

ASPIREDU®, INC.

WEB SERVICES SUBSCRIPTION AGREEMENT

This is a Web Services Subscription Agreement (the "Agreement"), effective as of May 20, 2019 (the "Effective Date"), by and between AspirEDU®, Inc., with business offices located at 303 61st Street, Unit A, Holmes Beach, Florida 34217 ("AspirEDU"), and Duluth Public Schools with offices located at 215 N 1st Avenue East, Duluth, MN 55802 ("Subscriber").

Background Information

AspirEDU has developed and maintains an integrated suite of Internet based services allowing educators to organize and analyze student performance data for the purpose of improving retention and graduation rates (the "Services"). Subscriber wishes to utilize the Services in connection with Subscriber's organization, and AspirEDU has agreed to provide such Services pursuant to the terms and conditions of this Agreement. Accordingly, AspirEDU and Subscriber agree as follows:

Operative Provisions

1. License to Use Services. AspirEDU grants to Subscriber a nonexclusive, nontransferable, worldwide license to access and use the Services described in the Schedules to this Agreement, as such Schedules may be added from time to time by mutual agreement of the parties to add additional Services. All rights not expressly granted to Subscriber are reserved by AspirEDU. The license granted to Subscriber pursuant to this Agreement will permit use of the Services by Subscriber's employees, contractors and agents specified by Subscriber ("End-users").
2. Limitations on Use. The licensed Services are for use only by Subscriber and its assigned End-users. Except as permitted by this Agreement, the website from which the Services are accessed (the "Site") and content comprising the Services (the "Content") may not be decompiled, reverse engineered, disassembled, transferred, distributed, resold, sublicensed, or used to create any derivative works. Subscriber may not use any network monitoring or discovery software to determine the Site's architecture, or extract information about usage or identities of users. Subscriber may not use any robot, spider, other automatic software or device, or manual process to monitor or copy the Site or Content. Subscriber may not (i) license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party the Services or Content in any way; (ii) modify or make derivative works based upon the Site or the Content; (iii) create Internet "links" to the Site or "frame" or "mirror" any Content on any other server or wireless or Internet-based device. Subscriber may use the Services only for its internal business purposes and shall not: (i) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (ii) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortuous material, including material harmful to children or violative of third party privacy rights; (iii) send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs; (iv) interfere with or disrupt the integrity or performance of the Services or

the data contained therein; or (v) attempt to gain unauthorized access to the Services.

3. AspirEDU Proprietary Information. Subscriber agrees that the Content is protected by copyrights, trademarks, service marks, patents and/or other proprietary rights and laws. Except as expressly provided in this Agreement, nothing contained herein shall be construed as conferring to Subscriber any license or right under copyright or other intellectual property right law. Subscriber may make copies of Content only for purposes of Subscriber's internal use in connection with the Services.

4. Confidentiality and Privacy:

a. Confidentiality. Both parties shall maintain as confidential and shall not disclose, copy, nor use for purposes other than the performance of this Agreement, any information which relates to the other party's business affairs, trade secrets, technology, research and development, pricing, or the terms of this Agreement ("Confidential Information") and each agrees to protect that Confidential Information with the same degree of care it exercises to protect its own confidential information and to prevent the unauthorized, negligent, or inadvertent use, disclosure, or publication thereof. Confidential Information shall not include any information that (a) was known to the recipient before receiving the same from the discloser in connection with this Agreement; (b) is independently developed by the recipient without reliance on any Confidential Information of the discloser; (c) is acquired by the recipient from another source without restriction as to use or disclosure; or (d) is or becomes generally known to the public through no fault or action of the recipient. Upon expiration or termination of this Agreement, both parties agree to return respective to each other all such Confidential Information. Breach of confidentiality may cause irreparable damage and therefore, the injured party shall have the right to equitable and injunctive relief, and to recover the amount of damages (including reasonable attorneys' fees and expenses) incurred in connection with such unauthorized use.

b. Subscriber's Student Data. AspirEDU acknowledges and agrees that any information regarding Subscriber's students that is acquired by AspirEDU in connection with the provision of Services pursuant to this Agreement, including without limitation, student identity and performance information (collectively, "Student Data"), will be considered confidential and proprietary information of Subscriber, and all right, title and interest in such Student Data is owned by Subscriber. AspirEDU will use such Student Data only as necessary to perform the Services in accordance with this Agreement and will maintain such Student Data in strict confidence in accordance with the provisions of this Agreement, the Family Educational Rights and Privacy Act ("FERPA") and other applicable laws related to confidentiality of Student Data. AspirEDU's agrees to comply with FERPA's obligations as a "school official" and FERPA's "legitimate educational interests" limitation on use or disclosure of education records. AspirEDU will implement reasonable and typical administrative, technical, and physical safeguards to secure its facilities and systems from unauthorized access, and to secure Student Data. Without limiting the foregoing, AspirEDU agrees to abide by FERPA's limitations on re-disclosure of Student Data, to not use or disclose Student Data for any purpose other than the purpose for which such disclosure is made, except as permitted by this Agreement, as required by law or as authorized by Subscriber in writing.

c. Upon request from Subscriber, AspirEDU will provide Subscriber with any or all Student Data in AspirEDU's possession.

d. To the extent AspirEDU is required by applicable law, regulation or legal process to disclose Student Data to any third party, AspirEDU will provide Subscriber, to the extent permitted by law, with timely advance written notice of any such disclosure to afford Subscriber an opportunity to seek a protective order or other relief in Subscriber's discretion and Subscriber's cost.

e. Subscriber, and not AspirEDU, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all Student Data, and AspirEDU shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any Student Data except to the extent caused by AspirEDU's gross negligence or willful misconduct.

5. General Terms of Use:

a. Subscriber will be responsible for all use of the Services by its End-users, unless and until AspirEDU receives written notice from you that an End-user is accessing the Services on an unauthorized basis. Subscriber agrees to indemnify AspirEDU from and against any and all losses, damages, judgments, liabilities, costs, and expenses (including, but not limited to, reasonable attorneys' fees) suffered or incurred by AspirEDU in connection with or as the result of any (i) unauthorized use by parties which have obtained access to the Services through Subscriber; or (ii) use of the Services by an authorized End-user in a manner that violates the terms of this Agreement.

b. AspirEDU reserves the right to investigate complaints or reported violations of this Agreement and to take any action it deems appropriate, including without limitation, reporting any suspected unlawful activity to law enforcement officials, regulators, or other third parties and disclosing any information necessary or appropriate to such persons or entities relating to user profiles, e-mail addresses, usage history, posted materials, IP addresses and traffic information.

c. Subscriber agrees to abide by all applicable laws and regulations in connection with its use of the Services, including those related to data privacy, international communications and the transmission of technical or personal data. Subscriber will: (i) notify AspirEDU immediately of any unauthorized use of the Services or any other known or suspected breach of security; and (ii) report to AspirEDU immediately and use reasonable efforts to stop immediately any unauthorized copying or distribution of Content that is known or suspected by Subscriber's End-users.

6. Term of License. The initial term of the Agreement (the "Initial Term") shall commence upon execution of this Agreement and shall remain in full force and effect for a period of one year after the date Subscriber commences live usage of the Services (the "Commencement Date"). Following the Initial Term, this Agreement automatically renews for an unlimited number of one year additional terms ("Renewal Terms"), unless either party provides the other

with written notice of intent to not renew no less than 60 days prior to the end of the Initial or any Renewal Term, as applicable. This Agreement and the license granted herein may also be terminated by either party at any time upon providing 30 days' prior written notice to the other party if such termination is due to a breach of this Agreement by the other party. The right to terminate this Agreement following a breach shall be in addition to such other rights or legal remedies that may be available to the non-breaching party. The parties reserve the right to seek all remedies available at law and in equity for violations of this Agreement.

