

ADDENDUM NO. 1

AGREEMENT BETWEEN
MT. SAN ANTONIO COMMUNITY COLLEGE DISTRICT
AND
[INSERT CONTRACTOR'S NAME]

This Addendum ("Addendum") to the [INSERT TYPE OF AGREEMENT] (collectively "Agreement") between Mt. San Antonio Community College District ("District"), a California community college district and political subdivision of the State of California, and [INSERT NAME OF CONTRACTOR] ("Contractor"), [INSERT TYPE OF ENTITY/JURISDICTION OR IF AN INDIVIDUAL INSERT "an individual residing in the state of" AND INSERT STATE OF RESIDENCE] is entered into as of the XX day of XX, 2023. District and Contractor are also referred to collectively as the "Parties" and individually as "Party."

WHEREAS, District and Contractor wish to further clarify each Party's respective rights and obligations; and

WHEREAS, the terms and conditions contained in this Addendum shall supersede any other terms and conditions contained in any other agreements, Master Services Agreements, contracts, terms of use, terms of service, order forms, schedules, statement of work, policies, or any other Contractor documentation; and

WHEREAS, in the event of a conflict, this Addendum shall prevail; and

WHEREAS, it is understood and agreed by the Parties hereto, that upon the Effective Date, this Addendum shall become effective and the following terms and conditions shall be included and considered to be an integral part of the Agreement.

1. Scope of Service. Contractor's services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of his/her profession. Services to be provided by Contractor ("Work"): [INSERT DESCRIPTION OF WORK]. Define "**Software**"

Contractor will provide the District with a written list of the categories of data needed to perform the services contemplated by this Agreement. This list of requested data may be supplemented by written agreement of the Parties.

2. Term. This Agreement shall commence on [INSERT START DATE], and shall continue in full force and effect thereafter until and including [INSERT END DATE] ("Term"), unless this Agreement is terminated during the Term pursuant to this Agreement.

3. Payment.

A. Amount of Compensation. District agrees to pay Contractor, as full consideration and compensation for Contractor's performance of the Work under this Agreement, a total amount not to exceed [INSERT DOLLAR AMOUNT SPELLED OUT] Dollars (\$[INSERT NUMERICAL DOLLAR AMOUNT]) ("Contract Amount"). There shall be no increase in Fees during the Term of the Agreement. Additionally, District shall not be charged any late fees, or any expenses incurred by Contractor in collecting any past due amounts.

B. For Reimbursement of Expenses. Unless otherwise agreed upon by District in writing or specifically provided in this Agreement, Contractor shall assume and pay, at Contractor's sole expense, all costs and expenses incurred by Contractor in performing the Work under this Agreement ("Expenses").

C. Method and Schedule of Payment. District shall pay to Contractor the Contract Amount pursuant to invoice from Contractor in accordance with this Agreement.

i. Invoice. Contractor shall submit to District detailed billing information regarding the Work provided for the billing period, not more than once per month, and, **if applicable, District-authorized** Expenses incurred during the billing period. All **District-authorized** Expenses shall be documented **with original itemized receipts** and shall be **pre-approved in writing by District**, unless such expenses are specifically authorized by this Agreement. Invoices must be emailed to AccountsPayable@mtsac.edu and shall include the invoice date, date(s) of service(s), District's Purchase Order number (if available), and Contractor's Taxpayer Identification Number. Invoices shall be paid on a "net 30-day basis" for Work satisfactorily rendered (as determined by the District) pursuant to this Agreement. An invoice cannot be paid unless this Agreement has been signed by Contractor and has been properly executed by District, and Contractor has submitted a completed Vendor Form/Substitute Form W-9 to District's Contract and Procurement Services Department.

4. California State Tax Withholding for Nonresidents of California. It is mutually understood that if Contractor is a Nonresident of California, which may include California Nonresidents, corporations, limited liability companies, non-profits, and partnerships that do not have a permanent place of business in the State of California, the District is obligated to abide by California Franchise Tax Board (FTB) withholding requirements. The District is required to withhold from all payments or distributions of California source income made to a Nonresident when payments or distributions are greater than One Thousand Five Hundred Dollars (\$1,500) for the calendar year unless the District receives authorization for a waiver or a reduced withholding rate from the Franchise Tax Board. As of January 1, 2008, the standard withholding amount for all payments to Nonresident California

Contractors is Seven Percent (7%). District will deduct the amount ordered by the State of California from the payment hereunder and will pay such amount directly to the Contractor's California State Income Tax Account, settlement of which must be made by Contractor directly with the State of California through Withholding Services and Compliance MS F182, Franchise Tax Board, PO Box 942867, Sacramento, CA 94267-0651. Completion and submission of the appropriate form shall be the obligation of the Nonresident Contractor and Contractor shall defend, indemnify and hold harmless the District against any loss, expense, or liability arising out of Contractor's acts or omissions with respect to this nonresident requirement. Contractor shall provide all necessary documentation and information to help District comply with all tax requirements related to California nonresidents.

