

INDEPENDENT SCHOOL DISTRICT NO. 709
CONTRACT FOR CONSULTING SERVICES

THIS AGREEMENT is made as of this 1st of July, 2011, by and between INDEPENDENT SCHOOL DISTRICT NO. 709, in St. Louis County, Minnesota, (hereinafter referred to as "District") and APEX Online Development, LLC (hereinafter referred to as "Consultant").

1. **Employment**. The District hereby retains and employs Consultant to furnish services to the District for the a three year term automatically renewing on a yearly basis, commencing upon board approval July 2011.
2. Consultant shall furnish the District, in accordance with the policies of the Board of Education, those general services outlined in the attached Proposal for "Total Training" services and support.
3. The District retains the right to employ other consultants at any time and for any reason deemed necessary or appropriate by the District.
4. During the term of this Agreement, the first year setup and service maximum total fees shall not exceed the sum of **\$16,875**, subsequent years maximum total fees, shall not exceed the sum of **\$11,250**. Additionally, training customization can be proposed on a Time and Materials basis for **\$80.00/hr**. A statement of work will be provided before engaging in custom work, unless any additional sums are specifically authorized in advance by the School Board of the District.
5. The fees to be paid under this Agreement are as follows:
 - a. Summary of Fees cost estimates in the attached Proposal for Total Training, Service costs.

- b. Terms of Payment. Payment shall be made by the District within 30 days of the application for payment by the Consultant;
- c. Any other terms of payment in the attached proposal are incorporated by reference into this Agreement.

6. The Consultant shall perform work pursuant to this Agreement pursuant to the request and authority of the following persons:

<u>District Employee</u>	<u>Position</u>
Bill Hanson	Director of Business Services

7. The Consultant shall report to the following persons regarding its work pursuant to this Agreement, or to their designees:

<u>District Employee</u>	<u>Position</u>
Curt Conrad	Environmental Health and Safety Coordinator

8. The Consultant shall perform its services to the best of its professional ability and efforts.

9. The Consultant shall maintain the following minimum insurance during the term of this Agreement: \$1.5Million general and professional liability insurance naming ISD 709 as the Certificate Holder

10. **Independent Contractor**. Both the District and the Consultant agree that the Consultant will act as an independent contractor in the performance of its duties under this Agreement. Accordingly, the Consultant shall be responsible for payment of all taxes, including Federal, State and local taxes, arising out of the Consultant's activities in accordance with this Agreement, including by way of illustration, but not limited to, Federal and State income tax,

Social Security tax, Unemployment Insurance taxes, and any other taxes or business license fees as required.

11. **Confidential Information.** The Consultant agrees that any information received by the consultant during any furtherance of the Consultant's obligations in accordance with this Agreement, which concerns the personal, financial or other affairs of the District will be treated by the Consultant in full confidence and will not be revealed to any other persons, firms or organizations.

12. **Protection of the District.** To the extent that work by the Consultant or others on behalf of the District is to be planned, conducted, supervised or reviewed by the Consultant, the Consultant shall advise the District if such work:

- a. is not being performed pursuant to the plans and specifications, according to the best practice or in accordance with industry standards;
- b. should be rejected or modified;
- c. if the work should be performed in a different manner and whether other work should be performed;
- d. if the District should be advised of any other facts or opinions regarding that work.

In all respects, the Consultant shall represent the interests of the District and act to protect those interests and endeavor to guard the District against defects, deficiencies and omissions in the performance of the work.

13. **Arbitration.** Any disputes between the District and the Consultant shall be resolved through binding arbitration. The arbitration shall be conducted in the State of Minnesota, and Minnesota law shall apply. Unless otherwise agreed by the parties, the arbitration shall be conducted pursuant to the rules of the American Arbitration Association.

At the option of the District, the arbitration shall include in one consolidated arbitration proceeding all claims and disputes regarding the Consultant and any architects, contractors, subcontractors, materialmen and other consultants as may be involved in the dispute. Consultant shall include this paragraph in all its subcontracts dealing with the work of the District.

Following the issuance of a demand for arbitration, any party to the arbitration shall be entitled to use all discovery methods permitted in the Minnesota Rules of Civil Procedure for the District Courts. Once selected, the arbitrator shall hear any discovery disputes regarding discovery unless otherwise agreed by the parties.

14. **Indemnity and Defense of the District.** Consultant hereby agrees to defend, indemnify and hold the District harmless from all claims relating to its work pursuant to this Agreement.

In the event that Consultant breaches its obligation to defend, indemnify and hold the District harmless, then in addition to its other damages, the District shall be entitled to recover its attorney's fees and costs and disbursements incurred in enforcing this Agreement.

15. **Contract Document.** This Contract also incorporates the other documents relating thereto and specifically including: APEX Online Development, LLC Order Schedule

prepared for Duluth Public Schools, dated May 19 2011. **CONSULTANT:**
Apex, Online Development, LLC **NO. 709**

By: _____
Its _____

By: _____
Its School Board Chair