

**MEMORANDUM OF AGREEMENT
between the University of Minnesota Duluth
and Independent School District 709**

Term of Agreement: 2020-2021

By this agreement, the University of Minnesota Duluth College in the Schools (CITS) and the Duluth Public Schools (ISD 709) agree to partner in the delivery of UMD approved coursework to qualified junior and senior students.

The Duluth Public Schools will:

- Provide the UMD approved curriculum, instruction, textbooks, and facilities for the courses, and pay all expenses involved in instruction of the courses;
- Coordinate student records and class rosters with UMD Office of the Registrar administration. Qualified students must be a junior or senior in high school with a cumulative grade point average of 3.0 or higher. High-potential students who do not meet the GPA or grade level requirements may be allowed to enroll in CITS classes with the permission of the CITS teacher and the high school guidance counselor. [A UMD CITS Program and Registration Exception form](#) must be submitted to UMD from the high school;
- Adhere to UMD's enrollment limits to no more than 40 students per CITS class section except where otherwise noted that maximums may be reduced due to pedagogical best practices.
- Provide UMD CITS program staff with a copy of the final class syllabi each semester for every class offered. UMD Liaisons may request copies of the class syllabi while it is in development;
- Notify UMD CITS program staff as soon as possible regarding CITS teacher staffing changes during the school year. If CITS teachers will be out on leave for an extended period UMD CITS staff must be notified prior to the leave and the substitute instructor must be approved to teach the CITS curriculum. CITS staff will work with administrators and teachers to obtain an expedited approval.
- Advise students in the program and coordinate CITS program curriculum and courses with UMD Office of the Registrar administration; and
- Agree to partner with UMD CITS for the academic year 2020-2021.

With the coordination of the Office of the Registrar and CITS program staff, UMD will:

- Provide NACEP accredited UMD College in the Schools program and UMD CITS course offerings to the Duluth Public School's qualified junior and senior students for UMD credit taught by UMD approved teaching specialists;
- Coordinate CITS registration, provide assistance to CITS students and teachers to access UMD resources, and provide academic oversight of the program; and
- Facilitate all internal UMD administrative/academic duties, including program assessment and evaluation.
- Select and support CITS faculty liaisons who provide professional development to and collaborate with UMD CITS teaching specialists;

- Facilitate access to UMD student/faculty benefits and services, including: Internet/email, UMD Library services, U Card, and others; and
- Share CITS survey and research information.

Both parties will agree to perform within the requirements of the [Minnesota Data Practices Act, Minnesota Statutes, Chapter 13](#), in handling all data relative to this agreement.

UMD will charge \$92 per student, per course based on the UMD CITS class lists printed after the UMD student course cancellation/add deadline (see Addendum A for course listing). UMD will bill ISD 709 School District using the following schedule:

- Fall semester student enrollments are final in November and billed in December.
- Spring semester and all year student enrollments are final in April and are billed in May.
- Bills are payable within 30 days.

CITS courses offered in the Duluth Public Schools may be amended and/or expanded in each succeeding year.

APPROVALS:

| Title | Name | E-Signature | Date |
|---|----------------|-----------------------|-----------|
| UMD Associate Vice Chancellor for Academic Affairs | Gerald Pepper | | |
| UMD College in the School Program Director | Carla L Boyd | | |
| Duluth Public Schools Director of Curriculum & Instruction | Jen Larva | Jen Larva | 7/15/2020 |
| Duluth Public Schools CFO/Executive Director of Business Services | Cathy Erickson | <i>Cathy Erickson</i> | 7/17/20 |

01-E-005-211-000-394-200

Addendum A
2020-2021 List of UMD CITS Courses
To Be Offered in ISD 709

| Course Title | Course # | Credits | Maximum Class Size | CITS Teacher(s) |
|----------------------------|-----------------|----------------|---------------------------|--|
| College Writing | WRIT 1120 | 3 | 25 | Stephanie Mickle Stuart Sorenson |
| Introduction to Literature | ENGL 1907 | 3 | 40 | Carla Harrold Greg Jones Maria Macioce |
| Calculus I* | MATH 1296 | 5 | 40 | William Garnett Peter Graves Timothy White Ed Lewis |
| Economics and Society | ECON 1003 | 3 | 40 | Michael Devney Richard Updegrove Gina Hollinday |
| Weight Training | PE 1616 | 1 | 40 | Joseph Hietala |
| Introduction to Sociology | SOC 1101 | 4 | 40 | Catherine Nachbar Adair Ballavance Gina Hollinday |
| Intermediate Spanish I | SPAN 1201 | 4 | 40 | Eve Hessler Kimberly Kroll Strukel |
| Intermediate Spanish II | SPAN 1202 | 4 | 40 | Eve Hessler Kimberly Kroll Strukel |
| Beginning German II | GER 1102 | 4 | 40 | Emily Lull Lynn Hinzmann |
| Intermediate German I | GER 1201 | 4 | 40 | Emily Lull Lynn Hinzmann |

*All Year Course



**STANDARD SHORT FORM CONTRACT
FOR PROFESSIONAL SERVICES BETWEEN
LANDSCAPE ARCHITECT AND CLIENT**

Preliminary Provisions

Date

This Agreement is made as of July 13, 2020, between the Client and Landscape Architect for the Landscape Architectural Services as provided herein.

Client

Duluth Preschool

NAME

Historic Old Central High School, 215 N. 1st Avenue East, Duluth, MN 55802

ADDRESS / CITY / STATE / ZIP

Sherry Williams, Director of Duluth Preschool, sheryl.williams@isd709.org, 218-3368815

RELATIONSHIP TO PROJECT OWNER

Landscape Architect

3 Owls Outdoor Play Consultants

NAME

ENTITY

SOLE PROPRIETOR PARTNERSHIP CORPORATION LIMITED LIABILITY COMPANY

P.O. Box 3434, Duluth, MN 55803

ADDRESS / CITY / STATE / ZIP

Rebekah Johnson, 3owlsopc@gmail.com, 218-461-1678

CONTACT INFORMATION

Project

(general description of Project: name, purpose, baseline information)

Duluth Preschool is developing a nature playscape at three different sites: Myers-Wilkins Elementary, Piedmont Elementary, and Laura MacArthur Elementary. These playscapes will give preschool classes the opportunity for regular, stimulating, open-ended play in a secure, open-air, nature-inspired environment.

Compensation

Compensation for the Scope of Services performed under this Agreement shall be the Hourly fee of \$ 50. NTE \$4500 plus Reimbursable Expenses.



American Society of Landscape Architects

Article 1 Landscape Architectural Services

1.1 Standard of Care

The Landscape Architectural Services shall be performed with care and diligence in accordance with the professional standards applicable at the time and in the location of the Project and appropriate for a project of the nature and scope of this Project.

1.2 Scope of Services

Landscape Architectural Services to be provided under this Agreement are:

Conceptual Design Services for each of the three sites include (but are not limited to):

Project Team Collaboration, Site Analysis, Ideation, Design Development, Plan Drawings with photos & notes, Construction Consultation

Design costs per site: \$1500

1.3 Supplemental Services

Supplemental Services are in addition to the basic Scope of Services and, when requested in writing by the Client, shall entitle the Landscape Architect to additional compensation beyond the Compensation stated above. Supplemental Services under this Agreement expressly include but are not limited to:

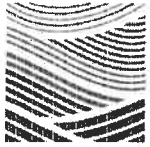
Staff training, educational sessions, other

1.4 Changes to Approved Services

Revisions to drawings or other documents shall constitute Supplemental Services when made necessary because of Client-requested changes to previously approved drawings or other documents, or because of Client changes to previous Project budget parameters or Project requirements.