5. Trademark/Logo Use. Contractor must obtain written approval from District's Public Information Office ("PIO") to use the District's name and/or logos in any advertisements, promotions, press releases or other media. In the event such permission is extended, PIO will furnish Contractor with camera-ready artwork for such use. District, at its sole discretion, may limit or otherwise place conditions on Contractor's use of District's name, and/or logos in which case such limitations shall be incorporated into this Agreement. Contractor shall not revise, change, or otherwise alter any material related to District's name and/or logo without written consent from District. Contractor understands and agrees that all matters produced under this Agreement shall become the property of District and cannot be used without District's express written permission. District shall have all right, title and interest in said matters, including the right to secure and maintain the copyright, trademark and/or patent of said matter in the name of the District (specifically excluding any underlying pre-existing intellectual property). District may use Contractor's name in conjunction with the sale, use, performance and distribution of the matters, for any purpose and in any medium.

6. Independent Contractor. In the performance of the Work herein contemplated, Contractor is an independent contractor or business entity, with the sole authority for controlling and directing the performance of the details of the Work, District being interested only in the results obtained. Contractor, in the performance of this Agreement, shall be and act as an independent contractor and not an employee of District. Contractor, understands and agrees that he/she and all of his/her employees shall not be considered officers, employees or agents of the District, and are not entitled to benefits of any kind or nature normally provided employees of the District and/or to which District's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. Contractor assumes the full responsibility his/her acts and/or liabilities including those of his/her employees or agents as they relate to the services to be provided under this Agreement. Contractor shall assume full responsibility for withholding and payment of all: federal, state, local and applicable income taxes; workers' compensation; contributions, including but not limited to, unemployment insurance and social security with respect to Contractor and Contractor's employees. Contractor should be aware the IRS regulations require District to report total income exceeding six hundred dollars (\$600) under this and any additional Agreements in any given year. The District will not withhold taxes, unemployment insurance or social security for Contractor or Contractor's employees or independent subcontractors. Contractor agrees to indemnify and hold District harmless from and against any and all liability arising from any failure or alleged failure of Contractor to withhold or pay any applicable tax, unemployment insurance or social security when due or any failure or alleged failure to comply with any applicable regulation applicable to Contractor's employees.

7. Use of Subcontractors or Third Party Vendors. Contractor must obtain District's prior written approval to use any subcontractors while performing any portion of the Agreement and such approval may be conditioned on approval of the subcontract between Contractor and subcontractor. Such approval must include approval of the proposed subcontractor and the terms of compensation. District retains the right to obtain copies of subcontractor insurance coverage at any time. Nothing in this Section shall be interpreted as creating a contractual relationship between District and any approved subcontractor. Notwithstanding District's approval of any subcontractor's contract, Contractor shall remain solely responsible for any harm, damage, or claim arising from any subcontractor's acts or omissions as set forth in Section 13.

8. Public Retirement System Retirees. Contractor must disclose to District if Contractor has retired from the California State Teachers' Retirement System ("CalSTRS") or the California Public Employees' Retirement System ("CalPERS"). Pursuant to California Education Code Section 24214 and 24214.5, there are postretirement limitations on earnings if Contractor has retired from CalSTRS and hours worked limitations if Contractor has retired from CalPERS. If Contractor has retired from either CalSTRS or CalPERS, Contractor should be aware that the District is required to report all payments under this and any additional Agreements in any given year (July 1 – June 30).

CalSTRS or CalPERS: _____ Agency Retired From: _____ Date Retired: _____ D.O.B.: _____

9. Materials and Expenses. Contractor shall furnish, at his/her own expense, all labor, materials, equipment, supplies and other items necessary to complete the Work to be provided pursuant to this Agreement. District shall not be liable to Contractor for any costs or expenses paid or incurred by Contractor in performing Work for District.

10. Contractor Use of Other Copyright/Trademark/Patent Materials. Contractor is responsible for arranging and paying for all rights and copyrights necessary and for all costs arising from the use of any material covered by copyright, patent, trademark or franchise. Contractor agrees to indemnify, defend and hold harmless the District from any claims or costs, including legal fees, which might arise from questionable use of any such material. The District reserves the right to require verification.

11. Termination. This Agreement shall terminate upon expiration of the Term. Any termination of this Agreement during the Term shall be in accordance with the following:

