to or relating to this Agreement (“MCOE Work”). The following applies to the Counterparty Work: (A) the Counterparty Work is Counterparty’s property and Counterparty has all interests and rights thereto; (B) MCOE does not own and shall not claim any interest or right to or in the Counterparty Work; (C) Counterparty grants to MCOE a limited license during the Agreement Term to use and reproduce only those portions of the Counterparty Work necessary for MCOE to perform this Agreement; and (D) MCOE shall return any or all Counterparty Work to Counterparty upon Counterparty’s request. The following applies to the MCOE Work: (A) MCOE represents that the MCOE Work is MCOE’s original work and does not contain any unlawful matter or infringe upon any Third Party’s copyright, right, or interest; (B) the MCOE Work is an instrument of service and constitutes Counterparty’s sole property, and MCOE shall deliver to Counterparty the MCOE Work within 30 days of the date of completion of the Services or the date of termination of this Agreement, whichever is earlier; and (C) Counterparty shall have the right, and may authorize others to, use, modify, duplicate, distribute, sell, dispose, and/or disclose, in whole or in part, in any manner, and for any purpose, the MCOE Work. **“Work”** means any data, document, display, drawing, report, material, invention, work, and discovery, including any copyright, right, and interest therein or thereto and whether written, recorded, or electronically stored, and shall include source codes and other codes and information if this Agreement requires MCOE to prepare, create, modify, update, or perform work relating to any website, webpage, and/or computer software, program, or product. **“Third Party”** means a person who or an entity that is *not* any of the following: (A) a Party; (B) an owner, director, officer, employee, or agent of MCOE; (C) an employee, agent, or volunteer of Counterparty or a member, officer, or agent of the Merced County Office of Education Board Member; or (D) Agreement with (whether directly or through a subcontract of any level) or otherwise retained by a Party to act for or on the Party’s behalf.

Section 1.6
Compliance with
Applicable Laws and
Grant

Section 1.6.1
Generally

Each Party shall comply with all laws and regulations (collectively “**Law**”) applicable to its performance of this Agreement, and all Law that it agrees to comply under this Agreement (referred to collectively and separately as “**Applicable Law**” and shall include amendments and Law that are in effect as of the Effective Date or become effective during the Agreement Term). Each Applicable Law is deemed inserted herein; however, if any conflict or inconsistency exists between a provision in this Agreement and an Applicable Law, the provision in this Agreement shall govern except where such provision is specifically prohibited or void by the Applicable Law in which case the Applicable Law shall govern to the extent provided therein. Each Party shall comply with each grant (if any) that provides funding to pay for this Agreement and all Law and requirements applicable to such grant.

Section 1.6.2
Federal Grant Funds

The provisions of this Subsection apply if this Agreement is paid, in part or in whole, with federal grant funds. Each Party shall comply with federal laws, regulations, and requirements applicable to such federal grant funds. MCOE represents that it is not debarred, suspended, or otherwise excluded or ineligible to be awarded this Agreement. MCOE shall comply with federal suspension and debarment regulations, including, but not limited to, regulations implementing Executive Orders 12549 and 12689. MCOE shall also comply with: (A) applicable federal laws, regulations, and requirements, including but not be limited to, non-discrimination based on race, color, national origin, sex, disability, or age; (B) applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C 1251-1387); (C) Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act; (D) the Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352) and Counterparty’s Conflict of Interest Policies; (E) Conflict Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Agreements and Cooperative Agreements (37 CFR Part 401); (F) Surveillance Equipment Restrictions (2 CFR Section 200.216); (G) Domestic Preferences (2 CFR Section 200.322); Procurement of Recovered Materials (2 CFR

Section 200.323); (H) Small and Minority Business Preferences (2 CFR Section 200.321); (I) Federal Occupational Safety and Health Act (34 CFR 75.609); and (J) and Energy Conservation Compliance (34 CFR 75.616). Upon Counterparty's request, whether during or after the Agreement Term, MCOE shall cooperate with and provide Counterparty with documents and information relating to this Agreement that are necessary for Counterparty to comply with applicable federal laws, regulations, and requirements. The provisions of this Subsection shall survive the termination of this Agreement.