1.5 Schedule of Performance

The Client's signature on this Agreement shall be the basis for the Landscape Architect to begin providing services for the Project. The Landscape Architect shall perform the services as expeditiously as is consistent with the standard of care described in section 1.1, above.



American Society of Landscape Architects

Article 2 Client's Responsibilities

2.1 Information

The Client shall provide data about the site and other information on which the design is to be based as well as Client's budget parameters for the Project. The Landscape Architect shall be entitled to rely on the accuracy and completeness of information provided by the Client.

2.2 Budget

The Landscape Architect shall reasonably strive to propose designs and prepare documents consistent with the Client's budget parameters. If provided by the Landscape Architect as a part of the Scope of Services, opinions of probable construction costs are based on the Landscape Architect's familiarity with the landscape construction industry and are provided only to assist the Client's budget planning. Such opinions shall not be construed to provide a guarantee or warranty that the actual construction costs will be within the Project budget parameters at the time construction bids are solicited or construction contracts negotiated.

2.3 Approvals

The Client's decisions, approvals, reviews, and responses shall be communicated to the Landscape Architect in a timely manner so as not to delay the performance of the Landscape Architectural Services.

2.4 Project Permit and Review Fees

The Client shall pay all fees required to secure jurisdictional approvals for the Project.

Article 3 Ownership of Documents

The Landscape Architect shall be deemed the author and owner of all documents and deliverables developed pursuant to this Agreement and provided to the Client by the Landscape Architect (collectively, the "Design Materials"). Subject to payment by the Client of all fees and Reimbursable Expenses owed to the Landscape Architect, the Landscape Architect grants to the Client an irrevocable, non-exclusive license to reproduce the Design Materials solely for the construction of the Project and for information and reference with respect to the use of the Project.

Article 4 Landscape Architect Compensation



American Society of Landscape Architects

4.1 Compensation for the Landscape Architectural Services performed under this Agreement shall be as indicated in the Preliminary Provisions plus Reimbursable Expenses as defined below. Supplemental Services, when requested in writing by the Client, shall require additional compensation to be determined on an hourly basis or on the basis of a negotiated fee.

4.2 Reimbursable Expenses are expenditures made by the Landscape Architect, its employees, and consultants in the interest of the Project plus an administrative fee of 25 %. Reimbursable Expenses include but are not limited to travel expenses, costs of reproduction of documents, postage, services of professional consultants which cannot be quantified at the time of contracting, and other, similar, direct Project-related expenditures.

4.3 Monthly payments to the Landscape Architect shall be based on (1) the percentage of the Scope of Services completed, and shall include payments for (2) Supplemental Services performed, and (3) Reimbursable Expenses incurred.

4.4 Payments are due and payable 30 days from the date of the Landscape Architect's invoice. Invoiced amounts unpaid 45 days after the invoice date shall be deemed overdue and shall accrue 5 % simple interest per month. At the Landscape Architect's option, overdue payments may be grounds for termination or suspension of services.

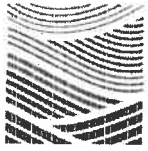
4.5 If through no fault of the Landscape Architect, the Scope of Services to be provided under this Agreement has not been completed within by the end of 2020 (*indicate calendar days or months*) of the initial notice to proceed, the compensation for services rendered after that time period shall be equitably adjusted.

Article 5 Indemnification

Client and Landscape Architect each agree to indemnify and hold harmless the other, and their respective officers, employees and representatives, from and against liability for losses, damages, and expenses, including reasonable attorney's fees, to the extent such losses, damages, or expenses are caused by the indemnifying party's negligent acts, errors, or omissions. In the event losses, damages, or expenses are caused by the joint or concurrent negligence of Client and Landscape Architect, they shall be borne by each party in proportion to its negligence.

Article 6 Dispute Resolution

6.1 If a dispute arises out of or relates to this Agreement, the parties shall endeavor to resolve their differences first through direct discussions. If the dispute has not been settled within 14 days of the initial discussions, the parties shall submit the dispute to mediation, the cost of which shall be shared equally by the parties.



American Society of Landscape Architects

6.2 Nothing in these provisions shall limit rights or remedies not expressly waived under applicable lien laws.

Article 7 Termination

This Agreement may be terminated by either party on seven (7) days' written notice should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination, provided the defaulting party has not cured or in good faith diligently commenced to cure the breach during the 7-day notice period.

Article 8 Other Terms and Conditions

8.1 Assignment

Neither party shall assign their interest in this Agreement without the express written consent of the other, except as to the assignment of proceeds.

8.2 Governing Law

The law in effect at the Landscape Architect's principal place of business shall govern this Agreement.

8.3 Complete Agreement

This Agreement represents the entire understanding between the Client and the Landscape Architect and supersedes all prior negotiations, representations, or agreements, whether written or oral with respect to its subject matter. The person(s) signing this Agreement on behalf of the parties hereby individually warrant that they have full legal power to execute this Agreement on behalf of the respective parties and to bind and obligate the parties with respect to all provisions contained herein. This Agreement may be amended only in a writing signed by both the Client and the Landscape Architect.

Landscape Architect



7/15/20
Date

Client



7-23-20
Date

04-E-005-579-503-305-000

AGREEMENT

THIS AGREEMENT, made and entered into this 24th day of June, 2020, by and between Independent School District #709, a public corporation, hereinafter called District, and First Witness , 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 1, 2020 and shall remain in effect until June 30, 2022, 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.** First Witness will provide Child Sexual Abuse Prevention information to both parents and children at Duluth Preschool sites upon request.

3. **Background Check.** (*applies to contractors working independent with students*). Not applicable.

~~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.~~

Contractor will notify the District of any individual working in our schools with convictions of a gross misdemeanor or felony.

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 \$50 per presentation.

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: Sherry Williams, Duluth Preschool, 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) First Witness, 4 W 5th St, Duluth, MN 55806.

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 Workers' 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.

THE REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK

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.

Travis O'Connell _____ 6/30/2020
 Contractor Signature SSN/Tax ID Number Date

Sherry Williams _____ 7/9/20
 Program Director Date

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

This contract is funded by either:

1. The following budget (include full 16 digit code); or
2. will be paid using Student Activity Funds; or
3. is no cost contract (e.g. Memorandum of Understanding).

Please check the appropriate line below:

Check if the contract will be paid using District funds and enter the budget code in the top line below.

| | | | | | | |
|----|-----|-----|-----|-----|--------|-----|
| 04 | E | 005 | 579 | 503 | 430 | 000 |
| 04 | 579 | 005 | 503 | 000 | 143000 | |


_____ Check if the contract will be paid using Student Activity Funds

_____ Check if the contract is a no-cost contract such as a Memorandum of Understanding

Catherine Eber _____ 7/12/20
 CFO / Superintendent of Schools / Board Chair Date

Memorandum

To: Cathy Erickson, CFO/Executive Director of Business Services

From: Dave Spooner 
Manager of Facilities

Date: July 2, 2020

Re: Quote #4342-1 Annual Service and Maintenance of Emergency Generators

The following quote was solicited according to statute and School Board Policy for services to be performed from July 1, 2020 through June 30, 2021, with the option to renew for two (2) additional one-year periods if acceptable to both parties.

After review and if you concur, please sign all copies based on signing authority and return them to the Facilities Management office for processing.

Quote #4342-1 - District-Wide Annual Service and Maintenance of Emergency Generators

Bids were solicited from six contractors for District-Wide Service and Maintenance of Emergency Generators. It is recommended the CFO approve entering into a contract with Cummins Inc. based on their low quote with an estimated value of \$5,542.74, with the option to renew for two (2) additional one-year periods if acceptable to both parties.