- A. Termination for Convenience. During the Term of this Agreement, District may terminate this Agreement at any time at its convenience and without cause, upon providing Contractor at least thirty (30) days written notice before the effective date of termination. Upon such termination by District, Contractor shall only be entitled to payment for all Work provided, rendered, and received by District prior to the date of termination and in no event shall Contractor be entitled to any payment or reimbursement as the result of District's termination.
- B. Termination for Cause. In addition to any rights of early termination set forth in this Section, either Party may terminate this Agreement immediately upon written notice to the other Party in the event the other Party has committed a material breach of this Agreement that remains uncured ten (10) days after written notice of such breach. In the event of a termination, expiration, or other conclusion of this Agreement by District pursuant to this Section 12.B, Contractor shall refund a prorated portion of any fees paid by District within thirty (30) days. Upon termination, either for cause or convenience as stated in subsection A. above, Contractor shall provide the District with all documents produced, maintained or collected by Contractor pursuant to this Agreement, whether or not such documents are final or draft documents. Contractor shall delete or destroy all data within a reasonable time after termination
- C. Other Grounds. Notwithstanding any provisions in this Agreement, District, at District's sole discretion and upon written notice to Contractor, shall have the right to terminate this Agreement effective on the date stated in District's written notice in the event District determines, at its sole discretion, that Contractor (i) is unable or unwilling to perform the Work or meet any obligation or duty as described or made necessary by the Agreement, (ii) changes the nature of its business so that it is not compatible with the mission or needs of the District or is involved in any incident or activity which embarrasses, creates unwelcome scrutiny or attention, or otherwise causes or threatens harm to the reputation of the District, or (iii) fails to comply with federal, state, and/or local laws applicable to Contractor's performance of the Work under this Agreement.
- D. Rights upon Termination. Upon any termination, expiration, or other conclusion of the Agreement, Contractor shall only be entitled to payment for all services provided, rendered, and received by District prior to the date of termination and in no event shall Contractor be entitled to any payment or reimbursement as the result of District's termination. In the event of any termination, expiration, or other conclusion of the Agreement, Contractor shall refund a prorated portion of any fees paid by District within thirty (30) days.
- E. Transition Assistance. Upon expiration or earlier termination of the Agreement for any reason, Contractor shall fully cooperate with District's request to transition the services and all District Information to District or a third party designated by District. Such transition assistance shall include Contractor providing specifications, documentation, information and other assistance necessary to enable District or its third party vendor to provide the services.
- F. Protection of Confidential Information after Expiration or Termination. Upon expiration or earlier termination of the Agreement for any reason, Contractor shall return to District, or, at District's direction, securely destroy, all District Information in any form, recorded on any medium, or stored in any storage system, as follows: (a) burn, pulverize or shred physical assets containing District Information so that such information cannot be read or reconstructed, and (b) destroy or erase digital assets containing District Information so that the information cannot be read or reconstructed. Unless Contractor communicates in writing that it determined that return or destruction of the District Information is not feasible, an authorized representative of Contractor shall certify in writing to District, within fifteen (15) days after the termination or earlier expiration of the Agreement, that all District Information has been returned or destroyed (as the case may be) and that Contractor no longer retains any such information in any form.

12. Indemnification. Contractor agrees to defend, hold harmless and indemnify District, its parent, affiliates, subsidiaries, authorized representatives, directors, officers, agents and employees against any and all liability for any judgments, awards, expenses, fines, penalties, attorneys' fees, costs, or other claims for damages in connection with any suit, complaint, charge, proceeding or action of any kind alleging a violation of any statutory or regulatory provision or otherwise arising out of the negligent act or willful misconduct by Contractor and or any of Contractor's agents or authorized representatives, of its duties and responsibilities under this Agreement, unless such performance or nonperformance occurred at the direction of or was caused by District. This hold harmless and indemnification includes but is not limited to compensatory damages, punitive damages, regulatory fines and penalties, and extra-contractual liability and shall survive the termination of this Agreement.

District agrees to defend, hold harmless and indemnify Contractor against any and all liability for any judgments, awards, expenses, fines, penalties, attorneys' fees, costs, or other claims for damages in connection with any suit, complaint, charge, proceeding or action of any kind alleging a violation of any statutory or regulatory provision or otherwise arising out of the sole negligent act or willful misconduct by District, of its duties and responsibilities under this Agreement, unless such performance or nonperformance occurred at the direction of or was caused by Contractor.

13. Insurance. Contractor agrees to maintain, in full force and effect, at Contractor's expense, the following insurance coverages from an admitted carrier in the State of California with a Best Rating of A-VII or higher: (i) Commercial General Liability insurance, with limits of not less than One Million Dollars (\$1,000,000) per occurrence including bodily injury, broad form property damage and blanket contractual liability, written on an "occurrence" form; (ii) Professional Liability Insurance with limits of not less than One Million Dollars (\$1,000,000); (iii) Employer's Liability with limits of not less than One Million Dollars (\$1,000,000) per occurrence; (iv) Workers' Compensation insurance as required by statutory insurance requirement of the State of California; (v) Automobile Liability covering all owned, non-owned and hired vehicles with combined single limit for bodily injury and/or property damage of not less than One Million Dollars (\$1,000,000); and (vi) Cyber Liability insurance with limits of not less than Two Million

Dollars (\$2,000,000) for each occurrence and an annual aggregate of Two Million Dollars (\$2,000,000) covering claims involving privacy violations, damage to or destruction of electronic information, information theft, any release of private information, alteration of electronic information, extortion and network security, and coverage needs to include remediation costs for expenses incurred relating to notification expenses, call centers, Information Technology forensics, and Public Relations support following an incident or breach.

Contractor agrees to name District, District's Board of Trustees, its officers, agents, and employees as Additional Insured under its policy(ies). Contractor shall deliver Certificate(s) of Insurance and Additional Insured Endorsement(s) evidencing the required coverages to the District, which shall be subject to the District's approval for adequacy of protection. The Certificate(s) of Insurance shall provide thirty (30) days prior written notice of cancellation. All certificates and endorsements must be emailed to purchasing@mtsac.edu before Work is to commence.