Section 1.7
Records and
Information

Section 1.7.1
Required Documents

MCOE shall provide to Counterparty each Required Document marked on the Cover, each of which is incorporated into and constitutes a part of this Agreement. If any Required Document becomes incorrect or inapplicable or expires during the Agreement Term, MCOE shall promptly notify in writing and/or submit to Counterparty the corrected, updated, or effective Required Document. If MCOE refuses to provide any Required Document or corrected, updated, or effective version thereof, Counterparty shall have the right to withhold payment of any or all of the Agreement Amount until such time that Counterparty receives the Required Document from MCOE.

Section 1.7.2
Confidential Material

If any documents and/or information (for example and not as a limitation, employee or student record) that are subject to nondisclosure or protection under the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C § 1232g; 34 CFR Part 99) and/or California laws (collectively and separately "**Confidential Material**") are provided to or created by MCOE for or pursuant to this Agreement, MCOE shall: (A) not release, disseminate, publish, or disclose the Confidential Material, except as required by law or a court order or as this Agreement may permit; (B) unless specifically permitted by Applicable Law, not use the Confidential Material for any purpose not related to MCOE's performance of this Agreement; and (C) protect and secure the Confidential Material, including Confidential Material saved or stored in an electronic form, to ensure that it is safe from theft, loss, destruction, erasure, alteration, and unauthorized viewing, duplication, and use. The provisions of this Subsection shall survive the termination of this Agreement.

Section 1.7.3
Record Retention,
Inspection, and Audit

MCOE shall maintain accurate books and records of all Services provided under, amounts billed pursuant to, and all documents required of MCOE under this Agreement for at least five years after the date on which this Agreement terminates and make them available, upon Counterparty's request, for review, audit, and/or copying by Counterparty and/or any federal or state agencies. Upon Counterparty's written notice to MCOE that a longer retention period is necessary in order for Counterparty to comply with records retention requirements under a court order or federal or state laws, MCOE shall continue to retain such books and records for the period stated in Counterparty's notice. If this Agreement involves the expenditure of \$10,000 or more in funds from the State of California, it is subject, for three years after the final payment is made, to the State Auditor's examination and audit at Counterparty's request or as part of an audit of Counterparty. The provisions of this Subsection shall survive the termination of this Agreement

ARTICLE 2 - PAYMENTS

Section 2.1
Agreement Amount

As full consideration and compensation for MCOE's performance of this Agreement, Counterparty shall pay MCOE the Agreement Amount in accordance with the Payment Schedule stated on the Cover. Except as stated in this Agreement or an amendment hereto, MCOE shall not be entitled to any other payment from Counterparty; in the event MCOE has received any payment to which MCOE is not entitled to under this Agreement or an amendment, MCOE shall refund such payment to Counterparty within 30 days of Counterparty's request. MCOE certifies that the Agreement Amount includes sufficient funds to permit MCOE to complete the Services and comply with all local, state, or federal labor laws or regulations during the Agreement Term, including payment of prevailing wage and that MCOE will comply with the provisions of Labor Code section 2810(d).

Section 2.2
Invoice, Additional
Information, and
Declaration Under
Penalty of Perjury