AGREEMENT

THIS AGREEMENT made and entered into this 1st day of July, 2020, by and between Independent School District #709, a public corporation, hereinafter called District, and Cummins Inc. 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 July 1, 2020 and shall remain in effect until June 30, 2021, 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.** Perform all work as specified in QUOTE #4342-1 (Re-Quote) Annual Service and Maintenance of Emergency Generators for the period of July 1, 2020 through June 30, 2021, with the option to renew for two (2) additional one-year periods if acceptable to both parties. This contract award is approximately \$5,542.74. Total Contract award amount to be determined through execution of this contract based upon annual service and maintenance rates and the emergency service hourly rates, which include all ancillary charges, of \$140.00/hr for normal working hours (8:00 a.m. to 5:00 p.m.), \$180.00/hr for after normal hours including Saturday and \$220.00 for Sunday and Holiday working hours as defined in the Contractor's quote.

This Contract consists of the following:

1. Printed Memorandum of Agreement and Title Sheet;
2. Contractor's response;
3. Contractor's Insurance Policy;
4. Any other documents identified by District.

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.

Contractor will notify the District of any individual working in our schools with convictions of a gross misdemeanor or felony.

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 at an annual rate of approximately \$5,542.74 based upon annual service and maintenance rates and the emergency service hourly rates, which include all ancillary charges, of \$140.00/hr for normal working hours (8:00 a.m. to 5:00 p.m.), \$180.00/hr for after normal hours including Saturday and \$220.00 for Sunday and Holiday working hours as defined in Contractor's quote.

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 and all required backup documentation 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: David Spooner, 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 Cummins Inc., 3115 Truck Center Drive, Duluth, MN 55806.

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. **Compliance with Laws.** The Contractor shall comply with all governing laws, rules and regulations, whether federal, state, local or those of the District. Those governing laws include but are not limited to Minnesota Statute 16C.05 (5) (formerly 1998 Minnesota Laws Ch. 386, Art. 1 Section 6) which Statute presently provides that the books, records, documents and accounting procedures and practices of the vendor or other party, that are relevant to the Contractor transaction, are subject to examination by the contracting agency and either the legislative auditor or the state auditor, as appropriate, for a minimum of six years. The other provisions of the Statute also apply.

The Contractor recognizes that, to the extent that competitive vendor requirements apply to this Contract, those requirements apply to the award and performance of this Contract.

The Regulations of the District are incorporated into this Contract by reference and must be complied with whether or not specifically identified in this Contract.

15. **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.

16. **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.

17. **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.

18. **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 Workers' 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. The District shall be listed as the certificate holder and shall be named an additional insured under said policy and proof of this insurance shall be provided to the District. This insurance shall be in the amount of at least \$1,500,000 per occurrence.

19. **Bonding.** Contractor shall provide such Payment and Performance Bonds as may be required, if any.

20. **Representatives of District.** The Contractor shall perform work pursuant to this Agreement pursuant to the request and authority of the following persons:

| <u>ISD 709 Employee</u> | <u>Position</u> |
|-------------------------|---|
| Cathy Erickson | CFO/Executive Director of Business Services |

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

| <u>ISD 709 Employee</u> | <u>Position</u> |
|-------------------------|-----------------------|
| David Spooner | Manager of Facilities |

21. **Protection of District.** To the extent that work by the Contractor or others on behalf of ISD 709 is to be planned, conducted, supervised or reviewed by the Contractor, the Contractor shall advise ISD 709 if such work:

- a. is not being performed pursuant to the plans and specifications, according to the best practice or in accordance with industry standards;
- b. should be rejected or modified;
- c. should be performed in a different manner and whether other work should be performed;
- d. requires ISD 709 to be advised of any other facts or opinions regarding that work.

In all respects, the Contractor shall represent the interests of ISD 709 and act to protect those interests and endeavor to guard ISD 709 against defects, deficiencies and omissions in the performance of the work.

22. Negotiation, Mediation and Arbitration. Any disputes between the parties shall first be negotiated. If the parties are not successful in negotiation, they then shall subject the dispute to mediation. If mediation is not successful, then any disputes between ISD 709 and the Consultant shall be resolved through binding arbitration. The arbitration shall be conducted in the State of Minnesota, and Minnesota law shall apply. Unless otherwise agreed by the parties, the arbitration shall be conducted pursuant to the rules of the American Arbitration Association.

At the option of ISD 709, the arbitration shall include in one consolidated arbitration proceeding, all claims and disputes regarding the Contractor and any architects, contractors, subcontractors, material men and other consultants as may be involved in the dispute. Contractor shall include this paragraph in all its subcontracts dealing with the work of ISD 709.

Following the issuance of a demand for arbitration, any party to the arbitration shall be entitled to use all discovery methods permitted in the Minnesota Rules of Civil Procedures for ISD 709 courts. Once selected, the arbitrator shall hear any discovery disputes regarding discovery unless otherwise agreed by the parties.

23. 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.

THE REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK

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.

Mark Hassel

Digitally signed by Mark Hassel
Date: 2020.07.01 16:56:57
-05'00'

35-0257090

7/1/2020

Cummins Inc.

SSN/Tax ID No.

Date

David G. Sporn

JUL 02 2020

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:

| | | Varies By Site Receiving Services | | | |
|-------|---------|---|---------|-----|--------|
| 01/05 | 810/865 | 000/005 | 000/370 | 000 | 135003 |

Cathie Elser

CFO/Superintendent/Board Chair

7/8/20

Date

ADDENDUM TO AGREEMENT

This Addendum to Purchase Order (“Addendum”), dated this 1 day of July 2020, by and between Independent School District #709 (hereinafter referred to as “District”) and Cummins Inc. (hereinafter referred to as “Contractor”).

WITNESSETH

WHEREAS, District and Contractor are parties to a certain Agreement, effective July 1, 2020 (the “Agreement”), whereby Contractor provides goods, materials, and/or services (“Services”), as identified in the Agreement, for District’s project;

WHEREAS, the parties now desire to amend the aforesaid Agreement as follows;

AGREEMENT

NOW, THEREFORE, in consideration of the promises herein contained and for other good and valuable consideration, the following provisions are incorporated into the Agreement for the duration of its term and shall supersede any language to the contrary found elsewhere:

1. The Contract consists of the following:
 - This Agreement;
 - Contractor’s response, including this Addendum;
 - Contractor’s Certificate of Insurance;
 - Asbestos Containing Materials Acknowledgment Form.

2. 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 an undisputed invoice;
 - b. Any other terms of payment in the performance of services are incorporated by reference in this Agreement.

3. Indemnification and defense of the District
Contractor shall defend, indemnify, and hold harmless District, and their respective successors, assigns, employees, directors, and agents harmless from and against any and all third party claims, liabilities, causes of action, losses, expenses, and/or damages (collectively “Claims”) which arise from the sole or gross negligence or willful misconduct of Contractor and result in damage to tangible property or persons, including bodily injury, disease, or death.

4. Notices.
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 Cummins Inc., 1600 Buerkle Road, White Bear Lake, MN 55110. With a copy to: 500 Jackson St., Columbus, IN 47201.

5. Property Insurance.
Contractor will be solely responsible for Contractor’s property for its full value including loss of use and hereby releases District from any and all liability for such property and will require its insurer, if any, to waive subrogation in favor of District.

6. Response Time.
Service response time of 60 minutes by phone and 4 hours on site.

7. Workmanship
Contractor shall correct the nonconforming Services where (i) such nonconformity becomes apparent to District during the warranty period; (ii) Contractor receives written notice of any nonconformity within thirty (30) days following discovery by District; and (iii) Contractor has determined that the Services are nonconforming. Services


corrected or re-performed shall be subject to the remaining warranty period of the original warranty of the Services. New parts supplied during correction or re-performance of Services are warranted for the balance of the warranty period still available from the original warranty of such parts. The remedies set forth in this Section shall not be deemed to have failed of their essential purpose so long as Contractor is willing to correct defective Services or refund the purchase price thereof.

