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## **EDUCATION SERVICES CONTRACT**

This Education Services Contract (the "Contract") is entered into effective as of **July 1, 2011** (the "Effective Date"), by and between [REDACTED], (the "District") and Insight Schools, Inc., an Oregon corporation d/b/a Insight School of Oregon ("Insight"). District and Insight may each be referred to in this Contract as a "Party," and both as the "Parties."

### **BACKGROUND**

Insight operates a school that is registered with the Oregon Department of Education (the "ODE") under institution identification number 4633 to operate a statewide, online, alternative high school education program (the "Program"). The District desires to have Insight provide certain educational services pursuant to the terms of this Contract.

### **AGREEMENT**

**1. Term and Termination.** This Contract shall begin on the Effective Date and shall continue until **June 30, 2012**, unless earlier terminated, in accordance with its terms. This Contract may be terminated by either Party in the event the other Party breaches a material term of this Contract and fails to cure such breach within 20 calendar days of receipt of written Notice (defined below) of such breach. Pursuant to Oregon Administrative Rule ("OAR") 581-022-1350(4), non-compliance with a rule or statute or suspension or revocation of registration by the Department shall constitute the breach of a material term of this Contract and shall result in the termination of this Contract. If the alleged breach is not cured in a timely manner, the terminating Party shall issue and deliver a Notice of termination to the other Party. Any such termination will take effect before the next semester begins, but not until after the end of the semester in which the Notice of termination is delivered. In the event this Contract is terminated due to non-compliance with a rule or statute or due to suspension or revocation during a semester, District agrees to pay fees for each Enrolled Student on a pro-rated basis for number of days each student was Enrolled in the Program up to and including the termination date. In the event of any Termination, District shall render payment in full within thirty (30) days of being invoiced by Insight.

**2. Student; Full-time, Part-time and Late Start Placement.** A "Student" is any individual who is (i) a resident of the District; (ii) registered with the District or is a permitted inter-district transfer; and (iii) between the ages of 14 and 20 at the time of placement in the Program or is otherwise permitted for placement in the Program by applicable law. A Student is a "Full-Time Student" if the student is enrolled in 4 or more courses in the current semester and has enrolled in the Program and begun class work before the day that is 30 calendar days after the first day of the current semester. A Student is a "Part-Time Student" if the student is enrolled in 3 or fewer courses in the current semester and has enrolled in the Program and begun class work before the day that is 30 calendar days after the first day of the current semester. A Student is a "Late Start Placement" if the student enrolled in the Program or began class work on or after the day that is 30 calendar days after the first day of the current semester.

**3. Placement of Students.** Using the criteria set forth in (OAR") 581-022-1350, and consistent with applicable law, including OR. REV. STAT. ("ORS") 336.635, the District's Superintendent or other authorized representative may place Full-Time Students, Part-Time Students, or Late Start Placement Students in the Program through the Resident District-Student Placement Form ("Placement Form"). A copy of the Placement Form is attached as Exhibit A. No Student will be placed in the Program without a completed Placement Form signed by the District's Superintendent or other authorized representative. The District is required to notify Insight when it places a Student into the Program. The District is responsible for payment to Insight for educational services (the "Services") for Students that have been placed in the Program by the District.

**4. Community Outreach.** Insight, with the District's prior written consent, may perform community outreach services in an effort to attract potential Students that reside within the District's geographic boundaries but who do not currently attend any of the District's schools. The District agrees that any person not enrolled in any of the District's



schools who seeks enrollment in the District as a result of the community outreach efforts of Insight may be placed in the Program by District pursuant to this Contract unless the potential Student does not meet the Student placement criteria.

**5. Technology and Educational Services.** Each Full-Time Student and each Late Start Placement Student will receive from Insight:

- (i) A laptop and printer/scanner;
- (ii) An internet stipend payable at the end of each semester upon provision of receipts to Insight;
- (iii) Student support provided by instructors, iMentors and staff;
- (iv) 24/7 technical support and tutorial services for math, reading, and science courses;
- (v) Access to a learning community including clubs and other non-academic activities; and
- (vi) Access to approximately 110 online courses. (Access to certain courses may be limited for Late Start Placement Students). See Course Catalog at [www.insightor.net](http://www.insightor.net), as may be amended by Insight from time to time.

Part-Time Students will receive and are eligible for each of the items listed above except for items (i) and (ii). Insight will be responsible for expenses incurred for the delivery and return of laptops and printers/scanners to the Student. All Students and their parent/guardian will be required to sign an Acceptable Use Agreement describing appropriate use of the student technology. The Student technology will include internet filters and content blockers necessary to provide industry standards to limit access to inappropriate content.