Before MCOE may receive any payment under this Agreement, MCOE shall submit an itemized invoice and other documents as set forth below to Counterparty at Counterparty's address for invoice stated on the Cover. Each person submitting and/or signing an invoice on behalf of MCOE declares under penalty of perjury under California laws, and certifies and attests that: (A) he/she has thoroughly reviewed the claim for payment and know its content; (B) the invoice

and supporting information are true, accurate, and complete, and reflect amounts due and services that MCOE has completed in accordance with this Agreement and the correct amount for those services; (C) MCOE has complied and is in compliance with all obligations required of MCOE under this Agreement; and (D) he/she is familiar with Penal Code section 72 pertaining to false claims, and knows and understands that submission and/or certification of a false claim may lead to fines, imprisonment, and/or other legal consequences. Upon receiving an invoice and if Counterparty objects to it and/or requires additional information, Counterparty shall notify MCOE and MCOE shall provide such information to Counterparty within 15 days after MCOE receives Counterparty's notice. If MCOE fails or refuses to provide the additional information, Counterparty shall have the right to withhold payment of any or all of the Agreement Amount until such time that Counterparty receives such information from MCOE.

Section 2.3
Payment Schedule,
Deduction, and
Release

The Payment Schedule, as stated on the Cover, shall apply to Counterparty's payment of the Agreement Amount to MCOE. Counterparty may deduct from each payment, if applicable, withholdings required by applicable laws, including but not limited to, those for non-California or foreign residents. MCOE's acceptance of any payment under this Agreement shall constitute, effective on the date of acceptance, a release of all claims and liabilities that MCOE has or may have against Counterparty for any additional payment for the Services, and/or matters, for which the payment was made. However, Counterparty's payment shall not relieve MCOE of MCOE's obligations under this Agreement or for deficient or defective Services that Counterparty discovers after the payment is made.

ARTICLE 3 – TERM AND TERMINATION OF AGREEMENT, AND SUSPENSION OF SERVICES.

Section 3.1
Agreement Term

This Agreement is effective on the Effective Date and continues in full force and effect thereafter until and including the Completion Date and any written extension thereto ("**Contract Term**") and, unless terminated during the Contract Term in accordance with Section 3.2 below, shall terminate at 12:00 midnight on the last day of the Contract Term without any notice or action by either Party.

Section 3.2
Termination During
Agreement Term

Section 3.2.1
Grounds For
Termination

During the Agreement Term, this Agreement may only be terminated pursuant to one or more of the following:

Section 3.2.1.1
Cause/Without
Cause

CAUSE/WITHOUT CAUSE. A Party may terminate this Agreement as marked on the Cover: (A) *With or Without Cause* – A Party, with or without cause, may terminate this Agreement by giving the other Party written notice for the Notice Period; or (B) *With Cause* – A Party may terminate this Agreement only upon the other Party’s material breach of one or more provisions of this Agreement and after the non-breaching Party has given the breaching Party written notice for the Notice Period.

Section 3.2.1.2
MCOE Insolvency

This Agreement shall terminate effective the day immediately preceding the day on which: (A) there is a filing by or against MCOE to have MCOE adjudged bankrupt or there is a petition for reorganization or arrangement of MCOE under any law relating to bankruptcy; (B) MCOE applies for, consents to, or has an order, judgment, or decree entered by a court for approval of a petition for or appointment of a receiver, trustee, custodian, or liquidator of all or a substantial part of MCOE’s assets; (C) MCOE is unable to, fails to, or admits in writing its inability generally to pay its debts or obligations as they become due; and/or (D) MCOE makes a general assignment for the benefit of creditors.

Section 3.3
Suspension of
Services

Despite any contrary provision in this Agreement, Counterparty shall have the right to suspend, delay, or interrupt any or all Services at any time during the Agreement Term by providing written notice to MCOE at least 15 days before the date on which the suspension, delay, or interruption is to begin, and stating the beginning and ending dates thereof (“**Suspension Period**”). Unless the Parties agree otherwise in writing, the following shall apply upon Counterparty’s exercise of the rights under this Section: (A) MCOE shall suspend, delay, or interrupt such Services as stated in Counterparty’s notice but shall continue to perform all other Services; (B) MCOE shall not be entitled to any compensation for Services that MCOE would have been required to perform under this Agreement but did not perform during the Suspension Period, and the Agreement Amount shall be

adjusted to deduct the amount of such compensation and such adjustment shall be set forth in an amendment executed by the Parties; (C) MCOE shall not be entitled to any damage, loss, or cost arising out of, resulting from, or relating to Counterparty’s exercise of its right under this Section or the Suspension Period; (D) MCOE shall resume performance of the suspended Services on the next business day following the last day of the Suspension Period; and (E) the Agreement Term shall remain the same.