This Addendum is effective as of the effective date of the Agreement and shall continue in line with the term of the Agreement, unless amended thereafter. In the event of a conflict between this Addendum and the terms of the Agreement or any specifications or related documents, this Addendum shall control. All other terms and conditions contained in the Agreement shall remain unchanged and in full force and effect. Capitalized terms contained in this Addendum shall contain the same meaning as found in the Agreement, unless otherwise stated.

IN WITNESS WHEREOF, the parties hereto have caused this Addendum to be signed by their duly authorized officers, all done the day and year first above written.

DISTRICT:

ISD 709

By: 

Name: Catherine A. Erickson

Title: CFO

CONTRACTOR:

CUMMINS INC.

By: Mark Hassel Digitally signed by Mark Hassel
Date: 2020.07.01 16:50:04 -05'00'

Name: Mark Hassel

Title: PEM Sales Manager

AGREEMENT

THIS AGREEMENT, made and entered into this 14th day of July, 2020, by and between Independent School District #709, a public corporation, hereinafter called District, and Aunty's Child Care LLC, 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 14, 2020 and shall remain in effect until June 4, 2021, 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 _____ : Individualized Education Program (IEP).

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

NOW THEREFORE, the parties agree as follows:

The AGENCY shall provide the following services: Preschool programming daily (5 days per week) Monday, Tuesday, Wednesday, Thursday, and Friday following the Duluth Schools District calendar.

The AGENCY shall perform these services at: **5714 Wadena Street, Duluth, MN 55807.**

The approximate date the service will begin is **September 14, 2020** and shall not extend beyond **June 4, 2021**; the contract not to exceed a total of **165 Days** (attending 5 Days per Week - Monday, Tuesday, Wednesday, Thursday, and Friday. The District will pay 5 days per week @ \$36.00 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) 215 North 1st Avenue East, Duluth, MN 55802, on the 15th of each month for the preceding month or bi-weekly for the preceding two weeks.

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.

Contractor will notify the District of any individual working in our schools with convictions of a gross misdemeanor or felony.

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 \$35.00 per day and **\$5,775.00** in total.

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. Invoices will be emailed directly to ap.vendor@ISD709.org.

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 Aunty's Child Care LLC, 5714 Wadena Street, Duluth, MN 55807.

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 Workers’ 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.

THE REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK

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 |
| <i>Jana Crane</i> | | <i>7/14/20</i> |
| Program Director | | Date |

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

- This contract is funded by either:**
1. The following budget (include full 16 digit code); or
 2. will be paid using Student Activity Funds; or
 3. is no cost contract (e.g. Memorandum of Understanding).

Please check the appropriate line below:

Check if the contract will be paid using District funds and enter the budget code in the top line below.

| | | | | | | |
|----|---|-----|-----|-----|-----|-----|
| 01 | E | 005 | 211 | 000 | 393 | 000 |
| XX | X | XXX | XXX | XXX | XXX | XXX |

_____ Check if the contract will be paid using Student Activity Funds

_____ Check if the contract is a no-cost contract such as a Memorandum of Understanding

| | |
|---|---------------------|
| <i>Cathie Elson</i> | |
| CFO / Superintendent of Schools / Board Chair | Date <i>7/17/20</i> |



Customer Confirmation

Mimecast North America, Inc.
191 Spring Street
Lexington, MA 02421

Reference: Q-206053
Prepared By: Craig Shadduck
Confirmation Date: May 22, 2020
Subscription Term (Months): 12.00
Hosting Jurisdictions:
Email Services - United States
Awareness Training - United States

CUSTOMER:
Duluth Public Schools
215 N 1st Ave E
Duluth, Minnesota 55802-2058

RESELLER:
CDW LLC
200 N Milwaukee Ave
Vernon Hills, Illinois 60061-1577

| Service | Qty |
|------------------------------------|-------|
| Mimecast AT1 Mime OS | 1,400 |
| LCS - Silver | 1 |
| Mimecast AT Mime OS Implementation | 1 |

Please note:

- Customer may increase the number of Permitted Users shown above or add Services at any time during the Subscription Term. However, Customer must provide Reseller or Mimecast with advance notice prior to adding additional Permitted Users to Customer's account, and additional fees may apply.
- During a Subscription Term, it is not possible for Customer to (i) reduce the number of Permitted Users shown above; (ii) downgrade any of the Services shown above; or (iii) remove any of the Services shown above. Such changes may be made effective at the start of a new Subscription Term, but only if Mimecast receives notice of such change not less than thirty days prior to the renewal date.

The provision of Services described herein is subject to the Mimecast Terms and Conditions located at <http://www.mimecast.com/contracts> for the applicable Services, as of the last date of signature below.



Customer Confirmation

To accept the Services under the terms set forth herein, please sign here:

For and on behalf of Customer:

Individual
Signing:

Catherine Erickson
~~Bart Smith~~

Job Title:

CFO

Authorized
Signature:

Catherine Erickson

Date Signed:

7/1/20

For and on behalf of Mimecast:

Individual
Signing:

Job Title:

Authorized
Signature:

Date Signed:

Service Descriptions

| Service Name | Description |
|------------------------------------|---|
| Mimecast AT1 Mime OS | Cyber Awareness Training, including Content Library with 14 Queue Slots, Phishing Testing, Risk Assessments and Reporting. |
| LCS - Silver | Local Business Hours Online Support, local Business Hours Telephone Support, 24x7x365 Telephone Support for P1 critical issues, unlimited access to Mimecast online Community & knowledge base, service monitoring, alerting and reporting, access to Customer Success Desk |
| Mimecast AT Mime OS Implementation | Implementation of the core Mimecast AT Service |

01 E 012 108 000 405 000

QUOTE CONFIRMATION



DEAR BART SMITH,

Thank you for considering CDW•G for your computing needs. The details of your quote are below. [Click here](#) to convert your quote to an order.

| QUOTE # | QUOTE DATE | QUOTE REFERENCE | CUSTOMER # | GRAND TOTAL |
|---------|------------|-----------------|------------|-------------|
| LKNC320 | 5/6/2020 | MIMECAST | 0745022 | \$11,000.00 |

| QUOTE DETAILS | | | | |
|--|------|---------|------------|------------|
| ITEM | QTY | CDW# | UNIT PRICE | EXT. PRICE |
| Cyber Awareness Training AT1 Mime - OS - web-based training Mfg. Part#: M_AT1_OS_1000_A Electronic distribution - NO MEDIA Contract: Minnesota Services Cooperative (018-A) | 1400 | 5932277 | \$7.00 | \$9,800.00 |
| MIMECAST LCS SILVER Mfg. Part#: M_LCS_SL_A Electronic distribution - NO MEDIA Contract: Minnesota Services Cooperative (018-A) | 1 | 5247665 | \$1,200.00 | \$1,200.00 |
| MIMECAST AT IMPLEMENTATION Mfg. Part#: M_ATIOS__OO Electronic distribution - NO MEDIA Contract: MARKET | 1 | 5913208 | \$0.00 | \$0.00 |

| PURCHASER BILLING INFO | | SUBTOTAL | \$11,000.00 |
|---|--|--|--------------------|
| Billing Address: INDEPENDENT SCHOOL DISTRICT 709 ACCTS PAYABLE 215 N 1ST AVE E DULUTH, MN 55802-2058 Phone: (218) 723-4127 Payment Terms: NET 30 Days-Govt/Ed | | SHIPPING | \$0.00 |
| | | SALES TAX | \$0.00 |
| | | GRAND TOTAL | \$11,000.00 |
| | | DELIVER TO Shipping Address: DULUTH PUBLIC SCHOOLS TECHNOLOGY DEPARTMENT 215 N 1ST AVE E DULUTH, MN 55802-2058 Shipping Method: ELECTRONIC DISTRIBUTION | |