7. Charges and Payment of Fees. The initial charges payable upon the Effective Date of this Agreement are the Implementation Fee and Subscription Fee for the Initial Term, as such terms are defined in the attached Services Schedule(s). Subscription Fees for any Renewal Period will be invoiced by AspirEDU within 15 days of the commencement of the Renewal Period, and such invoice is due within 30 days of receipt by Subscriber. AspirEDU may change the Subscription Fees applicable to any Renewal Period to reflect current Subscriber enrollment and any license fee changes, provided that AspirEDU gives Subscriber written notice of such change a minimum of 90 days prior to the commencement of such Renewal Period. All payments are nonrefundable. All pricing terms are confidential, and Subscriber agrees not to disclose them to any third party, except as otherwise required by applicable law. Delinquent payments will bear interest at the rate which is the lower of 1.5% per month, or the maximum rate allowed by law.

Fees for any additional services will be charged on an as quoted basis. AspirEDU's fees are exclusive of all taxes, levies, or duties imposed by taxing authorities, and Subscriber will be responsible for payment of all such taxes, levies, or duties, excluding only United States (federal or state) taxes based solely on AspirEDU's income. Subscriber agrees to provide AspirEDU with complete and accurate billing and contact information at all times. This information includes Subscriber's legal company name, street address, e-mail address, and name and telephone number of an authorized billing contact. All fees are payable in U.S. dollars. If Subscriber believes any bill is incorrect, Subscriber must contact AspirEDU in writing within 45 days of the invoice date of the invoice containing the amount in question to be eligible to receive an adjustment or credit.

8. Non-Payment and Suspension. In addition to any other rights granted to AspirEDU herein, AspirEDU reserves the right to suspend or terminate this Agreement and Subscriber's access to the Services upon 15 days' prior written notice to Subscriber if Subscriber's account becomes delinquent and such delinquency is not cured within such notice period. Subscriber acknowledges and agrees that AspirEDU has no obligation to retain Student Data and that such Student Data may be irretrievably deleted if Subscriber's account is 90 days or more delinquent.

9. Integration Services. AspirEDU will integrate Student Data in a manner that will allow Subscriber's End-users to use the Services. The scope of integration will be agreed upon by the parties. Subscriber will make commercially reasonable efforts to cooperate with AspirEDU on all technical aspects regarding integration of Student Data. The parties will begin the integration process within 15 days from the date of execution of this Agreement, or at such time as is mutually agreed to by the parties.

10. Subscriber Materials and Conduct.

(a) License. Subscriber hereby grants, and represents and warrants that it has all rights necessary to grant to AspirEDU a non-exclusive, worldwide, irrevocable, royalty-free and fully paid license (1) to use, reproduce, create derivative works, distribute, perform, and display any materials provided, imported or uploaded to, or otherwise used by or on behalf of Subscriber or any End-user with the Services (“Subscriber Materials”), for purposes of providing the Services; and (2) to use Subscriber’s trademarks, service marks, and logos as required to provide the Services. All rights in and to the Subscriber Materials not expressly granted to AspirEDU in this Agreement are reserved by Subscriber.

(b) Subscriber Materials and Conduct. Subscriber represents and warrants that all Subscriber Materials provided by Subscriber and End-users shall not (1) infringe any copyright, trademark, or patent; (2) misappropriate any trade secret; (3) be deceptive, defamatory, obscene, pornographic, invasive of another’s privacy, hateful, or racially, ethnically, religious, sexual, gender or otherwise objectionable; (4) contain any viruses, worms or other malicious computer programming codes able to damage the Site, or other data of the Services; or (5) otherwise violate the rights of a third party. In addition, Subscriber agrees not to, and shall ensure that End-users shall not, use the Services to (i) stalk and/or harass another; (ii) harm minors in any way; (iii) impersonate any person or entity, or falsely state or otherwise misrepresent Subscriber’s affiliation with a person or entity; (iv) forge headers or otherwise manipulate identifiers to disguise the origin of any Subscriber Materials posted on or transmitted through the Services; (v) use the Services or Subscriber Materials such that it will mislead a third party into believing that he or she is interacting directly with AspirEDU or the Services; (vi) engage in any chain letter, contests, junk e-mail, pyramid schemes, spamming, surveys or other duplicative or unsolicited messages (commercial or otherwise); (vii) use any AspirEDU domain name as a pseudonymous return e-mail address; (viii) access or use the Services in any manner that could damage, disable, overburden or impair any AspirEDU server or the networks connected to any AspirEDU server; or (ix) market any goods or services for any business purposes (including advertising and making offers to buy or sell goods or services), unless specifically allowed to do so by AspirEDU. Subscriber agrees that any use of the Services by Subscriber or End-users contrary to or in violation of Subscriber’s representations and warranties in this section constitutes improper and unauthorized use of the Services. Subscriber agrees that AspirEDU may (but has no obligation to), in AspirEDU sole discretion, remove or modify any Subscriber Materials which it deems to violate Subscriber’s covenants, representations and warranties in this section.

11. AspirEDU Representations and Warranties. AspirEDU will make commercially reasonable efforts to ensure a virus free environment, a reliable operational schedule and to provide timely correction of any component of the Services known to be inaccurate. AspirEDU does not represent or warrant that the Services will be error-free, free of viruses or other harmful components, that defects will be corrected or that the Services will always be accessible. Furthermore, AspirEDU does not warrant that use of the Services will achieve any particular result for Subscriber. AspirEDU may make improvements and/or changes to Site features, functionality or Content at any time.

AspirEDU represents and warrants as follows:

a. It has taken all necessary corporate action and has the full power and authority and all necessary rights to enter into and perform according to the terms of this Agreement and grant the license rights set forth herein; and the execution, delivery and performance of this Agreement, and the grant of rights to Subscriber hereunder, do not violate or conflict with the rights of any third party; and

b. The Site, Content and Services are original to AspirEDU and shall not infringe upon, or otherwise violate or misappropriate any copyright, patent, trademark, trade secret, or other intellectual property right(s) held by any third party.

In the event of a breach of any of the foregoing representations and warranties, AspirEDU agrees to promptly repair or replace the Site, Content and/or Services, at no charge to Subscriber, so that all errors or non-conformities in the Site, Content and/or Services of which Subscriber notifies AspirEDU or which otherwise come to AspirEDU's attention are corrected and meets all of the foregoing warranties. If AspirEDU is not able to repair or replace the Site, Content and/or Services within 30 days of being notified by Subscriber of the error or nonconformity, then Subscriber may, as its sole remedy terminate this Agreement and AspirEDU shall promptly refund all amounts paid by Subscriber under this Agreement for periods beyond the date of termination.

12. Disclaimer of Warranties. Except as provided in Section 11, the Services are provided on an "as is, as available" basis, and AspirEDU expressly disclaims all warranties, including the warranties of merchantability or fitness for a particular purpose. Except as provided in Section 11, AspirEDU disclaims all responsibility for any loss, injury, claim, liability, or damage of any kind resulting from, arising out of or any way related to (a) any errors in or omissions from the Services, including but not limited to technical inaccuracies and typographical errors; (b) the unavailability of the Services or any portion thereof; (c) Subscriber's use of the Services; (d) Subscriber's use of any equipment or software in connection with the Services; or (e) any third party web sites or content therein directly or indirectly accessed through links contained on the Site.

13. Limitation of Liability. Neither party shall be liable for any special, indirect, incidental, punitive or consequential damages of any kind whatsoever in any way due to, resulting from, or arising in connection with this Agreement or the use of or inability to use the Services. Neither party shall be liable to the other for any loss or damages in connection with this Agreement in an amount greater than the Subscription Fees paid during the six (6) month period prior to the event giving rise to such liability.