Section 3.4
 Force Majeure

A Party is not liable for failing to perform or delaying performance of this Agreement due to events that are beyond the Party’s reasonable control and occurring without its fault or negligence, for example, acts of God such as epidemics or pandemics (nationally, statewide, or locally declared) tornadoes, lightning, earthquakes, hurricanes, floods, or other natural disasters (collectively “**Force Majeure**”), provided that the Party has promptly notified the other Party in writing of the occurrence of the Force Majeure, except that a Force Majeure shall not excuse Counterparty’s payment to MCOE of any portion of the Agreement Amount that is due to MCOE where MCOE has performed, in accordance with this Agreement, the Services for which payment is requested, and submitted an invoice and supporting information as required on the Cover and Section 2.2. MCOE shall not receive any payment for Services that MCOE did not perform during the period in which the Force Majeure occurred.

ARTICLE 4 – INSURANCE

Section 4.1
 Required Insurance

MCOE, at its cost unless stated otherwise on the Cover, shall maintain in effect insurance as marked on the Cover and complying, at a minimum, with the applicable requirements stated below.

Section 4.1.1
 General Liability

General liability insurance shall be in effect during the Agreement Term, coverage for property damage, bodily injury, and personal and advertising injury with limits of not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate.

Section 4.1.2
 Workers
 Compensation

Workers’ compensation shall be obtained in accordance with California laws and *Employer’s Liability Insurance* with a limit of not less than \$1,000,000 per accident, both of which shall be in effect during the Agreement Term.

Section 4.1.3 Automobile Liability	Automobile liability insurance shall be in effect during the Agreement Term.
Section 4.1.4 Professional Liability	Professional liability insurance shall be in effect during the Agreement Term and three years thereafter, with limits of not less than \$1,000,000 per claim and \$2,000,000 general aggregate, written on a claims-made basis. The obligation to maintain this insurance shall survive the termination of this Agreement.
Section 4.2 Proof and Notice, Deductible or Self- Insured Retention	MCOE shall provide to Counterparty: (A) as required on the Cover and from time to time as Counterparty may request, written proof satisfactory to Counterparty of the existence of the insurance required of MCOE, including any required endorsement; (B) upon Counterparty's request, a copy of the insurance policy and/or other evidence of insurance satisfactory to Counterparty; (C) no later than 15 days before the date on which a required insurance expires, written proof of renewal of the insurance, including any required endorsement; and (D) written notice within two business days of the occurrence of any of the following: (1) any required insurance is cancelled or non-renewed, (2) notice from the insurer that the insurer intends to or will cancel or non-renew the insurance, and/or limit, restrict, or reduce MCOE's insurance coverage such that the insurance does not comply with the requirements in Section 4.1, or (3) any required insurance's policy limits have been reduced below those required in Section 4.1. MCOE shall disclose any deductible or self-insured retention for any of the required insurance. Counterparty reserves the right to require that such deductible or self-insured retention be eliminated or reduced, that MCOE obtain a bond or other security guaranteeing payment of losses and costs within the limits of the deductible or self-insured retention, or that MCOE provide other assurances satisfactory to Counterparty. MCOE's obligation to provide written proof of the insurance required under Section 4.1 shall survive the termination of this Agreement.

ARTICLE 5 – INDEMNITY

To the extent applicable, the indemnity provisions contained in the Fingerprinting Certification and/or the TB Certification, as indicated on the Cover Page of this Agreement, shall govern. In all other respects, the indemnity, defense, and hold harmless obligations under or related to this Agreement shall be governed solely by the provisions of this Section.