**6. Course Catalog.** Full-Time Students and Part-Time Students may enroll in any course listed in the Course Catalog that is offered by Insight. Late Start Placement Students may enroll only in courses that are designated with a double asterisk in the Course Catalog at [www.insightor.net](http://www.insightor.net).

**7. Enrollment and Payment for Services.** Fees for Services provided to a particular Student will not accrue until the Student is placed by the District and then enrolled in the Program. A Student is enrolled in the Program after the Student: (i) has registered with the District; (ii) has been approved and placed in the Program by the District; and (iii) has received credentials and logged into his or her coursework (collectively, the "**Enrollment Criteria**"). Unless otherwise provided herein, a student is "**Enrolled**" in the Program when the Student meets the Enrollment Criteria. The District shall pay Insight the lesser of (a) 98% of the District State School Fund warrant identified for the district by the Oregon Department of Education no later than August 31<sup>st</sup> of the contract year, up to \$36.00 per day or (b) 80% of the District's estimated current year's average per student net operating expenditure (pursuant to ORS § 336.635) for each Enrolled Full Time or Late Start Placement Student. Fees for Part-Time Students will not accrue until ten (10) calendar days after he or she meets the Enrollment Criteria. In lieu of a daily fee, District shall pay Insight a course fee of \$350.00 for each course enrolled in by each Enrolled Part-Time Student. District may elect to place Students utilizing the multiple student pricing scale, as follows: 1-15 Full Time or Late Start Placement Students, \$350 per Part-Time semester course; 16-30 Full Time or Late Start Placement Students, \$325 per Part-Time semester course; 30+ Full Time or Late Start Placement Students, \$300 per Part-Time semester course. Insight offers to contracted school districts a 10% discounted rate for Part-Time student placement(s) at \$315 per semester course for any course selected that appears on our website ([www.insightor.net](http://www.insightor.net)) course catalog and is demarked by a double asterisk. (\*\*)

Insight shall provide District with monthly statements detailing each Enrolled Student's: (i) name; (ii) identification number; (iii) enrollment status; (iv) Program entry date; (v) Program withdrawal date, if applicable; and (vi) membership days. At the end of each school year, Insight shall invoice District for Services. District will pay each invoice within 30 days following receipt.

**8. Student Records, Data and Reporting.** "**Student Records**" consist of the Placement Form, course transcript, credits earned, attendance, and report cards. Insight shall maintain the confidentiality of Student Records for each Enrolled Student consistent with the requirements of the Family Educational Rights and Privacy Act, as amended, and applicable Oregon statutes, administrative rules and non-regulatory guidance and written District policy



communicated to Insight. Insight shall provide the District with semester report cards and monthly progress reports for each Enrolled Student. Insight provide the District with an annual withdrawal report, detailing each Student who has withdrawn, graduated, or otherwise left the Program (each a "**Former Student**"). Insight shall forward to the District Student Records for each Former Student when the Student leaves the Program or for any Enrolled Student upon written request of the District. Attendance shall be calculated in accordance with Oregon's Student Accounting Manual, as updated from time to time.

**9. Curriculum and Graduation Requirements.** Insight will utilize curriculum that is aligned to comply with the course content standards established by the Oregon State Board of Education. An Enrolled Student shall be required to complete coursework at a level necessary to meet all State of Oregon and/or District graduation requirements. Insight shall notify District when an Enrolled Student has satisfactorily met the State of Oregon and/or District required units of credit and graduation requirements. District shall then elect to provide the Enrolled Student with a diploma or require Insight to do so.

**10. Intellectual Property Rights.** Each of the Parties shall remain the sole owner of all rights in and to its respective name, tradenames, trademarks, service marks, trade secrets, patents, copyrights (including all curriculum), logos, data, databases, technologies and other intellectual property rights, as the same now exist or as they may hereafter be modified or developed in the future by either Party during the term of this Agreement (collectively, the "**Intellectual Property Rights**"). Neither Party shall be deemed by any provision of this Contract to have any ownership interest in the Intellectual Property Rights of the other Party. It is expressly agreed that, notwithstanding anything to the contrary contained in this Section 10, all right, title and interest in and to all results and proceeds of all work prepared or performed by or on behalf of Insight in connection with Insight's provision of services pursuant to this Contract shall belong exclusively to Insight and may not be copied or used by any other person or entity (including, without limitation, the District) in any manner without Insight's express, prior written permission.