District's receipt of documents that do not comply with the requirements stated herein, or Contractor's failure to provide documents that comply with the requirements stated herein, shall not limit or relieve Contractor of the duties and responsibility of maintaining insurance in compliance with the requirements in this Section and shall not constitute a waiver of any of the requirements in this Section.

Contractor, upon execution of this Agreement and periodically thereafter upon request, shall furnish District with certificates of insurance evidencing such coverage. The Commercial General and Automobile Liability policies shall name the District as additional insureds with respect to any potential tort liability, irrespective of whether such potential liability might be predicated on theories of negligence, strict liability or products liability. The Contractor shall be required to provide District with 30 days' prior written notice if the insurance afforded by this policy shall be suspended, cancelled, reduced in coverage limits or non-renewed. Premiums on all insurance policies shall be paid by Contractor and shall be deemed included in Contractor's obligations under this Agreement at no additional charge.

14. Transportation. Contractor hereby acknowledges and understands that it is his/her responsibility to arrange for transportation to provide all Work necessary and/or required by this Agreement and is solely responsible for all associated costs. The District is in no way responsible for, nor does District assume any liability for, any injury or loss which may result from Contractor's transportation for which the Contractor shall indemnify the District in accordance with Section 13 above.

15. Personal Information. Contractor shall properly manage and secure all Personal Information, maintained by the District, Contractor may access in carrying out the scope of work defined in this Agreement, in accordance with all applicable global, federal, state, and local laws, rules and regulations. Personal Information is defined as any information provided by District or collected by Contractor in connection with the Work performed under the Agreement:

- That identifies or can be used to identify, contact, or locate the individual to whom such information pertains, or
- From which identification or contact information of an individual person may be derived.

Personal Information includes, but is not limited to: name, address, phone number, fax number, email address, Social Security number, passport number, other government-issued personal identifiers, financial account number, credit or debit card information, medical information, health insurance information, or a user name or email address, in combination with a password or security question and answer that would permit access to an online account. Additionally, to the extent any other information (such as, but not limited to, a personal profile, unique identifier and/or biometric information) is associated or combined with Personal Information, then such information also will be considered Personal Information.

16. Security of District Information.

- A. District Responsibilities. District agrees to prepare and furnish to Contractor, upon request, such information as is reasonably requested by Contractor in writing, including any District Information, as defined in Section 17(B), below, in order for Contractor to perform its obligations under this Agreement.
- B. Ownership of District Information and Data. District will retain ownership of, and the ability to control, all District data imported into the Software ("District Information"). District Information includes student records, as defined in Education Code section 76210(a)(1) ("Student Records"). District students have a right to access any and all Student Records maintained by the District, in accordance with Education Code section 76230. Contractor may, however, use and disclose to third parties District Information that has been anonymized or de-identified, but only to improve its educational products, to demonstrate the effectiveness of its products and in the development and improvement of educational sites, services and applications. Upon termination, expiration or other conclusion of this Agreement, all District Information shall be permanently deleted or otherwise returned to District by Contractor in a usable format as mutually agreed to between the District and Contractor within fifteen (15) calendar days after such termination or expiration, or such other date as mutually agreed to in writing between the District and Contractor.
- C. Prohibition on Unauthorized Use or Disclosure of District Information. Contractor agrees to hold District Information in strict confidence. Contractor shall not use or disclose District Information received from, or on behalf of, District, except as permitted or required by the Agreement, or as required by law. Contractor agrees that it will protect the District Information it receives from, or on behalf of, District, according to commercially acceptable standards and no less rigorously than it protects its own confidential information.