14. Indemnification.

a. Subscriber agrees to indemnify, defend and hold harmless AspirEDU, its officers, directors, and employees from and against all claims, losses, expenses, damages and costs, including reasonable attorneys' fees (collectively, "Losses"), resulting from any breach of this Agreement by Subscriber or any End-user.

b. AspirEDU agrees to indemnify, defend and hold harmless Subscriber, its officers, directors, and employees from and against all Losses resulting from any third party claim, demand or action based on (i) the infringement or misappropriation of any third party intellectual property right or trade secret by AspirEDU, its licensors, suppliers or third party information providers in connection with the Site, the Content or the Services under this Agreement; and (ii) AspirEDU's breach of this Agreement.

c. Indemnification under subsections (a) and (b) hereof will be provided only on the conditions that: (i) the indemnifying party is given written notice within 15 calendar days after the indemnified party receives notice of the potential Losses; (ii) the indemnifying party has sole control of the defense and all related settlement negotiations, provided any settlement that would impose any monetary or injunctive obligation upon the indemnified party shall be subject to such party's prior written approval; and (iii) the indemnified party provides cooperation and information in furtherance of such defense, as reasonably required by the indemnifying party.

15. Additional Miscellaneous Provisions. Use of the Services is at all times subject to AspirEDU's then current *Data Retention and Security Policy*, a copy of which will be provided to Subscriber upon request. This Agreement shall be binding upon and shall be for the benefit of AspirEDU and Subscriber, and each of their respective legal representatives, successors, and permitted assigns; provided, that Subscriber may not assign, sublicense, or delegate this Agreement, in whole or in part, without AspirEDU's prior written consent. This Agreement shall be deemed to be controlling with respect to the meaning of any other language on the Site. Nothing in any of the Help documentation or any other AspirEDU documentation shall be deemed to limit or otherwise modify this Agreement in any way. This Agreement is governed by and construed in accordance with the laws of the State of Florida, and the parties agree that the exclusive venue for any legal action related to this Agreement will be the state and federal courts of Hillsborough County, Florida. If any litigation is commenced by either party concerning the terms of this Agreement, the party which substantially prevails in such litigation will be entitled to a judgment against the other party for the costs of such litigation, including court costs and reasonable attorneys' fees. No waiver by a party of any breach or default by the other party of any provision of this Agreement, or failure by a party to exercise in any respect any right or remedy provided in this Agreement shall be deemed to be a waiver of any other breach or default, nor of any other right or remedy, of the same or other nature. Each party agrees that the other party will not be liable for any delay or failure in performance caused by network outages, acts of God, war, fires, flood, court order, strikes, or labor disputes, provided that each party agrees to use reasonable efforts to eliminate or minimize the effect of such events upon performance of their respective duties under this Agreement. This Agreement, together with the attached Schedules and referenced AspirEDU policies, constitutes the entire agreement with respect to access to and use of the Services. If any provision of this Agreement is unlawful, void or unenforceable, then that provision shall be deemed severable from the remaining provisions and shall not affect their validity and enforceability. Any demand, notice, or other communication required or permitted hereunder shall be effective if in writing and either (i) hand-delivered to the addressee, or (ii) deposited in the mail (registered or certified) or delivered to a private express company addressed as follows: (A) if to AspirEDU, at the address set forth in "Contact Us" section of the Site; or (B) if to Subscriber, at the address set forth on the signature page of this Agreement. Either party may change its notice address by providing the


other party with notice of the change. E-mail notification with confirmation by the other party may be accepted by either party at its option as notification, but e-mailing such notice shall not by itself constitute notice under this subsection.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date appearing in the preamble to this Agreement.

AspirEDU, Inc.

Duluth Public Schools


Signature


Signature

Kimberley Munzo
Printed Name

Catherine Erickson
Printed Name

President & CEO
Title

CFO
Title

7/17/2019
Date of Signature

07/17/19
Date of Signature

01-211-611. 303.000. 130500

SCHEDULE 1 – Dropout Detective

Student Performance Analytics

Fee Information

Estimated Commencement Date	Implementation Fee	Annual Subscription Fee
September 1, 2019	\$2,000 (includes training and LTI integration to Canvas)	\$4.00 per student (estimating 750 students) <i>A minimum annual subscription fee of \$1,500 is required.</i>

Increase in Student Count. If at any time during the Term the number of students being supported by Dropout Detective increases by more than 15% since the most recent invoice, Subscriber agrees to pay a prorated fee based on the remaining term of the Agreement.


Optional Delivery of Files. At Subscriber's request, AspirEDU can arrange for the automated daily delivery of the Statistics and/or Notes CSV files to Subscriber's SFTP server. The annual fee for this service is \$1,500.

AspirEDU, Inc.

Duluth Public Schools



 Signature



 Signature

Kimberley Munzo

 Printed Name

Catherine Erickson

 Printed Name

President & CEO

 Title

CFO

 Title

7/17/2019

 Date of Signature

07/17/19

 Date of Signature

AGREEMENT

THIS AGREEMENT, made and entered into this 17 day of July , 2019, by and between Independent School District #709, a public corporation, hereinafter called District, and Leanna Hudson, an independent contractor, hereinafter called Contractor.

THE PURPOSE OF THE AGREEMENT is to set out the terms and conditions whereby Contractor will provide programs or services for the District at the times and locations set forth in this Agreement.

The terms and conditions of this Agreement are as follows: *(insert here or attach as appropriate)*

1. **Dates of Service.** This Agreement shall be deemed to be effective as of August 1, 2019 and shall remain in effect until June 30, 2020, unless terminated earlier as provided for herein, or unless and until all obligations set forth in this Agreement have been satisfactorily fulfilled, whichever occurs first.

2. **Performance.** Support services include: Connecting with ISD 709 Families in Transition program coordinator to determine needs of families and students, meet with families in shelters or households to determine concerns and community support options, provide parenting support individually or in small groups at shelter and/or transitional housing sites, assist parents in maintaining appointments for children/youth within the community and school.

3. **Background Check.** *(applies to contractors working independent with students)*

Contractor must provide an executed criminal history consent form and a money order or check payable to the District in an amount equal to the actual cost of conducting a criminal history background check on all of its employees assigned to the program. Contractor is precluded from performance of contract until the results of the criminal background check(s) are on file.

If Contractor has already completed background checks for their business needs, Contractor stipulates that the background checks are completed, on file, and will be made available for review if the District should request.

4. **Reimbursement.** In consideration of the performance of Contractor of its obligations pursuant to this Agreement, District hereby agrees to reimburse Contractor for its services and expenses in performing said obligations up to a sum not to exceed \$ 22,000.00.

Contractor is required by Minnesota Statutes, Section 270.66, subd. 3, to provide their Taxpayer Identification Number (TIN) used in the enforcement of Federal and State tax laws. The TIN will be available to Federal and State tax authorities and State personnel involved in the payment of State obligations. This Agreement will not be approved unless TIN is provided.

5. **Requests for Reimbursement.** The terms of payment under this Agreement are as follows:

- a. Payment shall be made by the District within 30 days of submission of a proper invoice by the Contractor;
- b. Any other terms of payment in the performance of services are incorporated by reference in this Agreement.

6. **Propriety of Expenses.** The fact that the District has reimbursed Contractor for any expense claimed by Contractor shall not preclude District from questioning the propriety of any such item. District reserves the right to offset any overpayment or disallowance of any item or items at any time under this Agreement by reducing future payments to Contractor. This clause shall not be construed to bar any other legal remedies District may have to recover funds expended by Contractor for disallowed costs.

7. **Ownership of Materials.** The District reserves the rights to reproduce the programming in any fashion, or appropriate the contents of the programming, or any portion thereof, to its own use for any and all programs, forms and other materials that Contractor has provided, prepared, or utilized in performance of the terms of this Agreement.

8. **Independent Contractor.** Both the District and Contractor agree that they will act as an independent contractor in the performance of its duties under this Agreement. Nothing contained in this Agreement shall be construed as in any manner creating a relationship of joint venture between the parties, which shall remain independent contractors with respect to all actions performed pursuant to this Agreement.

Accordingly, Contractor shall be responsible for payment of all taxes, including Federal, State, and local taxes, arising out of Contractor'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, workers compensations, and any other taxes or business license fees as required.