The Vendor ("Indemnitor") shall:

(A) Indemnify, defend, and hold harmless the Merced County Office of Education (MCOE) and its agents, employees, officers, volunteers, governing board, members of the governing board, and directors (collectively, "Indemnitee") to the fullest extent permitted by California law from and against any Loss sustained by the Indemnitee or a third party, but only to the extent of the Vendor's liability as determined by a Final Determination; and

(B) Be solely responsible for, and shall pay all of its own attorney's fees and litigation costs related to any Claim or Loss without any right to reimbursement, indemnity, or contribution from the Indemnitee, including for any defense-related costs.

If the Vendor intends to seek or seeks indemnity and/or hold harmless from MCOE for any Loss, it shall provide written notice to MCOE within a reasonable time after it knows or should reasonably know of any Claim that may result in a Loss. The notice shall include, to the extent known or reasonably determinable, the relevant circumstances, involved entities or individuals, and the amount being claimed.

The Vendor's obligations under this Section are not limited by the existence or absence of insurance coverage and shall apply to the full extent permitted by California law. These obligations shall survive termination of this Agreement.

For purposes of this Section:- "Claim" means any claim, demand, administrative proceeding, lawsuit, cause of action, action, cross-complaint, cross-action, or proceeding related to this Agreement where there has been no Final Determination.- "Loss" means any bodily injury, property damage, personal injury, advertising injury, labor dispute (including but not limited to unpaid wages, employee benefits, and taxes), liability, loss, damage, judgment, expense, or cost (excluding attorney's fees and litigation costs incurred by a Party or third party) resulting from or related to this Agreement, for which there has been a Final Determination that the Vendor is liable.- "Final Determination" means a judgment, order, or decision by a court or government agency of competent jurisdiction that is not subject to appeal or for which the appeal period has expired.

ARTICLE 6 – DISPUTE RESOLUTION

The Parties shall meet and confer in good faith to resolve any dispute between them arising out of, resulting from, or relating to this Agreement, including any Claim or Loss for which a Party seeks indemnity pursuant to Article 5 and any dispute relating to this Agreement that arises or occurs after the termination of this Agreement. During any dispute, Counterparty's decision, for the time being, shall prevail and MCOE shall perform this Agreement as Counterparty directs without prejudice to a Final Determination, as this term is defined in Article 5. During a dispute regarding payment under this Agreement, Counterparty shall pay

MCOE the amount that is undisputed and due to MCOE; if a disputed amount is determined in a Final Determination to be due to MCOE, Counterparty shall pay such amount to MCOE within 30 days of the date of the Final Determination, unless a different date is stated in the Final Determination or in an agreement executed by the Parties, in which case, Counterparty shall pay MCOE in accordance therewith; each party will financially be responsible for paying their own corresponding attorney and any other related fees. Except for an action to preserve the status quo and/or prevent irreparable harm, a Party shall not commence any cause of action, action, lawsuit, or proceeding arising out of, resulting from, or relating to this Agreement until after the Party has complied with the provisions of this Article. The provisions of this Article shall survive the termination of this Agreement.

ARTICLE 7 – GENERAL PROVISIONS

Section 7.1
 Entire Agreement,
 Conflict, Execution,
 Amendment, and
 Waiver

This Agreement is a complete and exclusive statement of the Parties’ agreement under Code of Civil Procedure section 1856. This Agreement consists of, and any conflict or inconsistency in this Agreement shall be resolved by giving precedence as follows: Cover, General Terms and Conditions, exhibit or attachment stated in this Agreement as being a part of this Agreement, and the Required Documents. The Parties may execute this Agreement and any amendment in counterparts such that each Party’s signature is on a separate page. A copy or an original of this Agreement or an amendment with the Parties’ signatures, whether original or transmitted by electronic means, shall be deemed a fully executed Agreement. The Parties may amend or waive any provision of this Agreement only by a writing executed by both Parties.