- D. District Remedies. If District reasonably determines in good faith that Contractor has materially breached any of its obligations under this Section, District, in its sole discretion, shall have the right to provide Contractor with a fifteen (15) day period to cure the breach, or terminate the Agreement immediately if cure is not possible. District shall provide written notice to Contractor describing the violation and the action it intends to take.
- E. Maintenance of the Security of District Information. Contractor shall develop, implement, maintain and use appropriate administrative, technical and physical security measures to preserve the confidentiality, integrity and availability of all maintained or transmitted District Information received from, or on behalf of, District or its students. Contractor acknowledges that Student Records must be protected and will take all reasonable or legally required actions, including the designation and training of responsible individuals, to ensure the security and confidentiality of Student Records. These measures will be extended by contract to all subcontractors used by Contractor to perform the services authorized by this Agreement. Contractor will identify those employees and subcontractors who will have access to Student Records and ensure such individuals receive appropriate instructions as to how to comply with the security and confidentiality requirements of this Agreement with respect to Student Records.
- i. Information Security Plan. Contractor shall implement and maintain a written information security program ("WISP") that contains physical, administrative and technical safeguards necessary to ensure the confidentiality, integrity and availability of District Information, including such physical, administrative and technical safeguards as are necessary to ensure that District Information disclosed between Contractor and District is not used or disclosed by Contractor, or by any of Contractor's subcontractors, affiliates, agents or third parties, except as provided in the Agreement.
 - ii. Protection and Detection. Contractor's WISP shall include policies and procedures to detect and protect against all actual or suspected attempt to access or use District Information, or the systems that house such information, or an attempt to compromise the confidentiality, integrity or availability of such information, by an unauthorized person, whether or not such information was actually accessed, used or compromised. Contractor warrants that all Student Records will be encrypted in transmission using a minimum of 128 bit AES encryption or any other comparable industry-standard encryption. In addition, Contractor will use industry-standard and up-to-date security tools and technologies such as anti-virus protections and intrusion detection methods in providing services under this Agreement. This Agreement is intended to comply with California Education Code Section 76200 *et seq.* Contractor shall cooperate with District's request to complete any security surveys, assessments or audits. Contractor shall promptly correct any deficiencies in its security program that are detected by Contractor or District at no cost to District.
- F. Reporting of Concerns Regarding the Integrity of Software, Unauthorized Disclosures or Misuse of District Information. Contractor, within one (1) business day of discovery, shall report to District any information it receives, discovers, or learns that suggests the Software provided to District may exhibit any defects, errors, vulnerabilities, or other problems that could adversely affect the District (collectively, a "Vulnerability"). Contractor's report shall identify: (i) the nature of the Vulnerability; (ii) the actual or possible nature of the harm District may experience as a result of the Vulnerability; (iii) anyone involved with the Vulnerability including those who may try to exploit the Vulnerability; (iv) what Contractor has done or shall do to mitigate any effect of the Vulnerability; and (v) what corrective action Contractor has taken or shall take to prevent future similar Vulnerability. Contractor shall provide such other information, including a written report, requested by District.
- G. Indemnity. Contractor shall indemnify, defend and hold District harmless from all claims, liabilities, damages or judgments involving a third party, including District's costs and attorneys' fees, which arise as a result of Contractor's failure to meet any of its obligations under this Section. Contractor shall be responsible for restoring reasonable integrity to all data storage and security systems, in the event of such unauthorized disclosure or breach. This Section shall survive the expiration or termination of the Agreement.

17. Data Encryption. All data shared under this Agreement must be managed, maintained and stored within the United States of America. Contractor must encrypt all District Information, using secure industry standard protocols, at rest (e.g. database and disk encryption including backups) and in transit (e.g. system-to-client).

18. Accessibility of Information Technology. Contractor hereby warrants that the Work to be provided under the Agreement complies with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C §794d), and its implementing regulations set forth at Title 36, Code of Federal Regulations, Part 1194. Contractor agrees to promptly respond to and resolve any complaint regarding accessibility of its products brought to its attention. Contractor further agrees to indemnify and hold harmless the Mt. San Antonio Community College District, the Chancellor's Office of the California Community Colleges and any California community college using the Contractor's products from any claim arising out of its failure to comply with the aforesaid requirements. Failure to comply with these requirements shall constitute a breach and be grounds for termination of the Agreement. Any concerns or complaints regarding accessibility of the services should be directed to: **[INSERT CONTRACTOR'S POINT OF CONTACT]**.

19. Required Accessibility and Data Security Documents. Contractor shall provide District with a completed Voluntary Product Accessibility Template ("VPAT") and Higher Education Community Vendor Assessment Toolkit ("HECVAT") for review and approval by District prior to the start of Work. Additionally, Contractor shall provide an updated VPAT and HECVAT to the District

annually. The District may terminate this Agreement immediately if Contractor makes material, non-compliant revisions to its VPAT and/or HECVAT (in the District's sole determination). Contractor hereby certifies that all information provided to District in its VPATs and HECVATs is accurate. All VPATs and HECVATs submitted to the District are incorporated herein by reference with the same force and effect as though fully set forth herein. Failure to provide VPAT and/or HECVAT on an annual basis may be considered a material breach of this Agreement.

20. Service Availability. Contractor's website will be operational and available to District at least 99.8% of the time in any calendar month.

- A. "Unscheduled Downtime" is defined as a period of time when the Contractor's website is not available to District.
- B. "Unscheduled Downtime Period" means a period of ten (10) consecutive minutes of Unscheduled Downtime.
- C. "Monthly Uptime Percentage" is measured on a monthly basis by taking the total number of minutes in a calendar month minus the number of minutes of Unscheduled Downtime suffered from all Unscheduled Downtime Periods in a calendar month, divided by the total number of minutes in a calendar month.

In the event of any Unscheduled Downtime projected to last longer than thirty (30) minutes, Contractor shall promptly notify the District, in writing, and such notice shall include the status of the Unscheduled Downtime. For any month in which the Contractor's Monthly Uptime Percentage falls below 99.8%, District will be eligible to receive a credit of one percent (1%) off of the annual Fee paid by District ("Service Credit") for each full percentage point that the Monthly Uptime Percentage falls below 99.8% during that month. Service Credits will be applied against the following year's annual Fee, and if service is discontinued for any reason, the Service Credit shall be in the form of a refund at the end of service.

21. Modifications to Software. Contractor shall provide thirty (30) days' notice of any modifications to be made to the software. District reserves the right to approve any modifications, changes, or additions to the software. District may terminate the Agreement if any modifications substantially affect District's use of the software, at District's sole discretion. A prorated refund of any paid fees will be provided to District within thirty (30) days of termination.