9. **Indemnity and defense of the District.** Contractor 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 Contractor 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.

10. **Notices.** All notices to be given by Contractor to District shall be deemed to have been given by depositing the same in writing in the United States Mail: ISD 709, Duluth Public Schools, Attn: Katie Danielson, 215 North 1st Avenue East, Duluth, MN 55802.

All notices to be given by District to Contractor shall be deemed to have been given by depositing the same in writing in the United States Mail to 1545 Torgeson Road, Duluth, MN 55804.

11. **Assignment.** Contractor shall not in any way assign or transfer any of its rights, interests or obligations under this Agreement in any way whatsoever without the prior written approval of the District.

12. **Modification or Amendment.** No amendment, change or modification of this Agreement shall be valid unless in writing signed by the parties' hereto.

13. **Governing Laws.** This Agreement, together with all its paragraphs, terms and provisions is made in the State of Minnesota and shall be construed and interpreted in accordance with the laws of the State of Minnesota.

14. **Entire Agreement.** This Agreement contains the entire understanding of the parties hereto with respect to the subject matter hereof and shall not be changed or otherwise altered except by written agreement of the parties.

15. **Cancellation.** Either party shall have the right to terminate this Agreement, without cause, upon (30) days written notice to the other party as provided for in this Agreement.

16. **Data Practices.** Contractor further understands and agrees that it shall be bound by the Minnesota Government Data Practices Act (Minnesota Statutes 13.03-13.04) with respect to "data on individuals"; as defined in 13.02, subd. 5 of that Statute) which it collects, receives, stores, uses, creates or disseminates pursuant to this Agreement.

17. **Insurance.** (If applicable) Contractor shall not commence work under the contract until they have obtained all the insurance described below and Duluth Public Schools has approved such insurance. Contractor shall maintain such insurance in force and effect throughout the term of the contract.

Contractor is required to maintain and furnish satisfactory evidence of the following insurance policies:

Workers' Compensation Insurance: Contractor must provide Worker's Compensation insurance for all its employees and, in case any work is subcontracted, Contractor will require the subcontractor to provide Workers' Compensation insurance in accordance with the statutory requirements of the State of Minnesota including Coverage B, Employer's Liability.

Commercial General Liability: Contractor is required to maintain insurance protecting it from claims for damages for bodily injury, including sickness or disease, death, and for care and loss of services as well as claims for property damage, including loss of use which may arise from operations under the Contract whether the operations are by the contractor or subcontractor or by anyone directly or indirectly employed under the contract.

18. **Conflict of Interest and Fiduciary Duty:** All contractors doing business with the District agree to follow Policy 307 - Conflicts of Interest and Fiduciary Duty. This policy is located on the District's website.

AS EVIDENCE OF THEIR ASSENT TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, set forth above, the parties hereto have caused this Agreement to be executed by their duly authorized officers as of the day and year first above written.

Anna Hudson _____ 7-22-19
Contractor Signature SSN/Tax ID Number Date

[Signature] _____ 7-29-19
Program Director Date

Please note: All signatures *must* be obtained AND the following *must* be completed by Program Director before submission to the CFO for review and approval.

This contract is funded by the following budget (include full 16 digit code), will be paid using Student Activity Funds or is no cost contract (e.g. Memorandum of Understanding):

01 - 203 - 005 - 868 - 180 - 130300
XX - XXX - XXX - XXX - XXX - XXXXXX

Check this box if the contract will be paid using Student Activity Funds

Check this box if this contract is a no-cost contract such as a Memo of Understanding

Arthur Elber _____ 7/31/19
CFO/Superintendent of Schools/Board Chair Date



Special Services Department
Independent School District #709
215 N 1st Ave E
Duluth, MN 55802

CONTRACT FOR PRE-SCHOOL PLACEMENT

AGREEMENT

THIS AGREEMENT, made and entered into this **24** day of **July, 2019**, by and between Independent School District #709, a public corporation, hereinafter called District, and **Endion Sgaure Children's Center**, an independent contractor, hereinafter called Contractor.

THE PURPOSE OF THE AGREEMENT is to set out the terms and conditions whereby Contractor will provide programs or services for the District at the times and locations set forth in this Agreement.

The terms and conditions of this Agreement are as follows:

1. **Dates of Service.** This Agreement shall be deemed to be effective as of **September 17, 2019** and shall remain in effect until **May 29, 2020**, unless terminated earlier as provided for herein, or unless and until all obligations set forth in this Agreement have been satisfactorily fulfilled, whichever occurs first.

2. **Performance.**

WHEREAS, THE SCHOOL DISTRICT has determined that it is necessary to retain the services of a qualified agency to meet needs documented in individual Education Plan (IEP).

Whereas the AGENCY is duly qualified to perform these services for preschool program as determined by student's IEP team.

NOW THEREFORE, the parties agree as follows:

The AGENCY shall provide the following services: **Preschool programming for 4 hours (240 minutes) from 8:00-12:00 every Tuesday, Thursday, and Friday, and up to 96 days.**

The AGENCY shall perform these services at: **1823 E Superior St, Duluth.**

The approximate date the service will begin is, **September 17, 2019** and shall not extend beyond **May 29, 2020**; the contract not to exceed a total of **96 dyas** (3 Days per Week - from 8:00-12:00 every Tuesday, Thursday, and Friday). (\$25.00 per day).

The SCHOOL DISTRICT shall monitor the services of the AGENCY provided as follows: Supervision will be provided by the Special Education Director located in the Special Services Department. Student attendance will be provided to the Early Childhood Special Education (ECSE) program at Historical Old Central High School (HOCHS) on the 15th of each month for the preceding month.

3. Background Check. *(applies to contractors working independent with students)*

Contractor must provide an executed criminal history consent form and a money order or check payable to the District in an amount equal to the actual cost of conducting a criminal history background check on all of its employees assigned to the program. Contractor is precluded from performance of contract until the results of the criminal background check(s) are on file.

If Contractor has already completed background checks for their business needs, Contractor stipulates that the background checks are completed, on file, and will be made available for review if the District should request.

4. Reimbursement. In consideration of the performance of Contractor of its obligations pursuant to this Agreement, District hereby agrees to reimburse Contractor for its services and expenses in performing said obligations up to a sum not to exceed \$ **2688.00**.

Contractor is required by Minnesota Statutes, Section 270.66, subd. 3, to provide their Taxpayer Identification Number (TIN) used in the enforcement of Federal and State tax laws. The TIN will be available to Federal and State tax authorities and State personnel involved in the payment of State obligations. This Agreement will not be approved unless TIN is provided.

5. Requests for Reimbursement. The terms of payment under this Agreement are as follows:

- a. Payment shall be made by the District within 30 days of submission of a proper invoice by the Contractor;
- b. Any other terms of payment in the performance of services are incorporated by reference in this Agreement.

6. Propriety of Expenses. The fact that the District has reimbursed Contractor for any expense claimed by Contractor shall not preclude District from questioning the propriety of any such item. District reserves the right to offset any overpayment or disallowance of any item or items at any time under this Agreement by reducing future payments to Contractor. This clause shall not be construed to bar any other legal remedies District may have to recover funds expended by Contractor for disallowed costs.

7. Ownership of Materials. The District reserves the rights to reproduce the programming in any fashion, or appropriate the contents of the programming, or any portion thereof, to its own

use for any and all programs, forms and other materials that Contractor has provided, prepared, or utilized in performance of the terms of this Agreement.

8. **Independent Contractor.** Both the District and Contractor agree that they will act as an independent contractor in the performance of its duties under this Agreement. Nothing contained in this Agreement shall be construed as in any manner creating a relationship of joint venture between the parties, which shall remain independent contractors with respect to all actions performed pursuant to this Agreement.

Accordingly, Contractor shall be responsible for payment of all taxes, including Federal, State, and local taxes, arising out of Contractor'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, workers compensations, and any other taxes or business license fees as required.

9. **Indemnity and defense of the District.** Contractor 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 Contractor 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.