Need Assistance? CDW•G SALES CONTACT INFORMATION



Mayank Srivastava

(866) 626-8519

mayasri@cdw.com

This quote is subject to CDW's Terms and Conditions of Sales and Service Projects at <http://www.cdw.com/content/terms-conditions/product-sales.aspx>
 For more information, contact a CDW account manager

© 2020 CDW•G LLC, 200 N. Milwaukee Avenue, Vernon Hills, IL 60061 | 800.808.4239

Customer Registration

Organization Name: ISD 709 Duluth Public Schools

Contact Person: Catherine A. Erickson

Mailing Address: 215 N 1st Ave E

City: Duluth State: MN Zip: 55802

Website Address: www.isd709.org

Telephone: 218-336-8700 Fax: 218-336-8773

Email: catherine.erickson@isd709.org

Designate organization/institution type:

Educational entity

By signing below, Customer and Mobile Citizen, LLC agree to be legally bound by the Terms of Service attached hereto. THIS AGREEMENT WILL NOT BE BINDING UNTIL MOBILE CITIZEN, IN ITS SOLE DISCRETION, HAS APPROVED CUSTOMER, AND BOTH MOBILE CITIZEN AND CUSTOMER HAVE SIGNED AND DELIVERED THIS AGREEMENT.

ISD 709 Duluth Public Schools (Organization Name)

Signed:  Print Name: Catherine A. Erickson

Title: CFO Date: 7/28/2020

MOBILE CITIZEN, LLC

Signed:  Print Name: Adam Miller

Title: Operations Manager Date: 7/28/2020

01-E-012-108-000-320-000

Mobile Citizen - Direct Customer Terms of Service

Version: March 1, 2019

IMPORTANT – READ CAREFULLY: These Direct Customer Terms of Service (including the “Customer Registration” cover page, these “TOS”), as they may be amended as hereinafter provided, together with the applicable Mobile Citizen quote or order form (“**Order**”) into which these TOS are incorporated by reference, form a binding legal agreement (the “**Agreement**”) between Mobile Citizen LLC (“**Mobile Citizen**”) and the customer entity listed in the cover page (the “**Customer**”). Notwithstanding any other provision hereof, the Agreement will not be in effect until (i) Mobile Citizen has, in its sole discretion, approved the Customer, and (ii) Mobile Citizen and Customer have both signed and delivered this Agreement. The Agreement governs Customer’s access to and use of the wireless broadband service identified in the Order, that Mobile Citizen makes available under this Agreement (including any associated media and documentation, the “**Service**”). The Service is controlled and made available by a third party that may change from time to time (the “**Provider**”). For more information regarding the technical specifications of the Service, please refer to Appendix A attached hereto (for reference purposes only).

The “**Effective Date**” means the date both parties hereto have executed the cover page of this Agreement. NOTE THAT SUBSCRIPTIONS ARE SUBJECT TO AUTO-RENEWAL AND THAT THIS AGREEMENT IS SUBJECT TO CHANGE.

1. Scope of Agreement.

- a) **Service.** Subject to Customer’s continued compliance with the terms and conditions of this Agreement (including payment of fees due), Mobile Citizen will make the Service available to Customer for use by Permitted Users (defined below) based on the number of subscriptions purchased in the Order (each, a “**Subscription**”). Each Subscription will be paired with a single piece of Equipment, and in no event may Customer associate more than one piece of Equipment with a particular Subscription. All rights not expressly granted in this Agreement are reserved by Mobile Citizen. Neither Customer nor any Permitted User is granted any rights to any firmware or software under this Agreement.
- b) **Subscription Term.** The initial term of each Subscription shall be set forth in the Order and, subject to Service availability and any price adjustments then in effect, will automatically renew for successive periods of either (i) one year, in the case of annual Subscriptions (including where the first year is prorated so that it shares a common renewal date with other subscriptions), or (ii) one month, in the case of month-to-month Subscriptions, unless either party elects to terminate the Subscription at least 30 days prior to the end of the then-current term. The initial Subscription term and any subsequent renewal Subscription term are collectively referred to herein as the “**Subscription Term**”. If Mobile Citizen does not receive payment in full for any applicable Subscription Fees (defined below), Mobile Citizen reserves the right to immediately suspend or terminate Customer’s use of the Service for the applicable Subscription(s).
- c) **Permitted Users.** “**Permitted Users**” means (i) any users, recipients or beneficiaries of Customer’s own non-profit, social welfare or educational programs or services, (ii) any of Customer’s employees or independent contractors, or (iii) any of Customer’s students, faculty, administrators and staff, in each of the foregoing cases, (A) only while such persons meet the requirements of at least one of (i)-(iii), and (B) regardless of whether the individual has reviewed or agreed to this Agreement. Once the status of a Permitted User changes so that the individual

is no longer a Permitted User, Customer is responsible for ensuring that such individual no longer makes use of or accesses the Service. Customer is responsible to Mobile Citizen for the conduct of Permitted Users, including all Permitted User account activity related thereto, as if such conduct were Customer's own, and Customer will notify Mobile Citizen immediately of any unauthorized use of a Permitted User's account or suspected security breach.

- d) **Third-Party Provider.** Customer understands and agrees on behalf of itself and Permitted Users that the Service is provided by a third party that may change from time to time during this Agreement (the "**Provider**"). As of the Effective Date, the Provider is Sprint Spectrum, L.P. (or an affiliate thereof). Mobile Citizen, as a distributor of the Service, does not assume responsibility for the availability of the Service or the conduct of the Provider. For example, Mobile Citizen does not control or assume responsibility for congestion management, block or rate-control protocols or protocol ports, inhibit or favor any particular applications, impose user device rules or provide end-user security functionality. Customer further understands and agrees on behalf of itself and Permitted Users that the underlying technology and availability of the Service could change after the Effective Date in a manner causing changes or disruptions to the Service ("**Provider Service Change**"). Any change to or disruption of the Service in connection with the foregoing shall not constitute a breach of this Agreement.
- e) **Equipment.** Customer is responsible for ordering through Mobile Citizen all equipment needed for its Permitted Users' use of the Service ("**Equipment**"). Requirements for Equipment compatibility with the Provider's network are set forth on the Provider's website. Mobile Citizen is not responsible for any failure of the Equipment to function properly with the Service. In addition, Customer is responsible for ensuring that all Equipment and associated components thereof meet the minimum technical requirements posted on Provider's website. Equipment must be activated and authenticated by the Provider prior to first use. All Equipment is delivered Free On Board (F.O.B.) Origin unless otherwise agreed. Rental arrangements between Customer and Permitted End Users are not permitted without Mobile Citizen's prior written consent. The use of third-party equipment is not permitted without the prior written approval of Mobile Citizen.

2. Pricing, Payment & Other Charges.

- a) **Pricing & Payment.** Pricing for a Subscription (the "**Subscription Fee**") and for any Equipment is set forth in the Order. Pricing is subject to adjustment at the end of the initial Subscription term and any renewal term. Payment is due even if Service has been suspended by Mobile Citizen or Provider as permitted by this Agreement. Customer will pay all undisputed amounts invoiced within 30 days of the invoice date and must notify Mobile Citizen in writing of any good faith disputed amounts within such time, in which case Customer may withhold the disputed portions of the invoice pending resolution of the dispute. Payments are otherwise not subject to set off or withholding for any reason.
- b) **Taxes, Fees & Other Charges.** Customer will be responsible for all applicable taxes, duties, fees, surcharges, account set-up fees or other costs payable in connection with the Service or otherwise incurred by Mobile Citizen (including Equipment shipping costs), except to the extent Customer can show with documentation satisfactory to Mobile Citizen that Customer (or the Permitted User, as the case may be) is legally exempt from such taxes or fees. The taxes, fees and other charges detailed above may vary on a monthly basis. Mobile Citizen is not required to provide advance notice thereof except as required by law. Surcharges and recovery fees are not taxes and are not required by law, but are set by Mobile Citizen and may change. Customer also agrees to pay any additional charges or fees applied to its account, including interest and charges due to insufficient credit or insufficient funds.

