

Master Services Agreement

The purpose of this Master Services Agreement (“Agreement”) is to set forth the terms of the agreement between Red Wing Public Schools, and Information, Insight and Impact Works LLC (“i3 Works”), regarding services provided by i3 Works for Red Wing Public Schools. The Agreement includes all exhibits to this document and all Statements of Work (as defined below).

1. Master Agreement. If Red Wing Public Schools wants i3 Works to provide services, the parties will execute a Statement of Work that describes those services. The terms and conditions of this Master Services Agreement shall be deemed to be incorporated into each Statement of Work unless, given the context of a particular term or condition, that term or condition is clearly not applicable to the Statement of Work, or unless a term or condition is expressly excluded from the Statement of Work. The existence of this Master Services Agreement does not obligate Red Wing Public Schools to retain i3 Works to provide any services.

2. Definitions. “Technology” means i3 Works’ proprietary technology, including software tools, hardware designs, algorithms, software (in source and object code forms), user interface designs, architecture, class libraries, objects and documentation (both printed and electronic), drawings, designs, know-how, trade secrets, and any related intellectual property rights throughout the world, including any derivatives, improvements, enhancements, extensions, inventions, discoveries, and developments conceived, reduced to practice, or developed during the performance of any work pursuant to any statement of work.

“Deliverable(s)” means the tangible and intangible software, source and object code, artwork, documentation, printed graphics, and the like, specified in a Statement of Work.

“Services” means any services performed by i3 Works specified in a statement of work.

“Fees” refers to the schedule of estimated fees, and expenses for work outlined in a statement of work (the professional fees and expenses will together be referred to as the “Fees”).

3. Project Contacts. Each party shall designate one or more “Project Contacts” from such party’s internal personnel, who shall be responsible for implementing this Agreement and for providing timely management decisions as required or requested relating to the Services set forth in a Statement of Work. The initial Project Contacts are listed on the applicable Statement of Work, and may be replaced from time to time by the designating party upon provision of written notice to the other party.

4. Compensation. Red Wing Public Schools agrees to pay i3 Works for the Services and deliverables in accordance with rates and schedules set forth in the applicable Statement of Work. Red Wing Public Schools shall pay any federal, state, or local taxes that are imposed on the delivery of Services or Deliverables that i3 Works must pay, excluding taxes based on i3 Works’ income. i3 Works shall invoice Red Wing Public Schools for Services rendered as defined in the Statement of Work, and will charge interest of one and one-half percent (1.5%), or the highest rate allowed by law, if less, per month on any past due amount(s). i3 Works may, at its discretion, cease performing any Services or withhold any Deliverables if Red Wing Public Schools does not pay an invoice in full within thirty (30) days of the invoice date, unless otherwise specified in a Statement of Work. Red Wing Public Schools shall make all payments due hereunder without any right of set-off or chargeback.

5. Subcontractors and Assistants. i3 Works shall be solely responsible for the selection and management of its personnel in performance of the Services. In addition, i3 Works reserves the right to subcontract any and all of its performance obligations hereunder, but shall be responsible for the performance of such subcontractors.

6. i3 Works’s Obligations. i3 Works shall perform the Services in a professional manner in accordance with the professional standards of practice in the industry.

7. Confidentiality. Each party agrees that all proprietary information that is disclosed as a result of this Agreement or any Statement of Work by a disclosing party to a receiving party which relates to disclosing party's business (including without limitation, business plans, financial data, customer information, marketing plans, etc.), technology (including without limitation, technical drawings, designs, schematics, algorithms, technical data, product plans, research plans, software, etc.), products, services, trade secrets, know-how, formulas, processes, ideas, and inventions (whether or not patentable) or which should be reasonably understood by receiving party as the confidential or proprietary information of disclosing party (collectively, "Confidential Proprietary Information") are the confidential and proprietary information of the disclosing party. Except as specifically provided elsewhere in this Agreement, the receiving party shall not use the Confidential Proprietary Information of the disclosing party other than for the purposes of this Agreement, and shall disclose the same only on a need to-know basis to those of its full-time employees and contractors expressly contemplated hereunder who are subject to written confidentiality agreements with terms no less stringent than those provided in this Agreement. Each party shall diligently enforce such confidentiality agreements with its employees and contractors and shall be responsible for any breach of that party's confidentiality obligations under this Agreement by its employees and contractors. Other than as provided by the foregoing, receiving party shall not disclose disclosing party's Confidential Proprietary Information to third parties. Each of the parties shall use at least the same procedures and degree of care which it uses to prevent the disclosure of its own Confidential Proprietary Information, but in no event less than a reasonable standard of care. The parties' confidentiality obligations under this Agreement shall survive for a period of five (5) years following the termination or expiration of this Agreement. Upon the termination or expiration of this Agreement, or upon the disclosing party's earlier request, the receiving party shall destroy any and all originals and copies of disclosing party's property or Confidential Proprietary Information that the receiving party may have in its possession.