Section 7.2
 Interpretation,
 Applicable Laws and
 Time Zone, Venue,
 Severability, and
 Survival of
 Termination

If there is uncertainty of any language in this Agreement, the Parties agree that Civil Code section 1654 shall not apply to interpret the uncertainty. The language of this Agreement shall be interpreted according to its fair meaning and not strictly for or against any Party and under California laws without giving effect to California’s choice of law provisions that may result in the application of the laws of another jurisdiction. All dates and times stated in this Agreement shall be according to Pacific Time. All causes of action, actions, lawsuits, and proceedings arising out of, resulting from, or relating to this Agreement shall be adjudicated in state or federal court in Merced County, California, provided that Counterparty does not hereby waive any immunity to suit. If a court of competent jurisdiction holds any provision of this Agreement void, illegal, or unenforceable, this Agreement shall remain in full force and effect and shall be

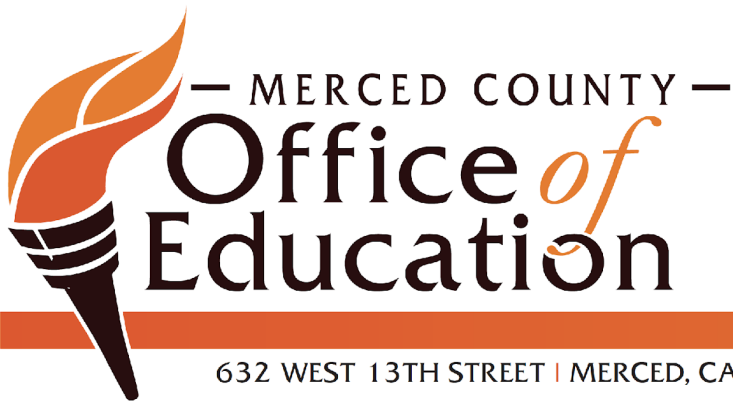
interpreted as though such invalidated provision is not a part of this Agreement and the remaining provisions shall be construed to preserve the Parties' intent in this Agreement. Any provision in this Agreement that by its nature applies after, or is specifically stated to survive, the termination of this Agreement shall survive the termination of this Agreement.

Section 7.3
Independent MCOE,
Assignment, Transfer,
and Subcontract

MCOE is an independent MCOE, and it and its officers, employees, and agents are not, and shall not represent themselves as, officers, employees, or agents of Counterparty. MCOE represents that it is a business service provider and the Services are provided as a bona-fide business-to-business relationship consistent with Labor Code section 2776. This Agreement does not and shall not be construed to create an employment or agency relationship, partnership, or joint venture between the Parties. MCOE and its officers, employees, agents, and any other person performing services for or on behalf of MCOE shall not have any right or claim against Counterparty for wages or employee compensation, social security benefits, workers compensation benefits, health benefits, vacation, sick leave, or other employee benefits. MCOE shall not assign or transfer any or all of its obligations and/or rights under this Agreement, including by operation of law or change of control or merger, without Counterparty's prior written consent. Unless stated on the Cover, MCOE shall not subcontract with any subcontractor to perform some or all of the Services required of MCOE.

Section 7.4
Notices

Except as may be stated otherwise in this Agreement in which case such provision shall govern to the extent provided therein, each Party shall give any notices, demands, and all other communications required or permitted under this Agreement in writing and by one of the following methods to the other Party at its address and/or email stated on the Cover, delivery to be effective upon receipt thereof by the other Party: (A) hand delivery; (B) sent by a reputable overnight courier service that tracks the delivery; (C) sent by certified mail, return receipt requested, postage prepaid; or (D) sent by regular mail. A Party may change its contact person and/or contact information stated on the Cover by notifying the other Party of the particular change and the effective date thereof in accordance with this Section. The provisions of this Section shall survive the termination of this Agreement



Steve M. Tietjen, Ed.D. | County Superintendent of Schools

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