- c) **Publicity.** Customer may not use or refer to the name, trademarks or logos of Mobile Citizen or Provider in any advertisements, publications or other such media without the prior written consent of Mobile Citizen or Provider, respectively.

3. Service Limitations & Restrictions.

- (a) **Availability.** The Service is not available in all locations and Permitted Users will only be able to access the Service when within the operating range of the Provider's network, which may change from time to time in the sole discretion of the Provider. The Service may be disrupted or unavailable from time to time due to maintenance, emergencies, inclement weather or other factors outside of Mobile Citizen's control. The Service and Equipment may not function in the event of a power failure or disruption, and Permitted Users may be required to reset or reconfigure their modem or other hardware in order to use the Service thereafter. Neither Mobile Citizen nor Provider assume any liability hereunder with regard to any failure or lack of performance of the Service for any reason whatsoever.
- (b) **Service Quality and Maintenance.** The speed and bandwidth available to each computer or device accessing the Service may vary for a variety of reasons. Provider reserves the right to engage in reasonable network management and/or eliminate malicious traffic patterns and prevent the distribution of viruses or other malicious code, as provided in the Provider T&C's. In addition, Provider will perform maintenance on the Service, which may include planned or unplanned interruptions of the Service. Customer acknowledges and agrees that neither Mobile Citizen nor any of the other Mobile Citizen Parties (defined below) will be responsible for any losses or damages suffered by Customer, Permitted Users or anyone accessing the Service through Customer, as a result of any Service interruptions. Customer acknowledges that the Service may not be available in all areas, and even within coverage areas service availability, quality, signal strength and network speeds may vary, be lower than advertised or be insufficient for use of the Service. No credit or adjustment will be made for interruptions or degradations of the Service except as agreed by Mobile Citizen in its discretion or as required by applicable law.
- (c) **Provider AUP, T&C.** Use of the Service is subject to the Provider's then-current (i) acceptable use policy (the "**Provider AUP**"), a copy of which is, as of the Effective Date, available at <https://www.sprint.com/en/legal/acceptable-use-policy> and incorporated herein by reference; and (ii) end user terms and conditions (the "**Provider T&C**"), a copy of which is, as of the Effective Date, available at <https://www.sprint.com/en/legal/terms-and-conditions> and incorporated herein by reference.
- (d) **Open Internet Rule Disclosures.** Customer represents that it has read and understands Mobile Citizen's Open Internet Transparency Rule Disclosures, as may be amended, which are available at <https://mobilecitizen.org/legal/> and incorporated herein by reference.
- (e) **Usage Limits.** THE SERVICE MAY BE SUBJECT TO USAGE LIMITS ESTABLISHED BY THE PROVIDER, WHICH ARE NOT CONTROLLED BY MOBILE CITIZEN AND ARE SUBJECT TO CHANGE. MOBILE CITIZEN MAY NOT RECEIVE ADVANCE NOTICE OF ANY SUCH CHANGES FROM THE PROVIDER AND IN SUCH CASES WILL NOT BE ABLE TO GIVE CUSTOMER ADVANCE NOTICE THEREOF.
- (f) **Prohibitions.** Customer shall not resell Subscriptions or the Service, permit third parties to access the Service, grant any sublicense, or distribute or transmit the Service in whole or in part. If Customer desires to resell the Service, Customer must enter into a Mobile Citizen Reseller

Agreement. Customer and Permitted Users shall not reverse-engineer, interfere or tamper with, or otherwise use or abuse the Service or Equipment with the intended or actual effect of violating this Agreement or any party's intellectual property rights.

4. Compliance with Laws. Customer represents and warrants that it and all Permitted Users will comply with all applicable laws and regulations in connection with its performance under this Agreement and use of the Service.

5. Term and Termination.

(a) Term. This Agreement will commence on the Effective Date and, unless sooner terminated as permitted herein, will continue in effect until all Subscriptions hereunder have expired or been terminated (the "Term"). The term of each individual Subscription is described in Section 1, above.

(b) Termination of Subscription or Suspension of Service by Mobile Citizen.

(i) Mobile Citizen may suspend or terminate the Service, in whole or in part, upon written notice to Customer in the event Customer has breached any term of this Agreement, provided that, where such breach is curable, Customer has failed to cure said breach within 30 days' receipt of notice of the breach. Mobile Citizen may also suspend or terminate Service for an individual Subscription upon written notice to Customer where a Permitted User of such Subscription has breached any terms of this Agreement, provided that, where such breach is curable, Permitted User has failed to cure said breach within 30 days of Customer's receipt of notice of breach from Mobile Citizen. Termination of Service will automatically constitute termination of the affected Subscription. For purposes of this clause b(i), any violation of the Provider AUP, the Provider T&C, intellectual property rights or applicable laws or regulations may be deemed incurable by Mobile Citizen in its reasonable discretion.

(ii) Mobile Citizen may suspend or terminate the Service, in whole or in part, in the event the Provider ceases to make the Service available to Mobile Citizen for any reason (including in the case of a Provider Service Change), Mobile Citizen otherwise loses the right to offer Subscriptions for any reason, or Mobile Citizen incurs a material increase in the cost of providing the Service. Mobile Citizen will use good-faith efforts to provide as much advance notice of such suspension or termination as is practicable under the circumstances; however, Customer understands that Mobile Citizen may not receive advance notice from the Provider of suspended or terminated Service.

(iii) This Agreement will terminate, effective upon delivery of written notice by either party to the other party: (a) upon the institution of insolvency, receivership, or bankruptcy proceedings or any other proceedings for the settlement of debts of the other party; (b) upon the making of an assignment for the benefit of creditors by the other party; (c) upon the dissolution of the other party; or (d) if any substantial part of such party's property becomes subject to any levy, seizure, assignment, application, or sale for or by a creditor or governmental agency, then the other party may terminate this Agreement upon sixty (60) days written notice (provided in case of clause (a) such termination will only be effective if such petition or proceeding is not dismissed within sixty (60) days after such written notice is provided).

(iv) Where Mobile Citizen terminates a Subscription without cause more than one month prior to the expiration of a Subscription, Mobile Citizen will issue a refund of Subscription Fees paid for full, unused months remaining on the then-current Subscription Term.

(c) Effect of Termination. Upon expiration or termination of a Subscription for any reason, all rights of access to and use of the Service under the Subscription shall automatically terminate and Customer will cause Permitted Users to immediately cease use of the Service.