Exceptions: The parties' confidentiality obligations under this Agreement will not apply to any proprietary information that receiving party can document:

- A. Is or becomes generally known to the public without fault of receiving party;
- B. Was in its possession without any obligation of confidentiality prior to receipt thereof from disclosing party;
- C. Is independently developed by receiving party without use of or reference to the Confidential Proprietary Information of disclosing party; or
- D. Is rightfully obtained by receiving party from a third party without any obligation of confidentiality to disclosing party. Nothing in this Agreement will prohibit receiving party from disclosing Confidential Proprietary Information of disclosing party if legally required to do so by judicial or governmental order or in a judicial or governmental proceeding ("Required Disclosure"); provided that receiving party shall: (i) give disclosing party reasonable notice of such Required Disclosure prior to disclosure; (ii) cooperate with disclosing party in the event that it elects to contest such disclosure or seek a protective order with respect thereto; and (iii) in any event only disclose the exact Confidential Proprietary Information, or portion thereof, specifically requested by the Required Disclosure.

Injunctive Relief: Receiving party acknowledges and agrees that due to the unique nature of disclosing party's Confidential Proprietary Information, there can be no adequate remedy at law for any breach of its obligations hereunder, that any such breach may allow receiving party or third parties to unfairly compete with disclosing party resulting in irreparable harm to disclosing party and, therefore, that upon any such breach or any threat thereof, disclosing party will be entitled to appropriate equitable relief in addition to whatever remedies it might have at law. Receiving party will notify disclosing party in writing immediately upon the occurrence of any such unauthorized release or other breach of which it is aware. The obligations under this paragraph shall survive the termination of this Agreement.

8. Educational Data Security Safeguards. All not public educational data/records that are received by i3 Works from Red Wing Public Schools and that are thereafter stored, used, maintained, or disseminated by representatives and contractors of i3 Works are subject to the requirements of the Minnesota Government Data Practices Act and the Family Educational Rights and Privacy Act ("FERPA"). i3 Works acknowledges and understands that under this

Agreement it is acting as a party to whom Red Wing Public Schools has outsourced discrete institutional services or functions and for that limited purpose it is considered a "school official" under FERPA and its implementing regulations. i3 Works acknowledges that its use and maintenance of all educational data/records obtained from Red Wing Public Schools are subject to the direct control of Red Wing Public Schools. i3 Works acknowledges and agrees that it will only use, access, view, maintain, or disseminate not public educational data/records provided for the purposes directed or requested by Red Wing Public Schools or an authorized Project Contact, and will abide by all lawful directives of Red Wing Public Schools pertaining to the creation, collection, receipt, use, storage, dissemination, and maintenance of not public educational data/records. i3 Works acknowledges that it is subject to the requirements of FERPA and the MGDPA governing the use and redisclosure of not public educational data/records, including the requirements in 34 C.F.R. § 99.33(a) that the personally identifiable information (PII) from education records may be used only for the purposes for which the disclosure was made, and governing the redisclosure of PII from education records. i3 Works agrees to establish appropriate security safeguards for all not public educational data/records received from Red Wing Public Schools. i3 Works will maintain the confidentiality of any and all not public educational data/records received from Red Wing Public Schools as may be required by FERPA and the MGDPA. Red Wing Public Schools shall be responsible for any response to requests for data under the MGDPA as any such request relates to any data it provides to i3 Works or for data i3 Works creates for Red Wing Public Schools under any statement of work. The requirements under this paragraph shall survive the termination or expiration of this Agreement.