22. Availability of District Information. District may request copies of District Information at any time for any purpose. Upon such request, Contractor will make available to District a copy of all District Information for secure download within ten (10) business days. District Information shall be provided by Contractor in a usable format as mutually agreed upon between the Parties.

23. Data Backup. Contractor will conduct regular backups of all District Information. Contractor shall adhere to standard information services industry practices by maintaining backup copies of District Information to allow for recovery in the event of loss, corruption or other similar event or circumstances that may occur in the process of performing the Work under the Agreement. District may request copies of District Information backups for archival purposes. Upon such request, Contractor will make available to District a copy of all District Information for secure download within ten (10) business days in a mutually agreeable format.

24. Disaster Recovery. Contractor shall have in place comprehensive a disaster recovery plan including contact information that specifies the procedures to be followed with respect to the Work to be provided under the Agreement in the event Contractor's facilities or equipment are destroyed or damaged. Contractor shall make such plans available to the District for review and from time to time upon District's written request, Contractor shall deliver a copy of its then-current disaster recovery plan to District. Such plans shall provide for backup and record protection for data relating to the District. Contractor shall test the plan annually and shall promptly implement such plan upon the occurrence of a disaster or business interruption.

25. Representations and Warranty. Contractor represents and warrants that it has administered privacy and confidentiality training to all of its employees and subcontractors before they are permitted to access to District Information, and that Contractor's certifications (for example, SSAE-16, SysTrust, PCI DSS, VPAT) are valid and accurate and will remain so throughout the Term of the Agreement.

Contractor warrants that to the best of its knowledge at the time of delivery, Software (i) shall be free of harmful code (i.e. computer viruses, worms, trap doors, time bombs, disabling code, or any similar malicious mechanism designed to interfere with the intended operation of, or cause damage to computers, data, or software), and (ii) shall not infringe or violate any intellectual property right. Without limiting the generality of the foregoing, if District believes harmful code may be present in any software delivered, Contractor shall, upon District's request, provide a master copy of the Software for comparison and correction.

Where Contractor resells hardware or Software it purchased from a third party, and such third party offers additional or more advantageous warranties than those set forth herein, Contractor shall pass through any such warranties to District and shall cooperate in enforcing them. Such warranty pass-through shall be supplemental to, and not relieve Contractor from Contractor's warranty obligations set forth above.

26. Right to Audit. Contractor shall make its policies, practices, books, records, systems and facilities related to District Information, and the requirements and obligations set forth in the Agreement, available to District, and their respective auditors, for the purpose of determining Contractor's compliance with applicable laws, rules, and regulations, and the terms and conditions of the Agreement. Contractor shall ensure such audit right extends to subcontractors who have access to District Information. If it is determined that Contractor is in violation of applicable laws, rules, and regulations, or the terms and conditions of the Agreement, Contractor shall promptly remedy any such violation to the extent applicable to Contractor and shall immediately certify the same in writing to District.

27. PCI Compliance. [IF APPLICABLE] Contractor affirms that, as of the Effective Date, it has complied with all applicable requirements to be considered Payment Card Industry Data Security Standard ("PCI DSS") compliant, and has performed the necessary steps to validate its compliance with the PCI DSS. Contractor agrees to supply the current status of Contractor's PCI DSS compliance, and evidence of its most recent validation of compliance not more frequently than annually upon request by District. Contractor agrees that it is responsible for the security of all cardholder data that it obtains or possesses on District's behalf with respect to those transactions, including but not limited to the functions relating to storing, processing, and/or transmitting such cardholder data.

28. Compliance with Data Privacy Laws. Contractor shall be solely responsible for ensuring its services and its actions comply with all applicable state, federal, and international data privacy and security laws and regulations, including without limitation Family Educational Rights and Privacy Act ("FERPA"), the California Information Practices Act (California Civil Code § 1798 et seq.), the Privacy Act of 1974, as amended, (5 U.S.C. § 552), Education Code sections 76240 et seq., California Civil Code § 1798.29, and all District Board Policies, Administrative Regulations, and other guidance issued by the District, Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), California Consumer Privacy Act ("CCPA"), and the European Union General Data Protection Regulation ("GDPR") (EU 2016/679) (collectively, the "Privacy Laws"). To ensure compliance with the Privacy Laws, Contractor shall have in place, comply with, and take appropriate steps reasonably designed to ensure compliance in all material respects with their policies and procedures relating to data privacy and security and the collection, storage, use, disclosure, handling, and analysis of personal information (the "Policies"). Contractor shall have at all times made all disclosures to users or customers required by applicable laws and regulatory rules or requirements. Contractor further certifies that it: (i) has not received notice of any actual or potential liability under or relating to, or actual or potential violation of, any of the Privacy Laws, and has no knowledge of any event or condition that would reasonably be expected to result in any such notice; (ii) is currently conducting or paying for, in whole or in part, any investigation, remediation, or other corrective action pursuant to any Privacy Law; or (iii) is a party to any order, decree, or agreement that imposes any obligation or liability under any Privacy Law. Contractor shall indemnify, defend and hold District harmless from all claims, liabilities, damages or judgments involving a third party, including District's costs and attorneys' fees, which arise as a result of Contractor's failure to meet any of its obligations under this Section. This Section shall survive the expiration or termination of the Agreement.