**11. Staff Qualifications; Criminal Background Checks and Certification.** Insight shall employ all instructors for the Program (the "**Instructors**"). All Instructors shall be highly qualified in their course content area as such term is defined by the No Child Left Behind Act of 2001, as amended. Insight shall perform criminal background and unprofessional conduct checks on all Instructors and/or staff prior to hiring and will comply with the requirements of OAR 581-022-1730, and ORS 326.603, 326.607 and 342.232. Insight shall provide District written certification that it has complied with these requirements upon request.

**12. Accreditation.** The Program is accredited by the Northwest Accreditation Commission ("**NWAC**"). The Program will maintain its NWAC accreditation while providing Services to District's students.

**13. Special Education.** The Program may accept students eligible for special education services upon approval of the District as authorized by the ODE. The District is responsible for all student special education evaluations, three year re-evaluations, annual development and revision of the student's individual education plan ("**IEP**"). Insight agrees to maintain the confidentiality regarding Enrolled Students with special education needs in accordance with the requirements of OAR 581-021-0072. All Student special education records will be maintained at the District.

**14. State Assessments.** Insight will administer required state assessment testing to each Enrolled Student within the required timeline established by the ODE unless the District chooses to administer the testing itself. The District shall provide Insight with the necessary assessment forms ("**Assessment Forms**") appropriate for each Enrolled Student in a timely manner. Upon timely receipt of such Assessment Forms, Insight will provide (i) all technical equipment and supervision to administer all required state assessments and (ii) will submit the completed assessment data to the District as required by ORS 336.637.

**15. Child Abuse Reporting Act.** Insight shall comply with the Oregon child abuse reporting laws under ORS 419B.005 through 419B.050. Insight shall immediately report to the Oregon Department of Human Services and/or local

law enforcement agency any circumstances supporting reasonable cause to believe that any child in Insight's care, custody or control has been abused or neglected.

**16. Independent School Performance Evaluation.** Oregon law requires District to conduct a performance evaluation of the Program annually. To fulfill this requirement, the District may direct in writing that Insight contract with a qualified independent third party, to conduct the required evaluation. Insight shall provide a copy of the evaluation to the District to fulfill this ODE requirement. The District retains the right to perform its own annual evaluation of the Program at a time mutually agreed to by both Parties. Insight's annual statement of expenditures for all State School Fund and other local school support moneys will be reviewed by the District in accordance with the requirements of ORS 336.635(2).

**17. Documentation from Insight.** Insight will provide the District with a copy of (i) the Program's ODE registration; (ii) Student placement criteria; (iii) certification of general liability insurance; and (iv) list of Services and curriculum being offered and all other documents as requested by the District in connection to the District's responsibility to oversee and evaluate Insight.

**18. Transportation.** Insight will not provide transportation to Enrolled Students. Enrolled Students and their families will be responsible for all transportation and all transportation costs, including transportation to any Program-sponsored social activities and other offsite events.

**19. Indemnification.** Each Party shall indemnify, defend and hold the other Party, and such Party's affiliates and their respective owners, officers, board members, employees, agents, permitted assigns and successors, harmless from and against all third party: claims, lawsuits, demands, proceedings, fines, fees, losses and costs (including reasonable attorneys' fees and other costs and expenses incurred), (collectively, "**Liabilities**") incurred to the extent the Liabilities were caused by or arise out of or result from the other Party's, its employees' or agents' alleged or actual negligent acts or omissions, willful misconduct or failure to comply with the terms or conditions of this Contract.

**20. Insurance.** Prior to the commencement of Services under this Contract, Insight shall provide the District with a certificate of general liability insurance evidencing coverage in the minimum amount of \$1,000,000 per occurrence. The certificate of insurance will show the District as an additional insured. The District will be provided with 30 days prior written notice of any material changes or cancellation of coverage. Insight will provide Worker's Compensation insurance for its employees as required by applicable law.

**21. Nature of Relationship.** Parties acknowledge and agree that their relationship is that of an independent contractor and nothing in this Contract shall be construed to create an employee relationship between Insight and District. Each Party is solely responsible for any and all liabilities of its employees for their performance under this Contract and further is responsible for any and all taxes imposed upon it, including FICA, FUTA, unemployment taxes, worker's compensation coverage, and other liabilities incurred as the employer providing the services pursuant to this Contract as an independent contractor. Each Party acknowledges and agrees that its employees are employees of its own and not those of the other Party and further acknowledges and agrees that its employees are not eligible for any benefits under any benefit plan of the other Party, the other Party's affiliates, or successors. Nothing in this Contract shall be construed to create a partnership, joint venture or agency relationship between the Parties.