6. Confidentiality. In connection with this Agreement, either party (the “**Disclosing Party**”) may from time to time disclose to the other party (the “**Receiving Party**”) certain information regarding the business, products, or services of the Disclosing Party and its suppliers that the Disclosing Party designates as confidential or which a reasonable person would understand to be confidential or proprietary based on the nature of such information (“**Confidential Information**”). Without limitation, Confidential Information may include technical data, marketing materials, financial information, employee information, and business plans. The Receiving Party will not use any Confidential Information of the Disclosing Party for any purpose not expressly permitted by the Agreement, and will disclose the Confidential Information of the Disclosing Party only to the employees or contractors of the Receiving Party, and in the case of Mobile Citizen only, its affiliated companies, who have a need to know such Confidential Information for purposes of the Agreement and who are under a duty of confidentiality no less restrictive than the Receiving Party’s duty hereunder. The Receiving Party will protect the Disclosing Party’s Confidential Information from unauthorized use, access, or disclosure in the same manner as the Receiving Party protects its own confidential or proprietary information of a similar nature and with no less than reasonable care. The Receiving Party’s obligations under this Section with respect to any Confidential Information of the Disclosing Party will terminate if such information: (a) was already known to the Receiving Party at the time of disclosure by the Disclosing Party; (b) was disclosed to the Receiving Party by a third party who had the right to make such disclosure without any confidentiality restrictions; (c) is, or through no fault of the Receiving Party has become, generally available to the public; or (d) was independently developed by the Receiving Party without access to, or use of, the Disclosing Party’s Confidential Information. In addition, the Receiving Party will be allowed to disclose Confidential Information of the Disclosing Party to the extent that such disclosure is (i) approved in writing by the Disclosing Party, (ii) necessary for the Receiving Party to enforce its rights under the Agreement in connection with a legal proceeding; or (iii) required by law or by the order of a court of similar judicial or administrative body, provided that the Receiving Party notifies the Disclosing Party of such required disclosure promptly and in writing and cooperates with the Disclosing Party, at the Disclosing Party’s request and expense, in any lawful action to contest or limit the scope of such required disclosure. The Receiving Party will return to the Disclosing Party or destroy all Confidential Information of the Disclosing Party in the Receiving Party’s possession or control and permanently erase all electronic copies of such Confidential Information promptly upon the written request of the Disclosing Party upon the expiration or termination of the Agreement. The Receiving Party will certify in a writing signed by an officer of the Receiving Party that it has fully complied with its obligations under this Section.

7. Representations and Warranties; Disclaimer.

(a) Customer represents and warrants that: (i) it is a non-profit or social welfare organization or educational institution and will only allow persons who are current Permitted Users access to Subscriptions; (ii) it is listed on <http://www2.guidestar.org> (or, if not listed, has otherwise been approved in writing by Mobile Citizen); (iii) it has requisite authority to enter into this Agreement; (iv) all information provided to Mobile Citizen will be accurate, complete and current; (v) it will not make or publish any representations, warranties or guarantees on behalf of Mobile Citizen Parties (defined below) or the Provider concerning the availability, performance or functionality of the Service other than as set forth in Section 4, above; and (vi) it will keep Mobile Citizen informed of any problems and resolutions with the Service. Customer will provide Mobile Citizen with a copy of the standard it applies to assure compliance with clause (i), above, and shall certify annually to Mobile Citizen that it is in compliance with clause (i). Customer shall maintain such records as

may be necessary to establish such compliance and make them available to Mobile Citizen upon request.

(b) Equipment Warranty & Replacement. Mobile Citizen warrants that for a period of nine (9) calendar months from the date Mobile Citizen ships the Equipment (the "**Warranty Period**") to Customer, the Equipment will be free from defects in design, workmanship, construction and material (the "**Equipment Warranty**"). The foregoing Equipment Warranty is only valid to the Customer and its Permitted Users, and cannot be transferred or resold to another party. As the sole remedy for a violation of the Equipment Warranty, Mobile Citizen will, at its sole discretion, repair or replace the defective Equipment, or refund the purchase price of the Equipment. The replacement Equipment can be refurbished, new, or a similar product, at Mobile Citizen's sole and absolute discretion. Replacement or refunds for defective Equipment are subject to Mobile Citizen's Return Merchandise Authorization (RMA) policies, which require the Customer to work with Mobile Citizen and Provider to troubleshoot potentially defective Equipment, and set forth requirements for returning defective Equipment. Mobile Citizen shall make its RMA policies available to Customer.

The limited Equipment Warranty does not cover, and is void with respect to Equipment that has undergone, any of the following: (i) abuse, accident, physical damage, abnormal operation, battery leakage, improper handling, neglect, unauthorized alteration, or improper storage; (ii) cosmetic damage; (iii) removal or alteration of warranty stickers or product serial numbers (the Equipment serial number must be legible for the Equipment Warranty to be valid); (iv) signal reception problems (unless caused by defects in material and workmanship); (v) damage from fire, flood, acts of God or other acts which are not the fault of Mobile Citizen and which the Equipment is not specified to tolerate, including damage caused by shipping; or (vi) any Equipment which has been repaired, modified, or altered by anyone other than Mobile Citizen.

In addition, in order to receive the benefits of the Equipment Warranty, (i) the applicable Equipment must be subject to an active Subscription (not currently cancelled or suspended for any reason), (ii) Provider must deem the Equipment defective, (iii) Provider must provide and generate an Interaction ID (which must then be supplied to Mobile Citizen before defective Equipment is shipped back to Mobile Citizen), and (iv) defective Equipment must be returned to Mobile Citizen within the Warranty Period and in the manner detailed in the applicable Mobile Citizen RMA policies.

(c) Disclaimer of Warranties. MOBILE CITIZEN, ITS RELATED ENTITIES AND ITS SUPPLIERS, INCLUDING WITHOUT LIMITATION EBS SUPPORT SERVICES LLC AND ITS AFFILIATES (COLLECTIVELY, THE "**MOBILE CITIZEN PARTIES**"), MAKE NO WARRANTIES UNDER THIS AGREEMENT AND HEREBY DISCLAIM ALL WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED WITH REGARD TO THE SERVICE AND THE EQUIPMENT, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR USE AND ANY WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE. ALL USE OF THE SERVICE AND EQUIPMENT IS AT THE PERMITTED USER'S OWN RISK. THE SERVICE AND EQUIPMENT ARE AVAILABLE ON AN "AS IS" AND "AS AVAILABLE" BASIS EXCEPT AS EXPRESSLY PROVIDED HEREIN.

8. Support Services. Except as expressly set forth in this Agreement, Mobile Citizen shall have no obligations with respect to the Service. Customer is responsible for handling all billing, payment, collection, disputes and administrative matters related to Permitted Users. Except for any basic Tier 1 technical support that Mobile Citizen may elect to provide, technical support requests will be routed

to and are the responsibility of the Provider (collectively, the “**Support Services**”). Support Services are subject to Permitted Users’ use of the Service and Equipment in accordance with this Agreement as well as, in the case of Equipment defects, the manufacturer’s applicable warranty policy. Mobile Citizen or the Provider may need to access Equipment or related hardware or software in order to provide Support Services. Defective Equipment should be returned to the Provider as instructed by Mobile Citizen or the Provider. EACH MOBILE CITIZEN PARTY IS NOT RESPONSIBLE FOR THE ACTS OR OMISSIONS OF ANY OTHER MOBILE CITIZEN PARTY, THE PROVIDER OR THIRD PARTIES IN CONNECTION WITH SUPPORT SERVICES. Provider will only provide Support Services for Equipment purchased through Mobile Citizen, through the Provider or an authorized Provider dealer.