29. Exclusion of Limitation of Liability. The liability of Contractor to District for any reason and upon any cause of action related to the Agreement whether in tort or in contract or otherwise shall not be limited. Any reference to a limitation of liability in any of Contractor's agreements, terms of use, policies, or any other documentation is hereby deleted.

30. Electronic Software Tax Liability. Contractor agrees to deliver purchased software solely in an electronic form and via electronic means. Contractor shall be responsible for ensuring that the software is not delivered to the District in tangible form and shall defend and indemnify the District for any and all tax liability resulting from Contractor's failure to deliver the software as required by this Agreement.

31. Assignment. The obligations of the Contractor pursuant to this Agreement shall not be assigned by the Contractor without the express, written approval of the District, which may not be unreasonably withheld.

32. Compliance with Applicable Laws. The Work completed herein must meet the approval of the District and shall be subject to the District's general right of inspection to secure the satisfactory completion thereof. Contractor agrees to comply with all federal, state and local laws, rules, regulations and ordinances that are now or may in the future become applicable to Contractor, Contractor's business, equipment and personnel engaged in operations covered by this Agreement or accruing out of the performance of such operations ("Rules"). Contractor will comply with District's policies, procedures, rules and regulations and applicable laws posted on District's website at <https://www.mtsac.edu/governance/trustees/apbp/index.html>. If District disapproves of any service provided by Contractor, or if Contractor fails to comply with any applicable Rule, Contractor shall address the issue immediately at no additional cost to District.

33. Permits/Licenses. Contractor and all Contractor's employees or agents shall secure and maintain in force such permits and licenses as are required by law in connection with the furnishing of Work pursuant to this Agreement.

34. Professional Practices. All Work provided pursuant to this Agreement shall be provide in a manner consistent with the standards of care, diligence and skill ordinarily exercised by professionals in similar fields and circumstances in accordance with sound professional practices.

35. Employment with Public Agency. Contractor, if an employee of another public agency, agrees that Contractor will not receive salary or remuneration, other than vacation pay, as an employee of another public agency for the actual time in which Work is actually being performed pursuant to this Agreement.

36. Entire Agreement/Amendment. The Agreement documents consist of this Agreement, any exhibits attached to or referenced herein, and all amendments and/or modifications issued in writing, duly approved by District's Board of Trustees, and executed by the Parties after the release of this Agreement. Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence: (a) provisions set forth in this Agreement, (b) provisions set forth in any referenced attachments or exhibits to this Agreement attached or incorporated herein by reference.

37. Exhibits. All exhibits referenced herein and attached hereto shall be deemed incorporated into and made a part of this

Agreement by each reference as though fully set forth in each instance in the text hereof.

38. Non-Discrimination. Contractor agrees not to engage in unlawful discrimination in the provision of Work, allocation of benefits, accommodation in facilities, employment of persons, or in the acceptance, assignment, treatment, evaluation or compensation of students who participate in programs sponsored or arranged by District, on the basis of race, color, religion, genetic information, nationality, national origin, ancestry, pregnancy, sex, gender, gender identity, gender expression, ethnicity, age, medical condition, mental or physical disability, marital status, sexual orientation, military or Vietnam-era veteran status, or any other characteristic protected by law.

39. Non-Waiver. The failure of District or Contractor to seek redress for violation of, or to insist upon, the strict performance of any term or condition of this Agreement, shall not be deemed a waiver by that Party of such term or condition, or prevent a subsequent similar act from again constituting a violation of such term or condition.

40. Force Majeure. Neither Party shall be deemed in default or in violation of this Agreement if prevented from performing any obligation hereunder for any circumstance or reason beyond its control, including, without limitation, acts of God or of the public enemy, governmental restrictions or regulations, epidemics or pandemics, flood, storm, strikes, regulatory or legal delay or restraint. In this event, all or a portion of either Party's performance is rendered impossible, the Parties shall cooperate with each other and use their best efforts to remove the impediment or develop a substitute manner of performance.

41. Dispute Resolution. In the event of any dispute arising under the terms of this Agreement, the Parties shall meet and confer within seventy-two (72) hours of the request of any Party with the objective of negotiating in good faith to resolve such dispute. If within seven (7) calendar days of this meeting, or such longer period as may be mutually agreed upon by the Parties, the dispute cannot be resolved by the Parties' mutual satisfaction, the Parties shall mutually select a mediator to facilitate the resolution of the dispute through mediation. The mediator shall conduct the proceedings as he or she deems appropriate to resolve the dispute. The fees and expenses of the mediator shall be divided equally between the Parties, provided that each Party shall be responsible for their own costs, including the costs of counsel, related to the mediation. Absent written agreement of the Parties to the contrary, the mediation process shall be completed or terminated within forty-five (45) days of the initial request for mediation. Unless otherwise agreed to in writing or provided for by law, arbitration is not available to the Parties as a method of resolving disputes that would arise under this Agreement.