9. Promotion. i3 Works may identify Red Wing Public Schools, and a description of the statement of work on its web site or in other materials promoting i3 Works and its portfolio of work.

10. Ownership and License. Work Product. i3 Works acknowledges that all copyrightable material, notes, records, drawings, and other works of authorship embodied in the Deliverables delivered to Red Wing Public Schools under a Statement of Work, other than Pre-Existing Materials, will be the sole property of Red Wing Public Schools, subject to Red Wing Public Schools's full payment of the related Fees as set forth in the Statement of Work. i3 Works hereby assigns and shall assign (or cause to be assigned) to Red Wing Public Schools, all rights in the Deliverables (other than Pre-Existing Materials), and any intellectual property rights embodied therein.

11. Pre-existing Materials. For all Pre-existing Materials, Red Wing Public Schools agrees that such materials are and shall remain the sole property of i3 Works. Commencing at the time final payment is received, i3 Works hereby grants to Red Wing Public Schools a worldwide, perpetual, non-transferable, royalty-free license to use any Pre-Existing Materials that are incorporated by i3 Works in the Deliverables solely to the extent necessary for Red Wing Public Schools to exploit the Deliverables in the manner contemplated by this Agreement or a Statement of Work. No other grants of licenses or rights to Red Wing Public Schools will be implied from the provisions stated in this Agreement or a Statement of Work. Red Wing Public Schools shall not obliterate or remove and will reproduce i3 Works' intellectual property notices contained in the Pre-existing Materials. "Pre-Existing Materials" means any and all materials:

- A. developed by i3 Works prior to the Effective Date of a statement of work
- B. developed by i3 Works other than in performance of this Agreement or a Statement of Work; or
- C. that are generally applicable to i3 Works' products and services and are not unique to the business of Red Wing Public Schools or a Statement of Work.

12. Term and Termination.

Term: This Agreement shall commence on August 31, 2020 (the Effective Date) and continue until the later of:

- A. One (1) year after the Effective Date;
- B. Six (6) months following the completion of all Services and deliverables under all Statements of Work entered into hereunder; or

C. Until terminated in accordance with the terms of this Section ("Term").

Termination: Either party may terminate this Agreement upon written notice to the other party:

D. If the other party is in material breach of any obligation under this Agreement and such breach is not remedied within thirty (30) days of written notice thereof; or

E. In the event of a bankruptcy, insolvency, liquidation, or similar meritorious proceedings of the other party or if such party admits in writing its inability to pay its debts when due, or makes an assignment for the benefit of its creditors.

F. Effect of termination. Upon termination, Red Wing Public Schools shall pay i3 Works all of i3 Works' outstanding Fees accrued through the date of termination. The following sections shall survive any termination or expiration of this Agreement: Section 3 (Project Contacts), Section 7 (Confidentiality), Section 8 (Educational Data), Section 9 (Promotion), Section 10 (Ownership and License), Section 11 (Pre-existing Materials), and Section 13 (Indemnification).

13. Indemnification. Red Wing Public Schools acknowledges that in order to complete the Services and Deliverables under a Statement of Work, Red Wing Public Schools may direct i3 Works to enter into agreements with third parties, including without limitation, authors, artists, and talent, for necessary goods or services. With respect to those third parties that Red Wing Public Schools selects and requires i3 Works to use, Red Wing Public Schools will defend, hold harmless, and indemnify i3 Works from any and all claims, damages, liability, costs, and expenses, if any, of such third party for (i) infringement of intellectual property rights, (ii) violation of privacy rights, including without limitation, rights of publicity, or (iii) breach of contract.

The School District and i3 Works agree to defend, indemnify, and hold each other, and their respective officers, employees, and agents harmless from and against any liability, loss, expense (including attorney's fees), or claims of injury or damages arising out of the performance of the terms of this Agreement but only in proportion to and to the extent such liability, loss, expense, attorney's fees, or claims for injury or damages are caused by the negligent acts or omissions of the indemnifying party, and/or its officers, employees or agents.

APPROVAL

Red Wing Public Schools

By:

Name:

Title:

Date:

i3 Works

By:

Kevin Anderson

Name:

Kevin Anderson

Title:

Principle

Date:

10/3/2020