**22. Notices.** Each Party giving or making any notice, request, demand or other communication (each a "**Notice**") pursuant to this Contract shall give the Notice in writing and use one of the following methods of delivery, each of which for purposes of this Contract is a writing: (i) personal delivery; (ii) Registered or Certified Mail (in each case, return receipt requested and postage prepaid); (iii) nationally recognized overnight courier (with all fees prepaid); or (iv) facsimile (with receipt of transmission).



Notice shall be deemed given upon receipt by the addressee. Any Party giving Notice shall address the Notice to the appropriate person at the address listed below. Such contact name and address may be changed from time to time by either Party by providing written Notice pursuant to this paragraph.

<b>If to Insight:</b>	<b>If to District:</b>
Insight Schools, Inc. d/b/a Insight School of Oregon	
309 SW Sixth Avenue, Suite 820	
Portland, Oregon 97204	
Attn: JD McMahan, Head of School	
Fax: 866-529-1480	
<a href="mailto:jdmcmahan@insightschools.net">jdmcmahan@insightschools.net</a>	

**23. LIMITATION OF LIABILITY.** EXCEPT FOR A PARTY’S THIRD PARTY INDEMNITY OBLIGATIONS UNDER SECTION 19, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL OR INCIDENTAL DAMAGES, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION APPLIES REGARDLESS OF WHETHER SUCH DAMAGES ARE SOUGHT BASED UPON BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATION OR OTHER LEGAL OR EQUITABLE THEORY.

**24. Compliance with Laws:** Each Party will comply with all applicable local, state, and federal laws, regulations and ordinances with respect to each Party’s performance pursuant to this Contract.

**25. Governing Law.** This Contract shall be governed by and construed in accordance with the laws of the State of Oregon without reference to conflict of laws principles.

**26. Entire Agreement.** This Contract shall supersede any and all other contracts, whether written or oral, between the Parties pertaining to the subject matter hereof.

**27. Waiver.** Any waiver or right under this Contract must be in writing signed by the Party waiving its rights.

**28. Assignment and Delegation.** This Contract may not be assigned, in whole or in part, by either Party without the prior written consent of the other Party; provided, however, either Party may assign this Agreement without the consent of the other Party to any successor in interest to such Party or the purchaser of all or substantially all of the equity or assets of such Party. Neither Party may delegate any performance under this Contract without prior written consent of the other Party. Any attempt to assign and/or delegate its performance under this Contract, in whole or in part, in violation of this provision is void.

**29. Binding Nature.** This Contract shall be binding on the Parties’ successors and permitted assigns.

**30. Amendment.** This Contract may not be amended except by mutual agreement evidenced by a written instrument signed by authorized representatives of each Party.

**31. Counterparts.** The Parties may execute this Contract in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one agreement. The signatures of all of the Parties need not appear on the same counterpart, and delivery of an executed counterpart signature page by facsimile is as effective as executing and delivering this Contract in the presence of the other Party to this Contract. This Contract is effective upon delivery of one executed counterpart from each Party to the other Party. In proving this Contract, a Party must produce or account only for the executed counterpart of the Party to be charged.

**32. Facsimile.** This Contract may be executed by facsimile. Said facsimile shall be deemed an original and fully enforceable and admissible in any legal proceeding.



**33. Survival.** The representations, covenants, confidentiality, indemnification obligations, any amounts owing at the time of termination, limitation of liability and any other provisions, which by their nature are intended to survive the termination or expiration of this Contract, shall survive for such period as necessary to effectuate their intent. Any Exhibits referenced in this Contract are incorporated herein in their entirety.

**34. Headings and Captions.** The descriptive headings of the article, section and subsections of this Contract are for convenience only and do not constitute a part of this Contract.

**35. Interpretation.** The Parties agree that the terms and conditions of this Contract are a result of mutual negotiations. Therefore, the rule of construction that any ambiguity shall apply against the drafter is not applicable and will not apply to this Contract. Any ambiguities shall be reasonably construed as to its fair meaning and not strictly for or against one party regardless of who authored the ambiguous language.

**36. Severability.** If any provision of this Contract is determined to be illegal, invalid, or unenforceable by a competent court or tribunal, the validity and enforceability of the remaining provisions will not be affected and, in lieu of such illegal, invalid, or unenforceable provision, there will be added as part of this Contract one or more provisions as similar in terms as may be legal, valid and enforceable under applicable law.

IN WITNESS WHEREOF, the Parties have caused this Contract to be executed by their duly authorized officers or representatives as of the Effective Date.

**DISTRICT**

**INSIGHT SCHOOLS, INC.**

Date:

Date: \_\_\_\_\_

Name:

Name: \_\_\_\_\_

Signature:

Signature: \_\_\_\_\_

Title:

Title: \_\_\_\_\_