42. Notice. All notices or demands to be given under this Agreement by either Party to the other Party shall be in writing and given either by: (a) personal service, (b) electronic mail, or (b) by U.S. Mail, mailed either by certified or registered mail, return receipt requested, with postage prepaid. Service shall be considered given when received, if personally served, or, if mailed, on the third day after deposit in any U.S. Post Office. The address to which notices or demands may be given by either Party may be changed by written notice given in accordance with the notice provisions of this Section. At the date of this Agreement:

District: Mt. San Antonio Community College District
Attn: Director of Purchasing
1100 N. Grand Ave.
Walnut, CA 91789
Phone: (909) 274-4245
purchasing@mtsac.edu

Contractor: **[INSERT CONTRACTOR'S NAME]**
[IF BUSINESS INSERT CONTRACT PERSON'S NAME]
[INSERT ADDRESS]
[INSERT CITY, STATE, ZIP]
[INSERT PHONE NUMBER]
[INSERT EMAIL ADDRESS]

A Party may change its/his/her designated representative and/or address for the purpose of receiving notices and communications under this Agreement by notifying the other Party of the change in writing and in the manner described in this Section.

43. Severability. If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.

44. Interpretation. In interpreting this Agreement, it shall be deemed to have been prepared by the Parties jointly, and no ambiguity shall be resolved against District on the premise that it or its attorneys were responsible for drafting this Agreement or any provision hereof. The captions or heading set forth in this Agreement are for convenience only and in no way define, limit, or describe the scope or intent of any Sections or other provisions of this Agreement. Any reference in this Agreement to a Section, unless specified otherwise, shall be a reference to a Section of this Agreement.

45. Conflict of Interest. Contractor hereby represents, warrants and covenants that (i) at the time of execution of this Agreement, Contractor has no interest and shall not acquire any interest in the future, whether direct or indirect, which would conflict in any manner or degree with the performance of Work under this Agreement; (ii) Contractor has no business or financial interests which are in conflict with Contractor's obligations to District under this Agreement; and (iii) Contractor shall not employ in the performance of Work under this Agreement any person or entity having any such interests.

46. Applicable Law, Venue and Interpretation. This Agreement, and the Parties' rights and obligations, are to be governed by and construed in accordance with California laws. If any action is instituted to enforce or interpret this Agreement, the venue of any such action shall be in the appropriate state or federal court in Los Angeles County, California, provided that nothing in this Agreement constitutes a waiver of immunity to suit by District. The provisions of this Agreement are to be construed in all cases as a whole, according to their fair meaning, and not strictly for or against any Party.

47. Provisions Required By Law Deemed Inserted. 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 this Agreement shall be read and enforced as though it were included therein.

48. Authority to Execute. The individual(s) executing this Agreement on behalf of the Contractor is/are duly and fully authorized to execute this Agreement on behalf of Contractor and to bind the Contractor to each and every term, condition and covenant of this Agreement.

49. Attorney's Fees/Costs. Should litigation be necessary to enforce any terms or provisions of this Agreement, then each Party shall bear its own litigation and collection expenses, witness fees, court costs and attorneys' fees.

50. Approval by District's Board of Trustees. Pursuant to Education Code Section 81655, this Agreement is not valid and does not constitute an enforceable obligation against District unless and until District's Board of Trustees has approved or ratified this Agreement.

51. Time is of the Essence. Time is of the essence with respect to all provisions of this Agreement.

52. Counterparts. This Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.

53. Certification Regarding Debarment, Suspension or Other Ineligibility. [applicable to all agreements funded in part or whole with federal funds].

- A. By executing this contractual instrument, Contractor agrees to comply with applicable federal suspension and debarment regulations, including, but not limited to, regulations implementing Executive Order 12549 and 12689 (2 CFR part 180).
- B. By executing this contractual instrument, Contractor certifies to the best of its knowledge and belief that it and its principals:
 - 1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
 - 2) Have not, within a three-year period preceding the execution of this contractual instrument, been convicted of, or had a civil judgment rendered against them, for: (a) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or Local) or private transaction or contract; (b) Violation of Federal or State antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging; (c) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice; or (d) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects Contractor's present responsibility;
 - 3) Are not presently indicted for, or otherwise criminally or civilly charged by any government entity (Federal, State or Local), with commission of any of the offenses enumerated in B.2) above, of this certification;
 - 4) Have not, within a three-year period preceding the execution of this contractual instrument, had one or more public transaction (Federal, State or Local) terminated for cause or default;
 - 5) Shall not, except as otherwise provided under applicable federal regulations, knowingly enter into any lower tier covered transaction with a person who is proposed for debarment, debarred, suspended, declared ineligible, or voluntarily excluded by any federal department or agency from participation in such transaction; and
 - 6) Include in all lower tier covered transactions, and all solicitations for covered transactions, provisions substantially similar to those set forth herein.

IN WITNESS WHEREOF, Parties hereby agree.

CONTRACTOR

MT SAN ANTONIO COMMUNITY COLLEGE DISTRICT

BY: _____
 Signature of Authorized Representative

Print Name _____
 Print Title _____

BY: _____
 Signature of Authorized Representative

Print Name _____
 Print Title _____

Date

Date
District's Board of Trustee's
Approval/Ratification Date

District Initiating Department

District Contact Name

District Contract #

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SAMPLE