10. **Notices.** All notices to be given by Contractor to District shall be deemed to have been given by depositing the same in writing in the United States Mail: ISD 709, Duluth Public Schools, Attn: Jason Crane, 215 North 1st Avenue East, Duluth, MN 55802.

All notices to be given by District to Contractor shall be deemed to have been given by depositing the same in writing in the United States Mail to (mailing address with zip) Endion Square Children's Center, 1823 E Superior St, Duluth.

11. **Assignment.** Contractor shall not in any way assign or transfer any of its rights, interests or obligations under this Agreement in any way whatsoever without the prior written approval of the District.

12. **Modification or Amendment.** No amendment, change or modification of this Agreement shall be valid unless in writing signed by the parties' hereto.

13. **Governing Laws.** This Agreement, together with all its paragraphs, terms and provisions is made in the State of Minnesota and shall be construed and interpreted in accordance with the laws of the State of Minnesota.

14. **Entire Agreement.** This Agreement contains the entire understanding of the parties hereto with respect to the subject matter hereof and shall not be changed or otherwise altered except by written agreement of the parties.

15. **Cancellation.** Either party shall have the right to terminate this Agreement, without cause, upon (30) days written notice to the other party as provided for in this Agreement.

16. **Data Practices.** Contractor further understands and agrees that it shall be bound by the Minnesota Government Data Practices Act (Minnesota Statutes 13.03-13.04) with respect to “data on individuals”; as defined in 13.02, subd. 5 of that Statute) which it collects, receives, stores, uses, creates or disseminates pursuant to this Agreement.

17. **Insurance.** (If applicable) Contractor shall not commence work under the contract until they have obtained all the insurance described below and Duluth Public Schools has approved such insurance. Contractor shall maintain such insurance in force and effect throughout the term of the contract.

Contractor is required to maintain and furnish satisfactory evidence of the following insurance policies:

Workers’ Compensation Insurance: Contractor must provide Worker’s Compensation insurance for all its employees and, in case any work is subcontracted, Contractor will require the subcontractor to provide Workers’ Compensation insurance in accordance with the statutory requirements of the State of Minnesota including Coverage B, Employer’s Liability.

Commercial General Liability: Contractor is required to maintain insurance protecting it from claims for damages for bodily injury, including sickness or disease, death, and for care and loss of services as well as claims for property damage, including loss of use which may arise from operations under the Contract whether the operations are by the contractor or subcontractor or by anyone directly or indirectly employed under the contract.

18. **Conflict of Interest and Fiduciary Duty:** All contractors doing business with the District agree to follow Policy 307 - Conflicts of Interest and Fiduciary Duty. This policy is located on the District’s website.

AS EVIDENCE OF THEIR ASSENT TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, set forth above, the parties hereto have caused this Agreement to be executed by their duly authorized officers as of the day and year first above written.

Contractor Signature	SSN/Tax ID Number	Date
<u>Jason Case</u>		<u>7/25/19</u>
Program Director		Date

Please note: All signatures *must* be obtained AND the following *must* be completed by Program Director before submission to the CFO for review and approval.

This contract is funded by the following budget (include full 16 digit code), will be paid using Student Activity Funds or is no cost contract (e.g. Memorandum of Understanding):

01.211.005.000.000.1393.00

Check this box if the contract will be paid using Student Activity Funds

Check this box if this contract is a no-cost contract such as a Memo of Understanding

<u>Arthur Wilson</u>	<u>7-25-19</u>
CFO/Superintendent of Schools/Board Chair	Date



CDW Customer Service Order Form
Nutanix, Inc

Table with 1 column and 4 rows: Seller: CDW Government LLC, Seller Address: 200 N. Milwaukee Avenue, Vernon Hills, IL 60061, Customer: INDEPENDENT SCHOOL DISTRICT 709 - DULUTH PUBLIC SCHOOLS 0745022, Subscription Term Start Date: Upon Service Activation

Table with 4 columns: Nutanix Cloud Services, Licensed Quantity, Initial Subscription Term, Total Service Fee. Row 1: NUTANIX XT SUB, 1, 1 Year, \$15168.00

Initial Subscription Term Fee Total: \$15,168.00

Terms:

- 1. TERMS AND CONDITIONS - Customer's obligations under this Customer Service Order Form...
2. PAYMENT - Customer will pay all Fees (as defined herein) for the use of the Cloud Services...
3. ADD-ON ORDERS - Any orders submitted by Customer to Seller for Nutanix Cloud Services...
4. NON-CANCELLABLE/NON-REFUNDABLE - The Cloud Services purchased under this Customer Service Order Form...
5. SERVICE SUSPENSION - In addition to any other rights Seller may have, Seller may suspend or terminate the Cloud Services...

BY SIGNING BELOW, Customer acknowledges and agrees that it is receiving the Cloud Services directly from Nutanix, Inc. ("Nutanix") pursuant to Nutanix's standard terms and conditions or such other terms as agreed upon by Customer and Nutanix.

CUSTOMER AUTHORIZED REPRESENTATIVE

Signature: Catherine Erickson
Name: Catherine A. Erickson
Title: CFO
Date: 7/31/19



EXHIBIT A

TERMS AND CONDITIONS

PLEASE READ THESE TERMS AND CONDITIONS VERY CAREFULLY

THE TERMS AND CONDITIONS OF CUSTOMER'S PURCHASE OF THIRD PARTY CLOUD SERVICES ("CLOUD SERVICES") FROM SELLER ARE LIMITED TO THOSE CONTAINED HEREIN. ANY ADDITIONAL OR DIFFERENT TERMS OR CONDITIONS IN ANY FORM DELIVERED BY YOU ("CUSTOMER") ARE HEREBY DEEMED TO BE MATERIAL ALTERATIONS AND NOTICE OF OBJECTION TO THEM AND REJECTION OF THEM IS HEREBY GIVEN.

BY RECEIVING THE CLOUD SERVICE DIRECTLY FROM THE THIRD PARTY SERVICE PROVIDER ("CLOUD SERVICE PROVIDER") OR BY MAKING PAYMENT TO THE CDW AFFILIATE IDENTIFIED ON THE SERVICE ORDER FORM ("SELLER"), CUSTOMER AGREES TO BE BOUND BY AND ACCEPTS THESE TERMS AND CONDITIONS UNLESS CUSTOMER AND SELLER HAVE SIGNED A SEPARATE AGREEMENT WHICH EXPRESSLY GOVERNS THE RECEIPT OF CLOUD SERVICES, IN WHICH CASE THE SEPARATE AGREEMENT WILL GOVERN.

ANY GENERAL DESCRIPTION OF THE CLOUD SERVICE AND/OR THE RESULTS THEREOF POSTED ON ANY SELLER WEBSITE OR MOBILE APPLICATION DO NOT CONSTITUTE PART OF THE AGREEMENT BETWEEN SELLER AND CUSTOMER.

Important Information About These Terms and Conditions

These Terms and Conditions constitute a binding contract between Customer and Seller and are referred to herein as either "Terms and Conditions" or this "Agreement". In addition to any agreement that references or incorporates these Terms and Conditions, Customer accepts these Terms and Conditions by making a purchase from or placing an order with Seller on any Seller website or mobile application (each, a "Site"). These Terms and Conditions are subject to change without prior notice, except that the Terms and Conditions posted on a Site at the time Customer places an order or signs a Customer Service Order Form will govern the order in question, unless otherwise agreed in writing by Seller and Customer.



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Customer consents to receiving electronic records, which may be provided via a web browser or e-mail application connected to the Internet; individual consumers may withdraw consent to receiving electronic records or have the record provided in non-electronic upon written request to Seller. In addition, Internet connectivity requires access services from an Internet access provider. Contact your local access provider for details. Electronic signatures (or copies of signatures sent via electronic means) are the equivalent of written and signed documents.