- 9. Service Modification and Discontinuation.** Mobile Citizen and the Provider reserve the right at any time to in any way modify, edit, suspend or discontinue the Service or the Support Services made available hereunder with or without notice. In the event of Service discontinuation or of Service changes causing a material adverse effect on the quality or availability of Service, the Customer may, as its and the Permitted Users’ sole and exclusive remedy arising out of this Agreement, terminate the affected Subscriptions and the sole and exclusive liability of Mobile Citizen and the other Mobile Citizen Parties shall be to pay Customer a refund of Subscription Fees previously paid for full, for unused months remaining on the then-current Subscription Term.
- 10. Changes to Terms.** Mobile Citizen reserves the right to make modifications to the terms of this Agreement to comply with applicable laws or to account for changes in Mobile Citizen’s business, course of dealing with the Provider, or other factors. The Provider also reserves the right to change or update the Provider AUP and Provider T&C at any time. Mobile Citizen will make reasonable attempts to provide Customer with notice of all changes (to the extent the Provider has not already done so), which may include providing notice of the revised version of this Agreement on the Mobile Citizen website. Notwithstanding any other provision of this Agreement, providing notice of the revised version of this Agreement shall constitute sufficient notice. All such changes will be deemed effective and accepted by Customer and Permitted Users upon their continued use of the Service thereafter; provided, however, that if such modifications are not agreeable to Customer or to Permitted Users, Customer may elect instead (as its sole and exclusive remedy) to terminate the affected Subscriptions within 30 days of the change and receive a refund of Subscription Fees paid for full, unused months remaining on the then-current Subscription Term.
- 11. Indemnification.** Customer shall defend, indemnify and hold harmless the Mobile Citizen Parties from and against any claims, suits, losses, damages, liabilities, costs, and expenses (including reasonable attorneys’ fees) brought by third parties (including any Permitted User) resulting from or relating to: (a) any acts, omissions or breach of this Agreement of or by Customer; or (b) any acts, omissions or breach of this Agreement by Permitted Users (or any other user receiving access to the Service through Customer).
- 12. Limitation of Liability.** TO THE FULLEST EXTENT PERMITTED BY LAW, THE MOBILE CITIZEN PARTIES’ CUMULATIVE LIABILITY TO CUSTOMER AND TO ANY PERMITTED USER OR THIRD PARTY FOR ALL CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT WILL BE LIMITED TO THE TOTAL SUBSCRIPTION FEES PAID BY CUSTOMER TO MOBILE CITIZEN IN THE TWELVE (12) MONTHS PRIOR TO THE DATE ON WHICH THE FIRST CLAIM AROSE. MULTIPLE CLAIMS WILL NOT ENLARGE THIS LIMIT. THE MOBILE CITIZEN PARTIES WILL HAVE NO LIABILITY WITH REGARD TO ANY DEFECT OR FAILURE OF THE SERVICE, EQUIPMENT OR SUPPORT SERVICES, ANY LACK OR BREACHES OF SECURITY OF THE SERVICE OR IN THE STORAGE OR INTEGRITY OF CUSTOMER’S OR ANY PERMITTED USER’S DATA, ANY COST OF OBTAINING SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY. FURTHER, IN NO

EVENT WILL THE MOBILE CITIZEN PARTIES BE RESPONSIBLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL OR EXEMPLARY DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION LOSS OF PROFITS, BUSINESS INTERRUPTION, OR LOSS OF BUSINESS INFORMATION) ARISING OUT OF OR IN ANY WAY RELATED TO THE USE OF OR INABILITY TO USE THE SERVICE OR THE EQUIPMENT, UNDER ANY THEORY, WHETHER CONTRACT, TORT, NEGLIGENCE, PRIVACY, SECURITY, STRICT OR PRODUCT LIABILITY, OR OTHER LEGAL OR EQUITABLE THEORY EVEN IF SUCH DAMAGES ARE FORESEEABLE AND WHETHER OR NOT THEY HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

- 13. Assignment.** Customer's rights under this Agreement may not be transferred, leased, assigned, or sublicensed, including without limitation to any successor in interest, without the prior written consent of Mobile Citizen. Any purported attempt to transfer, lease, assign or sublicense Customer's rights without the consent of Mobile Citizen will be void, and Mobile Citizen may immediately terminate this Agreement without liability. Notwithstanding the foregoing, all provisions of this Agreement shall be binding upon Customer's successors and permitted assigns.
- 14. Governing Law & Venue.** Any question, controversy or dispute arising out of or related to this Agreement (a "**Dispute**") shall be governed by and interpreted in accordance with the laws of the State of Colorado, without regard to conflict of laws principles. The parties hereby irrevocably submit to the exclusive jurisdiction of the state and federal courts seated in Denver, Colorado for the resolution of any such Dispute. To the extent permitted by law, the parties hereby expressly waive the right to a trial by jury.
- 15. Content and Security.** Any material downloaded or otherwise obtained through use of the Services is accessed at Customer's and Permitted Users' own discretion and risk. The Mobile Citizen Parties do not control and are not responsible for any third-party websites, content, services or products that Customer may access or encounter during use of the Service, and the Mobile Citizen Parties and the Provider each reserve the right to engage in reasonable network management to protect the overall integrity of the Provider's network, including detecting malicious traffic patterns and attempting to prevent the distribution of viruses or other malicious code, and through techniques such as reducing the aggregate bandwidth available to excessive bandwidth users during periods of congestion. While the determination of what constitutes excessive use depends on the specific state of the network at any given time, excessive use will be determined primarily by resource consumption. The Provider's network management practices may entail the inspection and storage of network traffic, the provision of network traffic to third parties and/or the use of network traffic for non-network management purposes. For further information, please refer to the Provider AUP and Provider T&C, which form a part of this Agreement. The Mobile Citizen Parties and the Provider also have the right to take actions either of them deem reasonably necessary to protect any individual or entity, comply with applicable laws, regulations, or government requests, or to enforce the terms of the Agreement. Customer acknowledges that the Internet and wireless communications are not inherently secure means of data communication, the Mobile Citizen Parties shall have no liability for breaches of security beyond their reasonable control, including, without limitation, Customer's negligence with respect to controlling access to the Service or Customer's data. It is the sole responsibility of Customer to obtain and implement appropriate security devices, software, and other measures (including without limitation firewalls) to protect Customer's systems and data from theft, viruses, worms, Trojan horses, or other security threats, and the Mobile Citizen Parties have no responsibility or liability with regard thereto.
- 16. Notices.** Except where the Agreement provides otherwise, all notices, required or permitted under this Agreement shall be delivered in writing in person or by courier, overnight delivery or by certified or registered mail (postage prepaid and return receipt requested) to the address set forth in the Order (in the case of the Customer) and in the case of Mobile Citizen delivered to: Mobile Citizen LLC, 825

Delaware Street, Ste. 500, Longmont, CO 80501. Notice hereunder will be effective upon certified delivery. Either party may change the notice address by Notice to the other party.

17. **General.** None of the Mobile Citizen Parties or Provider shall be responsible or liable in any manner under this Agreement for any failure in the Service or Mobile Citizen's performance of this Agreement to the extent that such failure is due to acts of God, failure of suppliers or other causes beyond its control or by reason of a change in the Service as provided in Sections 10 and 11 above. Except as otherwise provided in Sections 10 or 11, no amendment or modification of this Agreement shall be valid unless made in writing and signed by duly authorized representatives of each party. If any part of this Agreement is found invalid (including without limitation any conflict with any applicable law or regulation) such invalidity will not affect the remaining portions of this Agreement, and the parties will substitute for the invalid provision a provision that most closely approximates the intent and economic effect of the invalid provision. Failure by either party to complain of any act or failure to act of the other party or to declare the other party in default, irrespective of the duration of such default, will not constitute a waiver of rights hereunder. This Agreement constitutes the complete agreement between Customer and Mobile Citizen with respect to the subject matter hereof and supersedes all proposals (oral or written), all previous negotiations, and all other communications, including without limitation communications on the website of any Mobile Citizen Party, except as set forth above.

Appendix A – Additional information regarding the Service

Mobile Citizen 30GB+ 4G LTE Plan

Sprint is providing Mobile Citizen's users with a 30GB+ 4G LTE data-only plan (with no throttling, suspension or overage charges after 30 GB).* The plan does not include off-network roaming and it is subject to any standard network management that Sprint may apply to commercial broadband data-only account users.