Customer may issue a Purchase Order for administrative purposes only. Additional or different terms and conditions contained in any such Purchase Order will be null and void. No course of prior dealings between the parties and no usage of trade will be relevant to determine the meaning of these Terms and Conditions or any Purchase Order or invoice, or any document in electronic or written form that is signed and delivered by each of the parties for the performance of the Cloud Services except for Seller's customer services order form (each, a "Service Order Form").

Definitions

"Affiliates" means, with respect to Seller, entities that Control, are Controlled by, or are under common Control with Seller; and, with respect to Customer, entities that Control, are Controlled by, or are under common Control with Customer.

"Confidential Information" means, subject to the following sentence, any information or data of a confidential nature of a Party, its Affiliates or a third party in oral, electronic or written form that the receiving Party knows or has reason to know is proprietary or confidential and that is disclosed by a Party in connection with these Terms and Conditions or that the receiving Party may have access to in connection with these Terms and Conditions, including but not limited to the terms and conditions of each Statement of Work and/or Purchase Order. Confidential Information does not include Personal Data.

"Control" or "Controlled" means the possession, directly or indirectly, of the power to direct or cause the direction of the affairs of another whether by ownership of shares, ability to appoint officers, contract or otherwise.

"Force Majeure Event" means any event or circumstance arising which is beyond the reasonable control of Seller (including but not limited to any industrial dispute affecting any third party, carrier delays, embargos, acts of God or acts or laws of governmental regulations or government agencies, severe weather conditions, fire, flood, disaster, failure of power, civil riot, war or terrorism).

"Laws" means any applicable federal, state, provincial, local, municipal, regional, foreign, international, multinational or other constitution, law, statute, treaty, rule, regulation, regulatory or



legislative requirement, ordinance, license, restriction, judicial or administrative order, code, common law or other pronouncement having the effect of law.

"Party" means individually, as applicable, Seller or Customer, and **"Parties"** means in each instance, Seller and Customer.

"Personal Data" means data which relates to a living individual who can be identified (a) from that data, or (b) from that data and other information which is in the possession of, or is likely to come into the possession of, the controller, and includes any expression of opinion about the individual and any indication of the intentions of the controller or any other person in respect of the individual.

"Purchase Order" or **"PO"** means a document that is in electronic form and that contains an offer by Customer to purchase pursuant to these Terms and Conditions at a specified price as the same may be amended or modified from time to time and incorporates these Terms and Conditions.

Governing Law

THESE TERMS AND CONDITIONS AND ANY CUSTOMER SERVICE ORDER FORM WILL BE GOVERNED BY THE LAWS OF THE STATE OF ILLINOIS, WITHOUT REGARD TO CONFLICTS OF LAWS RULES. ANY ARBITRATION, ENFORCEMENT OF AN ARBITRATION OR LITIGATION WILL BE BROUGHT EXCLUSIVELY IN COOK COUNTY, ILLINOIS, AND CUSTOMER CONSENTS TO THE JURISDICTION OF THE FEDERAL AND STATE COURTS LOCATED THEREIN, SUBMITS TO THE JURISDICTION THEREOF AND WAIVES THE RIGHT TO CHANGE VENUE. CUSTOMER FURTHER CONSENTS TO THE EXERCISE OF PERSONAL JURISDICTION BY ANY SUCH COURT WITH RESPECT TO ANY SUCH PROCEEDING. Customer and Seller are solely obligated to address and resolve all disputes associated with these Terms and Conditions or any Customer Service Order Form, including any damages or injuries to the Customer's Affiliates, and all claims related to these Terms and Conditions or any Customer Service Order Form will be brought by Customer in Cook County, Illinois as provided in these Terms and Conditions. Except in the case of nonpayment, neither party nor any Affiliate may institute any action in any form arising out of these Terms and Conditions more than one (1) year after the cause of action has arisen. The rights and remedies provided Seller under these Terms and Conditions are cumulative, are in addition to, and do not limit or prejudice any other right or remedy available at law or in equity.

Cloud Services

Customer acknowledges that it is receiving the Cloud Services directly from the Cloud Service Provider pursuant to the Cloud Service Provider's standard terms and conditions or such other terms as agreed upon by Customer and the Cloud Service Provider ("Cloud Services Terms and Conditions"). Accordingly, Customer shall consider the Cloud Service Provider to be the contracting party and the



Cloud Service Provider shall be the party responsible for providing the Cloud Services to the Customer and Customer will look solely to the Cloud Service Provider for any loss, claims or damages arising from or related to the provision of such Cloud Services.

Payment

Seller, or any of its Affiliates on behalf of Seller, may issue an invoice to Customer. All invoiced amounts and payments shall be made in United States Dollars. Any objections to an invoice must be made to Seller within fifteen (15) days after the invoice date. Customer agrees to pay interest on all past-due sums at the lower of one and one-half percent (1.5%) per month calculated daily and compounded monthly (19.56% per annum) or the highest rate allowed by law. In the event of a default in the payment of an invoice, Customer will be responsible for all of Seller's costs of collection, including, but not limited to, court costs, filing fees and attorneys' fees. In addition to any other means available to place orders, Customer may issue a PO to Seller. POs are not binding on Seller until accepted by Seller. Any issuance of a PO is for administrative purposes only. Any additional or different terms and conditions contained in any PO will be null and void.

Export Sales

If any transaction hereunder involves an export of items (including but not limited to, commodities, software or and/or technology) from the United States subject to the Export Administration Regulations, as amended, such export shall be in accordance with such laws or regulations, as applicable. Customer agrees that it will not divert, use, export or re-export any such items contrary to any applicable Laws in the U.S., Canada, European Union (EU) or United Kingdom. Customer expressly acknowledges and agrees that it will not export, re-export, dispose of or otherwise provide such items directly or indirectly: (a) to any entity or person within any country that is subject to U.S., Canadian, EU or United Kingdom economic sanctions, as applicable, imposing comprehensive embargoes without first obtaining prior authorization from the U.S. government, Canadian government, or the UK government, as applicable and (b) to entities and persons that are ineligible under U.S, Canadian, EU or UK law, as applicable, to receive such items. In addition, manufacturers' warranties for exported Cloud Services may vary or may be null and void for Cloud Services exported from the United States.

Warranties

Customer acknowledges that Seller is not the provider of the Cloud Services purchased by Customer hereunder and the only warranties offered are those of the Cloud Service Provider, not Seller or its Affiliates. In purchasing the Cloud Services, Customer relies on the Cloud Service Provider's service



descriptions and the terms and conditions set forth in the Cloud Services Terms and Conditions only and not on any statements, specifications, service descriptions or other specifications representing the Cloud Services that may be provided by Seller or its Affiliates. Customer expressly waives any claim that it may have against Seller or its Affiliates based on any product liability or infringement or alleged infringement of any patent, copyright, trade secret or other intellectual property rights with respect to the Cloud Services and also waives any right to indemnification from Seller or its Affiliates against any such claim made against Customer by a third party.

Seller makes no warranties to Customer and Customer hereby acknowledges that Seller makes no warranties in regard to the applicability of all Laws affecting, without limitation the manufacture, performance, sale, packaging and labelling of the Cloud Services which are in force within Customer's territory or any part of it (Local Regulations). Customer must satisfy itself that the Cloud Services comply with the Local Regulations in force from time to time.

Customer further acknowledges and agrees that Seller makes no representations, warranties or assurances that the Cloud Services are designed for or suitable for use in any high risk environment, including but not limited to aircraft or automobile safety devices or navigation, life support systems or medical devices, nuclear facilities, or weapon systems, and Customer shall indemnify, defend and hold Seller, its Affiliates, and its and their directors, officers, employees and agents harmless from any loss (of any kind), cost, damage or expense (including, but not limited to, attorneys' fees and expenses) arising from any such use of the Cloud Services. Customer further agrees to review and comply with the Cloud Service Provider's disclaimers and restrictions, if any, regarding the use of the Cloud Services, in high risk environments.

EXCEPT AS SET FORTH IN ANY CUSTOMER SERVICE ORDER FORM, AND SUBJECT TO APPLICABLE LAW, SELLER MAKES NO OTHER, AND EXPRESSLY DISCLAIMS ALL OTHER REPRESENTATIONS, WARRANTIES, CONDITIONS AND COVENANTS, EITHER EXPRESS OR IMPLIED (INCLUDING WITHOUT LIMITATION, ANY EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, SATISFACTORY QUALITY, DURABILITY, ACCURACY OR NON-INFRINGEMENT) ARISING OUT OF, OR RELATED TO, THE CLOUD SERVICES OR THE HARDWARE OR SOFTWARE USED TO DELIVER THE CLOUD SERVICES. FURTHERMORE, SELLER DOES NOT WARRANT THAT THE CLOUD SERVICES WILL BE TIMELY, UNINTERRUPTED OR ERROR FREE OR THAT THE CLOUD SERVICES WILL MEET CUSTOMER'S REQUIREMENTS. THE DISCLAIMER CONTAINED IN THIS PARAGRAPH DOES NOT AFFECT THE TERMS OF ANY CLOUD SERVICE PROVIDER'S WARRANTY. THIS DISCLAIMER AND EXCLUSION SHALL APPLY EVEN IF THE EXPRESS WARRANTY AND LIMITED REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE. THE TERMS OF THIS PARAGRAPH DOES NOT AFFECT THE TERMS OF ANY WARRANTIES FROM THE CLOUD SERVICES PROVIDER. CUSTOMER ACKNOWLEDGES THAT NO REPRESENTATIVE OF SELLER OR OF ITS AFFILIATES IS AUTHORIZED TO MAKE ANY REPRESENTATION OR WARRANTY THAT IS NOT IN THESE TERMS AND CONDITIONS.

Customer shall be solely responsible for daily back-up and other protection of its data and software against loss, damage or corruption. Customer shall be solely responsible for reconstructing data (including but not limited to data located on disk files and memories) and software that may be lost, damaged or corrupted during the performance of Cloud Services. SELLER, ITS AFFILIATES, AND ITS AND THEIR SUPPLIERS, SUBCONTRACTORS AND AGENTS ARE HEREBY RELEASED AND SHALL CONTINUE TO BE RELEASED FROM ALL LIABILITY IN CONNECTION WITH THE LOSS, DAMAGE OR CORRUPTION OF DATA AND SOFTWARE, AND CUSTOMER ASSUMES ALL RISK OF LOSS, DAMAGE OR CORRUPTION OF DATA AND SOFTWARE IN ANY WAY RELATED TO OR RESULTING FROM THE CLOUD SERVICES.

Seller shall not be liable for any loss or damage suffered or incurred by Customer arising from Seller's delay or failure to fulfil or otherwise discharge any of its obligations under these Terms and Conditions or any Customer Service Order Form or PO where such delay or failure is caused by any non-performance of its obligations by Customer, industrial dispute, sudden or substantial depletion of Seller's staff, or any Force Majeure Event.

Pricing Information; Availability Disclaimer

Seller reserves the right to make adjustments to pricing and Cloud Services offerings for reasons including, but not limited to, changing market conditions, Cloud Services discontinuation, Cloud Services unavailability, and Cloud Service Provider price changes. Therefore, Seller cannot guarantee that it will be able to fulfill Customer's orders. Customer must be notified prior to any price adjustments.

Limitation of Liability

UNDER NO CIRCUMSTANCES AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY SET FORTH HEREIN, WILL EITHER PARTY, ITS AFFILIATES OR ITS OR THEIR SUPPLIERS, SUBCONTRACTORS OR AGENTS BE LIABLE FOR: ANY LOSS OF PROFITS, LOSS OF SALES OR TURNOVER, LOSS OR DAMAGE TO REPUTATION, BUSINESS, REVENUES OR SAVINGS, LOSS, DAMAGE OR CORRUPTION OF DATA OR SOFTWARE, OR ANY INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITIES OF SUCH DAMAGES OR IF SUCH DAMAGES ARE OTHERWISE FORESEEABLE, IN EACH CASE, AND WHETHER A CLAIM FOR ANY SUCH LIABILITY IS PREMISED UPON BREACH OF CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY OF LIABILITY. THE



ENTIRE LIABILITY OF EACH PARTY AND ITS AFFILIATES FOR DAMAGES FROM ANY CAUSE WHATSOEVER WILL NOT EXCEED THE LESSER OF: (A) THE AMOUNT PAID OR PAYABLE BY CUSTOMER FOR THE CLOUD SERVICE(S); OR (B) \$100,000.

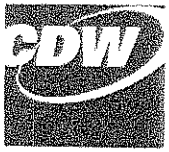
ALL EXCLUSIONS AND LIMITATIONS IN THESE TERMS AND CONDITIONS AND/OR ANY PURCHASE ORDER SHALL ONLY APPLY SO FAR AS PERMITTED BY LAW.

Confidential Information

Each Party anticipates that it may be necessary to provide access to Confidential Information to the other Party in the performance of these Terms and Conditions, the Customer Service Order Form and/or any PO. Confidential Information does not include information that: (a) becomes known to the public through no act of the receiving Party; (b) was known to the receiving Party prior to disclosure; (c) is made known to the receiving Party by a third party having the right to disclose it; or (d) is independently developed by Personnel of the receiving Party who have not had access to such information. Each Party agrees that it will maintain the confidentiality of the other Party's Confidential Information for a period of three (3) years following the date of disclosure and will do so in a manner at least as protective as it maintains its own Confidential Information of like kind but in no event with less than a reasonable degree of care. Disclosures of the other Party's Confidential Information will be restricted (i) to those individuals with a need to know such Confidential Information in connection with these Terms and Conditions, any Customer Service Order Form and/or any PO, and (ii) to a Party's business, legal and financial advisors bound by a confidentiality obligation. Each Party agrees not to use any Confidential Information of the other Party for any purpose other than the business purposes contemplated by these Terms and Conditions, any Customer Service Order Form and/or any PO. At the written request of a Party, the other Party will either return, or certify the destruction of, such Party's Confidential Information. If a receiving Party is required by law, rule or regulation, or requested in any judicial or administrative proceeding or by any governmental or regulatory authority, to disclose Confidential Information of the other Party, the receiving Party will give the disclosing Party prompt notice of such request so that the disclosing Party may seek an appropriate protective order or similar protective measure and will use reasonable efforts to obtain confidential treatment of the Confidential Information so disclosed.

Arbitration

Any claim, dispute, or controversy (whether in contract, tort or otherwise, whether preexisting, present or future, and including, but not limited to, statutory, common law, intentional tort and equitable claims capable in law of being submitted to binding arbitration) arising from or relating to the Cloud Services, the interpretation or application of these Terms and Conditions or any Customer Service Order Form or the breach, termination or validity thereof, the relationships which result from



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these Terms and Conditions or any Service Order Form (including, to the full extent permitted by applicable law, relationships with third parties who are not signatories hereto), or Seller's or any of its Affiliates' advertising or marketing (collectively, a "Claim") WILL BE RESOLVED, UPON THE ELECTION OF ANY OF SELLER, CUSTOMER OR THE THIRD PARTIES INVOLVED, EXCLUSIVELY AND FINALLY BY BINDING ARBITRATION. If arbitration is chosen, it will be conducted pursuant to the Rules of the American Arbitration Association. If arbitration is chosen by any party with respect to a Claim, neither Seller nor Customer will have the right to litigate that Claim in court or to have a jury trial on that Claim or to engage in pre-arbitration discovery, except as provided for in the applicable arbitration rules or by agreement of the parties involved. **Further, Customer will not have the right to participate as a representative or member of any class of claimants pertaining to any Claim.** Notwithstanding any choice of law provision included in these Terms and Conditions, this arbitration agreement is subject to the Federal Arbitration Act (9 U.S.C. §§ 1-16). The arbitration will take place exclusively in Chicago, Illinois. Any court having jurisdiction may enter judgment on the award rendered by the arbitrator(s). Each party involved will bear its own cost of any legal representation, discovery or research required to complete arbitration. The existence or results of any arbitration will be treated as confidential. **Notwithstanding anything to the contrary contained herein, all matters pertaining to the collection of amounts due to Seller arising out of the Cloud Services will be exclusively litigated in court rather than through arbitration.**

Miscellaneous

These Terms and Conditions and the Customer Service Order Form, if applicable, contains the entire understanding of the Parties with respect to the subject matters herein and supersedes and replaces in their entirety any and all other prior and contemporaneous agreements and understandings, whether oral, written, electronic or implied, if any, between the Parties hereto with respect to the subject matter hereof. Each Party acknowledges that it has not relied on any statements, warranties or representations given or made by any other party under or in relation to these Terms and Conditions, save those expressly set out in these Terms and Conditions. Each Party further acknowledges that it shall have no rights or remedies with respect to such subject matter other than under these Terms and Conditions. No course of prior dealings between the Parties and no usage of trade will be relevant to determine the meaning of these Terms and Conditions or invoice related thereto.

Except where the context otherwise requires, words denoting the singular include the plural and vice versa, words denoting any gender include all genders, and words denoting persons include firms and corporations and vice versa. No provision of these Terms and Conditions or any Customer Service Order Form will be deemed waived, amended or modified by either Party unless such waiver, amendment or modification is in writing and signed by both Parties. Any delay or failure by either



Party to exercise any right or remedy will not constitute a waiver of that Party to enforce such rights thereafter.

Seller may assign or subcontract all or any portion of its rights or obligations under these Terms and Conditions to any of its Affiliates or assign the right to receive payments to any of its Affiliates, with prior notification to Customer.

Seller shall be responsible for the performance of any of its Affiliates subcontractors or assignees under these Terms and Conditions. Customer may not assign these Terms and Conditions or any of its rights or obligations herein without the prior written consent of Seller. Subject to the restrictions in assignment contained herein, these Terms and Conditions will be binding on and inure to the benefit of the Parties hereto and their successors and assigns. If any term or condition of these Terms and Conditions is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or conditions hereof.

The relationship between Seller and Customer is that of independent contractors and not that of employer/employee, agency, partnership or joint venture. Accordingly, except as expressly authorized herein, no Party shall have any authority to act or make representations on behalf of the other Party, and nothing herein shall impose liability on a Party in respect of any liability incurred by another Party to a third party.

Notices provided under these Terms and Conditions will be given in writing and deemed received upon the earlier of actual receipt the third (3rd) day after postage prepaid mailing by regular mail or airmail, or the first (1st) day after such notice is sent by courier. Electronic signatures (or copies of signatures sent via electronic means) are the equivalent of handwritten signatures.

Each Customer Service Order Form may be signed in separate counterparts each of which shall be deemed an original and all of which together will be deemed to be one original.

SERVICE ORDER



SUPPLEMENTAL SERVICES:

Involta will provide services outside the scope of this Service Order on a time plus materials and expenses basis, when requested and authorized by the Authorized Client Representative. For all work performed outside the scope of this Service Order, Involta shall prepare and submit invoices to Client on the 15th and last business day of each month. Fee schedule will be based on the then current Involta IT Services Rate Card ("Standard Rates") plus travel expenses (if services are provided other than inside the data center) and any applicable sales tax. Standard Rates are from 8:00AM to 5:00PM local time. Fee schedule for nights and weekends are 1.5 times Standard Rates and holidays are two (2) times Standard Rates.

Travel expenses are billed at actual cost and mileage at the current IRS rate, portal to portal. Travel expenses include applicable lodging, meals, airfare, and car rental.

PAYMENT TERMS:

Client shall pay all Monthly Recurring Charges monthly in advance, within *fifteen (15)* days after the date on each invoice. Client shall pay all other fees and charges within *fifteen (15)* days after the date on each invoice. All taxes and governmental fees and charges, if applicable, are not included in the above referenced pricing.

TERM and TERMINATION POLICY:

Start Date: When services are provisioned from Involta or no later than 7/19/2019.

This Service Order is effective as of the Start Date and, unless terminated earlier as provided in this Service Order, will continue for an initial term of 24 months (the "Initial Term"). Thereafter, unless terminated earlier as provided herein, this Service Order will continue on a month-to-month basis at Involta's then current list price, rates and fees, available upon request (each a "Renewal Term," and each of Initial Term and Renewal Term is a "Term"). Either party may terminate this Service Order at the end of the Initial Term by providing written notice to the other at least ninety (90) days prior to the end of the Initial Term. Either party may terminate this Service Order at the end of any Renewal Term by providing written notice to the other at least thirty (30) days prior to the end of any Renewal Term. This Service Order may be terminated for Cause, but not for convenience, by either party upon giving notice of termination in writing to the other party at least ninety (90) days in advance of termination. "Cause" means any material breach which remains uncured for a period of thirty (30) days following written notice describing the material breach. In the event Client terminates this Service Order for any reason other than for Cause, Client is responsible for payment of fees for the duration of the term stated above. If Involta terminates this Service Order without Cause, Involta will refund any pre-paid monies on a pro-rated basis for services not rendered. If either party is in default of payment or breach of Agreement as provided in the MSA, then the provisions of the MSA will apply.

SERVICE ORDER



TERMS & CONDITIONS:

This Service Order is incorporated into and made a part of the MSA referenced above and any TC Schedule applicable to the Services listed above.

Product Codes in the table above under the heading of Services are defined in Service Descriptions. The provisions of each of the Service Descriptions attached as an Exhibit or Exhibits to this Service Order and, in addition to the attached Exhibit or Exhibits, if any, the Service Descriptions found at <http://sd.involta.com>, all of which include additional information on the Product Codes listed above, are incorporated here by this reference.

CONFIDENTIALITY:

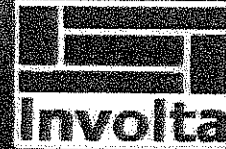
Client agrees that this Service Order, including without limitation the description of services and the pricing, is the sole and exclusive property of Involta, and shall treat them on a confidential basis and not disclose the same to any third party.

ACCEPTANCE:

Each of the undersigned represents that the undersigned has:

read and understands this Service Order and has full power and authority to sign it;
agrees and acknowledges that this Service Order is incorporated into the MSA; and,
signed this Service Order effective as of 7/8/2019.

SERVICE ORDER



PREPARED FOR:

Account Name Duluth Public Schools - ISD
709

Contact Name Bart Smith
Billing Address 215 N 1st Ave E,
Duluth, Minnesota 55802

MSA Number MSA201505114570
Contract Term 24 Months
Account Number 0000004954

SERVICE ORDER

Q-00011876

Proposal Name Duluth Public Schools - ISD
709[JFiber Cross
Connect -
Consolidated-Nextera
to ISD 709

Date 7/8/2019

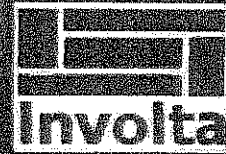
Account Manager Beth Jeanetta
Phone +1 2183934785
Email bjeanetta@involta.com

SERVICES:

QTY	Product Name	Product Code	UNIT PRICE	EXT PRICE
1	Fiber Pair Cross Connect	INV-XCON-FP-Duluth 6th Ave	125.00	125.00
			Monthly Recurring Charges	125.00

QTY	Product Name	Product Code	UNIT PRICE	EXT PRICE
1	Fiber Pair Cross Connect	INV-XCON-FP-Duluth 6th Ave	225.00	225.00
			Non- Recurring Charges	225.00

SERVICE ORDER



Customer (legal name): Duluth Public Schools - ISD 709	Involta, LLC
Individual signing: Catherine Erickson	Individual signing:
Signature: <i>Catherine Erickson</i>	Signature:
Title: CFO	Title:
Signing date: 7/9/19	Signing date:
Purchase Order #:	